



An
Bord
Pleanála

Inspector's Report ABP-315938-23

Question

Whether the provision of temporary steel containers within the applicant's lands for the period of a permitted development (P.A. Ref. No. 3199/20) is or is not development or is or is not exempted development.

Location

No. 145c Slaney Close, Dublin Industrial Estate, Dublin 11.

Declaration

Planning Authority

Dublin City Council.

Planning Authority Reg. Ref.

0013/23.

Applicant for Declaration

BA Steel Fabrication.

Planning Authority Decision

Is not exempted development.

Referral

Referred by

BA Steel Fabrication.

Occupier

BA Steel Fabrication.

Observer(s)

None.

Date of Site Inspection

11th day of September, 2023.

Inspector

Patricia-Marie Young.

Contents

1.0 Site Location and Description	4
2.0 The Question	5
3.0 Planning Authority Declaration.....	5
3.1. Declaration.....	5
3.2. Planning Authority Reports	5
4.0 Planning History.....	6
5.0 Policy Context.....	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	7
6.0 The Referral.....	8
6.1. Referrer's Case	8
6.2. Planning Authority Response	8
7.0 Statutory Provisions.....	8
8.0 Assessment.....	11
8.1. Is or is not development	11
8.2. Is or is not exempted development	11
9.0 Appropriate Assessment.....	19
10.0 Recommendation	19

1.0 Site Location and Description

- 1.1. No. 145c Slaney Road, is an irregular shaped 2,311m² site located in the Dublin Industrial Estate, that comprises part of a two-storey double height unit situated on the western side of an industrial building that also accommodates a smaller sized unit to its east, i.e., No. 145a Slaney Close. It would appear that No. 145c has been amalgamated at some time in the past with No. 145b Slaney Road which was the middle unit of this industrial building.
- 1.2. The northern elevation of No. 145c, which is its principal façade, is setback from the industrial estate road with part of its setback area enclosed by a tall metal fence and within this enclosed space there is storage structures, a large metal shipping container whose open end is accessed via the adjoining access road and outdoor storage.
- 1.3. The site as set out in the accompanying drawings is indicated to include the estate road and adjoining ancillary spaces to the west and south. Within this space there are several shipping container structures which at the time of inspection were in use for storage and for the making of Corten steel products as well as the storage of materials outdoors. The southern elevation of No. 145c is setback c44m from Slaney Road with the linear area including the area to the immediate west of the estate road to where it terminates at the public domain of Slaney Road also forming part of this irregular shaped site. Within this space there are several metal shipping containers through to outdoor storage, boundary enclosures with secured gates and other structures. In the south westernmost corner of the site alongside the junction with Slaney Road there is a small hard surfaced car parking area and in the area opposite the estate roads junction there is a large advertising structure with the green space around it mainly overgrown.
- 1.4. The estate road serving the site and that runs through the site continues northwards to a cul-de-sac end to the north of the site serving other units within this industrial park. In addition, it splits alongside the northern section of the site and runs in a westerly direction for a short distance before it loops back to Slaney Road. Along this route there are also a number of other units bounding it.
- 1.5. The subject site at its nearest point is located c489m by road to the heavily trafficked R135. There is a mixture of industrial, warehousing, commercial through to retail land uses present in the Dublin Industrial Estate.

2.0 The Question

- 2.1. Having examined the information submitted by the Referrer to Dublin City Council on the 16th day of January, 2023, and as submitted to the Board on the 1st day of March, 2023, I consider that the question before the Board is whether the provision of temporary steel containers within the applicants lands for the period of a development permitted under P.A. Ref. No. 3199/20 is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 10th day of February, 2022, a declaration was issued by Dublin City Council which concluded that the proposal is development and is not exempted development. This Declaration also included the following points:

- The works are not part of permission P.A. Ref. No. 3199/20 and should be considered to contravene Condition No. 1 of that permission.
- Due to the use of containers as commercial premises rather than construction site offices or similar they cannot be considered exempted under Class 16 development.
- The development is not considered to constitute exempted development under Article 6 and Schedule 2, Part 1, Class 16 of the Planning and Development Regulations, 2001, as amended.
- The development is restricted from being exempted development under any class under Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as amended.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report (Dated: 8th day of February, 2022) is the basis of the City Councils decision. It included the following points:

- This case is a result of enforcement proceedings.

