



An  
Bord  
Pleanála

## Inspector's Report ABP-311177-21

### Question

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.

### Location

Capital Kebabs, Eglinton Court, Eglinton Street, Galway.

### Declaration

Planning Authority

Galway City Council

Planning Authority Reg. Ref.

P/DC/3/15/21

Applicant for Declaration

Eglinton Co. Ownership

Planning Authority Decision

Is development & is not exempted development

### Referral

Referred by

Eglinton Co. Ownership

<b>Owner/ Occupier</b>	Eglington Co. Ownership
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> September 2022
<b>Inspector</b>	Ian Campbell

## 1.0 Site Location and Description

- 1.1. This case relates to a referral submitted under Section 5(3)(a) of the Planning and Development Act, 2000, as amended, where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 1.2. The subject of this referral is Eglinton Court, Eglinton Street, Galway, a 4 storey mixed use building located in the centre of Galway City. The ground floor of the building accommodates a number of retail units, including a kebab shop 'Capital Kebabs', referred to in the particulars submitted as 'Unit 3', which is the subject of this referral. Apartments are located on the upper floors of the building. A surface car park is located to the rear of the subject property.
- 1.3. An internal fire escape corridor runs to the rear of the building and adjoining units. Ducting, cabling and ventilation pipework is affixed to the ceiling within this fire escape corridor. The rear wall of Capital Kebabs is formed by the fire escape corridor. An extractor flue emanates from the rear wall of Capital Kebabs into the fire escape corridor, before affixing to the roof of the passageway and is then directed upwards through a shaft (referred to as 'Shaft 1) in a third party property (McSwiggans). A flue is located at the top of this shaft, on the roof of McSwiggans.
- 1.4. Within the fire escape corridor there is a second shaft (referred to as 'Shaft 2) located to the rear of Capital Kebabs. Cabling and a metal flue run up through this shaft. The flue, which is redundant, extends c. 1.5 metres above the level of the roof. This flue is partially enclosed by a wall with timber trellis mounted atop, and is for the most part screened from view behind the wall/fence due to its position alongside a lift core overrun.

## 2.0 The Question

- 2.1. The question that has been submitted in the referral is as follows:
  - Whether the removal of existing extract duct and existing air handling units at ground level, and the installation of new filtration unit at ground level to the 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.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

On the 28<sup>th</sup> June 2021, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, on the above question was received by Galway City Council from Eglinton Co-Ownership (C/o Core Real Estate Advisors).

In accordance with Section 5(2)(a) of the Planning and Development Act, 2000, as amended, Galway City Council issued a Declaration on the 22<sup>nd</sup> July 2021 that 'the removal of an existing extract duct system (to which Planning Ref. 06/41 refers) and the installation of new filtration unit and ancillary mechanical and electrical works' is development and is not exempted development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer includes the following comments;

- The Section 5 submitted states that the proposal consists of 'the removal of an existing extract duct system (to which Planning Ref. No. 06/41 refers), and the installation of a new filtration unit and ancillary mechanical and electrical works.
- Permission was granted under PA. Ref. 06/41 to 'retain and make alterations to an existing extraction/ventilation system, to include construction of stack to rear and retention of gas storage compound to the rear yard'. This permission was subject to a 5 year time limit, after which it was to be removed.
- The applicant has advised that 'at present, Capital Kebabs are venting their cooking extract hood by means of a 500 mm duct, which runs horizontally through the fire escape corridor and then up through a shaft in Mac Swiggans Restaurant. This extract duct had the benefit of a 5 year Planning Permission (Ref. No: 06/41), which has now expired.'
- The existing ventilation equipment expired in 2011, meaning that the current system is unauthorised.

- Article 9 (1) (viii) of the Planning and Development Regulations, 2001, as amended, de-exempts works which consist of, or comprise the extension, alteration, repair or renewal of an unauthorised structure or structure the use of which is an unauthorised use. The works are not exempted under Section 4 (1) (h) of the Planning and Development Act 2000, as amended, as the permission for the existing ventilation equipment expired in 2011 and it is therefore unauthorised. Its replacement or renewal is de-exempted.

### 3.2.2. Other Technical Reports

None received.

