



An
Bord
Pleanála

Inspector's Report 06D.RL.3580

Question	Whether the use of a Parcel Motel Facility as a placement for deposit/ temporary storage unit is or is not development or is or is not exempted development.
Location	Spar 1 and 3 Rockville Road, Newtown Park Ave, Blackrock, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown Co. Co.
Planning Authority Reg. Ref.	2917
Applicant for Declaration	Nightline Logistics Group
Planning Authority Decision	Is not exempted development
Date of Site Inspection:	2 nd August 2017
Inspector	Emer Doyle

1.0 Site Location and Description

- 1.1. The Parcel Motel facility is located in the external wall of an existing Spar supermarket located at the junction of Newtownpark Avenue and Rockville Road, Blackrock, Co. Dublin. There are a number of other retail premises at this location including a pharmacy and a take-away. Car parking is somewhat limited on the site and there is a one way system on site whereby cars enter the site from Rockville Road and exit the site from Newtownpark Avenue.
- 1.2. According to the Parcel Motel website, Parcel Motel offers a 'virtual address that allows a customer to manage their online deliveries easily. Parcel Motel facilities are available in many locations throughout Ireland and vary in size. The main services include the provision of lockers for customers to collect parcels from, return unwanted goods to retailers or send parcels to either another parcel motel locker or a specific address.

2.0 The Question

- 2.1. Whether the use of a Parcel Motel Facility as a placement for deposit/ temporary storage unit is or is not development or is or is not exempted development.

3.0 The Referrer's Submission

- 3.1. A submission was submitted to the Board on behalf of Nightline Logistics Group which can be summarised as follows:
 - A material change of use has not taken place given the commercial nature and context of the site. The unit does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or the neighbouring structures and it is therefore submitted that the use can be considered as exempt under Section 4(1)(h).

- It is submitted that the facility is exempt under Class 30 of the Planning and Development Regulations but also warrants review relative to the provisions of Section 254.
- It is clear from historical images that the Parcel Motel facility replaces two No. newspaper delivery box's that have been on site for many years. In this respect, Section 4(1)(h) applies as the unit, which replaces structures, on which advertising occurred, is neither materially nor functionally different.
- The Parcel Motel is placed in a location that does not create a traffic hazard.
- To confer an exclusive right to An Post is potentially anti-competitive, potentially contrary to competition legislation contrary to EU Competition Law and contrary to the provisions of the Interpretative Act 2005.

4.0 Planning Authority Decision

- 4.1.1. The Planning Authority's declaration states that the development constitutes development which is not exempted development.
- 4.1.2. The transportation report advised that the existing Parcel Motel would require planning permission with regard to its encroachment on the pedestrian footpath on the side of the Spar shop and its conflict with vulnerable road users (i.e. wheelchair users, pushchair users, etc.)
- 4.1.3. The planning report considered that the Parcel Motel structure on a public footpath would constitute works and is development. Having regard to the traffic hazard issue raised in the transportation report, it was considered that the restrictions on exemptions in Article 9 (1)(a)(iii) of the Planning and Development Regulations, 2001 (as amended) would apply.

5.0 Relevant Planning History

Enforcement

281/16: Enforcement file was opened on the 16th of December, 2016 in respect to the placement/ installation of a Parcel Motel structure without the benefit of a valid planning permission.

PA D07A/1273

Permission was granted for change of use from residential 2 No. commercial units (professional, health care, hairdresser, beauty salon) at first and second floor levels over Spar shop, incorporating a new entrance at ground floor level facing Newtownpark Avenue.

Referral Case

ABP 06D.RL3221/ PA 3414

Declaration by the Planning Authority that the placement of a deposit/ temporary storage box at The Goat Public House, Lower Kilmacud Road/ Taney Road, Dublin did not constitute exempted development. The Board also determined in the appeal that the placement of a deposit/ temporary storage box was development and was not exempted development.

6.0 Further Submissions

Planning Authority responded that it had no further comments.

7.0 Relevant Legislation

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**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.