- The use of the containers is not specified and they appear to be in commercial use.
- The containers do not correspond with Class 16 works and consequently they contravene Condition 1 of the grant of permission P.A. Ref. No. 3199/20.
- There is no exempted development provision that covers this level of intensification of containers on the site.
- The asserted inaccuracies in the drawings submitted with the permitted planning application P.A. Ref. No. 3199/20 are not a matter for consideration.
- The presence of containers on site in 2019 does not have any bearing as to whether or not the recent provision of containers is exempted development.
- Concludes is development and is not exempted development as per Section 3.1.1 above.

4.0 Planning History

4.1. Site

- **P.A. Ref. No. 3199/20:** On the 5th day of February, 2022, planning permission was **granted** subject to conditions for a development consisting of: (i) extension to existing industrial building, (ii) a new storage building, (iii) removal of existing trees, (iv) revisions to existing signage and (v) all associated site works. Of note are the requirements of the following conditions:

Condition No. 1: Requires development to be carried out as per the plans, particulars and specifications lodged with the application, as amended by the Further Information received on 11/01/21, subject to safeguards. The stated reason is “*to comply with permission regulations.*”

Condition No. 8: Sets out protection measures for trees to be retained on site. The stated reason is: “*in the interests of amenity, ecology, and sustainable development.*”

- **P.A. Ref. No. 5632/04:** On the 1st day of February, 2005, permission was **granted** subject to conditions for a card operated diesel pump dispensing facility and ancillary works at the side of unit 145C Slaney Close.

- **P.A. Ref. No. 0078/01:** On the 12th day of March, 2001, permission was **granted** subject to conditions for a development consisting of internal reconfiguration of industrial premises; new yard at rear to accommodate fully bunded lubricant oil tank compound and associated services infrastructure; improvements to boundary treatment and existing access at rear; associated signage and ancillary works.

4.2. **Other - Enforcement**

- **P.A. Ref. No. EO846/22:** Enforcement action taken in relation to: (i) non-compliance with Condition No. 1 of P.A. Ref. No. 3199/20; (ii) the provision of steel containers; and (iii) the provision of a new workshop.
- **P.A. Ref. No. EO186/20:** Enforcement action taken in relation to the provision of 20 plus number of containers erected on site together with all associated site works.

5.0 **Policy Context**

5.1. **Development Plan**

- 5.1.1. The site is zoned '*Z6 – Employment/Enterprise*' under the Dublin City Development Plan, 2022-2028. The land use objective for such lands is: "*to provide for the creation and protection of enterprise and facilitate opportunities for employment creation*". In addition, Chapter 15 of the Development Plan sets out the development management standards.

5.2. **Natural Heritage Designations**

- 5.2.1. There are no natural heritage designations of any relevance to the proposed development. The nearest such site is SPA South Dublin Bay & River Tolka Estuary (Site Code: 004024). This site is situated c4.38km to the east. I also note that the southern boundary of the site is located within 300m of pNHA Royal Canal (Site Code: 002103).

5.3. **EIA Screening**

- 5.3.1. Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity, there is no real likelihood of significant effects on the environment arising from the proposed

development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required. Impact of the development on sensitive locations, which are substantially removed from the site, are addressed in the Appropriate Assessment section of this report and it is concluded that no significant effects are likely to arise in respect of European sites.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The Referrer submission can be summarised as follows:

- The containers on site are temporary and required during the construction of the permitted development P.A. Ref. No. 3199/20. They are therefore exempt under the provisions of Schedule 2, Part 1, Class 16 of the Planning and Development Regulations, 2001, as amended. They will be removed once works are complete.
- They do not contravene Condition No. 1 of P.A. Ref. No. 3199/20.
- There is no requirement that the structures allowed under Class 16 must relate to construction related activities nor are commercial uses associated with the permitted development precluded under Class 16 exempted development.

6.2. Planning Authority Response

6.2.1. None received.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Part 1, Section 2(1) of the Act states that, "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".

It defines “structure” as meaning: ‘any building, structure, excavation, or other thing constructed or made on, in or under any land, or any 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 ...’ and land ‘includes any structure ...’

“advertisement” means any word, letter, model, balloon, inflatable structure, kite, poster, notice, device, or representation employed for the purpose of advertisement, announcement, or direction.

