

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND  
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY GORDON ROBINSON  
AND IN THE MATTER OF A DECISION BY THE  
DEPARTMENT OF INFRASTRUCTURE

KEEGAN J

**Introduction**

[1] This judicial review is brought by Mr Gordon Robinson, a self-employed event's organiser, against the Department of Infrastructure ("The Department") in relation to the operation of a policy regarding the erection of signs at roundabouts. Mr Robinson appeared on his own behalf as a litigant in person, Mr Philip McAteer BL appeared for the respondent. I commend Mr Robinson for the respectful way in which he conducted this hearing before the court and Mr McAteer for his assistance in compiling the papers and in presenting the legal arguments.

[2] Leave to proceed with judicial review was granted by Maguire J in April 2019. The context of that is important as Maguire J was told during the leave hearing that the relevant policy was subject to a review and that changes would be made. The judicial review proceeded because of an impasse between the parties over the statutory provisions which framed the policy. That has also led to an unfortunate situation whereby the revised policy has been delayed. In his skeleton argument Mr McAteer framed two questions for the court in relation to the relevant statutory provisions as follows:

- (a) Can acknowledgement signs form part of a package of road improvement works carried out under Article 43 of the 1993 Order such as to be lawful pursuant to the provision? and
- (b) In any event can the Department grant authority for such signs under Article 87 of the 1993 Order?

[3] In the circumstances outlined above, Mr McAteer, whilst raising various preliminary issues in his skeleton argument confirmed in the hearing before me that he did not object to leave and he raised no issue in relation to delay or the standing of Mr Robinson. In fact, Mr McAteer conceded that an important point of public interest has been raised in this case upon which it is useful to have clarification.

[4] The factual background is of some vintage but it is nonetheless important to state. Mr Robinson was subject to an action by the Department in 2017 in relation to the placing of a sign on a roundabout which related to his own business. These circumstances frame the case as Mr Robinson was compelled to remove the sign by virtue of the legislation which I will explain in due course. Subsequent to this occurrence Mr Robinson has researched the position across Northern Ireland and in his papers he makes various points regarding local council procedures. These are clearly matters of importance to Mr Robinson and I acknowledge that he has undertaken a considerable amount of research on this topic. However, these are matters of background, they are not the core of this challenge, and specifically I am not adjudicating on any individual cases. I am looking solely at the policy in the context of the relevant legal provisions which have been highlighted by Mr Robinson and Mr McAteer BL.

### **Legislative and Policy Framework**

[5] The Roads (Northern Ireland) Order 1993 (“The Roads Order”) contains a number of relevant provisions as follows. Article 8 of this legislation contains the duty to maintain roads and reads as follows:

“8(1) The Department shall be under a duty to maintain all roads and for that purpose may provide such maintenance compounds as it thinks fit.”

Article 43 is the general power of improvement and reads as follows:

“43(1) Subject to the provisions of this order, the Department may carry out any work for the improvement of a road where it appears to the Department expedient to do so for the purposes of facilitating road traffic.

(2) In this article ‘improvement’ (without prejudice to the generality of that expression) includes -

(a) the widening, realigning and reshaping of roads; and

- (b) the laying out, planting, maintenance and protection of trees, shrubs and grass margins in and beside roads.”

Article 78 contains an offence for excavations in a road unless by consent or under other conditions:

“78(1) Subject to paragraph (2), any person who carries out any excavation in, or otherwise breaks up the surface of, a road shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Article 87 provides for advertisements, pictures, signs etc and reads as follows:

“87(1) Any person who, without lawful authority -

- (a) paints or otherwise inscribes or affixes any picture, letter, sign or mark; or
  - (b) displays any advertisement, upon the surface of a road or upon any tree, structure, or other works in or on a road, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (2) Where any person contravenes paragraph (1), the Department may (whether or not any proceedings are instituted for an offence under that paragraph) -
- (a) remove anything painted, inscribed affixed or displayed in contravention of paragraph 1 and make good any damage done to the road or to the tree, structure or other works in question; and
  - (b) recover from that person any expenses thereby reasonably incurred.
- (3) The Department may serve on the owner of any structure or other works in or on a road a notice requiring him, within 21 days of the service of the notice, to remove anything painted, inscribed,

affixed or displayed on the structure or other works in contravention of paragraph (1).

