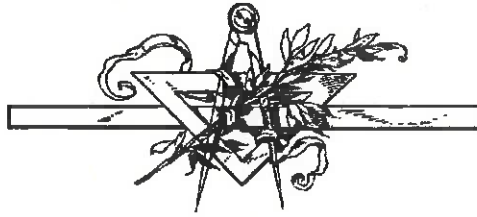


Architectural Construction Technology

Architecture, Project Management, Planning & Design Consulting



An Tigh, Ballyogan Avenue, Carrickmines, Dublin D18 V6X9.
 Mob : 087 2233395 E-mail : act@connect.ie

ABP-

01 4400-19

22 MAR 2019

Fee: €

220

Type:

CHQ

Your Ref :

Our Ref : 2451-26-02

Time:

12:20

By:

hand

Date : 17/03/2019

An Bord Pleanala,
 64 Marlborough St,
 Dublin 1

Application Re : Alleged Unauthorised Works; being The Provision of a timber lattice type fence around and a retractable awning over the first floor Function Room smoking area.

Applicant: Mr Charles Chawke.

Location: The Goat Public House at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin.D14 PY 56.

Local Authority: Dun Laoghaire Rathdown County Council.

Application Type: Declaration on Development under section 5.

Reg Ref: DLR 719 Dated: 04-02-2019 Decided: 28-02-2019

Dear Sirs,

We enclose a copy of our client's application to Dun Laoghaire Rathdown County Council for a Declaration of Exempted Development under section 5 of the Planning and Development Act; for The Provision of a timber lattice type fence around, and a retractable awning over, the first floor Function Room smoking area, which sits above and behind the Glazed Roofed car park level Beer Garden, at The Goat Public House, situated at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin D14 PY 56. Dun laoghaire Rathdown County Council has refused our client's request for a declaration of exempted development accordingly we ask that An Bord Pleanala review the application anew.

There is a live enforcement file open regarding this Alleged Unauthorised Works reg ref Enf 221/18. Naturally, our client disputes the Local Authority's position and in agreement with the LA Enforcement Section of the Planning Department he has agreed to lodge this section 5 application. It seems rather pointless because the LA has already told us that they disagree with our client's perspective however; this first step is necessary regardless of the negative outcome as the process will carry forward to An Bord Pleannala, who have already made a number of rulings that have a direct bearing on the enclosed application. Ordinarily a Local Authority is supposed to be guided by ABP Decisions but the Planning Department of Dun Laoghaire Rathdown County Council, do not appear to follow that protocol.

The initial warning letter from the Local Authority dated 13th August 2018 made no mention of a timber lattice type fence around and a retractable awning over the first floor Function Room smoking area. That letter alleged that there had been *The Creation of a beer garden, without the benefit of a valid planning permission, and which does not constitute exempted development.*

We responded to that allegation on the 24th September 2018 asking if the Local Authority had sufficient time to assess the situation and has arrived at the conclusion that there was no case to answer for our client. The LA replied on the 11th October 2018 where it elaborated upon its complaint, by broadening the initial allegation of the creation of a beer garden into *The provision of a timber lattice type fence, solid timber fencing a large retractable awning at first floor level, together with the use of the first floor terrace area by members of the public for drinking and/or smoking requires planning permission and in the absence of same is considered to be unauthorised development.*

We responded to this on the 18th October 2018 and addresses all of the points raised. With regard to the creation of beer garden/smoking area we addresses this issue and produced Google Earth imagery to show the duration of time the beer garden/smoking area had been in existence. In response to that letter the Local Authority wrote on the 12th November advising that they accepted the beer garden/smoking area use was outside of their authority as it was statute barred from enforcement having existed for at least ten years. This should have taken care of the Warning letter of the 13th August as that letter alleged *The Creation of a beer garden, without the benefit of a valid planning permission, and which does not constitute exempted development.* With their letter of the 12th November advising that they accepted the beer garden/smoking area use was outside of their authority as it was statute barred from enforcement the Local Authority should have closed the file with regard to this issue but it did not.

DLR have not closed the file and are now pursuing under a warning letter that has been effectively dealt with and the position conceded to enforce what is clearly exempted development and development for which no warning notice has been issued or letter of allegation made. We contend that this is an abuse of process and legally flawed. We noted that the Local Authority has accepted our submission on the use of the upper terrace and in support of that position we enclosed photos lifted from Google Earth. The tables were evident on the subject terrace in the photos. The photos are date stamped by Google as to the time the photo was taken.

With regard to the retractable awning and screen. We noted the Local Authority opinion on this matter and before our client was once again put to unnecessary expense we asked that the Local Authority reconsider their decision. We referred the LA to reg ref **Enf 195/13**. In that enforcement proceeding the Local Authority made a similar allegation regarding Mr. Chawke's and the Ground Floor Rear Beer Garden. At that time we asked the Local Authority to reconsider their decision and they refused. That refusal lead to our client having to lodge a section 5 application for a declaration on exempted development. That application ref ref **DLR/54/14** was regrettably and unsurprisingly refused by the Local Authority and our submission appeared as if it was completely ignored by them. The Local Authority stuck doggedly to their earlier decision when there were no grounds for doing so. Our client appealed that LA decision and it was no surprise to our client that by letter dated 01-10-2014 Reg Ref RL **06D.RL3227** An Bord Pleanála reversed the LA decision.

