



An  
Bord  
Pleanála

## Inspector's Report ABP-302163-18.

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<b>Question</b>	Whether the provision of an electrical kiosk is or is not development or is or is not exempted development.
<b>Location</b>	Appelgreen Service Station and Tootenhill House, Tootenhill, Rathcoole, Co. Dublin.
<b>Declaration</b>	
Planning Authority	South Dublin Co. Co.
Planning Authority Reg. Ref.	SD18/0015.
Applicant for Declaration	Petrogas Ltd.
Planning Authority Decision	Not exempted development.
<b>Referral</b>	
<b>Referred by</b>	Petrogas Ltd.
<b>Owner/ Occupier</b>	Petrogas Ltd.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	08 <sup>th</sup> October, 2018.
<b>Inspector</b>	A. Considine.

## **1.0 Site Location and Description**

- 1.1. The site is located alongside the Naas dual-carriage way, heading south from Dublin to Naas at the southern end of Rathcoole village. There are two access points to the site off the N7, one from a slip road 250m north of the site, and the second is the main access directly off the N7 onto the site.
- 1.2. There is an existing service station on the site, which includes a takeaway restaurant element and coffee shop. Planning permission for the redevelopment of the site was granted under SD16A/0280. This planning permission has been implemented and the kiosk, the subject of this referral is indicated as being required to house electric panels associated with the cabling for this permitted development.
- 1.3. The site backs onto a row of semi-detached houses known as Broadfield. To the east of the site, and located within the curtilage of the site, is Tootenhill House, which is currently in a state of disrepair and dereliction. The N7 and the associated slip road comprise the northern boundary of the site. To the west, there is an existing house and farm.
- 1.4. Access to the site is via the slip road which also provides access to Rathcoole village.

## **2.0 The Question**

- 2.1. Whether the provision of an electrical kiosk is or is not development or is or is not exempted development.
- 2.2. The electrical kiosk is required in order to house electrical panels associated with the cabling for the development under construction. The kiosk is embedded in the retaining wall structure to the rear of the site.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The Planning Authority declared, on the 28<sup>th</sup> June, 2018, that the development as outlined is not exempted development and requires planning permission.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Planning Report formed the basis for the decision of the Planning Authority with regard to this referral. The report is summarised as follows:

- Considered the development with regard to Sections 3, 4 and 5 of the Planning & Development Act, 2000 as amended and Part 2 of the Planning & Development Regulations, 2001 as amended.
- There is no provision in the Planning & Development Regulations, 2001 as amended which considers the provision of an electrical kiosk as exempted development.
- There is no definition or provision within the Planning & Development Act or Regulations which defines the doctrine of *de minimus*.
- It is considered that the development does not fall within the scope of exemptions from the obligation to obtain planning permission.

The report concludes that the kiosk is development and not exempted development.

### 3.2.2. Other Technical Reports

None noted.

## 4.0 Planning History

**PA ref S94/0237:** Redevelopment of existing service station incorporating new 160sq.m. single storey building including a 80sq.m. shop and ancillary toilets, storage and office areas with new canopy and forecourt area.

**PA ref SD16A/0280:** Permission granted for replacement filling station on a larger site including; (1) Demolition of 10 existing structures (554.7sq.m) including the existing filling station. (2) Construction of new shop building (gfa 612.7sq.m) containing 4 food offers (including take-away) retail area (net floor area of 100sq.m, including off-licence of 9.3sq.m), back of house area (286.6sq.m) and multiple signage on elevations. (3) Construction of 6 pump islands with branded canopy over. (4) 1 car wash facility. (5) All associated site works including dedicated HCV parking, car parking, landscaping, boundary treatment, footpaths, sheep ramp, retaining

walls, main ID sign, road markings, interceptors, surfacing, attenuation, new entrance arrangements to adjoining property, upgrading of onsite foul pump station and widening, realigning and lengthening of existing culverting the Carrigeen Stream.

This application was appealed, but the appeal was withdrawn prior to a decision issuing.

## **5.0 Policy Context**

### **5.1. Development Plan**

The South Dublin County Development Plan 2016-2022 is the relevant policy document pertaining to the subject site. The site is zoned RU – To protect and improve rural amenity and to provide for the development of agriculture.

The lands directly to the south are zoned RES To protect and/or improve residential amenity

### **5.2. Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is located approximately 10km to the south east of the site, being the Glenasmole Valley SAC, Site Code 001209.

## **6.0 The Referral**

### **6.1. Referrer's Case**

Petrogas Ltd have submitted the referral which is summarised as follows:

- The kiosk is required in order to house electrical panels associated with the cabling for the development under construction, ref SD16A/0280.
- It is a minor structure which is embedded in the retaining wall to the rear of the site.

- It is accepted that the kiosk falls under the definition of development but represents *de minimus* development within the overall permitted development on the site.
- Case law referred to with regard to the *de minimus* rule where any deviation from the requirements by the person seeking to have it excused must be ‘so trivial or so technical or so peripheral or otherwise so insubstantial’. The kiosk is a minor technical requirement and is insubstantial in terms of planning considerations.
- There are no visual impacts associated with the kiosk and there are no noise emissions arising.
- It is requested that the Board issue an order that the kiosk is development but is exempted development on foot of being *de minimus*.