“advertisement structure” means any structure which is a hoarding, scaffold, framework, pole, standard, device or sign (whether illuminated or not) and which is used or intended for use for exhibiting advertisements or any attachment to a building or structure used for advertising purposes.

Part 1, Section 3(1) of the Act states that: “in this 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”.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection- (a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, the use of the land shall be taken as having materially changed.

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

Part 1, Section 4(4) states that: “notwithstanding any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required”.

7.2. **Planning and Development Regulations, 2001 (as amended)**

Article 6 (1) states that: “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, Class 16 of the Regulations defines the following as exempted development: “the erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.

The following conditions and limitations are set out in Column 2 of this Class:

“Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act”.

Schedule 2, Part 1, Class 17 of the Regulations defines the following as exempted development: “the erection, construction or placing on land on, in over or under which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out”.

The following conditions and limitations are set out in Column 2 of this Class:

“Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent or approval or confirmation granted under the Act or any other enactment”.

The following conditions and limitations are set out in Column 2 of this Class:

“Such structures, works, plant or machinery shall be removed when commissioning of the mine, and any ancillary structures or facilities, has been completed pursuant to a permission under the Act”.

Article 9 sets out the following relevant restrictions on exempted development:

- (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) 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’.*

8.0 **Assessment**

8.1. **Is or is not development**

8.1.1. It should be stated at the outset of this assessment that the purpose of this referral is not to determine the acceptability or otherwise of the steel containers erected on the referrer’s property of No. 145c Slaney Close, but rather whether or not the matter in question constitutes development, and if so, does it fall within the scope of exempted development under planning legislation. This referral case appears to have arisen from planning enforcement action taken by the Planning Authority in relation to the containers on the subject site and for clarity I note that planning enforcement is a matter for the planning authority to deal with as they see fit and it does not fall within the jurisdiction of the Board.

8.1.2. Therefore, the question posed under this referral case is whether ‘the provision of temporary steel containers within the applicant’s lands for the period of implementation of a permitted development (P.A. Ref. No. 3199/20) is or is not development or is or is not exempted development’.

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

8.2.1. The first question that arises in this referral case is whether the provision of temporary steel containers within the applicant’s lands for the period of implementation of a permitted development (P.A. Ref. No. 3199/20) is or is not development with these steel containers being in the form of sea shipping containers of variable sizes and are located to the north, west and south of unit No. 145c Slaney Road within the confines of this site.

8.2.2. In relation to this question I note that Section 3 of the Planning & Development Act, 2000, (PDA) as amended, defines ‘*development*’ as: *‘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’.*

- 8.2.3. In addition, Section 2(1) of the PDA, defines ‘works’ as including: ‘*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*’.
- 8.2.4. Given the nature of the proposal, i.e., the erection of over 20 steel containers on the subject site, I consider it is reasonable to conclude that the proposal constitutes “development” within the meaning of the Act given the works required to install them on flat ground on site including their stacking along the western boundary two high and two wide.
- 8.2.5. This conclusion is accepted by the Referrer and the Planning Authority to be the case and therefore the focus, is on whether or not the proposed development constitutes ‘exempted development’ under planning legislation provisions.

8.3. **Is or is not exempted development**

- 8.3.1. The second question to determine in this referral case is whether the provision of temporary steel containers within the applicant’s lands for the period of implementation of a permitted development (P.A. Ref. No. 3199/20) is or is not exempted development.
- 8.3.2. I firstly consider that regard should be had to the categories of exemptions set out in Section 4(1) of the Planning and Development Act, 2000, as amended. In this regard I note that Section 4(1)(h) of the PDA states that: “*development consisting of the use 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*”. For the reasons set out below the provision of over twenty containers in an *ad hoc* manner at the subject site are works that do materially affect the external appearance of units No. 145c Slaney Close given that they are a type of structure that is at odds with the building typology of this industrial estate, they are inconsistent with the building to space relationships within Slaney Close as originally designed, laid out and over time has been amended. The use of the containers for metal workings with part of their exteriors open to the elements through to the stacking of metal and other items on top of them for storage is also at odds with the manner in which land use functions within this industrial estate. Further, they are of a number that together with their placement overbears No. 145c Slaney Close and other units within their visual

setting within the industrial estate they form part of. Moreover, many of the containers have various advertising signage attached to them which when taken together with the signage already permitted for this unit and the manner in which advertising is provided throughout this industrial estate park setting is at odds with its setting and they add to the visual clutter as well as material cumulative diminishment of the area surrounding them. For these reasons I consider that the containers are contrary to the exemption provided for under Section 4(1)(h) of the Planning and Development Act, 2000, as amended.