- 7.1.3. Section 3(1): in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.
- 7.1.4. Section 4(1): sets out developments that shall be exempted development for the purposes of this Act. Section 4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.
- 7.1.5. Planning and Development Regulations, 2001 Article 9(1)(a)(iii) 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 endanger public safety by reason of traffic hazard or obstruction of road users.

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

- 7.2.1. Planning and Development Regulations, 2001 Article 9(1)(a)(iii) 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 endanger public safety by reason of traffic hazard or obstruction of road users.

7.2.2. Class 30 Schedule 2 Part 1 Exempted Development

The carrying out by An Post – The Post Office of development consisting of the provision of –

- (a) pillarboxes
- (b) roadside boxes for the delivery of mail,
- (c) deposit boxes for the temporary storage of mail for local delivery, or
- (d) machines for the supply of stamps or printed postage labels.

8.0 Assessment

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the Parcel Motel Facility at this location, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
- 8.1.2. **Is it or not development?**
- 8.1.3. Having regard to the definition of 'works' under Section 2(1) of the Planning and Development Act, I am satisfied that the placement of the structure for the delivery of postal items on the site in question would constitute development within the meaning of Section 3(1) of the Act.
- 8.1.4. **Is or is not exempted development?**
- 8.1.5. Development can be exempted from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000 (the Act), or Article 6 of the Planning and Development Regulations 2001 (the Regulations).
- 8.1.6. The referrer submits that a material change of use has not taken place given the permitted commercial nature of the site and the unit does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of the neighbouring structures. As such, the referrer submits that the use can be considered as exempt under Section 4(1)(h) of the Act.
- 8.1.7. The Parcel Motel Structure is located within the car park of the Spar shop at this location but is a completely separate business operated by a different operator – Nightline Logistics Group. Customers of Parcel Motel can collect or drop off parcels at any time that suits them and it is not limited in terms of opening hours in the same way that the existing businesses at this location would be. Nightline Logistics consider that the works in question are exempted development under Section 4(1)(h) of the Planning and Development Act 2000. Section 4(1)(h) relates to development consisting of the carrying out of works for the maintenance, improvement or other alteration, being works which only affect the interior of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

- 8.1.8. The works carried out provided for a purpose built parcel motel facility which is operated separately from the existing businesses at this location by Nightline Logistics. I note that it is stated that the facility replaces two No. newspaper delivery box's that have been on the site for many years. The newspaper delivery boxes were used by a limited number of designated people specifically in connection with the Spar shop on the site. In my view, their purpose was very different to the parcel motel structure where there are no limitations on the numbers of people who use the facility provided that they pay the required fee to 'Parcel Motel' and there is considerably more boxes available than the two boxes previously in place specifically for newspaper delivery. It is reasonable to determine that the former structures were not maintained, improved or altered as they were removed and replaced with the specific type of purpose built structure required by parcel motel for holding parcels in individual lockers on a short stay basis. Furthermore, there are material differences arising from the replacements in terms of size, visual appearance, and number of structures – previously there were two structures which were replaced by one structure. I refer the Board to Image 3 of the submission. These are material changes that are inconsistent with the character of the structures that were replaced. In addition, I note that the car park at this location is limited in size and is operated by way of a one way system. On the day of inspection, it appeared to be a very busy car park. I consider that the Parcel Motel business would bring additional traffic to the site that wouldn't otherwise be using the Spar shop or other businesses at this location and customers would travel to the site specifically to use the Parcel Motel facility. The car parking standards set out in the current Development Plan do not refer to Parcel Motel facilities so it is difficult to judge how many additional spaces would be required for such a business. Notwithstanding this however, it is reasonable to assume that some intensification of use has taken place which could be considered to be a material change. Having regard to the above, I would conclude that a material change of use has taken place. I am also satisfied that the development does not come within the scope of section 4(1)(h).
- 8.1.9. With regard to article 6 of the Regulations, development of a class specified in Part 1 of Schedule 2 of the Regulations is exempted if such development complies with the

applicable conditions and limitations for that class and does not fall within any of the restrictions on exempted development set out in article 9 of the Regulations.