The situation in this case is very similar with the exception that this process is from the LA side legally flawed, but other than that they initially alleged that a beer garden had been created to later drop that and allege unauthorised works had taken place and doggedly refuse to consider anything else. Just as they are doing this time around.

AN BORD PLEANÁLA
27 MAR 2019
LTR DATED _____ FROM _____

In the Local Authority letter of the 27th September 2018 and following the LA Inspector's Phone call to this office a few days earlier. That telephone conversation was most informative and helpful. The inspector mentioned that he was in possession of photos that had highlighted the areas with which the Local Authority had concerns and were investigating. Enclosing a copy of those photos with the Local Authority's initial warning letter would have been very productive as neither we nor the client had any clue what the Local Authority were investigating. Our follow up letter asking for an assurance that the complaint file had been closed with no action to be taken was it seems the trigger for the LA inspector to make contact, realising we were clueless as to the complaint.

The Local Authority concerns as if we understood them were:

- 1) A pair of Gates on Taney Road that have a Mural painted on them.
- 2) A painted removable sign on the rear wall facing the car parking area and close to the Taney Road boundary wall.
- 3) A Retractable Canopy that has been placed over the existing upper terrace that acts as the Smoking area for the Function Room.
- 4) Artificial Grass laid on this terrace.
- 5) A Wind Break around this terrace.
- 6) A Painted Sign Mural in Black and Gold previously refused retention on the Taney Road boundary wall.

We have visited the site, we have looked at the items complained of and we deal with these items one by one. We replied as follows:

The item listed at number 6 above is the subject of a further Retention planning application. This was recently refused and the item removed.

Item Number 5 is a non-issue in planning terms and exempted development in 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 are Exempted Development.

Item Number 4 is in planning terms a non-issue and clearly exempted development. The LA has not mentioned this again so we presume that they have agreed it is a non-issue although they have not said this.

Item Number 3 like item number 5 is equally a non-issue in planning terms and exempted development in 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 are Exempted Development.

Item Number 1 and 2 could reasonable be argued to be exempted development and however in order to facilitate the Local Authority, our client lodged an application with the Local Authority to retain these. That application was recently refused and the next step will be considered shortly.

It appears that we are now left with only items 3 and 5 and this section 5 our client's application ought to address these. It is clear from the most cursory of site inspection, that the premises incorporates an array of architectural styles with varying roof profiles, roof pitches, external finishes and an array of different materials for external cladding. It cannot be considered that the overall premises provides any form of overall architectural coherence. This Public House is in existence for a great many years and over the years has had small additions, changes and repairs or improvements carried out to it. All of these have to some degree contributed to the slight loss of Architectural clarity and theme that once may have existed.

AN BORD BLEANALA

22 MAR 2019

LTR DATED _____ FROM _____

LDG- _____

APP- _____

The works being complained of cannot possibly be considered out of context or incongruous to the overall architectural style relating to the premises or indeed the wider area. The area in question is located in the heart of the building and is only partially visible from some vantage points along Taney Road. The changes complained of are not along the Goatstown Road, Lower Kilmacud Road, Mount Anville Road or most of the car parking area associated with the Goat. It could not be argued that the works undertaken materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures. Therefore; the exemption provisions set out under section 4(1)(h) do apply in this instance and the works undertaken constitute development which is exempted development.

With regard to the retractable awning and screen. We have noted the Local Authority position on this matter and before our client is put once again to unnecessary expense we ask that the Local Authority reconsider their decision. We refer you to reg ref Enf 195/13. In this enforcement proceeding DLR Local Authority made a similar allegation regarding Mr. Chawke's Ground Floor Rear Beer Garden. We asked the Local Authority to reconsider and they refused. That refusal led to our client having to lodge a section 5 application for a declaration on exempted development. That application ref ref DLR/54/14 was regrettably refused by the Local Authority and appealed and by letter dated 01-10-2014 Reg Ref RL 06D.RL3227 An Bord Pleanala reversed the DLR LA decision.

The Inspector's report should have been read by the DLR LA before committing itself once again to this same course of action and decision as the reasoning set out in that section 5 application apply to this instance also. It would save our client considerable distress, time and money not to be once again forced into this planning merry go round. It could also save the DLR LA time and money by accepting the previous arguments that were accepted by An Bord Pleanala. The DLR LA is after all duty bound to take on board the decisions of An Bord Pleanala which in this instance it appears not to be doing. There can be no doubt that section 4(1)(h) applies in this instance.

Having reviewed this and similar planning issues and the position taken by DLR Co Co, we would like to make the following comments.

Case 1) ENF 133/12 Bhagwan's Pharmacy Ballinteer, a single storey pitched roof shed that had been used for storage was demolished. Some of the external walls were retained, as was the boundary wall with the public footpath. The shed was then converted into a consultation room for the ancillary use of a Pharmacy it was attached to. The existing floor was removed and a new one floor poured, New foul drainage pipes were laid and taken outside of the property into the public footpath where they were connected to the public drainage system and inspection chambers set into the public footpath. The original pitched roof was removed and a new flat roof constructed but at a higher level with velux type rooflights installed. The boundary walls were raised. A new wc and wash hand basin were installed. A new wall was built using the public footpath as the foundation for that wall and a new gully was installed into the Public footpath. This was referred to DRL Local Authority your reference ENF 133/12. The Local Authority was asked to determine if unauthorised works had taken place and it was decided by the Local Authority that the works were exempted development. Our client on that occasion was very disappointed by the Local Authority decision but she was aware that the applicant on that occasion was well connected and her protests were never going to get anywhere. DLR LA decided 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 are exempted development.

