



An  
Bord  
Pleanála

## Inspector's Report ABP-303954-19

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<b>Question</b>	Whether the extension of an external boiler flue pipe linked to the stores internal heating system is or is not development and is or is not exempted development.
<b>Location</b>	22 – 25 George's Street Upper, Dun Laoghaire, Co. Dublin.
<b>Referrer</b>	Better Value Unlimited Company
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	Ref. 519
<b>Observer</b>	None
<b>Date of Inspection</b>	30th July 2019
<b>Inspector</b>	Kenneth Moloney

## Contents

1.0 Site Location and Description .....	3
2.0 The Declaration .....	3
3.0 The Question .....	4
4.0 Policy Context.....	4
4.1. Development Plan.....	4
5.0 The Referral.....	4
5.1. The following is the summary of a referral;.....	4
5.2. Planning Authority Response .....	5
5.3. Referrer's Response .....	5
5.4. Observations .....	5
6.0 Evaluation .....	5
7.0 Recommendation.....	10

## 1.0 Site Location and Description

- 1.1. The referral site is located off George's Street Lower in Dun Laoghaire, Co. Dublin.
- 1.2. The referral property is a Dunnes Stores shop unit which has street frontage onto George's Street, which is the main customer entrance. There is also an entrance / exit onto Northumberland Avenue which provides an emergency exit.
- 1.3. The rear elevation of referral site faces onto Dungar Avenue. Dungar Avenue is a small cul-de-sac comprising of red-brick two-storey semi-detached houses.
- 1.4. The flue pipe, the subject of this referral, is located on the rear elevation of the Dunnes Stores shop unit as such the flue pipe faces onto Dungar Terrace.
- 1.5. The flue emerges for the building approximately 1.6 – 1.8 metres above ground level and rises upwards over the first floor level to a height of approximately 1 metres above the eaves level.
- 1.6. The flue is constructed from a stainless steel material.

## 2.0 The Declaration

- 2.1. The Planning Authority issued a declaration on the 21st of Feb. 2019, to the effect that the proposed development comprising of the erection of an external boiler flue along the property's Dungar Terrace elevation, located at 22 – 25 George's Street Upper, Dun Laoghaire, Co Dublin is not exempt development under Section 4 (1) (h) of the Planning and Development Act, 2000.
- 2.2. The main points of the Planner's report, upon which the Declaration decision was based, is summarised as follows: -
  - It is acknowledged that a new boiler was required to replace a malfunctioning boiler in 2015. As part of the new boiler an external flue was required.

- The applicant claims the subject works are exempt under Section 4 (1) (h) of the Planning and Development Act, 2000.
- The proposal involves works to the exterior of the structure and hence would involve works which would constitute development within the meaning of the Act.
- It is considered that the external flue material affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

### 3.0 The Question

*“Whether the erection of an external boiler flue along the property’s Dungar Terrace elevation is or is not development and/or is or is not exempted development”.*

### 4.0 Policy Context

#### 4.1. Development Plan

Dun Laoighaire – Rathdown County Development Plan, 2016 – 2022, is the operational Development Plan.

The appeal site is zoned MTC ‘to protect, provide for and-or improve major town centre facilities.

### 5.0 The Referral

5.1. The following is the summary of the referral submission;

- It is submitted that the subject external flue satisfies the exemption criteria as set out in the Planning and Development Act, 2000.
- The subject building is not a protected structure and is not located within a designated ACA.
- The houses within Dungar Terrace are not located within an ACA.

- A new boiler was required to replace a malfunctioning boiler in 2015. As part of the new boiler an external flue was required. The property's internal boiler cannot function without the external flue pipe.
- Given the scale and commercial nature it is considered that the erection of an external flue is exempt having regard to Section 4(1) (h) of the Planning and Development Act.
- The subject works are required to maintain and improve the structure. The works do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.
- It is contended that the maintenance and improvement works carried out, as outlined in the submission, are exempt and do not require planning permission.

## 5.2. Planning Authority Response

No further comments.

## 5.3. Referrer's Response

None

## 5.4. Observations

None

## 6.0 Evaluation

### 6.1. The Facts of the Case

The facts of the matter include the following;

- On the **3rd September 2018** a warning letter was issued by Dun Laoghaire Rathdown County Council to the referrer regarding the external boiler flue (chimney stack).

- On the **28<sup>th</sup> of January 2019** a Section 5 application was submitted to Dun Laoghaire Rathdown County Council asking the question whether external boiler flue along the property's Dungar Terrace elevation is or is not development and/or is or is not exempted development.
- On the **21st of February 2019** Dun Laoghaire Rathdown County Council issued a declaration that the planning authority considered that the erection of an external boiler flue is development which is not exempted development.
- On the **15th March 2019**, a first party referral was received by Better Value Unlimited Company in accordance with the provisions of Section 5(3)(a) of the 2000 Act.

