



**Question**

Whether the removal of 3 no. (high/eaves level) refrigeration units to the eastern elevation, and the installation of 1 no. Dry Cooler unit within the Loading bay area, The erection of green mesh fence surrounding Dry Cooler unit within the Loading Bay Area, The removal of green mesh fence surrounding Dry Cooler unit within the Loading Bay area, The installation of 4 no. (low/ground level) Air Conditioning units to the Northern Elevation, The removal and relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area, The provision of a fifth (low/ground level) Air conditioning unit to within the Loading Bay Area, The installation of 2 no. (low/ground level) air conditioning units to the Eastern elevation, The provision of a screen/enclosure surrounding proposed air conditioning units and existing dry cooler refrigeration unit

within the loading bay area; and  
Landscaping and all associated and  
ancillary works and development, is or  
is not development and is or is not  
exempted development.

**Location**

Lidl, Johnswell Road, Kilkenny.

**Declaration**

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

DEC 739

Applicant for Declaration

Lidl (Ireland) GMBH.

Planning Authority Decision

Is development and is not exempted  
development.

**Referral**

**Referred by**

Lidl (Ireland) GMBH.

**Owner/ Occupier**

Lidl (Ireland) GMBH.

**Observer(s)**

None.

**Date of Site Inspection**

15<sup>th</sup> March 2024.

**Inspector**

Peter Nelson

# Contents

## 1.0 Site Location and Description

1.1. The site is located on the Johnswell Road, Kilkenny City. The site contains a Lidl store, which is located with parking on the front and west sides of the premises. The site is bordered by the public road to the south and Beechlawns residential development to the west and rear/ north of the site. The residential development of Pocke Lower is located approximately 100m east of the site and is separated from the site by an outdoor amenity area. There is pedestrian access connecting the green area to the east and the residential development to the rear of the site to the car-parking area.

## 2.0 The Question

2.1. Whether

- The removal of 3 no. (high/eaves level) refrigeration units to the Eastern elevation,
- The installation of 1 no. Dry Cooler unit within the Loading Bay area,
- The erection of a green mesh fence surrounding the Dry Cooler unit within the Loading Bay Area,
- The removal of the green mesh fence surrounding the Dry Cooler unit within the Loading Bay area,
- The installation of 4 no. (low/ground level) Air Conditioning units to the Northern Elevation,
- The removal and relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area,
- The provision of a fifth (low/ground level) Air conditioning unit to within the Loading Bay Area,
- The installation of 2 no. (low/ground level) air conditioning units to the Eastern elevation,

- The provision of a screen/enclosure surrounding proposed air conditioning units and existing dry cooler refrigeration unit within the loading bay area and
- Landscaping and all associated and ancillary works and development, is or is not development or is, or is not exempt development under Section 4 (1)(h) of the Planning and Development Acts, 2000-2022 (in respect of works) and is or is not development (in respect of us, i.e. not a material change of use)

### **3.0 Planning Authority Declaration**

#### **3.1. Declaration**

On the 26<sup>th</sup> of May 2023, Kilkenny County Council decided that the proposed works constitute development, which is not exempt and, therefore, requires planning permission.

#### **3.2. Planning Authority Reports**

##### **3.2.1. Planning Report**

3.2.2. The main points of the planner's report dated the 25<sup>th</sup> May 2023 can be summarised as follows:

- The works, by virtue of their nature and location, do affect the external appearance of the structure in that plant and machinery should be properly screened so as not to visibly affect the external appearance of the structure when viewed from neighbouring public spaces.
- The site abuts the public park, and the haphazard edition of plant and machinery, both attached to the building and freestanding adjacent to the building and visible from the public park without adequate screening, individually and in combination, has an incongruous visible impact, rendering the development inconsistent with the high-quality finish with the remainder of the Lidl building.