Case 2) ENF-113-16 Unit 2 The Mart on the Old Bray Road, considerable works had been undertaken and it was difficult to monitor what was going on, as it was all being done with the shutters pulled down. It appeared however; that the property has been extended to the rear and the front portion had been completely refitted to serve as a restaurant with what appears to have been an emphasis on the takeaway market. The front of the shop had been changed considerably, old signage has been covered over, new brightly coloured tiling and a new shutter have been installed changing the look of the premises quite a bit. We were unable to locate a planning permission one and because of the brightly coloured yellow tiles and the new signage we did not believe that DLR could considered the works an exempted development.

AN BORD PLEANALA
27 MAR 2019
LTR DATED _____ FROM _____
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We were very surprised to be told by letter dated 22nd July 2016 that DLR LA did consider the works as exempted development. They considered the rear extension exempted development because it would only be used for 30 day or less each year and for a farmers Type market so under **Class 37** section 2 part 1 of the Planning & development exempted Development Regulations 2001 (as Amended). There was no mention of the new livery colours and signage.

We lodged this complaint because of the difficulties a number of our client's were experiencing with DLR LA with regard to this very same matters and we needed to clarify their position.

Case 3) The Barbers in Cornelscourt Village only 100 m from Unit 2 the Mart was cited for painting a small picture of a scissors and a comb on his wall. He was ordered to remove it or face prosecution. The client in this subject application Mr. Chawke also finds himself regularly receiving warning letters for the slightest thing. For instance, Mr. Chawke has allowed for the last 20 plus years the sale of Christmas trees on the environs of The Goat site. This has also been the subject of enforcement by DLR LA yet, it also clearly qualifies under the same Class 37 section 2 part 1 of the Planning & development exempted Development Regulations 2001 (as Amended). The view taken by DLR LA was however; not so enlightened they instead believed that the use could only be statute barred if it was in continuous existence for 7 years or more. Thankfully; after a reply from ourselves they have not progressed that matter any further. If our client places any signage for even the shortest of time advertising a sporting event, promoting our national team, or runs a promotion in the Goat, he receives a warning letter.

In support of our client's position we refer you to:

Case 4) An Bord Pleanála Reg Ref: **35 RL 2850**. This was referred to An Bord Pleanála by Athy, Town Council on the 25th day of February, 2011: The Planning Authority Reference Number: **UD/10/1**. A questions arose as to whether the renovation of a service station to include:

1. the removal of underground fuel storage tanks (20,000 litres) and the installation of two underground fuel storage tanks (30,000 litres);
2. the construction of a new drainage layout and services duct layout;
3. the erection of four number "Amber" signs and droplet logo signs on the stanchions of the canopy structure;
4. the erection of new side cladding and three number "Amber" signs and droplet logos on the canopy structure; and
5. the erection of new cladding and the new logo "Diesel", "Petrol", "Costcutter" "Hotfood/Deli" and "Fresh Coffee" on the roadside double pole ID sign;

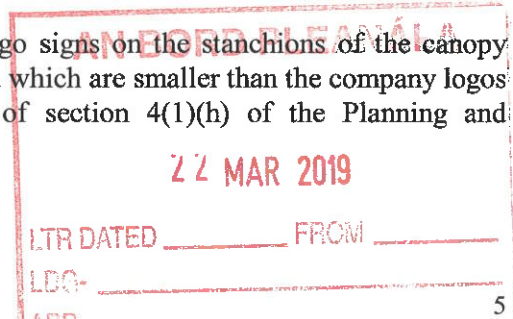
at Woodstock Service Station, Woodstock Street, Athy, County Kildare, are or are not exempted development: and whereas the said questions were referred to An Bord Pleanála by Athy Town Council on the 25th day of February, 2011:

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

- (a) section 4 of the Planning and Development Act 2000, as amended,
- (b) articles 6, 9 and Part 2 of Schedule 2 to the Planning and Development Regulations 2001, and
- (c) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) The removal of underground fuel storage tanks (20,000 litres) and the installation of two underground fuel storage tanks (30,000 litres) of limited scale, located underground, does not result in intensification of the site, does not raise new planning issues and comes within the scope of section 4(1)(h) of the Planning and Development Act, 2000;
- (b) The construction of a new drainage layout and services duct layout, on the basis of the evidence submitted, does not raise new planning issues and comes within the scope of section 4(1)(h) of the Planning and Development Act, 2000;
- (c) The erection of four number "Amber" signs and droplet logo signs on the stanchions of the canopy structure, which provide information about the relevant pump and which are smaller than the company logos previously permitted and generally comes within the scope of section 4(1)(h) of the Planning and Development Act, 2000;



- (d) The erection of new side cladding and three number “Amber” signs and droplet logos on the canopy structure, generally comes within the terms of the permitted development and the colour change of the canopy reflect the company colours in the same way that condition number 3 of TP/32/95 reflected the colour of the company for which the petrol filling station was applied for;
- (e) The erection of new cladding and the new logo “Diesel”, “Petrol”, “Costcutter” “Hotfood/Deli” and “Fresh Coffee” on the roadside double pole ID sign, are not out of character with the structure permitted and generally comes within the scope of section 4(1)(h) of the Planning and Development Act, 2000:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the said renovation of a service station at Woodstock Service Station, Woodstock Street, Athy, County Kildare is exempted development.