## 6.2. Planning Authority Response

The Planning Authority submitted what appears to be a generic response to this referral in that it refers to obligations under Part V of the Planning & Development Act, 2000 as well as compliance with the Development Contribution Scheme.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

7.1.1. Section 2 (1) of the 2000 Planning and Development Act states as follows:-

*“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”*

In Section 2 (1) of the Act “works” are interpreted as including *“any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”*.

7.1.2. Section 3 (1) of the 2000 Planning and Development Act states as follows:-  
“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

7.1.3. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

## 7.2. **Planning and Development Regulations, 2001**

Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

“Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.”

Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act.

## 7.3. **Other**

7.3.1. In terms of case law, the Board will note that the referrer makes reference to a number of cases whereby the *de minimus* rule can be applied where any deviation from the requirements by the persons seeking to have it excused must be ‘so trivial or so technical or so peripheral or otherwise so insubstantial’. In particular, the following cases are cited:

Dunne Ltd -v- Dublin County Council

Cork County Council -v- Cliftonhall Ltd

7.3.2. In terms of referrals relating to similar questions, I note that this particular issue does not appear to have come before the Board before. I did note a number of referrals which relate to the issue of *de minimus*, none of which are particularly relevant to the subject case.

## 8.0 Assessment

The question posed is as follows:

‘Whether the provision of an electrical kiosk is or is not development or is or is not exempted development at Applegreen Service Station, Tootenhill House, Tootenhill, Rathcoole, Co. Dublin.’

The Board will note the planning history pertaining to the subject site and I note that the installation of the electrical kiosk was carried out while implementing the planning permission granted for the redevelopment of the site, PA ref SD16A/0280 refers. The kiosk has been constructed within the permitted retaining wall to the south of the site and it is advised that it was required to house electrical panels associated with the cabling for the permitted development on the site. The structure did not form part of the planning application and is 2.7m in width, 1.4m deep and 2.8m in height.

### 8.1. Is or is not development

8.1.1. Section 2 (1) of the Act defines “works” as including “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”. I am satisfied that, in accordance with the above definition, the subject referral relates to ‘works’.

8.1.2. In terms of Section 3(1) of the Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.” I am satisfied that the said ‘works’ comprise ‘development’. This determined, consideration is required as to whether the ‘works’ would constitute “exempted development”.

## 8.2. Is or is not exempted development

8.2.1. Having established that the 'works' undertaken amount to 'development', the issue to be considered is whether the development is exempted development or not. Section 4(1) of the Act defines certain types of development as being '*exempted development*'. There is no class of development described which would equate to the works carried out in this instance. Therefore, the works cannot be considered to be exempted development under the provisions of Section 4(1) of the Planning & Development Act, 2000 – 2013.

8.2.2. Section 4(2)(a) of the Act provides that the Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

8.2.3. In terms of the Planning & Development Regulations, and Schedule 2 of the Regulations, the electrical kiosk as described does not seem to appear under any class of development which might constitute exempted development. Class 26 provides for 'the carrying out by any undertaker authorised to provide an electricity service of development consisting of the laying underground of mains, pipes, cables or other apparatus for the purposes of the undertaking.' There is no issue with this element of the permitted development.

8.2.4. In addition, Class 29 provides for 'the carrying out by any electricity undertaking of development consisting of the construction or erection of a unit substation (excluding a charging point for electric vehicles) or minipillar for the distribution of electricity at a voltage not exceeding a nominal value of 20kV. The volume above ground level of any such unit substation or minipillar shall not exceed 11 cubic metres, measured externally.' While I would note that the 'kiosk' has an area of 10.6 cubic metres, and therefore would accord with the Class 29 requirements, I have no information in terms of the electricity voltage distributed from the kiosk, and therefore, I cannot conclude that the works are exempted development under the Regulations.



8.2.5. Further to the above, I note the submission of the referrer in terms of the potential for the electrical kiosk to be considered *de minimus*. While I would concur with the referrer that the structure has been constructed in such a manner as to have minimal or no visual impacts on the neighbouring properties, and would agree that it is a technical requirement for the permitted development, having regard to the information presented, it does not fall within a class of development constituting exempted development.

## 9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the provision of an electrical kiosk is or is not development or is or is not exempted development at Applegreen Service Station, Tootenhill House, Tootenhill, Rathcoole, Co. Dublin, is or is not development or is or is not exempted development:

**AND WHEREAS** requested a declaration on this question from Council and the Council issued a declaration on the 26<sup>th</sup> day of June, 2018 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 23<sup>rd</sup> day of July, 2018:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,

- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Previous planning permission, PA ref SD16A/0280,
- (d) Submissions made during the course of the referral, and
- (e) The physical structure of the kiosk:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The construction of the kiosk comes within the scope of the definition of development contained in Section 3 of the Planning and Development Act 2000,
- (b) The kiosk as construction did not form part of the permitted development at the site,
- (c) there is no provision for exemption for the said electrical kiosk provided for in either Section 4, as amended, of the said Act or Article 6 of the Planning and Development Regulations 2001, and
- (d) therefore, the construction of the electrical kiosk as currently erected on site is development and is not exempted development

**NOW 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 provision of an electrical kiosk at the Applegreen Service Station, Tootenhill House, Tootenhill, Rathcoole, Co. Dublin, is development and is not exempted development.

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A. Considine  
Planning Inspector  
12<sup>th</sup> October, 2018