- (4) Where a person on whom a notice is served under paragraph (3) fails to comply with that notice within the period specified in that paragraph, the Department may –
  - (a) do anything which that person has failed to do; and
  - (b) recover from that person any expenses thereby reasonably incurred by it.
- (5) Paragraph (1) does not apply to an advertisement relating specifically to a pending parliamentary election or to a pending election to the assembly or a district council.”

[6] In addition to these provisions under the Roads Order I have been referred to the Planning Act (Northern Ireland) 2011 (“The Planning Act”) and in particular Section 250 which is the interpretation section and includes the following definition in this Act:

“Advertisement means any word, letter, model, sign, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction, and (without prejudice to the preceding provisions of this definition) includes any hoarding or similar structure used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use for the display of advertisements, and references to the display of advertisements shall be construed accordingly.”

[7] The Planning (Control of Advertisements) Regulations (Northern Ireland) 2015 are regulations made by the Department of the Environment in exercise of powers conferred on it under the Planning Act. Regulation 4 sets out requirement for consent:

“4.—(1) Subject to paragraph (2), no advertisement may be displayed unless consent for its display has been granted—

- (a) by the council or the Department on an application in that behalf (referred to in these Regulations as 'express consent'); or
- (b) by regulation 5 (referred to in these Regulations as 'deemed consent')."

[8] I have also had recourse to the policy documents which have helpfully been exhibited by the respondent as follows:

- (1) Circular roads 16-89: planting acknowledgement in public roads and car parks (experiment).
- (2) Circular roads 1 of 93 DPO 25/93: privately funded planting of roundabouts, road verges and car parks.
- (3) Circular roads 7 of 94 DPO 14/94: privately funded planting of roundabouts, road verges and car parks.
- (4) Circular roads 3 of 95 DPO 8/95: privately funded planting of roundabouts, road verges and car parks.
- (5) Roads Service policy and procedure guide RSPPG E004: privately funded planting of roundabouts, road verges and car parks.
- (6) Roads Service policy and procedure guide RSPPG SO35: advertisements placed within road boundaries and overlooking motorways.
- (7) Notes on articles re Article 87.

[9] The core policy under challenge in this case is RSPPG E004 the relevant provisions of which read as follows:

**"1.1 Purpose**

This Roads Service Policy & Procedure Guide (RSPPG):

- a) Is aimed at all Roads Service staff involved in the provision of planting on roundabouts, road verges and car parks.

b) This RSPPG relates to planting of roundabout central islands, road verges, traffic islands, car park verges, 'island' plantings within car parks and other areas of land owned or maintained by Roads Service for roads or car parking purposes.

### **1.3 Background**

1.3.1 As part of the Department's overall objective to enhance the living environment, Roads Service will encourage improvement to the appearance of public roads and car parks by permitting controlled planting of roundabout central islands, road verges and suitable spaces within public car parks which are within the Department's ownership. As the funding of such planting is not currently a priority within the road authority's responsibilities, its provision can most readily be accommodated by sympathetic consideration of proposals presented by District Councils and privately funded sources. In approving such schemes, the procedures below shall be followed.

### **2.1 Planning Approval**

2.1.1 Planning approval will not normally be required for planting schemes. Planning Service should, however, be consulted about all schemes, as approval may be required if the scheme involves substantial filling of land or the construction of planter boxes or retaining walls.

2.2.1 As the Department will be inviting private sponsorship, which will entail substantial input in terms of design effort, planting and maintenance costs, it is inappropriate that Sponsors be required also to independently seek the views/approval of other interested parties. Accordingly Roads Service Divisions will act as a "one stop" application/approval point and be responsible for confirming that planting proposals are acceptable to Planning Service, Statutory Undertakers, RUC and District Councils where appropriate and that proposals are not detrimental to the effectiveness of street lighting installations. Roads Service will also advise the Sponsor of the locations of known services, etc. The responsibility for alteration to or protection of services will, however, remain with the Sponsor, who should

contact the Undertaker when planting or maintenance operations are being undertaken.

## **2.6 Acknowledgement Signs**

2.6.1 Advertising per se will not be permitted. In order to encourage private sponsorship, however, acknowledgement signs will be permitted.

2.6.2 A sign for the purpose of identification with respect to the land on which it is displayed and erected in association with the planted areas will not require express planning consent provided it does not exceed 0.3 sq m in area, have any letters, figures, symbols, emblems or devices of a height exceeding 300 mm, is not illuminated and the highest part is not above 0.5m from ground level. For the purposes of uniformity, acknowledgement signs in association with privately planted areas should broadly be in the form of the diagram at Appendix A.