## 4.0 Planning History

### 4.1. Subject Property:

PA. Ref. 06/41 - Permission GRANTED to retain and make alterations to existing extraction/ventilation system to include construction of stack to rear and retention of gas storage compound to rear yard.

Condition No. 2 required that the development permitted be removed after five years.

PA. Ref. 00/716 - Permission GRANTED to retain and make alterations to existing extraction/ventilation system to include construction of extract stack to rear.

Condition No. 3 required that the development permitted be removed after two years.

PA. Ref. 00/111 – Permission REFUSED to retain existing extraction/ventilation system to roof level.

PA. Ref. 89/678 – Permission GRANTED for demolition of former Garda Barracks and re-erection of a development, consisting of shops, offices & 16 no. residential units.

### 4.2. Referral History:

- 4.2.1. I have undertaken a review of the referrals database in order to determine if there are any history cases that relate to development of the same form as that the subject of this case.

PL 3474 – The question arose as to whether extractor plant and ducting is or is not development, and whether it is or is not exempted development.

The Board concluded that the extractor plant and ducting would 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, and the extractor plant and ducting would not materially affect the character of the structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, and accordingly the extractor plant and ducting to the rear of the building is development and is exempted development.

RL 2402 - The question arose as to whether a replacement extraction system and the installation of cooler units located to the rear of a restaurant is or is not development, and whether it is or is not exempted development.

The Board issued a split decision, concluding that the replacement extraction system was exempted development, but that the installation of cooler units was not exempted development, concluding as follows:

- The replacement of the extraction system came within the scope of S4(1)(h), being works of maintenance or improvement that did not materially affect the external appearance of the structure.
- The installation of the cooler units did not come within Section 4(1)(h), and did not fall within a class of development referred to in article 6 nor Schedule 2 Part 1 of the regulations.

From reviewing the Inspector's report associated with RL 2402, I note that the installation of the cooler units were not considered to come within the scope of Section 4(1)(h) as it involved an addition to the structure, essentially something new, as distinct from the maintenance of and improvement to something which already existed.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The relevant Development Plan is the Galway City Development Plan 2017 – 2023.

- 5.1.2. The subject site is zoned 'CC' City Centre in the Galway City Development Plan 2017 – 2023.
- 5.1.3. The subject property is located within the City Core Architectural Conservation Area (ACA).
- 5.1.4. The subject site is not subject to any specific objectives relating to landscape or the protection of views or prospects.

## 5.2. Natural Heritage Designations

- Lough Corrib SAC (Site Code 000297) – 0.18 km west.

## 6.0 The Referral

### 6.1. Referrer's Case

The following is a summary of the main issues raised by the referrer in the submission to the Planning Authority and to the Board (see submission from Reid Associates dated 18<sup>th</sup> August 2021):

#### Background (Planning history):

- Permission was granted in 1989 under PA. Ref. 89/678 for Eglinton Court, which comprised 6 no. ground floor shops and apartments above.
- Shaft 2 (which it is proposed to use under the current proposal) was constructed in accordance with PA. Ref. 91/314<sup>1</sup>.
- Permission was granted for ventilation plant and ducts, and a further permission was granted for retention and alterations of ventilation system under PA. Ref. 06/41. This permission was for a period of 5 years. However, the construction of the extractor duct and shaft was not implemented under this permission.

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<sup>1</sup> I note that PA. Ref. 91/314 does not refer to the subject site/property and appears to be a typographical error.

### Existing situation:

- The existing kitchen extract from Capital Kebabs discharges horizontally through the rear left wall of Capital Kebabs, into the fire escape corridor, runs horizontally underneath the first floor and then turns vertically into a blockwork shaft in McSwiggans (Shaft 1). This duct discharges at roof level and is currently in use. This extract duct formed part of the retention application in 2006 (06/41) and 2000 (00/716).

### Requirement for Proposal:

- In 2020, the property was purchased from a receiver and a number of outstanding issues came to light in relation to fire safety, specifically regarding the extractor flue crossing of the fire escape corridor. The proposed works are required in order to satisfy the fire safety requirements of the Chief Fire Safety Officer (correspondence pertaining to the issue of fire safety within the fire escape corridor from the Chief Fire Officer has been submitted).

