



An  
Bord  
Pleanála

## Inspector's Report ABP-309512-21 RL

### Question

Whether the erection of antennae, aerials, and support structures on the main house and high-level wires extending from the roof to the currently unauthorised shed and antennae poles at the rear of the house is or is not development or is or is not exempted development.

### Location

12 Stepside Park, Stepside, Dublin 18.

### Declaration

Planning Authority

Dun Laoghaire-Rathdown County Council

Planning Authority Reg. Ref.

421

Planning Authority Decision

Split Decision

- a) The erection of an antenna fixed to the chimney of the house and high-level wires extending from the rear of the house are works that

constitute development and are not exempted development.

- b) The erection of antennae and aerials fixed to the rear elevation of the house are works that constitute development and are exempted development.

**Referral**

**Referred by**

Raymond O'Malley

**Owner/ Occupier**

John Holland

**Date of Site Inspection**

21<sup>st</sup> April 2021

**Inspector**

Paul O'Brien

## **1.0 Site Location and Description**

- 1.1. No. 18 Stepside Park, Stepside, Dublin 18, is a two-storey detached house located on the north western side of this residential street. Stepside Park is located to the north east of the Enniskerry Road and to the south east of Stepside village. This residential development is characterised by similar two-storey detached houses.
- 1.2. To the rear of the garden is a large shed/ store/ garden room that stretches the width of the garden. The garden boundary consists of timber fencing. The houses to the rear/ north of the site are elevated at a higher ground level than that of the subject site.
- 1.3. A number of antennae and aerials were evident at the property on the day of the site visit. These included an aerial attached to a chimney, a large aerial that was similar to an uncovered umbrella and was attached to the rear elevation of the house by way of a support structure, and there were support structures located to the rear of the site and which attached to the aerials/ antennae by way of support wires. These support wires extended the length of the garden and were at a significant height above ground level.

## **2.0 The Question**

- 2.1. A question has arisen pursuant of Section 5 of the Planning and Development Act 2000 as amended as to whether 'the erection of antennae, aerials, and support truss on the main house and the erection of high-level wires linking the wireless infrastructure to the unauthorised shed and 2 no. 10-metre-high radio antennae poles in the rear garden' is exempted development.
- 2.2. Mr Raymond O'Malley has raised this question, originally to Dun Laoghaire-Rathdown County Council and subsequently to An Bord Pleanála.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The order as issued by the Planning Authority states:

‘The erection of an antenna fixed to the chimney of the house and high-level wires extending from the rear of the house are works that constitute **DEVELOPMENT** that is **NOT EXEMPTED DEVELOPMENT** and the erection of antennae and aerials fixed to the rear elevation of the house are works that constitute **DEVELOPMENT** that is **EXEMPTED DEVELOPMENT**’.

### 3.2. Planning Report

3.2.1. The Planning Authority considered the declaration in accordance with the following legislation:

- Sections 3 and 4(2)(a) of the Planning and Development Act 2000 as amended
- Article 6(1) and Class 4(a) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended.

3.2.2. A full assessment of the structures – aerials, antennae and support wires was made by the Planning Authority Case Officer. The antennae and aerials attached to the rear of the house were considered to be exempted development and that attached to the chimney was not exempt as the height exceeded the allowed 6 m under Class 4(a). There is no exemption for the provision of high-level support wires. The provisions of Article 9 of the Planning and Development Regulations ‘do not have any bearing on the planning exemptions’ as described.

## 4.0 Planning History

### 4.1. Site History

**P.A. Ref. D20B/0280** refers to a November 2020 split decision, by the Planning Authority, to grant permission for the retention of a shed in the rear garden and for the refusal of the retention of two x 10 m radio antennae poles for a single reason as follows:

‘The antenna poles to be retained, in combination with the existing supporting structures and wirescape on the site, seriously injure the visual amenities of the adjoining properties by way of visual clutter and would depreciate the value of property in the vicinity. The development to be retained would, therefore, be contrary

to the objective 'A' zoning of the site and the proper planning and sustainable development of the area'.

This decision was appealed by the applicant to An Bord Pleanála under **ABP. Ref. 308847-20** and no decision has been made/ issued to date.

