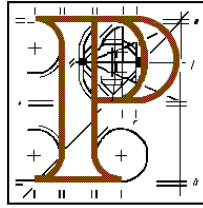


## An Bord Pleanála



## Inspector's Report

**Referral Case: 03. RL3493**

### **Question:**

Whether (1) the installation of flue pipes protruding above the roofs of the units for heating living room/ground floor using a stove and (2) the installation of satellite dishes to the front walls at Moore Bay Holiday Village, Kilkee County Clare is or is not development, or is or is not exempted development.

### **Referral Application**

Planning Authority:	Clare County Council
Planning Authority File	No. RL16/39
Referrer:	Moore Bay Holiday Village Management
Owner/occupiers:	Bert Langelaar Caroline Bradshaw David Gibson Anita Ryan-Kelly
Date of Site Inspection:	22 <sup>nd</sup> September 2016

**Inspector:** Karla Mc Bride.

## **1.0 INTRODUCTION**

### **1.1 Inspection**

I inspected the site on 22<sup>nd</sup> September 2016, during which I took photographs that are included in the Appendix to this report together with a location map.

### **1.2 Site Location**

The referral site is located at Moore Bay Holiday Village on the south side of Kilkee in County Clare and the surrounding area is predominantly residential in character.

### **1.3 Planning History**

**Reg. Ref. 96-461** – Permission granted to erect 100 holiday homes, 20 town houses, and a clubhouse with ancillary recreational facilities.

*Condition no.20* stated that electricity and telephone services shall be laid underground. Provision shall be made for the underground installation of cable television service. This work shall be carried out prior to road surfacing and junction boxes shall be provided by the developer.

*Condition no.31* required that no garage, shed, awning or similar structure shall be provided without the prior consent of the Planning Authority whether or not such provision would otherwise constitute exempted development.

**Reg. Ref. 98-1365** – Permission granted to change the status of the 20 town houses to holiday homes.

**Reg. Ref. 01-2169** – Permission granted for a change of status of 2 detached dwelling houses (117 & 118) from permanent residences to holiday homes.

**Enforcement Ref. UD08-017** – related to non-compliance with Reg. Ref. 98-1365 above for the change in status of 20 town houses to holiday homes.

## **1.4 Background**

This referral under Section 5 3(a) of the Planning and Development Act 2000 (as amended) has been made by the Moore Bay Management Company. It has been made in relation to the installation of flue pipes protruding above the roofs of several units for heating the living rooms/ground floor areas, and the installation of satellite dishes to the front walls of several houses in the Moore Bay Holiday Village.

## **1.5 Submission with referral to Planning Authority**

The Agent (Hutch O'Malley Mc Beath) acting on behalf of the Referrer (Moore Bay Holiday Village Management Company) made a formal request for a Section 5 Declaration to the planning authority on 28<sup>th</sup> April 2016 in relation to (1) the installation of flue pipes protruding above the roofs of several units for heating the living rooms/ground floor areas, and (2) the installation of satellite dishes to the front walls of several houses in the Moore Bay Holiday Village.

The referrer noted that Condition no. 31 of the planning permission granted for the holiday village under Reg. Ref.P96/461 suggested that the Planners were of the opinion that due to the open nature of the properties design, any features which affected the elevations would require approval from the planning authority whether or not such a provision would otherwise constitute exempted development. This relates to the flues and the satellite dishes.

## **1.6 Planning Authority reports**

The Planning Authority's decision on the Declaration is based on a report from its Planning Officer Planner dated 20<sup>th</sup> May 2016.

The Planning Officer had regard to the relevant sections of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended), including the conditions and limitations attached to Class 2(a) of Part 1 of Schedule 2, of the Regulations in relation to the provision of a domestic heating system, and Class 4(a) & (b) of Part 1 of Schedule 2 of the Regulations in relation to the erection of television antenna and satellite dishes on the roof of or within the curtilage of a dwelling house.

The Planning Officer also had regard to the drawings submitted by the Referrer. The Planning Officer considered that the installation of flue pipes protruding above the roofs of the units for heating living room/ground floor unit using a stove constitutes development and is exempted development; and that the installation of satellite dishes to the front walls constitutes development and is not exempted development.