- 8.3.3. In relation to Classes 16 and 17 of the Planning and Development Regulations, 2001 (as amended) I consider that these are of particular relevance to the determination of this case by the Board.
- 8.3.4. In relation to Classes 16 of the Regulations I note that it relates specifically to the erection of structures on site that are needed temporarily in connection with a development during the period in which it is being carried out, either pursuant to a permission under the Act or as exempted development.
- 8.3.5. Having reviewed the planning history of the site I am cognisant that the Referrer recently applied for and was granted planning permission for a development on the subject site under P.A. Ref. No. 3199/20. This grant of permission related to the extension to the existing industrial unit of No. 145c; the provision of a new storage building; the removal of existing trees subject to safeguard; the revisions to existing signage together with other associated site works with the original proposal as submitted to the Planning Authority amended by a further information response.
- 8.3.6. From inspecting the site, I observed that components of this grant of permission may have been carried out by way of the partial construction of the northern end of a linear shed building in the north westernmost corner of the site. However, this structure was part of a larger structure that extended southwards and did not include external signage. Moreover, what is present on site in terms of dimensions and placement of openings do not appear to correspond with the linear building permitted at this location of the site irrespective of the fact that it may potentially be only partially construction. What is constructed I observed was in use at the time of inspection. With workers connected to the Referrers business operations entering and exiting this building. There also appears to be a part extension to the southern elevation but views of this

were not clear and what was visible did not appear to correspond with what has been permitted to the existing unit. Having inspected the site and having regard to what was permitted under the grant of permission P.A. Ref. No. 3199/20 it would appear that the majority of works have yet to be carried out in a manner that is compliant with this grant of permission. Moreover, it would also appear that what has been carried out in the interim is not just confined to the installation of over 20 sea shipping containers in an *ad hoc* manner around the site but also there are new boundaries, erosion of the limited parking area that served this site, the cluttering of the site with advertising signage, significant product display through to the extensive use of the uncovered external ground area's of the site for *ad hoc* storage.

- 8.3.7. The Referrer in their submission to the Board contend that whilst they have commenced development of the development permitted under P.A. Ref. No. 3199/20 unfortunately the war in Ukraine has impacted the cost of materials for buildings and has placed additional stressors on their business. As a result of this the work related to carrying out the development permitted under P.A. 3199/20 has not continued as quickly as they envisaged, and they set out that it is still underway. They also note that they have five years to implement this grant of permission and in the interim they contend that to facilitate the construction of the permitted development containers have been placed on site temporarily. In this regard they assert that there is no requirement under Class 16 of the Regulations for such structures to relate to construction related activities of the permitted development nor does it preclude the commercial use of these structures exempted development containers whilst in situ.
- 8.3.8. Having inspected the site I consider that there is a disjoint between the quantum of steel container structures that the Referrer has erected at No. 145c Slaney Close and there is no robust evidence that supports that these structures have been erected for a facilitating the carrying out of a development pursuant to a permission under the PDA. Particularly when regard is had to the meaning given to 'development' as prescribed for it under Section 3 of the PDA. That is to say development is taken to mean the carrying out of any works on, in, over or under land or the making of any material change in use any structures or other land'. Alongside when this is considered against the provisions of Class 16. Which as said sets out that it relates to structures that are needed temporarily in connection with a development during the period in

which it is being carried out, either pursuant to a permission under the Act or as exempted development.