**P.A. Ref. ENF 20520** refers to an open enforcement file – unauthorised development relating to the installation of antenna to the roof of the house that may exceed exempted development rights and secondly, a shed/ room has been erected which may also exceed the conditions and limitations as applied to Class 3 development.

#### 4.2. **Previous Board References/ Referrals**

Nothing of direct relevance to this case was found on the database.

### 5.0 **Policy Context**

#### 5.1. **Development Plan**

- 5.1.1. Under the Dun Laoghaire-Rathdown County Development Plan 2016 – 2022, the subject site is zoned A – Residential, with the objective 'To protect and/ or improve residential amenity'.

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

None.

### 6.0 **The Referral**

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

Ray O'Malley has engaged the services of Kiaran O'Malley + Co. Ltd, Town Planning Consultants, to appeal the declaration decision of Dun Laoghaire-Rathdown County Council.

The following points are made:

- Ray O'Malley owns no.14 Stepside Park and the amenity of which is subject to injurious residential and visual amenity impacts arising from the listed works at no.12 Stepside Park.

- The shed and antennae poles in the rear garden of no.12 are not part of this referral as they are subject to a first party appeal to An Bord Pleanála.
- Mr O'Malley agrees with the Planning Authority that the antenna on the chimney is development and is not exempted development and also agrees in relation to the high-level support wires – development and not exempted development.
- He disagrees with the Planning Authority that the antennae and aerials fixed to the rear of the house are exempted development as they comply with Class 4(a) of the exempted development regulations.
- The planning history of the site is set out.
- The landowner has erected a number of aerials/ antennae including support structures over a period of time. A number of photographs has been submitted in support of the referral.
- It appears that structures are erected and removed over time to misrepresent the extent of unauthorised works that have been on-going on site.
- It is considered that the development as considered to be exempt by the Planning Authority is not in accordance with Class 4(a) as the antenna is not on the roof of the house and therefore does not come within the meaning of Class 4(a). The dish/ umbrella type aerial does not comply with Class 4(b) due to it exceeding the diameter (1 metre) and there is already a satellite tv dish on the gable elevation of the house.
- Class 4(a) refers only to one antenna, not multiple antennae. Considers it clear that only one antenna is acceptable in terms of Class 4(a), not multiple antennae. The change in the exemptions made back in 1994 are quoted.
- The height of the antenna is clearly more than the acceptable 6 m.
- The high-level wires do not come within the range of development described under Class 4(a) or 4(b). They do not come within any exemptions.

In conclusion, it is submitted that all the antennae, aerials and support structures are development and are not exempted development. It is requested that a referral decision be issued that the listed structures are development and not exempted development.

## 6.2. **Planning Authority response**

None.

## 6.3. **Landowner response**

None.

## 7.0 **Statutory Provisions**

### 7.1. **Planning and Development Act, 2000 as amended**

#### **Section 2(1) – Interpretation**

The following are relevant to the subject question:

**structure** means –

‘any building structure excavation or other thing constructed or made on in or under any land, a part of any structure so defined and

(a) where the context so admits, includes the land on, in or under which the structure is situate ...’

**works**

‘includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, ....’

#### **Section 3 (1) - Development**

In the Act ‘...‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land’.

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

Article 6.

(1) 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.

**Schedule 2**

**Part 1 – Exempted Development – General**

**CLASS 4**

<p>(a) The erection of a wireless or television antenna, other than a satellite television signal receiving antenna, on the roof of a house.</p>	<p>The height of the antenna above the roof of the house shall not exceed 6 metres.</p>
<p>(b) The erection on or within the curtilage of a house, of a dish type antenna used for the receiving and transmitting of signals from satellites.</p>	<ol style="list-style-type: none"> <li>1. Not more than one such antenna shall be erected on, or within the curtilage of a house.</li> <li>2. The diameter of any such antenna shall not exceed 1 metre.</li> <li>3. No such antenna shall be erected on, or forward of, the front wall of the house.</li> <li>4. No such antenna shall be erected on the front roof slope of the house or higher than the highest part of the roof of the house.</li> </ol>

**8.0 Assessment**

It should be stated at the outset of this assessment, that the purpose of the referral is not to determine the acceptability or otherwise of the aerials, antennae and support wires in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development. Likewise, planning enforcement is a matter for the Planning Authority and does not fall within the jurisdiction of the Board.