- Part 2 Article 9(1)(a)(i) of the Planning and Development Regulations 2001-2021 states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out the development would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
- The development contravenes Condition 1 of planning permission ref. P10/12 as amended by 10/515, therefore, is not exempt development.
- The works which form the subject to this Section 5 Declaration are considered to contravene and be inconsistent with the permission granted.
- The works materially affect the character of the building when viewed from the adjacent public space and are, therefore, inconsistent with the character of the building.

### 3.2.3. Other Technical Reports

None.

## 4.0 Planning History

### **P.A. Ref: 2360159:**

Permission granted on the 14<sup>th</sup> June 2023 for the retention of development is sought for: 1) Existing Dry Cooler Refrigeration Unit located within the Loading Bay area and 2) Existing (2 no.) Air Conditioning units located on the Eastern elevation of the store. Permission for development is sought for: 3) Installation of (5 no.) Air Conditioning units to be located within the Loading Bay area; 4) Provision of a screen/enclosure surrounding proposed Air Conditioning units and existing Dry Cooler Refrigeration Unit within the Loading Bay area; and 5) Landscaping and all associated and ancillary works and development. The grant of permission was subject to 10no. conditions.

**P.A. Ref: 10/515** – Permission granted on the 15<sup>th</sup> October 2010 to Lidl Ireland GmbH for amendments to planning permission P.10/12, which was granted for the erection of a Licensed Discount Foodstore of 1,647 sq. m. (gross floor area) and 1,274 sq. m. (net retail area). Permission is now sought for an 80sqm extension to

the permitted building, resulting in a Licenced Discount Foodstore of 1,727 sq. m. (gross floor area) and 1,354 sq. m. (net retail area) and a revised site layout.

**P.A. Ref: 10/12** – Permission was granted on the 19th May 2010 for development on site, consisting of the erection of 1 No. Licensed Discount Foodstore of 1,647m<sup>2</sup> (gross floor area) and 1,270m<sup>2</sup> (net retail area), comprising of a single-storey pitched roof structure, enclosed dock leveller, 2 No. building mounted back-lit signs, the erection of 1 No. back-lit freestanding double-sided sign, the erection of 2 No. freestanding finger post signs, boundary treatments, with connection to all existing services, and all associated site development works, including new vehicular entrance off the existing Johnswell Road and 110 car parking spaces.

#### 4.1. **Other Relevant Cases**

**RL.3109** A question arose as to whether 7no. air conditioner units installed along the south-eastern elevation of an existing Lidl store and one condenser unit installed on the rear/north-eastern elevation in a sunken delivery bay/waste compactor are exempted development. The Board decided that neither the seven air conditioning units nor the refrigeration condenser are exempted development.

#### 4.2. **Enforcement**

**P.A. Ref: ENF 21055** Enforcement file relation to the subject of the referral.

### 5.0 **Policy Context**

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

The Kilkenny City and County Development Plan 2021-2027 is the operational plan for the area. The plan came into affect on the 15<sup>th</sup> October, 2021

The site is zoned for General Business, the objective of which is *'To provide for general development.'*

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

River Nore Special Protection Area is located approximately 1.4m west of the site.

River Barrow and River Nore Special Area of Conservation is located approximately 1.4m west of the site.

## 6.0 The Referral

### 6.1. Referrer's Case

The main points raised in the Referrer's case can be summarised as follows:

- No consideration was given to the works in question on an item-by-item and overall/cumulative basis.
- No clarity was provided on what has been deemed as the 'baseline'/'before' situation.
- There is no explicit consideration of the full 'after' effect of all the works, including those not yet carried out.
- The visual impact appears to be used as a proxy for material of change and character/consistency of appearance.
- Significant weight has been applied to the standard Condition No.1 governing the planning permission on site.
- Significant weight has also been placed on 'restrictions on exemptions' under Article 9 of the Planning and Development Regulations, 2001-2023.
- Section 4 of the Planning and Development Act provides immunity from restrictions or limitations as may be applied under the Regulations.
- The Planning Authority has misinterpreted the significance of Condition No.1 of P.A. Ref: 10/12.
- The PA interpretation would effectively restrict any exempted development from being carried out on virtually any planning application.
- The referral should be determined based on a comparison between the 'before' and 'after' scenarios to enable a clear understanding of the status of the works.
- The declaration does not provide a position of the items to be removed.