- 8.3.9. At this stage the development that has been permitted if it is accepted that works are on-going on its implementation in an incremental manner is the phase of site preparation and construction works to accommodate the permitted buildings, their associated spaces and the like.
- 8.3.10. The several shipping containers that are *in situ* in the subject site do not facilitate the carrying out of this phase of development but rather they are all sited in the locations of where the additional buildings, associated spaces and ancillary works relating to the permitted development would be necessary to have cleared to accommodate carrying out development as permitted under P.A. Ref. No. 3199/20. It is also clearly evident from inspecting the site that the subject containers are in use for the manufacturing of Corten steel products, storage of metal products and other materials needed for the day to day operations of the Referrers business. They also have additional structures attached to them including steel stairways accessing upper floors through to panelling affixed to them including in part to create additional internal enclosures within the site area as well as these boundaries and containers providing an opportunity to display the type of panelling that the Referrers business can make on site. The additional area that arises from the significant number of containers now present on the site is not clear but when compared with the additional floor area permitted under P.A. Ref. No. 3199/20, with cognisance had to the fact that the containers are substantial in their size and in places stacked two high and two deep covers a more substantial area of the site. They are over and above what could be reasonably be argued required to carry out the permitted development even if there was proof that they were not used for commercial supporting purposes of the Referrers business. Which as said in this case there is no such evidence.
- 8.3.11. In relation to the signage permitted under P.A. Ref. No. 3199/20 this signage is over and above that indicated in the permitted development with the clutter of signage being of variable quality and in situations very overbearing particularly when viewed from Slaney Road. It is unclear how it can be sustained by the Referrer that the quantum of signage through to the use of the containers for display purposes, albeit I accept it improves the visual appearance of the containers in their setting, facilitates the achievement of the development permitted under P.A. Ref. No. 3199/20. Ultimately

there is no evidence or tangible link between the Referrers use of the containers to which this referral case relates, and the development permitted under P.A. Ref. No. 3199/20. Thus, it is not reasonable conclude that these containers are structures that are temporarily needed during the period in which works associated with the implementation of P.A. Ref. No. 3199/20 is being carried out. But rather they are associated with the day-to-day operations of the Referrers business at No. 145c Slaney Close and are used for the attachment of advertising signage which also has no relevance to implementing the grant of permission P.A. Ref. No. 3199/20.

- 8.3.12. As such, I consider that the exempted development provisions under Class 16, which require such development to be carried out “*pursuant to a permission under the Act*”, is not applicable in this instance.
- 8.3.13. In relation to Class 17 of the Regulations it relates to the provision of temporary on-site accommodation for persons employed/engaged in connection with the carrying out of the development, pursuant to any permission, consent, approval, or confirmation granted under the Act or any other enactment as exempted development, during the period in which it is being carried out. Having inspected the site there was no visible evidence that any of the containers erected on the Referrers land perform this function whereas as said the evidence and activities on site clearly supported their use in the Referrer’s day-to-day operations of the Corden steel manufacturing business.
- 8.3.14. In relation to Article 9(1)(a)(i) of the Regulations it sets out 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 ... contravene a condition attached to a permission under the Act or be inconsistent with any use specified under the Act*”.
- 8.3.15. As previously considered above there is no tangible or other connection between implementing the development permitted under P.A. Ref. No. 3199/20 and the additional quantum of floor area that the containers give rise to for the carrying out of the Referrers day-to-day operation of their business at the subject site. These containers effective give rise to significant intensification of the site’s permitted use in a manner that also is in conflicts with Condition No. 1 of this grant of permission given that the likely additional floor area they give rise to in themselves does not benefit from any exempted development provisions.

- 8.3.16. In relation to Condition No. 1 this condition restricted the way the additional floor space could be provided on site for the intensification of the day-to-day operations of the Referrers business on this site to what was set out in the plans, particulars and specification permitted.
- 8.3.17. Further, if it is accepted that any constructions works are being carried out, albeit in an incremental manner, Condition No. 8 of the grant of permission is in my view also relevant.
- 8.3.18. This condition required that all trees shown to be retained on site shall be adequately protected during construction and this includes that a protection fence beyond the branch spread, with no construction work or storage carried out within the protective barrier. The reason given for this condition is in the interest of amenity, ecology and sustainable development. The works and the site as observed during my inspection of the site do not comply with the requirements of this condition either.
- 8.3.19. As such, I consider that the development to which this referral case relates is not exempt under the provisions of Article 9(1)(a)(i) of the Regulations given that it conflicts with Condition No. 1 and 8 of the grant of permission P.A. Ref. No. 3199/20.
- 8.3.20. I also consider as a precaution that additional consideration should be given to the fact that the containers are as said also contain advertising attached to them.
- 8.3.21. In this regard I am cognisant of the definitions provided under Section 2 of the Planning and Development Act, 2000, as amended, in relation to '*structure*', '*advertisement*' and '*advertisement structure*' alongside the variety of types and sizes of advertising. In addition, Section 3(2) of the PDA states that: "*for the purposes of subsection (1) and without prejudice to the generality of that subsection- (a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, the use of the land shall be taken as having materially changed*". I therefore consider that containers facilitate the additional provision of advertising signage throughout the subject site in a manner that the advertising is dependent upon the containers as a frameworks/device used for their exhibition and in so doing the use of the land shall be taken as having materially changed. This could be considered as a new issue by the Board.
- 8.3.22. Article 6(2)(b) of the regulations states that development consisting of the erection of such an advertisement structure for the exhibition of an advertisement of any one of