2.6.3 Care must be taken to ensure that they do not constitute a distraction, which could contribute to an accident. The number of signs permitted will depend on the particular circumstances of the area being treated and the nature of the planting. The siting, size and number of signs will be agreed jointly by the Divisional Roads Manager and the Divisional Planning Manager.

2.6.4 Sponsors should be encouraged to design acknowledgement signs in keeping with the nature of the planted area. Provided they are of sound construction, signs may be mounted in a similar manner to road traffic signs or street name signs, or may be in natural materials such as timber or stone with legends burnt or engraved into the surface. Signs should not be located such that they are likely to contribute to personal injury in the event of a road traffic accident occurring.

2.6.5 Some latitude may be permissible in the wording of the sign for cases such as schemes jointly funded by more than one Sponsor. Where planting is carried out by, for example, a landscape gardener acting as an Agent for the Sponsor however, no acknowledgement of the Agent will be permitted.

2.6.6 Inclusion of the Sponsor's standard logo, if such exists, will be permitted on the sign as shown in Appendix A. Tobacco or alcohol sponsorship will not be allowed.

## **2.8 General**

2.8.1 No restriction will be placed on Sponsors, which would prevent their making reference in advertising literature to planting schemes funded by them.

3.2.1 The period of any maintenance agreement will be 3 years for small areas of annuals planting or 7 years for other types of planting.

3.2.2 The Sponsor, his Agent or Sub-contractor, who undertakes maintenance operations will for the period of the initial planting and for the period of the maintenance contract indemnify the Department, its officers and servants against any and all claims in respect of accident, injury or damage to persons or property by reason of or in connection with the planting, maintenance or existence of the plants, the use of chemicals and with associated signs if erected and against any and all actions or proceedings which at any time may be brought against the Department, its officers and servants in consequence of such accident, injury or damage and against any and all costs and expenses in connection therewith, and shall maintain and cause any Sub-contractor to maintain such insurance's as are necessary to cover the liability of the sponsor or as the case may be of any such Sub-contractor in respect of personal injury to or death of any person whomsoever or in respect of any injury or damage whatsoever to any property real or Personal arising out of or in the course of or caused by the performance of this Contract not due to any act or neglect of the Department or any person for whom the Department is responsible."

[10] The other policy document which has been highlighted is RSPPG S035. This is in relation to advertisements placed within road boundaries and overlooking motorways. The background to this is contained at 1.3.1:

"The primary responsibility for controlling advertisements rests with the Planning Service. By virtue of Article 4 of the Planning Regulations, no advertisement may be displayed without the consent of



the Department of the Environment. However, this prohibition does not apply to advertisements that have deemed consent under the Planning Regulations or advertisements of particular classes prescribed in those Regulations.”

Paragraph 2.1 is in relation to advertisements placed within road boundaries and reads as follows:

“2.1.1 It can generally be assumed that any advertisement, (defined in the Planning Regulations as any word, letter, model, sign, placard, board, notice, device or representation whether illuminated or not, for the purpose of advertisement, announcement or direction) placed within the boundaries of a public road would require a specific consent under the Planning Regulations. The limited exception to this requirement in the case of election posters is referred to in section 2.2.

2.1.2 If the advertisement were affixed to a traffic sign there would probably be a contravention of Article 33 of the Road Traffic Regulation Order. If it is painted, inscribed, affixed or displayed on the surface of the road or on any tree, structure or other works in or on the road there could be a contravention of Article 87(1) of the Roads Order. The difficulty in these two cases is that it is the person who paints, inscribes, affixes or displays who commits the offence and it may be difficult to secure evidence to sustain a prosecution. However, see also paragraph 2.1.12.

2.1.3 Under Article 87(1), a person who, without lawful authority -

- (a) paints or otherwise inscribes or affixes any picture, letter, sign or mark; or
- (b) displays any advertisement, upon the surface of a road or upon any tree, structure or other works in or on a road, shall be guilty of an offence.

2.1.4 Article 87(1) provides the defence of acting with ‘lawful authority’. ‘Lawful authority’ does not include or imply consent under the Roads Order, as the Department has no specific consent powers, nor does it include planning consent except in the context of Article 87(5).

Planning consent does not constitute lawful authority to place an advertisement on property not in one's ownership or control. No planning consent, if it were given for an advertisement within the road boundary, could legally be implemented.