The Planning Officer concluded that:

- (1) The installation of flue pipes protruding above the roofs of the units for heating living room/ground floor unit using a stove would be deemed to be exempted development as the proposal would meet the conditions and limitations as set out under Class 2(a) of Part 1, of Schedule 2, of the Planning and Development Regulations 2001, as amended (Exempted Development within the curtilage of a house).
- (2) The installation of satellite dishes to the front walls would not be deemed to be exempted development having regard to the Class 4(b) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended (Exempted Development within the curtilage of a house).

## **2.0 THE DECLARATION**

The Planning Authority issued the Declaration on 28<sup>th</sup> April 2016 which stated that:

- (1) The installation of flue pipes protruding above the roofs of the units for heating living room/ground floor unit using a stove at Moore Bay, Kilkee, County Clare constitute development that is exempted development.
- (2) The installation of satellite dishes to the front walls at Moore Bay, Kilkee, County Clare constitute development which is not exempted development.

## **3.0 SUBMISSIONS**

### **3.1 Submission by referrer**

The Agent (Hutch O'Malley Mc Beath) acting on behalf of the Referrer (Moore Bay Holiday Village Management Company) made a formal request for a Section 5 Declaration which was received by the Board on 17<sup>th</sup> June 2016 in relation to the installation of flue pipes protruding above the roofs units for heating the living rooms/ground floor areas, and the installation of satellite dishes to the front walls of units in the Moore Bay Holiday Village. The submission was accompanied by a copy of the planning permission granted for the holiday village under Reg. Ref.P96/461 and an extract from Schedule 1 of the Planning and Development Regulations 2001-2015. The main points are summarised below:

- Schedule 2, Part 1, Class 2 of the P&D Regulations lists a flue as exempt development if its purpose is for a central heating system.
- Condition no. 31 of the planning permission granted for the holiday village under Reg. Ref.P96/461 would suggest that the Planners were of the opinion that due to the open nature of the properties design, any features which affected the elevations would require approval from the planning authority whether or not such a provision would otherwise constitute exempted development.
- This de-exemption also relates to satellite dishes which protrudes from the front walls of the properties whist Class 4 states that no dishes can be erected on the front wall or roof of houses. Permission is therefore required for the erection of any dish to the front of a house.
- Seek direction from the Board so that unauthorised development which seriously detracts from the visual appearance of the houses and affects the value of the holiday homes both rental and sale value, can be controlled within the development.

### **3.2 Additional information**

The Board requested further information and the Referrer's response was received on 22<sup>nd</sup> July 2016. The main points are summarised below.

- Copy of planning permission granted under P96/461 is submitted.
- The houses were permitted for use as holiday homes.
- The houses were all fitted with electric central heating, storage and panel heaters and with thermostatic controls and a boost option; the estate was not designed to cater for any other type of heating; there are no rear gardens and therefore nowhere to store a tank or solid fuel.
- Condition no.31 of P96/461 prohibits the erection of any other structures within the curtilage of the houses.
- The owners of a few houses have fitted stoves and open fireplaces along with associated flue and formal chimney stacks, which have been fitted as a secondary heating system, and such works are contrary to Part L of the Building Regulations.
- A copy of the Management Company's maintenance agreement is submitted.
- Condition no.20 of P96/461 requires that provision be made for cable TV network underground and the Management Company have provided a network to each house which can also be upgraded.
- Owner/occupier details provided for each house in the estate and a map which indicates whether or not they have a satellite and/or flue/chimney and photographs.