- It is submitted that the ‘after’ scenario is consistent with the ‘before’ scenario as the same pattern of activity and the same type of view will be present.

## 6.2. Planning Authority Response

The planning response to the appeal was received outside the appropriate period and was, therefore, returned.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

Planning and Development Act, 2000 Under Section 3(1) of the Act, “development” means “(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land...”

Under Section 2(1) of the Act, “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.

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and - (a) where the context so admits, includes the land on, in or under which the structure is situated,

Under Section 5 of the Act:

*(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning*



*authority any information necessary to enable the authority to make its decision on the matter.*

*(3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration*

*Section 4(1)(H)*

Section 4 'Exempted Development' (1) 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.

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

**Article 6** of the Regulations states the following:

(1) 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** of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development, including (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. (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 11 of Part 1 of Schedule 2 of the Planning and Development Regulations.

<p><b>CLASS 11</b></p> <p>The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –</p> <p>(a) any fence (not being a hoarding or sheet metal fence), or</p> <p>(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</p>	<p><b>Conditions and Limitations</b></p> <ol style="list-style-type: none"><li>1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.</li><li>2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.</li></ol>
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## 8.0 Assessment

### 8.1. Preliminary Matters

8.2. I note that Kilkenny County Council on the 17<sup>th</sup> of July 2023, granted permission (P.A. Ref: 2360159) for the following:

- 1) Existing Dry Cooler Refrigeration Unit located within the Loading Bay area; and,
- 2) Existing (2 no.) Air Conditioning units located on the Eastern elevation of the store. Permission for development is sought for:

- 3) Installation of (5 no.) Air Conditioning units to be located within the Loading Bay area;
- 4) Provision of a screen/enclosure surrounding proposed Air Conditioning units and existing Dry Cooler Refrigeration Unit within the Loading Bay area; and,
- 5) Landscaping and all associated and ancillary works and development.

The referral question relates to the above development and the work to be retained. Notwithstanding this, I will make an assessment and make a recommendation on the question asked.

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

- 8.3.1. Firstly, the question is whether the works in question constitute development. The definition of works under Section 2 of the Act includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The definition of 'development' under Section 3 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.
- 8.3.2. The submitted plans and details show the removal of 3no. high-level refrigeration units on the eastern elevation, the installation of 1no. dry cooler unit within the loading bay area, the removal of the existing fencing, the erection of a new fence surrounding the dry cooler unit within the loading bay area, and the installation of 4no. air conditioning units to the northern elevation, removal and relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area, the provision of a fifth (low/ground level) Air conditioning unit to within the Loading Bay Area, the installation of 2 no. (low/ground level) air conditioning units to the Eastern elevation, provision of a screen/enclosure surrounding proposed air conditioning units and existing dry cooler refrigeration unit within the loading bay area; and landscaping.
- 8.3.3. The list of works that are entailed would require a level of construction on land, and I would conclude that this is development in accordance with Section 3 of the Planning and Development Act, 2000 (as amended)

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

- 8.4.1. The referrer indicates that the works in question are exempted development under Section 4(1)(h) of the Planning and Development Acts 2000 (as amended). The referrer states that the Local Authority did not consider the works in question on an item-by-item and overall/cumulative basis.

To deal with the referrer's case, it is necessary to consider the element of Section 4(1)(h) of the Planning and Development Acts 2000 (as amended). Section 4(1)(h) requires that *'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.'*

- 8.4.2. I will first consider the elements to be removed. These are:

- The removal of 3 no. (high/eaves level) refrigeration units to the eastern elevation,
- The removal of the green mesh fence surrounding the Dry Cooler unit within the Loading Bay area,
- The removal of 4 no. (low/ground level) Air conditioning units.

- 8.4.3. Is the removal of the 3no. refrigeration units, green mesh fence and the 4no. air conditioning units for the maintenance, improvement or other alteration of any structure?