2.1.5 In the interests of the safety and convenience of traffic using a road Roads Service should take steps to have any unauthorised advertisements which have been placed within the boundaries of a road removed as soon as possible. The action taken should be related to the degree of danger or inconvenience to traffic considered to be caused by the advertisement."

### **The Applicant's Evidence and Arguments**

[11] The applicant, Mr Robinson, has filed three affidavits one of 28 September 2018, one of 8 June 2019 and a third amended affidavit of 15 November 2019. I pause to observe that these affidavits are more in the form of legal arguments however I have allowed some latitude to Mr Robinson given that he is a personal litigant. In addition, Mr Robinson has filed a skeleton argument which is dated 16 November 2019 and an amended Order 53 Statement dated 11 November 2019. I have considered all of the above in reaching my conclusions.

[12] The applicant's case is repeated in the various affidavits and the skeleton argument. The applicant maintains that the policy under review in this case is illegal and unjust. He takes issue with the explanation originally given to him that authority for acknowledgement signs may be granted pursuant to Article 43 of the Roads Order. He also takes issue with an alternative view which has subsequently been provided by the Department that authority can be implied from Article 87 of the Roads Order. The applicant refers to the fact that he has made a complaint about breach of advertising contrary to Article 87 against a council but this was not upheld. He also refers in some detail to the activities in various other councils whereby he contends that advertising is effectively being allowed under the guise of this policy in an unregulated way. Mr Robinson makes the connection between this and a reduction in funding for grass cutting improvements which he says came about after 2015 when Northern Ireland underwent a complete restructuring of its local councils.

[13] Mr Robinson also referred to the decision of Sullivan J in *Butler v Derby City Council* [2015] EWHC 2835 (Admin) in which he said that "if one asks, what is an advertisement, the answer is, at least in part, something that is "in the nature of, and employed wholly or partly for the purposes of, advertisement..." In this respect the definition of an advertisement is like the definition of the proverbial elephant. One knows an elephant (or advertisement) when one sees it because it is in the nature of an elephant (or advertisement)". Mr Robinson also referenced the case of

*Lumba (WL) v Secretary of State for the Home Department* [2011] UKSC 12 and relied upon the dicta that “a decision maker must follow its published policy (and not some different unpublished policy) unless there are good reasons for not doing so.”

[14] I therefore distil the applicant’s arguments into three main points:

- (i) The applicant contends that there is no statutory definition of acknowledgement signs and that in effect this policy is now being operated to allow advertising. He made the case in argument that the original intention of the policy which was for an agreement for planting has been superseded by a commercial regime for sponsorship of roundabouts. He contrasted the acknowledgement sign presented by Wilsons (and exhibited a photograph of an employee of Wilsons tending to the roundabout) with more up-to-date acknowledgement signs which the applicant described as “pure advertising”.
- (ii) The applicant argues that Article 43 of the Roads Order could not possibly be a basis for consent for these signs.
- (iii) The applicant further states that Article 87 could not be a basis for consent for such signs.
- (iv) Overall, the applicant invited the court to quash the policy on the basis that it is illegal and unfair and in addition he requested declaratory relief.

### **The Respondent’s Evidence and Arguments**

[15] The respondent has filed an affidavit of 30 November 2018 and 24 May 2019 both sworn by Stephen Hughes. Mr Hughes describes himself as a Principal Professional and Technical Officer with responsibility for Traffic Management and Development Control Policy in the Department for Infrastructure. The first affidavit is pre-leave and it sets out that there is to be a review of the policy which was initiated in December 2018 and the timeframes were that within 3 months the review would commence. By the time of the affidavit the review had commenced and Mr Hughes attaches an inception report to his affidavit. He says in his affidavit that amongst other things the section entitled ‘Background’ explains:

“In the course of recent correspondence about advertising and sponsorship signage issues, it became apparent that some aspects of policy and procedures relating to privately funded planting would benefit from review and clarification. DFI Roads agreed that the RSPPG should be reviewed in order to ensure that it is both up-to-date and clear. The timeframe for publishing of a revised RSPPG was given in this affidavit as December 2019.”

[16] Paragraph 12 of the first affidavit states:

“In the course of the review, the Department will consider and take into account the issues raised by Mr Robinson in relation to the legality of acknowledgement signage associated with privately funded planting schemes. For the avoidance of doubt the review will not include consideration of any other advertisements, pictures, signs, etc, unrelated to privately funded planting schemes, which will continue to be dealt with as appropriate under Article 87 of the Roads (Northern Ireland) Order 1993.”

