



An
Bord
Pleanála

**Board Direction
ABP-305579-19**

The submissions on this file and the Inspector's report were considered at a Board meeting held on January 10th, 2020.

The Board decided, as set out in the following Order, that the replacement of the existing ventilation system with a new ventilation extractor hood to the roof over the kitchen area located to the rear of 170 Rathmines Lower, Dublin 6 (protected structure) is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the replacement of the existing ventilation system with a new ventilation extractor hood to the roof over the kitchen area located to the rear of 170 Rathmines Lower, Dublin 6 (protected structure) is or is not development or is or is not exempted development.

AND WHEREAS Farmer Browns Eatery Limited, c/o Simon Clear and Associates of 3 Terenure Road West, Terenure, Dublin 6W, requested a declaration on this question from Dublin City Council, and the Council issued a declaration on the 10th day of September 2019 stating that the matter is development and is not exempted development.

AND WHEREAS Farmer Browns Eatery Limited referred this declaration for review to An Bord Pleanála, on the 7th day of October 2019.

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to:

- (a) Sections 2, 3, 4 and 57 of the Planning and Development Act 2000, as amended
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended, and Class 41 (d) of Part 1 of the Second Schedule to those Regulations,
- (c) The pattern of development in the vicinity, including other protected structures, and
- (d) The report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of the subject ventilation extractor hood involved the carrying out of “works” and therefore constitutes development;
- (b) This development, by reason of its scale, design, finish, and location where it is visible from the public realm, does not come within the scope of Section 4 (1)(h) of the Planning and Development Act, 2000, because it materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure and of neighbouring structures (including other protected structures);
- (c) As no Notice under Section 26 of the Air Pollution Act 1987 was served requiring the provision of the subject ventilation extractor hood, the exemption provided for under Class 41 (d) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, does not apply in this instance.

- (d) However, it is considered that, even if such Notice had been served, the subject extractor hood, by reason of its scale, design, finish and location, materially affects the character of the protected structure and accordingly any exemption provided for under Class 41 (d) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, would be restricted pursuant to Section 57 (1) if the Planning and Development Act, 2000, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the replacement of the existing ventilation system with a new ventilation extractor hood to the roof over the kitchen area located to the rear of 170 Rathmines Lower, Dublin 6 (protected structure) is development and is not exempted development.

In not accepting the Inspector's recommendation that the development in question should be deemed to be exempted development, the Board did not accept, for the reasons outlined in its Order, that the development comes within the scope of Section 4 (1)(h) of the Planning and Development Act 200, as amended, and noted that the status of the subject property as a protected structure relates to the entirety of its curtilage, and not just to the main building fronting onto Rathmines Road Lower. Furthermore, the Board is satisfied that the subject extractor hood, due to its scale, design and finish, does detract from the character of the protected structure and neighbouring protected structures, notwithstanding that it is located on a subsidiary and non-original building/extension.

Board Member

Date: 14th January 2020

Philip Jones