8.1.10. The relevant class in this instance is Class 30 which relates to the carrying out by An Post, The Post Office of development.

8.1.11. I consider that the history file on this site – RL3221- is relevant and would assist the Board in terms of precedent arising from this determination. In this case, the Inspector noted that whilst Class 30 was drawn up at the time of only one provider, since the deregulation of the market, to date An Post is the only provider of a 'universal postal system' and is accountable to ComReg. Nightline Logistics Group, whilst providing a postal service, is not providing a service comparable to that of a universal postal system and, although obliged to provide a code of practice, is not subject to the same oversight by the regulator. It was submitted that should the exemptions of Class 30 be applicable to all postal service providers, regardless of the level of service provided, the issue of duplication of facilities could have a material effect on the area and thus come become a valid issue in terms of its proper planning and sustainable development. In response to the assertion that the failure to apply the exemptions as set out in Class 30 to all postal providers would be anti-competitive, it was submitted that such matters are not a planning consideration. However, should this be considered to be the case and that Class 30 affords one operator an unfair advantage over another, then this is more appropriately addressed by way of a change in legislation. The Board determined that the facility constituted works and was development which did not come within the scope of exempted development.

8.1.12. In the case of the current referral, I can only conclude that the circumstances involved have similarities with their main differences being the more limited car park, the obstruction of the footpath which I will discuss below, and the replacement of newspaper delivery boxes at this location. Notwithstanding, these differences, I do not consider that this case would warrant a different determination.

8.1.13. With regard to the restriction on exemptions, development to which article 6 relates shall not be exempted development for the purposes of the Act under article 9(1)(a)(iii) if the carrying out of such development would endanger public safety by reason of traffic hazard or obstruction of road users. The Transportation Department

considered that the Parcel Motel structure would not constitute exempted development as it encroached on the pedestrian footpath to the side of the Spar shop and conflicts with vulnerable road users, and as such would endanger public safety by reason of traffic hazard or obstruction of road users. The declaration by the Planning Authority reflected this report. The submission on behalf of Nightline Logistics makes the case that the Parcel Motel structure does not create a traffic hazard at this location and that the desire line for pedestrians is away from this location. Notwithstanding this, I am of the view that the Parcel Motel structure at this location obstructs the footpath and does inhibit pedestrian traffic at this location and endangers public safety by reason of traffic safety. As such the restriction on exemption set out in article 9(1)(a)(iii) applies.

9.0 Recommendation

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

WHEREAS a question has arisen as to whether the placement of a deposit/temporary storage unit for postal items at Spar, 1 and 3 Rockville Road, Newtownpark Avenue, Blackrock, Co. Dublin is or is not exempted development:

AND WHEREAS Nightline Logistics Group requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a declaration on the 24th day of April 2017, stating that the matter was development and was not exempted development:

AND WHEREAS Cunnane Stratton Reynolds Consultants on behalf of Nightline Logistics Group referred this declaration for review to An Bord Pleanála on the 10th day of May 2017:

AND WHEREAS An Bord Pleanála, in considering this referral, 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, as amended,
- (c) Class 30 (c) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended, and
- (d) the planning history of the site,
- (e) the impact of the development on the receiving environment.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the placement of a deposit/temporary storage unit for postal items constitutes 'works' as defined in section 2 of the Planning and Development Act, 2000 as amended, and, therefore constitutes development as defined in section 3(1) of the said Act, and
- (b) the placement of the deposit/temporary storage unit for postal items has not been undertaken by An Post- The Post Office and does not come within the scope of the exempted development provisions of Class 30(c) of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended.
- (c) the development has restricted the use of the footpath at this location and endangers public safety by reason of traffic hazard. As such the restriction on exemption set out in article 9(1)(a)(iii) applies.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the use of a Parcel Motel Facility as a placement for deposit/ temporary storage unit is development and is not exempted development.

Emer Doyle
Planning Inspector

17th August 2017