### **3.3 Response by owner/occupiers**

The Board circulated the Section 5 Declaration request to the list of owner/occupiers provided by the Referrer by way of the FI response and the following owner/occupiers responde:

- Philip Fitzgerald of no.6A Moore Bay request his his name be amended and stated that his property does not have a satellite dish.
- Bert Langelaar of no.14C Moore Bay:
  - Built a traditional chimney block with a stack above roof level as a secondary heating systems because the primary heating system is inefficient. This constitutes development but is exempted development. Condition no.31 does not prohibit the provision of a chimney or satellite dish.
  - Satellite dishes on the front walls of houses constitute development which is not exempted development; however, as these houses are built in blocks of four and all elevations are equally visible from the estate roads it is not possible to located dishes in obscure locations; the dish also requires a sight line to the mast which further restricts the locational options. The existing dish will be removed.
- Caroline Bradshaw on no.15D Moore Bay:
  - Installed a treble skim stainless steel flue to service a solid fuel stove for the same reasons as Mr Langelaar of no.14C.
  - Ms Bradshaw expressed the same opinion in relation to satellite dishes as Mr Langelaar.
- David Gibson of no. 22C Moor Hall:
  - Installed a satellite dish because the annual cost of the TV service was prohibitively expensive and the service was eventually discontinued by the provider.
  - The location of the TV aerial on no.22C is correctly marked on the back of Block 22, the front of this block is occupied by nos. 22A and 22D, and no.22C is not in breach of planning regulations.

- Willing to pay a share (1/100<sup>th</sup>) of providing the free to air satellite system to all houses and then remove the dish as it would no longer be required.
- Anita Ryan-Kelly of no. 9B Moore Hall:
  - Does not have a stove or protruding flue from the roof for heating the living rooms using a stove.
  - Unaware that the tenant had installed a satellite dish on the side (but not the front) of the house, this was done because of the absence of a cable TV service, and Ms Ryan-Kelly would like apply to retain the dish.

### **3.4 Response by Planning Authority**

The Planning Authority responses raised no new issues.

### **3.5 Response by Referrer**

No response received.

## **4.0 THE QUESTION**

Having regard to the foregoing, and in the light of the issues set out in the referral, I consider that the two questions to be determined by the Board in this case are:

- (1) Whether the installation of flue pipes protruding above the roofs of the units for heating a living room/ground floor area using a stove at Moore Bay, Kilkee, County Clare is or is not development, or is or is not exempted development.
- (2) Whether the installation of satellite dishes to the front walls at Moore Bay, Kilkee, County Clare is or is not development, or is or is not exempted development.



## **5.0 EVALUATION**

### **5.1 Statutory provisions.**

#### **Planning and Development Act 2000 (as amended)**

Section 2 (1) of the Act states as follows: -

“In this Act, except where the context otherwise requires –

“development” has the meaning assigned to it by Section 3

"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) of the Act states as follows: -

“ ‘development’ means, except where the context otherwise requires, the carrying out of 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) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

#### **Planning and Development Regulations, 2001-2015**

Article 6(1) states:

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.

Article 9(1) states 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:

- (a) Give rise to any one of a series of effects listed under sub-sections (i) to (xii) and in particular:
  - (i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
  - (b) Be located within an SAAO.
  - (c) A development to which Part 10 applies
  - (d) Have repercussions on major accident hazards.

Class 2(a) of Part 1, Schedule 2 of the Planning and Development Regulations states that the following developments within the curtilage of a house are exempted development:

- The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure.

The *conditions and limitations* associated with Class 2 of Part 1, Schedule 2 of the Planning and Development Regulations state that:

- The capacity of an oil storage tank shall not exceed 3,500litres.

Class 4 of Part 1, Schedule 2 of the Planning and Development Regulations states that the following developments are exempted development:

- (a) The erection of a wireless or television antennae, other than a satellite television signal receiving antennae, on the roof of a house.
- (b) The erection on or within the curtilage of a house, of a dish type antennae used for the receiving and transmitting of signals from satellites.

The conditions and limitations associated with Class 4 (b) of Part 1, Schedule 2 of the Planning and Development Regulations state that:

1. Not more than one such antennae shall be erected on, or within the curtilage of the house.
2. The diameter of any such antennae shall not exceed 1m.
3. No such antennae shall be erected on, or forward of, the front wall of the house.
4. No such antennae shall be erected on the front roof slope of the house or higher than the highest part of the roof of the house.