the classes specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that the area of the structure to be used for the exhibition of an advertisement does not exceed the area, if any, specified in column 2 of the said Part 2 opposite the mention of that class in the said column.

- 8.3.23. Having regard to Schedule 2, Part 2 of the Planning and Development Regulations, 2001, as amended, Class 1 sets out that advertisement exhibited on business premises, wholly with reference to the business or other activity carried out on or the goods or services provided on those premises are exempted development subject to a number of specified conditions limitations. Despite the lack of detailed drawings provided by the Referrer in relation to both the container structures and the advertising thereon it was evident from inspection of the site that they are of a size and positioning that conflict with the following conditions and limitations of Class 1.
- 8.3.24. For example, Condition and Limitation 3 sets out that the total area of such advertisements which are not exhibited on or attached or affixed to a building on the premises shall not exceed 3 square metres. This is clearly exceeded in regards to a number of the advertising structures attached to the containers on site.
- 8.3.25. In addition, Condition and Limitation 4(a) an advertisement structure on which it is exhibited shall be more than 2.5 meters in height. All the advertising attached to the containers on the subject site do not meet this criterion.
- 8.3.26. Moreover, they do not correspond with the signage that was permitted under P.A. Ref. No. 3199/20, thus further adding to the concerns already raised but also giving rise to further unauthorised development concerns on site which as said is a separate planning enforcement matter for the Planning Authority to deal with as they see fit.
- 8.3.27. To this the question relating to the period of time, i.e., the duration in which the grant of permission P.A. Ref. No. 3199/20 can be implemented, is not a relevant consideration given that the development to which this referral case relates for the reasons set out has no tangible links to facilitating it.
- 8.3.28. In conclusion, based on the reasons set out above, I consider that the containers at No. 145c Slaney Road to which this referral case relate to is development which is not exempted development.

9.0 Appropriate Assessment

9.1. This appeal site is located in an established serviced residential area, and it is not located adjacent to nor in close proximity to any European sites, as defined in Section 177R of the Habitats Directive. The proposed development does not fall within a class of development for the purposes of EIA with reference to Schedule 5 of the Planning and Development Regulations, 2001 (as amended). Having regard to the nature, scale and type of proposal, the lateral separation distance between the site and the nearest European site and the nature of this serviced urbanscape in between, no appropriate assessment issues arise and therefore it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

10.0 Recommendation

10.1. 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 temporary steel containers within the applicant's lands at No. 145c Slaney Close for the period of a permitted development P.A. Ref. No. 3199/20 is or is not development or is or is not exempted development:

AND WHEREAS BA Steel Fabrication requested a declaration on this question from Dublin City Council under P.A. Ref. No. 0013/23 and the Council issued a declaration on the 10th day of February, 2023, stating that the matter was development and was not exempted development:

AND WHEREAS BA Steel Fabrication referred this declaration for review to An Bord Pleanála on the 1st day of March, 2023:

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 3(2) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (e) Article 6(2) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Class 16 and Class 17 of Schedule 1, Part 1 of the Planning and Development Regulations, 2001, as amended,
- (g) The planning history of the site, and in particular P.A. Ref. No. 3199/20 Condition No. 1 and 8,
- (h) The pattern of development and the character of the site's setting as part of Dublin Industrial Estate,
- (i) The nature, scale, and use of the containers at this site,
- (j) The report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded the provision of temporary steel containers within the applicant's lands at No. 145c Slaney Close for the period of a permitted development P.A. Ref. No. 3199/20 is development and is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3) of the 2000 Act, hereby decides that the provision of temporary steel containers within the applicant's lands at No. 145c Slaney Close for the period of a permitted development P.A. Ref. No. 3199/20, hereby decides it **is development and is not exempted development.**

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought

to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Patricia-Marie Young
Planning Inspector – 6th day of October, 2023.