



The Board's Direction of 15th September 2016 cited several of its previous declarations under section 5 of the planning act. They may be summarised as follows –

- 06F. RL 2074 – This referral related to a domestic boiler and an oil tank above ground which would serve a house. The board's consideration was based on the exempted development Class 2 of Part 1 of Schedule 2 of the planning regulations which would not apply in the current case.
- 26. RL 2115 – This referral concerned the attachment of telecom antennae to an overground water tank. The board's consideration was based on the exempted development Class 31 of Part 1 of Schedule 2 of the planning regulations which would not apply in the current case.
- 04. RL 2211 – This referral concerned the installation of a facility to store and dispense solvents from eight tanks of 24,000l each enclosed by a steel wall on an established industrial site. The steel wall was that of a former tank that had been decommissioned. The board declared that the works would be development and not exempted development. In particular it declared that the works would not be for the maintenance, improvement or other alteration of a structure and so would not come within section 4(1)(h) of the planning act. This declaration could provide a precedent that the installation of tanks on the site of an established operation consisted in the provision of new structures rather than alterations of an existing structure, and so support a conclusion that the works proposed in the current case were not exempted. On the other hand the tanks proposed in RL2411 were not connected to the existing

structures on the site but would have been filled from vehicles and emptied to drums from their own new and separate pumps, which might distinguish it from the current case with regard to the applicability of section 4(1)(h) where the tanks would be connected to the existing pumps.

- 29N. RL 2290 – This referral concerned the resumption of the use of an existing waste storage tank at Dublin Port for chemical storage. The case did not involve the carrying out of works and the board declared that no development was involved. As such the declaration would not establish a useful precedent for the current case.
- 25K. RL 2340 – This referral concerned the installation of a septic tank to serve an older house that had been built without one. The board declared that the works constitute development which was not exempted under section 4(1) of the act or otherwise. The separateness of the structure from the house and the applicability of section 4(1)(h) was not specifically addressed in the declaration or in the submissions on the file.
- 06S. RL2661 – This referral concerned the use of land for commercial purposes and the erection of structures and laying of surfaces upon it for which no permission had been granted. The board's declaration stated a conclusion that the established use of the land was agricultural. The commercial use therefore represented a material change of use that was development and not exempted development, and the works that had been carried out were also development that was not exempted development. As there was no authorised or established use on the site which the structures would serve, this case would not establish any useful precedent for the current case.
- 04. RL 2747 – This referral concerned numerous questions regarding the construction of a house and the extent to which it may have departed from the grants of permission for a house on the site. One element of the board's declaration was that the construction of a septic tank and percolation area which was not in accordance with the authorised plans constituted development that was not exempted development.

- 17. RL 2818 – This referral concerned the storage of sludge from municipal wastewater treatment plants in agricultural sheds. The board decided it was a material change in the use of the sheds and so was development that was not exempted development. As the case concerned use rather than works, it would not establish any useful precedent for the current case.
- 04. RL 3069 – This referral concerned the installation of two fuel tanks, one of 2,500l and another of 3,000l, in place of an existing tank of 5,000l at a fuel depot. The board declared that the works would not result in a material alteration in the appearance of the site and would not raise new planning issues. As such it would be exempted development under section 4(1)(h). The board’s declaration differed from that of the planning authority which held that the proposed tanks were new structures and so section 4(1)(h) would not apply. The board’s declaration in this case would support a conclusion in the current case that the proposed tanks on the site would not necessarily constitute a new structure so as to exclude the exemption available at section 4(1)(h). This previous case might be distinguished from the current case, however, in that it involved the removal of an existing tank while the current case involve the installation of tanks in a different position on the site with the old tank being decommissioned rather than removed.
- 28. RL 3095 – This referral concerned the installation of overground diesel storage tanks. The board declaration cited sections 2, 3 and 4(1)(h) of the act and stated that the tanks were development and not exempted development. The inspector’s report and the submissions on the file indicate that the planning history of that site was complex and the status of various uses and structures upon it were disputed. In such circumstances the declaration of the board in that case would not establish any precedents that would clearly apply to the current case.

The declarations under 25. RL 2340 and 04. RL 2747 establish that building a septic tank to serve a house would not benefit from the exemption at 4(1)(h) of the act.

This might be held to indicate the fact that a septic tank was physically connected to a house and was subservient in use did not render its construction an improvement of the existing structure, which in the current case would mean that the proposed

tanks should be regarded as separate structures and so not exempted development. However the above declarations referred to cases where entirely new septic tank systems were constructed, rather than to cases where an existing system was being replaced. So their circumstances might be regarded as materially different from the current case.

04. RL 2211 indicated that new tanks serving an established use on a site might not benefit from the exemption at section 4(1)(h) even where they would not affect the external appearance of the site, which may indicate that the tanks proposed in this case would not be exempted development. However the proposed tank would be connected into the existing pipework and pumps of the established petrol station on the site, whereas the tanks in RL 2211 would not have been. The board might consider that this distinction justified a different conclusion as to whether new structures were being installed and so whether 4(1)(h) might apply. The declaration in 04. RL 3069 would support a conclusion that a replacement tank at a filling station might be exempted under section 4(1)(h), but the fact that the older tank would not be removed in the current case might undermine that support. The files for 04. RL 2211 and 04. RL 3069 are attached.

The prior declarations cited by the board would not, therefore, set a clear precedent that would determine whether the underground tanks that are the subject of the current referral should be considered as a separate structure from the filling station that they would serve. The present case falls to be determined on the particular circumstances that apply to it, having regard to the various submissions and reports on the file.

Stephen J. O'Sullivan
Planning Inspector

3rd January 2017