The referrer claims that the 3no. refrigeration units were part of the original planning permission.

Notwithstanding the planning status of the units, their removal, along with the removal of green mesh and the 4no. air conditioning units are part of a stated upgrade programme at the storey to ensure that appropriate equipment is relied upon, where energy and noise efficiency and standards increase over time. I

therefore consider that the removal of the items is for the improvement of the structure.

8.4.4. Will the removal of the 3no. refrigeration units, green mesh fence and the 4no. air conditioning units only affect the interior of the building?

No, since the items to be removed are to the outside of the building they do not affect the interior of the structure.

8.4.5. Does the removal of the 3no. refrigeration units, green mesh fence and the 4no. air conditioning units 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?

The character of the building is a function of its external appearance, use and the materials used in its construction. The building is in commercial use. Its external appearance is dominated by large solid areas, particularly on its eastern and northern elevations and with glazed elements on its southern and western elevations. The material of the structure consists of glazing and powdered coated cladding. I consider that the removal of the 3no. high-level refrigeration units on the eastern elevation and the 4no. low-level air conditioning units and the removal of the green mesh fencing will not render the appearance of this retail/commercial structure inconsistent with its character. Given that removing these elements will result in fewer additions to the existing elevations, I consider the removal of these will not materially affect the external appearance of the structure so as to render it inconsistent with the character of the neighbouring structures, predominately residential and amenity lands.

8.4.6. Having regard to the above I consider the removal of 3no. refrigeration units, green mesh fence and the 4no. air conditioning units to be exempted development.

8.4.7. Secondly, I will consider the elements of the proposed building that will be erected. These are:

- The installation of 1 no. Dry Cooler unit within the Loading Bay area,
- The installation of 4 no. (low/ground level) Air Conditioning units to the Northern Elevation,
- Relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area,
- The provision of a fifth (low/ground level) Air conditioning unit to within the Loading Bay Area,
- The installation of 2 no. (low/ground level) air conditioning units to the Eastern elevation,

I will consider the installing and relocating the air conditioning units together.

8.4.8. Is the installation of 4 no. air conditioning units to the northern elevation, relocation of 4 no. air conditioning units, the provision of a fifth air conditioning unit dry cooler unit to within the loading bay area and the installation of 2 no. air conditioning units to the eastern elevation for the maintenance, improvement or other alteration of any structure?

The referrer has not adequately demonstrated that the 4no. air conditioning units have an existing planning permission. Notwithstanding the planning status of the air conditioning units and dry cooler, their installation is part of a stated upgrade programme at the store to ensure that appropriate equipment is relied upon, where energy and noise efficiency and standards increase over time. I therefore consider that the erection and relocation of the items are for the improvement of the structure.

8.4.9. Will the installation of 4 no. air conditioning units to the northern elevation, relocation of 4 no. air conditioning units, the provision of a fifth air conditioning unit and a dry cooler unit within the loading bay area and the installation of 2 no. air conditioning units to the eastern elevation only affect the interior of the building?

No, since the items to be installed and relocated are to the outside of the building they do not affect the interior of the structure.

8.4.10. Does the installation of 4 no. air conditioning units to the northern elevation, relocation of 4 no. air conditioning units, the provision of a fifth air conditioning unit and a dry cooler within the loading bay area and the installation of 2 no. air conditioning units to the eastern elevation 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?

I consider that the proposed installation of the 6no. low-level air-conditioning units and the dry cooler, due to their location and number, will be inconsistent with the character of the open amenity space and residential area which are directly adjoining the subject structure.

8.4.11. Having regard to the above I consider that the proposed installation of the 6no. low-level air-conditioning units and the dry cooler are not exempted development.

8.4.12. Thirdly, I will consider the erection of a green mesh fence surrounding the Dry Cooler unit within the Loading Bay Area and the provision of the screen/enclosure surrounding the proposed air conditioning units and the existing dry cooler refrigeration unit within the loading bay area.

These elements of the works fall within Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations.