Case 5) An Bord Pleanála Reg Ref: RL 06D.RL3227. This was referred to An Bord Pleanála by Mr. Chawke following the refusal by DLR LA to properly consider his application for a declaration under section 5 reg ref DLR/54/14. The Inspector’s report should be read by the LA before committing itself to this particular decision as the reasoning set out in that section 5 application apply to this instance also.

An Bord Pleanála’s ASSESSMENT: *The first question which the Board must determine is whether or not the changes undertaken on site constitute ‘works’, and as such constitute ‘development’ in accordance with the criteria set out in the planning legislation. The changes to the glazed roof include replacing a mono-pitched glazed roof profile with a pitched roof profile and also increasing the surface area of the glazed roof above both beer gardens with changes also included increasing the height of the roof by just over 1 metre. These changes would constitute works in my view as they involve the construction, extension, alteration and, according to the applicant, the repair/renewal of the glazing above the beer garden. As the proposed changes constitute ‘works’ it naturally follows that the works undertaken constitute developments in accordance with the provisions of section 3(1) of the Act.*

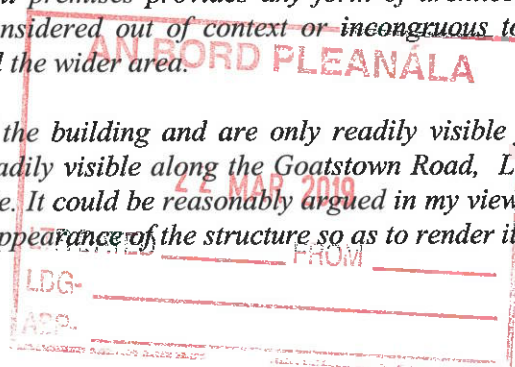
If the Board agree with the above conclusion, the more pertinent question which arises is whether or not the works undertaken constitute development which could be considered exempted development under the provisions of the Act and Regulations. Having consulted the Exempted Development Regulations and in particular Article 6 and Article 9 of the Regulations, I can find no reference to any class of development which is directly related to or relevant to the works undertaken on the site in question.

I am therefore of the view that in order to ascertain whether or not the works undertaken constitute development which is exempted development, the Board should have particular regard to the provisions of sections 4(1)(h).

The owner/occupier of the premises argues that the works carried out were for the maintenance and improvement of the structures in question. It is suggested that the roofs were leaking and in generally poor condition. While this may be the case, it is clear that the owner/occupier of the premises did not replace like with like in carrying out the maintenance works. Changes were made in relation to the height, style and area of the glazed areas. However the key question is whether or not the alterations carried out materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures?

I consider it can be reasonably argued, based on my site inspection, and the drawings submitted that the alterations incorporated were relatively minor in the context of the overall premises. It is clear from both my site inspection and the drawings submitted that the premises incorporates an array of architectural styles with varying roof profiles, roof pitches, external finishes and an array of different materials for external cladding. It cannot be considered that the overall premises provides any form of architectural coherence. The works undertaken therefore cannot be considered out of context or incongruous to the overall architectural style relating to the premises or indeed the wider area.

The glazing areas in question are located to the rear of the building and are only readily visible from vantage points along Taney Road. The changes are not readily visible along the Goatstown Road, Lower Kilmacud Road or Mount Anville Road to the east of the site. It could be reasonably argued in my view that the works undertaken do not materially affect the external appearance of the structure so as to render it



inconsistent with the character of the structure or of neighbouring structures. I therefore consider that the exemption provisions set out under section 4(1)(h) would apply in this instance and the works undertaken therefore constitute development which is exempted development.

This Section 5 application has arisen as a result of An Enforcement Notice from the local Authority which stated that there was an unauthorised beer garden and then having addressed that matter the local authority alleged additional works were considered Unauthorised Development. Our Client does not agree with the Local Authority enforcement assessment and much of the Local Authority warning notice has been dispensed with amicably although there remain a few issues such as this to be resolved.

Our Client made a detailed representation to the Local Authority to have the alleged unauthorised works declared Exempted Development. The Local Authority refused to consider almost all of our client's submission while granting similar such declarations or ignoring similar infringements by others. The Local Authority appear to have a vendetta against our client or his agent and they appear to be making decisions where our client is concerned that are contrary to other similar situations for other applicants and their agents. The Local Authority do not appear to be acting in a fair and even handed manner and their decisions are in conflict with each other and appear to be arbitrary in nature.