## 6.2. Statutory Provisions

I consider the following statutory provisions relevant to this referral case:

### Planning and Development Act, 2000 (as amended)

Section 2 (1) states: - 'development' has the meaning assigned to it by Section 3, and 'develop' shall be construed accordingly;

Section 3 (1) states: -"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 of use of any structures or other land."

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001.

## Planning and Development Regulations, 2001(as amended)

Article 6(1) of the Regulations states as follows: - “(a) Subject to article 9, development consisting 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 Regulations sets out circumstances in which development to which Article 6 relates shall not be exempted development.

Class 2(a) of Part 1, Schedule 2 of the Planning and Development Regulations states that the following developments within the curtilage of a house are exempted development:

- The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

The conditions and limitations associated with Class 2 of Part 1, Schedule 2 of the Planning and Development Regulations state that:

- The capacity of an oil storage tank shall not exceed 3,500litres.

### 6.3. **Other Relevant Case(s)**

- RL 3493 – A question arose whether the installation of a flue pipe or chimney stacks protruding over the roof of a number of holiday homes within a holiday village in Kilkee, Co. Clare is or is not development and is or is not exempted development. The reporting Planning Inspector refers to Class 2 (a) of Part 1, Schedule 2 of the Planning and Development Regulations, 2001. The Planning Inspector concluded that flue pipe does constitute exempted development with regard to Article 6(1) and Class 2 (a) of Part 1, Schedule 2

of the Planning and Development Regulations, as amended. The Board concurred with the Inspector and determined that the installation of a chimney and of a flue protruding above the roofs of the units for heating the living room / ground floor are development and are exempted development.

- RL 2429 – The construction of a chimney to facilitate the installation of an oil stove as part of the central heating system of the house at 5 Blackfort Close, Castlebar, County Mayo is development and is exempted development.

#### 6.4. **Assessment**

##### 6.4.1. Is or is not development

The flue pipe would represent development having regard to the definition of ‘works’ and ‘structure’ in the Act as referred to above. I am satisfied that the construction of the subject flue pipe does constitute ‘development’.

##### 6.4.2. Is or is not exempted development

6.4.3. In paragraph 6.3 above I have referred to RL 3493. Although this referral summaries a case whereby an external flue pipe / chimney stack would be exempted development I would acknowledge that that case relates to a domestic dwelling. The exemption for a flue pipe / chimney stack in Class 2 relates to an exemption as part of a central heating system of a house. However the flue pipe the subject of the current referral is associated with a commercial property and as such Class 2, Part 1, Schedule 2 of the Planning and Development Regulations, 2001 (as amended), would not apply to the subject referral.

6.4.4. The referral submits that the subject flue pipe is exempted development having regard to Section 4 (1) (h) of the Planning and Development Act, 2001 (as amended).



- 6.4.5. Section 4 (1)(h) states:- *'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures'* is exempted development.
- 6.4.6. The subject flue pipe is located on the rear elevation of a commercial property and located away from the main street, i.e. St. George's Street, and generally out of public view. I would acknowledge that the referral property is not a protected structure nor is the referral property located within an ACA.
- 6.4.7. I would acknowledge that the purpose of the subject flue pipe is to facilitate the provision of a new boiler as the previous boiler was malfunctioning. Therefore the provision of a new boiler maybe argued as maintenance and improvement of a structure however in accordance with Section 4 (1) (h) works are not applicable for the exemption should they affect the external appearance of a structure.
- 6.4.8. The flue pipe, which is in-situ, having regard to its scale, would clearly materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure. The character of the area, in my view, is defined by an external commercial building and the existing houses on Dungar Terrace.

## 6.5. **Appropriate Assessment**

Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

## 7.0 RECOMMENDATION

### 7.1. Conclusions and Recommendations

Accordingly, I would recommend an order along the following lines: -

**WHEREAS** a question has arisen as to whether the erection of an external boiler flue along the property's Dungar Terrace elevation is or is not development and/or is or is not exempted development;

**AND WHEREAS** the said question was referred to An Bord Pleanála by Better Value Unlimited Company.

**AND 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. Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and Part 1 of Schedule 2 to those Regulations, including Class 2,

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

- a. the external flue pipe is development having regard to the provisions of section 2(1) and section 3(1) of the Planning and Development Act 2000 (as amended);

- b. having regard to commercial nature of the subject site, the said external flue pipe does not come within the provisions of Class 2 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended), and
  
- c. the development does not come within the scope of section 4(1)(h) of 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 2000 Act, hereby decides that the external flue pipe to the rear of no. 22 – 25 George’s Street Upper, Dun Laoghaire, Co. Dublin is development and is not exempted development.

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Kenneth Moloney  
Planning Inspector

27<sup>th</sup> August 2019