[17] The second affidavit sets out the policy background and explains that the impugned policy was first introduced in October 1989 as Circular Road 16/89. This affidavit also states that the Department as the sole roads authority in Northern Ireland has a duty to maintain all roads under Article 8 of the Roads (Northern Ireland) Order 1993. Mr Hughes explains that Circular Road 16/89 was introduced in response to an offer to plant the central island of a roundabout in exchange for the erection of an acknowledgement plaque. At the time the Department considered that there was “merit in encouraging such interest on grounds of both amenity and cost, subject to proper control and standard procedures.” The affidavit explains the evolution of the various policies and at paragraph 23 Mr Hughes explains that the policy intention behind RSPPG E04 is as set out in paragraph 1.3.1:

“1.3.1 As part of the Department’s overall objective to enhance the living environment, Roads Service will encourage improvement to the appearance of public roads and car parks by permitting controlled planting of roundabout central islands, road verges and suitable spaces within public car parks which are within the Department’s ownership. As the funding of such planting is not currently a priority within the road authority’s responsibilities, its provision can most readily be accommodated by sympathetic consideration of proposals presented by District Councils and privately funded sources.”

[18] I recite paragraphs 24-27 of the affidavit in detail as these sections explain the outworking of the policy as follows:

“24. In practice the policy allows for the controlled planting by others on roundabouts, road verges and car parks. The planting, landscaping and general maintenance of these areas allows the Department to meet its duties under Article 8 of the Roads

(Northern Ireland) Order 1993 without any impact on departmental budgets, with the added benefit that the finished work has an enhanced amenity value over the standard and minimal grass cutting that the Department would typically employ.

25. The policy essentially works in two ways. The work is either managed by the local district council on behalf of the sponsor, or the sponsor organises or completes the work itself. The use of the district council has its advantages as the council will already have its own resources in terms of staff, plant and equipment to deliver improvements and will be able to provide the necessary insurances and indemnities. Third parties can come directly to the Department, but will either have to employ a specialist contractor to do the work or, in the cases of local community groups or landscaping companies complete the work themselves.

26. Contracts between parties are generally arranged by exchange of letter, with Appendix B of RSPPG E004 setting the conditions that must be met. Planting can only be undertaken under cover of a road opening consent in accordance with Article 78 of the Roads (Northern Ireland) Order 1993.

27. The current policy does allow for acknowledgment signs, with the intention of giving the sponsor recognition of their contribution to the improvement of the local area and giving something back to the local community. The intention is not to advertise per se. In simple terms the policy allows for the sponsor to be named but does not permit their services to be listed or promoted."

[19] The affidavit then explains that from the records currently available there are in the region of 180 sites that are suitable for planting of which 142 are currently sponsored. The majority of sites are managed by the local district council with the council completing the works. There are however a small number where the sponsor liaises directly with the Department. Mr Hughes points out that five of these are community groups which organise and complete the work themselves to the benefit of their local community. Also he states that until receipt of Mr Robinson's communications in 2017 the policy had been operating successfully and without challenge since 1989 to the benefit of the local community. He also points out that there are similar roundabout sponsorship schemes in Great Britain and in the Republic of Ireland. In relation to the legal structure the affidavit refers to

Article 42 of the Roads Order and Article 87 of the Roads Order where the applicant argues that powers are found in relation to authorising acknowledgement signs.

[20] At paragraph 36 of the affidavit Mr Hughes makes the following concession:

“The Department acknowledges, however, that a number of documents which have been identified appear to contradict the existence of such a power. These are set out in the interests of candour so that the court has all material touching the issues and contentions even though it will argue that they are neither relevant to, nor determinative of, the legal issues in this case.”

[21] Finally Mr Hughes points out that the review has been suspended until the court provides judgment on the legal position.

[22] In his legal submissions Mr McAteer frankly conceded that in some cases acknowledgement signs may amount to advertising within the statutory definitions and as such the policy will have to reflect that reality. In his argument Mr McAteer also made the case that acknowledgement signs which are for the purpose of improvement may be permitted by virtue of Article 43 which should be given a wide interpretation. As such Mr McAteer made the case that such signs cannot be deemed to have been displayed without lawful authority contrary to Article 87 of the 1993 Order.