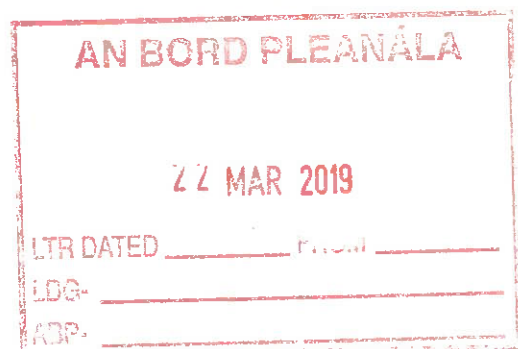
The Local Authority were invited by us to refer this matter to An Bord Pleanala but they chose not to. It appears to us that DLR LA are incapable of making an unbiased decision with this particular client or ours. There is no let up from the Local Authority and our client regularly receives warning letters the vast majority of which amount to nothing. We have spoken to the Enforcement Department and while those conversations are always cordial and polite and the inspectors appear to be professional and genuine our client still feels that there is something or someone that has it in for him.

Our clients asks An Bord Pleanala to consider the works and the submission herein and to declare the works as exempted development.

Yours Sincerely



Gary Solan
For and on behalf of
Architectural Construction Technology.



Planning Department

An Rannóg Pleanála
Registry Section
Sharon O'Neill
Asst. Staff Officer
Direct Tel: 01 2054700
Fax: 01 2803122

Architectural Construction Technology
An Tigh
Architectural Construction Technology
Ballogan Avenue
Carrickmines
Dublin
D18 V6X9

Reference No: Ref719

Application Type: Declaration on Development and Exempted Development Act
– Section 5, Planning & Development Act (as amended)

Registration Date: 04-Feb-2019

Decision Date: 28th February 2019

Location: The Goat Grill & Public House, Lower Kilmacud Road, Goatstown,
Dublin 14

Development Works: The provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden at The Goat public house and Paddy Powers Complex at the junction of, Lower Kilmacud Road

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

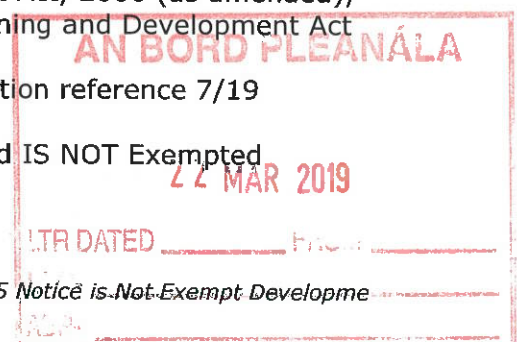
In pursuance of its functions under the planning & Development Act, 2000 (as amended), Dún Laoghaire-Rathdown County Council has, by Order No. Ref.10/19 dated 28th February 2019 decided to issue a Declaration that:

Whereas a question has arisen as to the provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden at The Goat public house and Paddy Powers Complex, at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin 14, is or is not Development and is or is not Exempted Development.

And whereas Dun Laoghaire Rathdown County Council, in considering this application, had regard particularly to-

- (a) Sections 2 and 3 of the Planning & Development Act, 2000 (as amended),
- (b) Schedule 4 (1)(H) Exempted Development Planning and Development Act 2000 (as amended).
- (c) The documentation submitted as part of application reference 7/19

The conclusion is that the proposal IS Development and IS NOT Exempted Development.



Date of issue: 28-Feb-2019

Signed: *Sharon O'Neill*
For Senior Executive Officer

NOTE: Where a Declaration is issued under Section 5, any Person issued with such a Declaration, may, on payment to An Bord Pleanála, 64 Marlborough Street, Dublin 1, of a fee of €220, refer the Declaration for review, **within 4 weeks** of the date of issue of the Declaration.

AN BORD PLEANÁLA	
27 MAR 2019	
LTR DATED _____	From _____
LDG- _____	
ABP- _____	

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

PLANNING & DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 PLANNING & DEVELOPMENT ACT 2000 (as amended)

Reference No: Ref719

Applicant: Charles Chawke The Goat Grill & Public House,
Lower Kilmacud Road, Goatstown, Dublin 14

Agent: Architectural Construction Technology Architectural
Construction Technology, An Tigh, Ballogan Avenue, Carrickmines, Dublin, D18
V6X9

Registration Date: 04-Feb-2019

Location: The Goat Grill & Public House, Lower Kilmacud Road, Goatstown,
Dublin 14

Agent: Architectural Construction Technology Architectural Construction
Technology, An Tigh, Ballogan Avenue, Carrickmines,
Dublin, D18 V6X9

Description of Works: The provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden at The Goat public house and Paddy Powers Complex at the junction of, Lower Kilmacud Road

Report:
Rebecca Greene

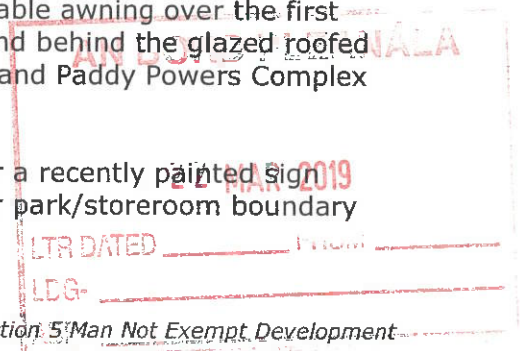
This is a request for a declaration on development and exempted development under Section 5 of the Planning and Development Act 2000 (as amended), in respect of works at The Goat Public House and Paddy Powers Complex, at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin 14.
Declaration:

The declaration requested relates to whether the following works constitute development, namely;

The provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden at The Goat public house and Paddy Powers Complex

Planning History

D18A/1052 – Retention permission was REFUSED for a recently painted sign approx. 1.22m by 2.44m fixed to a portion of the car park/storeroom boundary



Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

wall close to Taney Road and a painted mural on the delivery gates approx. 2.42m by 2.42m set into the Taney Road/storeroom boundary wall. D18A/0936 - Planning permission was refused for Retention of a recently refused Planning Reg. Ref. D17A/0614 Black and Gold painted sign on a portion of the boundary wall at Taney Road, Condition Number 2, measuring approx. 1.83m x 4.20m.