The question asked consists of the following:

'Is the erection of antennae, aerials, and support truss on the main house and the erection of high level wires linking the wireless infrastructure to the unauthorised shed and 2 no. 10 metre high radio antennae poles in the rear garden exempt development?'

### **8.1. Is or is not development**

- 8.1.1. Having regard to Section 2(1) and Section 3(1) of the Planning and Development Act 2000 as amended, it is considered that the erection of aerials, antennae, and support wires, as described, is development within the meaning of the act. These works fall within the definition of development.

### **8.2. Is or is not exempted development**

- 8.2.1. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act 2000 as amended, or by Article 6 of the Planning and Development Regulations 2001 as amended.
- 8.2.2. Class 4 of Schedule 2, Part 1 – Exempted Development of the Planning and Development Regulations 2001 as amended, refers specifically to development of this nature/ type. The available information is limited as the referral has not been made by the landowner. From the site visit and available information, it appears that the antennae/ aerials are for radio transmission/ receiving of signals. In terms of Class 4(a), therefore, they can be considered as wireless antennae if not for the receiving of television signals.
- 8.2.3. The wording of Class 4 (a) suggests that an antenna is exempt once it is on the roof of the house and does not exceed 6 m above the roof level.
- 8.2.4. On the day of the site visit a single antenna was located to the side of the house, fixed to the chimney, and extended less than 6 m above the top/ ridgeline of the roof. It is noted that in the photographs submitted in support of the referral, the antenna appears greater than the allowed 6 metres above the roof, but this was not evident on the day of the site visit.
- 8.2.5. The second referenced antenna is the dish or umbrella type antenna located to the rear of the house and is attached to the rear elevation. I note the Planning Authority report and conclusion, however, I consider that it is more appropriate to assess this

antenna under Class 4(b) – as this part of the class refers to ‘dish type antenna’ and although not a fully solid dish, its appearance is more akin to such a structure. I was unable to measure the diameter of this antenna, but it exceeds the 1 metre as specified under Class 4(b) and is not, therefore, exempt from requiring planning permission. Under Class 4(b), only one such antennae per house can be erected.

- 8.2.6. The remaining item(s) referred to in the question are the support wires, which are at a high level. There is nothing in Class 4 (a) or (b) referring to such support structures and whilst it is expected that some such structures would be required, the extent of these is excessive and cannot be considered as incidental to the main works, as in the case of a signal wiring or electricity source.

## 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 erection of antennae, aerials, and support truss on the main house and the erection of high-level wires linking the wireless infrastructure to the unauthorised shed and 2 no. 10-metre-high radio antennae poles in the rear garden’ is or is not exempted development within the Planning Authority’s area:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Kieran O’Malley on behalf of Ray O’Malley on the 15<sup>th</sup> of February 2021.

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

- (a) Sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Classes 4(a) and (b), of the Planning and Development Regulations, 2001, as amended,

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

- the provision of an antenna to the side of the house but attached to a chimney forming part of the roof gable, is development and is exempted development as it is less than 6 m in height.
- the provision of an umbrella type dish to the rear of the house was development and is not exempted development due to the diameter of the dish exceeding 1 metre,
- and that as support structures are not listed as exempted development, they therefore require planning permission.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Planning and Development Act as amended, hereby decides that:

- The provision of an antenna to the side of the house, the provision of an umbrella type dish to the rear of the house and support structures to the rear of the garden, are all development.
- the provision of an antenna to the side of the house but attached to a chimney forming part of the roof gable, is exempted development as it is less than 6 m in height.
- the provision of an umbrella type dish to the rear of the house is not exempted development due to the diameter of the dish exceeding 1 metre.
- and that as support structures are not listed as exempted development in the Planning and Development Regulations 2001 as amended, they therefore require planning permission.

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Paul O'Brien  
Planning Inspector

14<sup>th</sup> June 2021