



An
Bord
Pleanála

Inspector's Report 06D.RL.3581

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	The Goat, Lower Kilmacud Road, Dun Laoghaire, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown Co. Co.
Planning Authority Reg. Ref.	2817
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 subject site is located within the car park of 'The Goat' public house at the junction of Lower Kilmacud Road and Taney Road in Dublin 14. The 'Parcel Motel' structure is located close to a bottle bank and provides for a large number of letter boxes/ lockers. 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:

- The previous Section 5 which has been determined on the site did not address the matter of Section 4(1)(h) of the Planning and Development Act.
- 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. To confer an exclusive right to An Post under Class 30 is potentially anti-competitive, potentially contrary to competition legislation

contrary to EU Competition Law and contrary to the provisions of the Interpretative Act 2005.

- Referral RL3233 determined that the replacement of four underground storage tanks with four larger underground fuel tanks
 - (a) does not result in intensification of use, and
 - (b) does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure of neighbouring structures and, therefore, comes within the scope of section 4(1)(h) of the Planning and Development Act 2000.

The clear implication of the above is that new structures on sites can be allowed and can be consistent with the provisions of Section 4(1)(h) of the Act.

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 planning report prior to the declaration by the planning authority included the following:
 - It is considered that since the parcel motel is a standalone structure under a separate applicant and separate to the existing commercial nature of the site, the works are not exempt under Section 4 1(h) of the Planning and Development Act 2000.
 - Furthermore, the placement of a deposit/ temporary storage unit constitutes 'works' and as the placement of the deposit/temporary storage unit has not been undertaken by An Post – The Post Office 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.

5.0 Relevant Planning History

Enforcement

195/13: Warning letter issued for the alleged unauthorised development consisting of the carrying out of the following works without the benefit of planning permission: The erection of concrete structures and the placement of garden shed 'for sale', erection of signage at the Taney Road, Drummartin Road entrance, erection of a parcel motel, creation of a beer garden to the rear of the premises.

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 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.

7.2. Planning and Development Regulations, 2001, Schedule 2 Part 1- Exempted Development

7.2.1. Class 30

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. I note that the referrer suggests that the facility warrants review relative to the provisions of Section 254 of the Planning and Development Act. In the absence of a formal application and appeal under Section 254, the Board has no remit in assessing or determining such an application.

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 referrer quotes a history referral case – RL3233 which determined that the replacement of four underground storage tanks with four larger tanks did not result in intensification of use and did not materially alter the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures and therefore came within the scope of Section 4 (1)(h) of the Act.
- 8.1.8. The Parcel Motel Structure is located within the car park of the Goat Pub but is a completely separate business operated by a different operator – Nightline Logistics Group. Customers of Parcel Motel can collect or drop off parcels to the lockers at any time that suits them and it not limited in terms of opening hours in the same way that the Public House would be. I consider that the circumstances in RL3233 were very different in that the ‘structures’ involved were underground so there was no visual impact and the enlargement of the existing structures meant that there would be less fuel deliveries and therefore a reduction in traffic and intensification of the existing use did not apply. In this case, there would be more traffic using the site for different purposes to the main commercial use of the site. 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 there is no change in circumstances or the facts of the case which would allow for a different determination in this instance.

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 The Goat Public House of Lower Kilmacud Road and Taney Road, 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 18th 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) article 6(1) 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 pattern of development in the area.

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.

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