The refusal reason was as follows;

The sign on the boundary wall for retention is considered to add visual clutter to the area and is considered to be unnecessary, given there is sufficient signage on the premises. It is considered that the sign to be retained is inconsistent with Section 8.2.6.8: Shopfronts, Signage and Advertising, as set out within the County Development Plan, 2016-2022, and is inconsistent with Policy NC2 of the Goatstown Local Area Plan. The sign for retention results in visual clutter and therefore sets a poor precedent for such development and seriously injures the visual amenities of the area, and is therefore contrary to the proper planning and sustainable development of the area.

D17A/0614 - Planning permission was granted for the retention of a painted wall mural of goats and a clock on the side wall of the Goat Pub. The permission granted was for a period of 3 years after the date of final grant of permission and relates to the design as submitted. Condition no. 2. of Reg. Ref. D17A/0614 states; 'The painted sign on the portion of wall is to be removed within a time period of two months from the date of this permission'. This was for to avoid visual clutter.

It is noted that this painted sign on the portion of the side wall has not been removed, and was the subject of the retention planning permission Reg. Ref. D18A/0936, which was refused retention permission.

D18A/1052 - A concurrent planning application has been submitted for the retention of a recently painted Guinness sign on the delivery gates and a painted sign on the side of the building fronting into the rear car park. These signs are additional painted signs.

Enforcement History

ENF 221/18 - A) The creation of a beer garden, without the benefit of a valid planning permission, and which does not constitute exempt development.
B) The erection of signage/advertising structures, to the rear of the premises, without the benefit of a valid planning permission, and which does not constitute exempt development.

ENF 197/17 - The painting of a mural on the wall, contrary to Class 12 of Schedule 2, Part 1 of the Planning & Development Regulations, 2001 (as amended) and without the benefit of a valid planning permission.

ENF 195/13 - the carrying out of the following works without the benefit of a valid planning permission:(a) The erection of concrete structures & the placement

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

of garden sheds 'for sale'(b) The erection of signage (c) The erection of a 'parcel motel' in the car park (d) The creation of a large beer garden to the rear of the premises

Previous Section 5 Declarations

54/14 – Certificate of Exemption was granted by the Bord (Appeal Reference RL06D.RL3227) replacement of the glazed roofs over the existing beer garden with new pitched glazed roofs at a slightly higher elevation similar to the original pitched glazed roof canopy at The Goat Public House and Paddy Powers Complex, Lower Kilmacud Road, Goatstown, Dublin 14

34/14 - Certificate of Exemption was Refused by the Bord (Appeal reference RL06D .RL.3221) for the proposed placement of a deposit/temporary storage unit for postal items (parcel motel).

Subject site

The Goat Bar and Grill is located at the junction of Taney Road and Lower Kilmacud Road in Goatstown. The Lower Kilmacud Road is to the east of the site and Taney Road is to the north. The site contains a large public house with several extensions to the rear and an area of car parking.

Consideration:

The Council is requested to determine, in accordance with Section 5 of the 2000 Act (as amended), whether or not the proposed works ~~to~~ constitutes development *and if so* ~~an~~ exempted development.

whether such development is considered to be

The proposed development will be considered relative to the appropriate Sections/Articles of the Planning and Development Acts and Regulations. With regard to whether the proposal constitutes works and/or development I refer to Section 2(1) of the Planning and Development Act 2000 as amended where 'works' is defined as 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.'

Section 3(1) of the Planning and Development Act 2000(as amended) states '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'

In this regard the proposal is considered to be development,

Is the proposal Exempted Development?

The second matter to determine is whether the proposal would constitute exempted development or not. Section 4(1)(h) of the Planning and Development Act, 2000 (as amended), states that the following shall be exempted development for the purposes of this Act:

"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

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Dún Laoghaire-Rathdown County Council

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RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;'

Assessment *as described*

The proposal ^{''} consists of the provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden^{''} at The Goat public house and Paddy Powers Complex.

The works consist of a retractable canopy that includes a supporting structure, and a timber fence that encloses a smoking area, this area is at first floor level.

The works are elevated from the street and are visible from ~~the~~ street level. I note that the applicant states that the works are partially visible from Taney Road, and not visible from Goatstown Road, Lower Kilmacud Road and Mount Anville Road.

I would consider that the supporting structure, retractable canopy and fencing, alters the rear of the external appearance of the building, appearing as ^{an} additional beer garden space / extension at first floor level when viewed from the street.

It is considered therefore, that provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden, would materially affect the external appearance of the rear of structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

The subject development would therefore fails to comply with the provisions of Section 4(1)(h) and of the Planning and Development Act 2000 (as amended), and would does not constitute exempt development.