## **5.2 Previous referrals/references**

**28.RL.2995:** The Board decided that at The Glenanaar Bar, Boreenmanna Road, Cork (a) the attachment of antennae, dishes and cabinets for statutory undertakers, constitutes “works” within the meaning of section 3 of the Planning and Development Act, 2000 and constitutes development, (b) the attachment of antennae and dishes to the said structure for receiving and transmitting signals from satellites is not exempted development.

**46. RL. 2429:** The Board decided that the construction of a chimney to facilitate the installation of an oil stove as part of the central heating system of the house at 5 Blackfort Close, Castlebar, County Mayo is development and is exempted development.

### **5.3 Development Plan**

Moore Bay Holiday Village is located within an area covered by the County Clare Development Plan 2011-2017 and the West Clare Local Area Plan 2012-2018 within which the site is zoned for tourism purposes.

### **5.4 Assessment**

#### ***(a) "Is or is not development"***

In the case of the items that are the subject of this referral, it is quite evident that they involve the carrying out of works, as defined, and hence constitute development within the meaning of the Act.

#### ***(b) "Is or is not exempted development"***

The Referrer submits that the works, which comprise (1) the installation of flue pipes protruding above the roofs of the units for heating living room/ground floor using a stove and (2) the installation of satellite dishes to the front walls at Moore Bay Holiday Village does not constitute exempted development.

#### ***Exempted development:***

The question as to whether the installation of flue pipes protruding above the roofs of the units for heating living room/ground floor using a stove and the installation of satellite dishes to the front walls at Moore Bay is or is not exempted development, will now be assessed.

The development comprises two elements:

- (1) The installation of flue pipes protruding above the roofs of the units for heating living room/ground floor using a stove.
- (2) The installation of satellite dishes to the front walls

**The installation of flue pipes protruding above the roofs of the units for heating living room/ground floor using a stove:**

Moore Bay Holiday Village comprises a residential development of 100 holiday houses which are mainly laid out in blocks of 4 houses with shared garden areas which are not enclosed. Each holiday house is fitted with a central heating system. Several of the owner/occupiers were dissatisfied with the heating arrangements and they installed stoves which necessitated the installation of flue pipe and/or chimney stacks which protrude over the roofs of the houses. The Moore Bay Management Company (the Referrer) submits that the works constitute development which is not exempted development.

Article 6(1) of the Planning and Development Regulations 2001 (as amended) 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.

Class 2(a) of Part 1, Schedule 2 of the Planning and Development Regulations states that the provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure is exempted development subject to the associated conditions and limitations which state that the capacity of an oil storage tank shall not exceed 3,500litres.

The Referrer acknowledged that Class 2 of Part 1, Schedule 2 of the Regulations lists a flue as exempt development if its purpose is for a central heating system. However, the Referrer submits that this exemption is not relevant as all of the houses in the Moore Hall Holiday Village were fitted with electric central heating and that the estate was not designed to cater for any other type of heating as there are no back gardens to store oil or fuel

Class 2(a) of Part 1, Schedule 2 of the Regulations refers to a “heating system” and not a “central heating system”. A heating system can be defined as a “utility to warm a building” whilst central heating can be defined as “a heating system in which air or water is heated at a central furnace and sent through the building via vents or pipes and radiators”. Notwithstanding this difference in definition, the Board decided under Ref. 46. RL. 2429 that the construction of a chimney to facilitate the installation of an oil stove as part of the central heating system of the house at 5 Blackfort Close, Castlebar, County Mayo is development and is exempted development.

Furthermore, the conditions and limitations associated with Class 2(a) do not stipulate that the exemption only applies if there is no other heating system in place, and it is silent in relation to the location of “a boiler house or fuel storage tank or structure.” Although the conditions and limitations associated with Class 2(a) set a maximum oil storage tank capacity of 3,500 litres, this limitation is not relevant to this element of the referral development.

Article 9(1) (a) (i) of the Regulations also states 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 in a permission under the Act.

Planning permission was granted under Reg. Ref. 96-461 to erect 100 homes at Moor Bay Holiday Village. Condition no.31 required that no garage, shed, awning or similar structure shall be provided without the prior consent of the Planning Authority whether or not such provision would otherwise constitute exempted development. The Referrer submits that this element of the development would contravene Condition no.31. However, it is noted that Condition no.31 did not specifically prohibit the installation of a flue pipe or chimney stack and the provisions of Article 9(1) (a) (i) of the Regulations do not apply to this element of the development.