### The Proposal:

- The proposal comprises
  - the removal of the section of the existing extract duct, which traverses the shared fire escape corridor and discharges through Mc Swiggan's Shaft 1, thereby eliminating a potential fire hazard as identified by the Chief Fire Officer.
  - the removal of the existing redundant duct in Shaft 2.
  - the diversion of the extract from the kitchen of Capital Kebabs, located at the rear of Capital Kebabs, to a new carbon filtration unit.
  - The air from the carbon filtration unit will be discharged vertically, by means of a new duct through the existing shaft ('Shaft 2') and will terminate approximately 1 metre above the roof level. The proposed duct will be below the roof parapet, and will not be visible from ground level or from the apartments.



#### Assessment by Planning Authority:

- The Planning Authority appear to have considered the proposal under an irrelevant use class of the Planning and Development Regulations, 2001, as amended, as Class 31 (k) refers to telecommunications antennae erected by statutory undertakers.
- The Planning Authority appear to have determined the referral on the basis of PA. Ref. 06/41, concluding that the existing ventilation system is unauthorised due to the fact that PA. Ref. 06/41 was limited in duration to five years. However this permission was not implemented.
- Once the ventilation duct within the fire corridor is removed there will no longer be any unauthorised structure in existence.
- The restrictions provided in Article 9 of the Planning and Development Regulations, 2001, as amended, only apply to exemptions provided under Article 6 of the Planning and Development Regulations, 2001, as amended, and not to the Planning and Development Act, 2000, as amended.

#### Case for Proposal being Exempted Development:

- The proposal may be considered under Section 4 (1)(h) of the Planning and Development Act, 2000, as amended. The works are necessary for the maintenance and improvement of the structure.
- The works which are internal are not an issue. The carbon filtration plant is located within an enclosed undercroft, is not visible and doesn't materially affect the character of the rear yard. The insertion of the extractor duct in the existing ventilation shaft ('Shaft 2') similarly will not be visible and will not materially affect the external appearance of the roof structure.
- The works which are external do not materially affect the external appearance of the structure of the building, including the roof and the rear yard and the proposal will not be inconsistent with the character of the structure or of neighbouring structures. The proposed new duct is only 1m high and will be screened from view by the roof parapet and the existing ventilation shaft and stairwell structure. The parapet screens the duct from public view at ground level.

- The removal of the existing plant equipment does not materially affect the external appearance of the roof structure.
- There is already a significant shaft ('Shaft 1') at roof level serving McSwiggans, in addition to plant and equipment on the roofs in the vicinity.
- Class 41(e), Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended, provides that 'works consisting of or incidental to development, for the carrying out of development in compliance with a condition or conditions attached to a fire safety certificate granted in accordance with Part III of the Building Control Regulations, 1997' are exempt. The proposed works comprise development necessary to comply with the requirements of the Chief Fire Safety Officer.
- The proposal would not be affected by any of the restrictions provided under Article 9 of the Planning and Development Regulations, 2001, as amended, and the removal of the existing extractor duct obviates any unauthorised works or structure, and as the proposed works are new they are not affected by conditions of any prior permission.

## 6.2. Planning Authority Response

The Planning Authority have submitted a response in respect of the referrer's submission and the issues are summarised as follows:

- The applicant contends that PA. Ref. 06/41 was never implemented and was therefore not subject to condition. This is however not the case. PA. Ref. 06/41 sought to 'retain and make alterations to existing extraction/ventilation system, to include construction of stack to rear and retention of gas storage compound to the rear yard'. This permission sought to retain a development and was limited to a duration of five years. The applicant failed to reapply for the development which was permitted and it therefore became an unauthorised structure.
- Prior to PA. Ref. 06/41, retention permission was refused under PA/ Ref. 00/111 for an extraction/ventilation system at roof level. Under PA. Ref. 00/716, which was to 'retain and make alterations to existing extraction/ventilation system to include construction of extract stack to rear', a condition was attached limiting this

permission to a duration of two years. As a result the existing ventilation system is unauthorised and as such Article 9 of the Planning and Development Regulations, 2001, as amended pertains.