RECOMMENDATION

I recommend that the applicants agent, Architectural Construction Technology Architectural Construction Technology, An Tigh, Ballogan Avenue, Carrickmines, Dublin, D18 V6X9, be informed that:

Whereas a question has arisen as to the provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden at The Goat public house and Paddy Powers Complex, at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin 14, is or is not Development and is or is not Exempted Development.

And whereas Dun Laoghaire Rathdown County Council, in considering this application, had regard particularly to-

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- (a) Sections 2 and 3 of the Planning & Development Act, 2000 (as amended),
- (b) Schedule 4 (1)(H) Exempted Development Planning and Development Act 2000 (as amended).
- (c) The documentation submitted as part of application reference 7/19

The conclusion is that the proposal IS Development and IS NOT Exempted Development.


Administrative Officer


Executive Planner

ORDER

The issuing of a Declaration pursuant to Section 5 of the Planning & Development Act 2000, (as amended) to Architectural Construction Technology Architectural Construction Technology, An Tigh, Ballogan Avenue, Carrickmines, Dublin, D18 V6X9, that

I recommend that the Applicant be informed that:

Whereas a question has arisen as to the provision of a timber fence around and a retractable awning over the first floor function room smoking area which sits above and behind the glazed roofed car park level beer garden at The Goat public house and Paddy Powers Complex, at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin 14, is or is not Development and is or is not Exempted Development.

And whereas Dun Laoghaire Rathdown County Council, in considering this application, had regard particularly to-

- (a) Sections 2 and 3 of the Planning & Development Act, 2000 (as amended),
- (b) Schedule 4 (1)(H) Exempted Development Planning and Development Act 2000 (as amended).
- (c) The documentation submitted as part of application reference 7/19

The conclusion is that the proposal IS Development and IS NOT Exempted Development, is hereby approved.

Signed:


Approved Officer

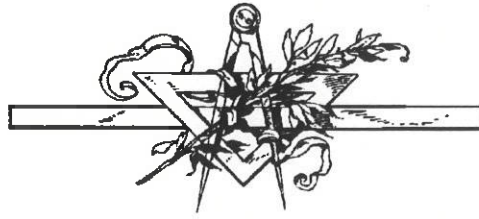
Dated:

28/02/19

Thereunto empowered by order of *Príomhfheidhmeánach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin*, Order No. 1672, dated 04/02/09, delegating to me all her powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.

Architectural Construction Technology

Architecture, Project Management, Planning & Design Consulting



An Tigh, Ballyogan Avenue, Carrickmines, Dublin D18 V6X9.
Mob : 087 2233395 E-mail : act@connect.ie

Dun Laoghaire Rathdown Co. Co.,
Planning Department,
County Hall,
Marine Road,
Dun Laoghaire,
Co. Dublin.

Your Ref :
Our Ref : 2451-26-01
Date : 31/01/2019

Application Re : Alleged Unauthorised Works; being The Provision of a timber lattice type fence around and a retractable awning over the first floor Function Room smoking area.

Applicant: Mr Charles Chawke.

Location: The Goat Public House at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin D14 PY 56.

Local Authority: Dun Laoghaire Rathdown County Council.

Application Type: Declaration on Development under section 5.

Dear Sirs,

We enclose our client's application for a Declaration of Exempted Development under section 5 of the Planning and Development Act; for The Provision of a timber lattice type fence around, and a retractable awning over, the first floor Function Room smoking area, which sits above and behind the Glazed Roofed car park level Beer Garden, at The Goat Public House, situated at the junction of Lower Kilmacud Road and Taney Road, Goatstown, Dublin D14 PY 56.

There is a live enforcement file open regarding this Alleged Unauthorised Works reg ref Enf 221/18. Naturally, our client disputes the Local Authority's position and in agreement with the LA Enforcement Section of the Planning Department he has agreed to lodge this section 5 application. It seems rather pointless because the LA has already told us that they disagree with our client's perspective however; this first step is necessary regardless of the negative outcome as the process will carry forward to An Bord Pleannala, who have already made a number of rulings that have a direct bearing on the enclosed application. Ordinarily a Local Authority is supposed to be guided by ABP Decisions but the Planning Department of Dun Laoghaire Rathdown County Council, do not appear to follow that protocol.

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The initial warning letter from the Local Authority dated 13th August 2018 made no mention of a timber lattice type fence around and a retractable awning over the first floor Function Room smoking area. That letter alleged that there had been *The Creation of a beer garden, without the benefit of a valid planning permission, and which does not constitute exempted development.*

We responded to that allegation on the 24th September 2018 asking if the Local Authority had sufficient time to assess the situation and has arrived at the conclusion that there was no case to answer for our client. The LA replied on the 11th October 2018 where it elaborated upon it's complaint, by broadening the initial allegation of the creation of a beer garden into *The provision of a timber lattice type fence, solid timber fencing a large retractable awning at first floor level, together with the use of the first floor terrace area by members of the public for drinking and/or smoking requires planning permission and in the absence of same is considered to be unauthorised development.*

We responded to this on the 18th October 2018 and addresses all of the points raised. With regard to the creation of beer garden/smoking area we addresses this issue and produced Google Earth imagery to show the duration of time the beer garden/smoking area had been in existence. In response to that letter the Local Authority wrote on the 12th November advising that they accepted the beer garden/smoking area use was outside of their authority as it was statute barred from enforcement having existed for at least ten years. This should have taken care of the Warning letter of the 13th August as that letter alleged *The Creation of a beer garden, without the benefit of a valid planning permission, and which does not constitute exempted development.* With their letter of the 12th November advising that they accepted the beer garden/smoking area use was outside of their authority as it was statute barred from enforcement the Local Authority should have closed the file with regard to this issue.