In conclusion the installation of flue pipes protruding above the roofs of the units for heating the living room/ground floor of the houses in Moore Bay Holliday Village does constitute exempted development with regard to Article 6(1) and Class 2(a) of Part 1, Schedule 2 of the Planning and Development Regulations, as amended.

### **The installation of satellite dishes to the front walls:**

Moore Bay Holiday houses are served by cable TV via an underground network of cables. Several of the owner/occupiers were dissatisfied with this arrangement and they installed satellite dishes on the walls of their houses.

Article 6(1) of the Planning and Development Regulations 2001 (as amended) 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.

Class 4(b) of Part 1, Schedule 2 of the Regulations states that the erection on or within the curtilage of a house, of a dish type antennae used for the receiving and transmitting of signals from satellites, is exempted development subject to the associated conditions and limitations which state that (3) no such antennae shall be erected on, or forward of, the front wall of the house.

The Moore Bay holiday houses are arranged in blocks of four and there has been some debate as to what constitutes the front, side and rear walls of the houses because of this configuration. However, several of the owner occupiers have clearly installed satellite dishes on the front walls of their houses which is in contravention of Condition and Limitation no.3 of Class 4(b) of Part 1, Schedule 2 of the Regulations, and this element of the development does not constitute exempted development.

Article 9(1) (a) (i) of the Regulations also states 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 in a permission under the Act.

Planning permission was granted under Reg. Ref. 96-461 to erect 100 holiday homes at Moor Bay Holiday Village. Condition no.20 stated that electricity and telephone services shall be laid underground and that provision shall be made for the underground installation of cable television service, and the developer complied with these requirements. The Referrer submits that this element of the development would contravene Condition no.20. However, it is noted that Condition no.20 did not specifically prohibit the installation of satellite dishes and therefore the provisions of Article 9(1) (a) (i) of the Regulations do not apply to this element of the development.

In conclusion, the installation of satellite dishes on the front walls of the houses in Moore Bay Holiday Village does not constitute exempted development with regard to Article 6(1) and Condition and Limitation no.3 of Class 4(b) of Part 1, Schedule 2 of the Regulations.

## **5.5 Conclusion**

I conclude that the works at Moore Bay Holiday Village that was the subject of the Planning Authority's Declaration related to:

- (1) The installation of flue pipes protruding above the roofs of the units for heating living room/ground floor using a stove is development and is exempted development, and
- (2) The installation of satellite dishes to the front walls is development and is not exempted development, by reason of non-compliance with the condition and limitation no 3 of Class 4(b) of Part 1, Schedule 2 of the Planning and Development Regulations 2001-2015.



## 6.0 Recommendation

I recommend that the Board should decide as follows:

The question was referred to the Board, by way of review of the Planning Authority's Declaration of 24<sup>th</sup> May 2016 under Section 5 of the Planning and Development Act, 2000, is:

Whether (1) the installation of flue pipes protruding above the roofs of the units for heating living room/ground floor using a stove and (2) the installation of satellite dishes to the front walls at Moore Bay is or is not development, or is or is not exempted development.

In considering this referral, the Board had regard particularly to:

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000 (as amended);
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001-2015;
- (c) Class 2(a), Part 1 of the Second Schedule to the Planning and Development Regulations, 2001-2015.
- (d) Class 4 (a) Part 1 of the Second Schedule to the Planning and Development Regulations, 2001-2015 including Condition and Limitation no.3.

AND WHEREAS An Bord Pleanála, in exercise of its powers conferred on it by Section 5 of the 2000 Act, hereby decides that:

- (1) The installation of flue pipes protruding above the roofs of the units for heating the living room/ground floor of the houses is development and is exempted development; and

(2) The installation of satellite dishes on the front walls of the houses is development and is not exempted development;

at Moore Bay Holiday Village, Kilkee, County Clare

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Karla Mc Bride  
Senior Planning Inspector  
15<sup>th</sup> December 2016