## **7.0 Statutory Provisions**

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

#### **Section 2 (Works)**

*Works includes 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.*

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

*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.*

#### **Section 4(1) (Exempted Development)**

*The following shall be exempted developments for the purposes of this Act:*

- (h) 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;*

#### **Section 4 (4) (Environmental Impact Assessment or Appropriate Assessment)**

*Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

**Section 82 (1)** (Development in Architectural Conservation Areas)

*Notwithstanding section 4 (1)(h), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.*

**Section 177U (9)** (Appropriate Assessment)

*In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.*

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

**Article 6 (1)** states the following:

*Subject to Article 9 the 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 conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.*

**Article 9 (1)(a)** provides that development to which Article 6 relates shall not be exempted development for the purposes of the Act, if the carrying out of such development would,

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.*
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a*

*new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.*

*(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site*

**Class 41 (e)**, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,

*Works consisting of or incidental to —*

*the carrying out of development in compliance with a condition or conditions attached to a fire safety certificate granted in accordance with Part III of the Building Control Regulations, 1997 other than the construction or erection of an external fire escape or water tank.*

## 8.0 **Assessment**

8.1. I have examined all the documentation on the file, inspected the site, and have had regard to the legislative provisions set out in both the Planning and Development Act, 2000, as amended, and the Planning and Development Regulations, 2001, as amended. I consider that the issues raised in the referral can be assessed under the following headings.

- Whether the removal of existing extract duct and existing air handling units at ground level, and the installation of new filtration unit at ground level to the 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.
- Whether the works can be considered exempted development under the provisions of Section 4(1)(h) of the Planning and Development Act, 2000 as amended, or

under Class 41(e), Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended.

## 8.2. Is or is not development

- 8.2.1. 'Works' are defined as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'. The proposal consists of 'the removal of extract duct and existing air handling units at ground level, the installation of new filtration at ground level, an extract through an existing vertical shaft and all ancillary mechanical and electrical works'. I consider the proposal to comprise 'works' as it includes acts of both alteration and renewal.
- 8.2.2. In accordance with Section 3(1) of the Planning and Development Act, 2000 as amended, 'works' become development when they are carried out on, in, over or under land and therefore the works which are the subject of this referral are considered to comprise 'development'.

## 8.3. Is or is not exempted development

- 8.3.1. Section 4 of the Planning and Development Act, 2000, as amended, sets out certain forms of development which shall be exempted development. Additionally, Schedule 2 of the Planning and Development Regulations, 2001, as amended set out forms of development which are exempted development within specific context.
- 8.3.2. The referrer makes the case that the proposal is exempted development in accordance with Section 4(1)(h) of the Planning and Development Act, 2000, as amended, and that it may also be considered exempted development under the provisions contained under Class 41(e), Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended.
- 8.3.3. In considering the applicability of Section 4(1)(h) to the proposal it is first necessary to consider whether the proposal comprises '*works for the maintenance, improvement or other alteration of any structure*'. Having regard to the nature of the proposal, specifically noting that it is intended to improve the existing ventilation system serving the property by allowing for the ventilation system to be located within the part of the building owned by the referrer, whereas it is currently partially located with the

adjoining property (McSwiggan's), and given that the proposed system, consisting of a new carbon filter unit, would represent an improvement compared to the existing system, I consider that in principle, Section 4(1)(h) would confer an exemption for the proposal. I note that the Board has previously considered ventilation systems to come within the scope of Section 4(1)(h), see PL 3474 and RF 2402, the details of which are addressed at paragraph 4.2.1. Additionally, I note that the proposal is intended to replace an existing ventilation system, and that the flue which is to be located within Shaft 2 will replace a redundant flue and therefore the works relate an existing structure and not the creation of a new structure(s), and as such the proposal in my opinion comes within Section 4(1)(h).