[23] Mr McAteer also dealt with Article 87 which is the provision relied upon by the applicant to establish the alleged unlawfulness of the policy. In this regard, Mr McAteer argued that the proper construction of Article 87(1) is that it provides a clear implied power to grant authority to do that which would otherwise be unlawful pursuant to it. He argued that otherwise an interpretation renders the words ‘without lawful authority’ redundant. In pursuit of this line of argument, Mr McAteer relied on *Bennion on Statutory Interpretation* at Section 89.5 and he drew on a case of Kerr J in *Re An Application by the Local Government Auditor* [2003] NIQB 21 which applied the principles from a case *A-G v Great Eastern Railway Company* [1885] App Case 473 at 478. In his written argument Mr McAteer states that the grant of lawful authority to do that which would otherwise be unlawful pursuant to Article 87(1) may fairly be regarded as incidental to, or consequential upon the enactment of Article 87. He therefore argued that it is proper to infer such a power as incidental to the provision made by Article 87 and/or implied by expressed words of it.

## **Consideration**

[24] At the outset I remind myself that this is a court of supervisory jurisdiction. The judicial review court is not permitted to conduct a merits based review. In particular, I reiterate the fact that I am not deciding upon the individual cases which

have been raised by Mr Robinson. Also, the court is naturally reticent to enter into areas of policy making.

[25] The first challenge for the policy makers obviously relates to the definition of acknowledgement signs. In that regard, Mr McAteer has candidly stated that some acknowledgement signage may span into advertising. That assertion is unsurprising given the definition contained in the Planning Act and the jurisprudence referenced by Mr Robinson. The point is also well made that without proper definition this policy may have been administered in an inconsistent way. That is not to say acknowledgement signs are redundant. Mr Robinson has himself highlighted the Wilson's example as an appropriate use of acknowledgement signs. There is also the potential for local community initiatives in this area.

[26] The Department accepts that the policy is old and needs revision. The court takes much comfort from that approach in general. It is regrettable that the policy could not simply have been revised to take into account Mr Robinson's points. The operation of the policy to date is not the issue and, as I have said, I cannot deal with individual cases. In particular if Mr Robinson had a complaint about his treatment in 2017 he could have brought a case then. Obviously it would be entirely inappropriate of me to make any determination on his case or indeed any of the other individual cases Mr Robinson has referenced.

[27] In terms of the statutory powers my view is as follows. Firstly, I consider that Article 43 should be given a wide and purposive interpretation. It is clear to me that the improvement of roads encapsulates the scenario of planting at roundabouts and incidental to that is the erection of an acknowledgement sign which I do not see as problematic at all. Indeed, Mr Robinson made the point that the sign erected by Wilsons was entirely appropriate and reflected the aim of this scheme. In my view Article 43 does provide legal authority for acknowledgement signs. The revised policy will obviously have to properly define what an acknowledgement sign means as opposed to advertising. That is a matter for the policy makers as I have said.

[28] Turning to Article 87, it is quite clear to me that this provision does not comprise a statutory power. It is a stipulation that there is a potential criminal offence for advertising without lawful authority and that the Department may take certain steps to prevent this happening. I cannot see that Mr McAteer's enterprising arguments in relation to implied terms actually fit this case. I agree with Mr Robinson that a proper definition of acknowledgement signs needs to be provided. Also, if a sign falls into the advertising bracket, the consent process needs to be clear. I am not content that Article 87 provides the solution. I answer question (a) in the positive and (b) in the negative.

[29] Having reached this view, I will follow the suggestion of Mr McAteer and stay these proceedings to allow a new policy to be devised and the formal application of this ruling will be suspended to allow for that to happen. The benefit of allowing the policy change to progress is that it will be open to consultation. That

is in the public interest. The process should now begin without delay. I am also minded to set a timeframe for this process of 6 months.

[30] In taking this course I fully acknowledge that Mr Robinson has raised an important point about the operation of this system going forward but I also recognise that there is a benefit to local communities of having some scheme for privately funded planting in public areas. Mr Robinson and small businesses are just as much entitled to apply to be part of these schemes in local areas as anyone else and in my view it would be a pity if this initiative were shelved. Rather, the policy needs to be adapted and the law needs to be clear and transparent for all.

### **Conclusion**

[31] The proceedings are therefore stayed on the basis of the above. I will consider relief at a later stage if necessary. There is liberty to apply upon application.