<p><b>CLASS 11</b></p> <p>The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of –</p> <p>(a) any fence (not being a hoarding or sheet metal fence), or</p> <p>(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</p>	<p><b>Conditions and Limitations</b></p> <ol style="list-style-type: none"> <li>1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.</li> <li>2. Every wall, other than a dry or natural stone wall, constructed or</li> </ol>
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	<p>erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.</p>
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**The erection of the green mesh fence.**

The existing green mesh fence surrounding the loading bay has a height in excess of 2m and, therefore, does not meet the conditions and limitations of Class 11.

Therefore, I consider the erection of the green fence not to be exempted development.

**The provision of the screen/enclosure**

The proposed screen/enclosure surrounding the dry cooler unit within the loading bay area, as shown on the drawing submitted with the referral, has a height of 2m. I therefore considered that the proposed fence is exempted development.

8.4.13. Fourthly, I will consider whether the proposed landscaping works are exempt from development. The referrer has submitted a landscaping scheme. The question the referrer asks is if the landscaping and all associated and ancillary works and development are exempted development under Section 4(1)(h). As the associated and ancillary works and development have not been specified, I will only consider the question as it relates to the landscaping scheme. The scheme consists of wildflower planting and four additional trees.

8.4.14. Is the landscaping scheme consisting of wildflower planting and four additional trees for the maintenance, improvement or other alteration of any structure?



- 8.4.15. Yes, I consider that the planting scheme will result in the improvement of the setting of the structure.
- 8.4.16. Will the landscaping scheme only affect the interior of the building?
- 8.4.17. No, since the landscaping scheme is to the outside of the building, they do not affect the interior of the structure.
- 8.4.18. Does the landscaping scheme 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?
- 8.4.19. I do not consider that the proposed landscaping scheme materially affects the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. The proposed landscaping will assimilate into the surrounding parkland.
- 8.4.20. Having regard to the above I consider that the landscaping scheme is exempted development.

## 8.5. Restrictions on exempted development

### 8.5.1. Contravention of a Condition

Article 9(1)(a)(i) of the Regulations includes a restriction on exempted development where 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 in a permission under the Act.

- 8.5.2. The Planning Authority, in their decision, stated that the addition and removal of plant and machinery, including the screening as listed, contravenes Condition No.1 of planning permission ref: 10/12 as amended by ref.10/515.

- 8.5.3. Condition No.1 of the ref:10/12 states:

*'The development shall be carried out in accordance with the plans and particulars submitted on the 14th January 2010, as revised by further information received on the 22nd April 2010, except as amended by the conditions attached hereto.*

*REASON: To ensure that the development strictly accords with the permission and to ensure that effective control is maintained.'*

8.5.4. Condition No.1 of the ref:10/515 states:

*'The development shall be carried out in accordance with the plans and particulars submitted on the 27<sup>th</sup> August 2010 except as amended by the conditions attached hereto.*

*REASON: To ensure that the development strictly accords with the permission and to ensure that effective control is maintained.'*

8.5.5. The proposed development was granted permission in 2010 and the Discount Foodstore has been in operation since November 2010.

8.5.6. I do not consider that works carried out after the initial construction and carrying out of a development, which would be normally exempt, to be not exempted development by a condition which requires a development to be carried out in accordance with the plans and particulars submitted with the application.

8.5.7. The planning authority's interpretation would restrict any exempted development as allowed for in the Planning and Development Acts and Regulations from being carried out on any completed development for which planning permission has been obtained.

8.5.8. I therefore consider that the works which are the subject of this referral are not contrary to condition no.1 of planning permission ref:10/12 and condition no.1 of planning permission ref:10/515.

## **9.0 Appropriate Assessment**

9.1.1. Article 9(1)(a)(viiB) of the Regulations includes a restriction on exempt development where the Planning Authority, or An Bord Pleanála, requires an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

9.1.2. I note that screening for A.A. has not been carried out by the referring party or the Planning Authority. However, I have had regard to the information on the National Parks and Wildlife Service website and reviewed the online NPWS Designations.