- 8.3.4. The second consideration in relation to the applicability Section 4 (1) (h) is whether the proposal would *'consist of works which only affect the interior of the structure, or which do not materially affect the appearance of the structure such as to render it inconsistency with itself or with neighbouring structures'*. From inspecting the drawings and particulars submitted with the referral and based on my site inspection, I note that the new air filtration system is to be located in the service plant area at the eastern end of the fire escape corridor and would therefore be internal works. Similarly, the removal of the existing duct and air handling units are also internal works. The only external elements of the proposal would be the flue, where it extends 1 metre above the level of the roof, and also the air intake vent (louver grill) on the front façade of the property. I note that the new flue, which will run up through Shaft 2, will be screened from view by the parapet of the roof, the lift core overrun and the wall, which has timber trellis mounted atop, and as such will not be overtly visible from the adjacent apartments, the car park to the rear of the building, or from adjacent public areas. A new air intake is located above the entrance door, within one of the transom lights on the front façade of the property. Having regard to the size of this element and to its position alongside two other transom lights which are of a similar shape, and to the position of the shop awning relative to the air intake, which partially obscures the transom lights, I do not consider the air intake vent would materially affect the appearance of the structure such as to render it inconsistency with itself or with neighbouring structures.

8.3.5. The referrer contends that Class 41(e), Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended may be considered as conferring an exemption for the proposal, as the proposal is required in order to comply with the requirements of the Chief Fire Safety Officer for the building. Class 41(e) provides that 'works consisting of or incidental to development, for the carrying out of development in compliance with a condition or conditions attached to a fire safety certificate granted in accordance with Part III of the Building Control Regulations, 1997' are exempt. Having inspected the documentation on the file, in particular the correspondence from the Chief Fire Officer, I cannot definitively ascertain that the proposal is required in order to comply with a condition(s) attached to a fire safety certificate. I note that the correspondence, as it relates to the fire corridor states, *'there is an outstanding issue in relation to the kitchen extract duct from one or more commercial units. Kitchen extract ducts are to be fully compliant with Technical Guidance Document B and EN 15871 for kitchen extracts. Various proposals have been made for Capital Kebab but none have fully satisfied the requirements of the Building Regulations. Agreement should be sought with the stakeholders and the Fire Authority as to how to meet these requirements'*.

#### 8.4. Restrictions on exempted development

8.4.1. Section 82 (1) of the Planning and Development Act, 2000, as amended, provides that notwithstanding section 4 (1)(h), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area. As addressed above, the external elements of the proposal, namely the flue at roof level and the air intake in the front façade of the subject property, would not materially affect the character of the area. As such, I do not consider that Section 82 (1) would limit the proposal in its consideration as exempted development under Section 4(1)(h).

8.4.2. I note that the restrictions provided in Article 9 of the Planning and Development Regulations, 2001, as amended, relates to exemptions provided under Article 6 of the Planning and Development Regulations, 2001, as amended. As Section 4(1)(h) of the Planning and Development Act, 2000, as amended, is considered to confer an exemption for the proposal, Article 9 of the Planning and Development Regulations, 2001, as amended, and the restrictions contained therein, including whether the



proposal would comprise the extension, alteration, repair or renewal of an unauthorised structure, or a structure the use of which is an unauthorised use, is not pertinent in this instance.

- 8.4.3. Regarding the issue of unauthorised development at the subject property, I note that the purpose of An Bord Pleanála in relation to Section 5 referrals is to ascertain what is and is not development and if development, whether that development is exempted development or not. It is not the purpose of the Board to review planning permissions granted under Section 34, other than through the appeals system. Therefore, the planning history of the site is relevant in relation to the issue of whether the development in question is restricted due to a condition of that permission, or in the context of consideration of subsection viii of Article 9 of the Planning and Development Regulations, 2001, as amended, which as addressed in the preceding paragraph is not pertinent in this case. An Bord Pleanála does not have a role in relation to unauthorised development, which falls under the remit of the planning authority.

#### **8.5. Appropriate Assessment – Screening**

- 8.5.1. Having regard to the nature and limited scale of the works which are the subject of this referral, the developed nature of the landscape between the site and European sites and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the works which are the subject of this referral would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

#### **8.6. EIA - Screening**

- 8.6.1. The proposed development does 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.

### **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 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** Eglinton Co. Ownership requested a declaration on this question from Galway City Council, and the Council issued a declaration on the 22<sup>nd</sup> day of July, 2021 stating that the matter was development and was not exempted development:

**AND WHEREAS** Eglinton Co. Ownership referred this declaration for review to An Bord Pleanála on the 18<sup>th</sup> day of August, 2021:

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

- (a) The referral includes the removal of extract duct and existing air handling units, the installation of new filtration, 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.

**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 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.

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Ian Campbell  
Planning Inspector

11<sup>th</sup> November 2022