

An
Bord
Pleanála

Board Direction
ABP-311177-21

The submissions on this file and the Inspector's report were considered at a Board meeting held on 22/02/2023.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether the removal of extract duct and existing air handling units at ground level and the installation of new carbon filtration at ground level to rear of Capital Kebabs and extract through existing vertical shaft and all ancillary mechanical and electrical works is or is not development or is or is not exempted development:

AND WHEREAS Eglington Co. Ownership requested a declaration on this question from Galway City Council, and the Council issued a declaration on the 22nd day of July, 2021 stating that the matter was development and was not exempted development:

WHEREAS Eglington Co. Ownership referred this declaration for review to An Bord Pleanála on the 18th day of August, 2021:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 82 (1) of the Planning and Development Act, 2000, as amended,
- (e) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Class 41 (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site,
- (h) the pattern of development in the area, and
- (i) the report of the Inspector;

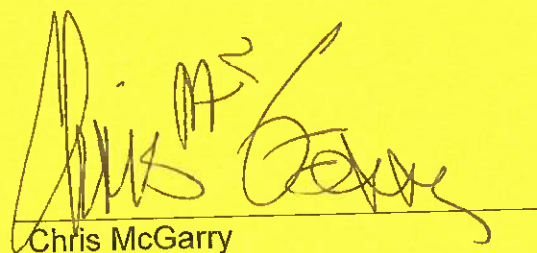
AND WHEREAS An Bord Pleanála has concluded that:

- (a) The referral includes the removal of extract duct and existing air handling units, the installation of a new filtration unit, an extract through an existing vertical shaft and all ancillary mechanical and electrical works, which comprise works, and therefore comes within the scope of the definition of development as set out at Section 3 of the Planning and Development Act, 2000, as amended.
- (b) The works which are the subject of this referral come within the scope of Section 4 (1) (h) of the Planning and Development Act, 2000, as amended.
- (c) The works which are the subject of this referral do not come within the scope of Class 41 (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

- (d) The restrictions on exemptions set out in Article 9 of the *Planning and Development Regulations, 2001*, as amended, are not applicable to the circumstances of this case.
- (e) Section 82 (1) of the *Planning and Development Act, 2000*, as amended, does not restrict the proposal noting the nature, extent and location of the proposal.
- (f) The works which are the subject of this referral are not likely to have significant effects on any European sites.
- (g) The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the *Planning and Development Regulations, 2001*, as amended, and therefore is not subject to EIA requirements.

THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the removal of extract duct and existing air handling units at ground level and the installation of new carbon filtration at ground level to rear of Capital Kebabs and extract through existing vertical shaft and all ancillary mechanical and electrical works is development, and is exempted development.

Board Member:


Chris McGarry

Date: 23/02/2023