- 9.1.3. The closest European Sites are River Nore Special Protection Area River Barrow and River Nore Special Area of Conservation, located approximately 1.4m west of the site.
- 9.1.4. Having regard to the nature and small scale of the proposed development, which includes the removal of plant and the installation of plant to an existing retail building, I conclude that the proposed development, individually or in combination with other plans or projects, would not be likely to have a significant effect on the above referenced European site, or any other European site, in view of the site's conservation objectives. A Stage 2 Appropriate Assessment is not, therefore, required.
- 9.1.5. I conclude that as the proposed works do not require Appropriate Assessment, the provisions of Article 9(1)(a)(viiB) do not apply in this instance and, therefore, this restriction on exempt development does not apply.

## 10.0 Recommendation

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

1.

**WHEREAS** a question has arisen as to whether

- The removal of 3 no. (high/eaves level) refrigeration units to the Eastern elevation,
- The erection of a green mesh fence surrounding the Dry Cooler unit within the Loading Bay Area,
- The removal of the green mesh fence surrounding the Dry Cooler unit within the Loading Bay area,
- The removal and relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area,

- The provision of a screen/enclosure surrounding proposed air conditioning units and existing dry cooler refrigeration unit within the loading bay area and
- Landscaping.

is or is not development or is or is not exempted development:

**AND WHEREAS** requested a declaration on this question from Kilkenny County Council and the Council issued a declaration on the 26<sup>th</sup> day of May, 2016 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 20<sup>th</sup> day of, 2016:

**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,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 11 of Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

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

- (a) Is development in accordance with Section 3(1), of the Planning and Development Act 2000 as amended,
- (b) Falls within the scope of Section 4(1)(h), of the Planning and Development Act 2000 as amended, as the development comprised works that 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.
- (c) The proposed screen/enclosure falls within the cope of Class 11 of Part 1, Schedule 2 of the Planning and Development Regulations.

**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 removal of 3 no. (high/eaves level) refrigeration units to the Eastern elevation,
- The removal of the green mesh fence surrounding the Dry Cooler unit within the Loading Bay area,
- The removal and relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area,
- The provision of a screen/enclosure surrounding proposed air conditioning units and existing dry cooler refrigeration unit within the loading bay area and
- Landscaping.

**is development and is exempted development.**

**2.**

**WHEREAS** a question has arisen as to whether

- The installation of 1 no. Dry Cooler unit within the Loading Bay area,
- The erection of a green mesh fence surrounding the Dry Cooler unit within the Loading Bay Area,
- The installation of 4 no. (low/ground level) Air Conditioning units to the Northern Elevation,
- The relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area,
- The provision of a fifth (low/ground level) Air conditioning unit to within the Loading Bay Area,
- The installation of 2 no. (low/ground level) air conditioning units to the Eastern elevation,

is or is not development or is or is not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 20<sup>th</sup> day of, 2016:

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

- (h) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (i) Section 3(1) of the Planning and Development Act, 2000,
- (j) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (k) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (l) Class 11 of Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (m) the planning history of the site

(n) The pattern of development in the area.

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

- (a) Is development in accordance with Section 3(1), of the Planning and Development Act 2000 as amended,
- (b) Falls within the scope of Section 4(1)(h), of the Planning and Development Act 2000 as amended, as the development comprised works that materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.
- (c) The fence does not fall within the scope of Class 11 of Part 1, Schedule 2 of the Planning and Development Regulations.

**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 installation of 1 no. Dry Cooler unit within the Loading Bay area,
- The erection of a green mesh fence surrounding the Dry Cooler unit within the Loading Bay Area,
- The installation of 4 no. (low/ground level) Air Conditioning units to the Northern Elevation,
- The relocation of 4 no. (low/ground level) Air conditioning units to within the Loading Bay Area,
- The provision of a fifth (low/ground level) Air conditioning unit to within the Loading Bay Area,
- The installation of 2 no. (low/ground level) air conditioning units to the Eastern elevation,

**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.

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Peter Nelson  
Senior Planning Inspector

18<sup>th</sup> September 2024