They have not done so and are now pursuing under a warning letter that has been effectively dealt with and the position conceded to enforce what is clearly exempted development and development for which no warning notice has been issued or letter of allegation made. We contend that this is an abuse of process and legally flawed. We noted that the Local Authority has accepted our submission on the use of the upper terrace and in support of that position we enclosed photos lifted from Google Earth. The tables were evident on the subject terrace in the photos. The photos are date stamped by Google as to the time the photo was taken.

With regard to the retractable awning and screen. We noted the Local Authority opinion on this matter and before our client was once again put to unnecessary expense we asked that the Local Authority reconsider their decision. We referred the LA to their reg ref **Enf 195/13**. In that enforcement proceeding the Local Authority made a similar allegation regarding Mr. Chawke's and the Ground Floor Rear Beer Garden. At that time we asked the Local Authority to reconsider their decision and they refused. That refusal lead to our client having to lodge a section 5 application for a declaration on exempted development. That application your ref ref **DLR/54/14** was regrettably and unsurprisingly refused by the Local Authority and our submission appeared as if it was completely ignored. The Local Authority stuck doggedly to their earlier decision when there were no grounds for doing so. Our client appealed that LA decision and it was no surprise to our client that by letter dated 01-10-2014 Reg Ref RL **06D.RL3227** An Bord Pleanala reversed the LA decision.

The situation in this case is very similar with the exception that this process is from the LA side legally flawed, but other than that they initially alleged that a beer garden had been created to later drop that and allege unauthorised works had taken place and doggedly refuse to consider anything else. Just as they are doing this time around.

In the Local Authority letter of the 27th September 2018 and following the LA Inspector's Phone call to this office a few days earlier. That telephone conversation was most informative and helpful. The inspector mentioned that he was in possession of photos that had highlighted the areas with which the Local Authority had concerns and were investigating. Enclosing a copy of those photos with the Local Authority's initial warning letter would have been very productive as neither we nor the client had any clue what the Local Authority were investigating. Our follow up letter asking for an assurance that the complaint file had been closed with no action to be taken was it seems the trigger for the LA inspector to make contact, realising we were clueless as to the complaint.

The Local Authority concerns as if we understood them were:

- 1) A pair of Gates on Taney Road that have a Mural painted on them.
- 2) A painted removable sign on the rear wall facing the car parking area and close to the Taney Road boundary wall.
- 3) A Retractable Canopy that has been placed over the existing upper terrace that acts as the Smoking area for the Function Room.
- 4) Artificial Grass laid on this terrace.
- 5) A Wind Break around this terrace.
- 6) A Painted Sign Mural in Black and Gold previously refused retention on the Taney Road boundary wall.

We have visited the site, we have looked at the items complained of and we deal with these items one by one. We replied as follows:

The item listed at number 6 above is the subject of a further Retention planning application. This was recently refused and the item removed.

Item Number 5 is a non-issue in planning terms and exempted development in 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 are Exempted Development.

Item Number 4 is in planning terms a non-issue and clearly exempted development. The LA has not mentioned this again so we presume that they have agreed it is a non-issue although they have not said this.

Item Number 3 like item number 5 is equally a non-issue in planning terms and exempted development in 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 are Exempted Development.

Item Number 1 and 2 could reasonable be argued to be exempted development and so, our client lodged an application with the Local Authority to retain these. That application was recently refused and will be appealed shortly.

It appears that we are now left with only items 3 and 5 and this section 5 application seeks to address these. It is clear from the most cursory of site inspection, that the premises incorporates an array of architectural styles with varying roof profiles, roof pitches, external finishes and an array of different materials for external cladding. It cannot be considered that the overall premises provides any form of overall architectural coherence. This Public House is in existence for a great many years and over the years has had small additions, changes and repairs or improvements carried out to it. All of these have to some degree contributed to the slight loss of Architectural clarity and theme.

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The works being complained of cannot possibly be considered out of context or incongruous to the overall architectural style relating to the premises or indeed the wider area. The area in question is located in the heart of the building and is only partially visible from some vantage points along Taney Road. The changes complained of are not along the Goatstown Road, Lower Kilmacud Road, Mount Anville Road or most of the car parking area associated with the Goat. It could not be argued that the works undertaken materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures. Therefore; the exemption provisions set out under section 4(1)(h) do apply in this instance and the works undertaken constitute development which is exempted development.

With regard to the retractable awning and screen. We have noted the Local Authority position on this matter and before our client is put once again to unnecessary expense we ask that the Local Authority reconsider their decision. We refer you to your reg ref Enf 195/13. In this enforcement proceeding DLR Local Authority made a similar allegation regarding Mr. Chawke's Ground Floor Rear Beer Garden. We asked the Local Authority to reconsider and they refused. That refusal lead to our client having to lodge a section 5 application for a declaration on exempted development. That application your ref ref DLR/54/14 was regrettably refused by the Local Authority and appealed and by letter dated 01-10-2014 Reg Ref RL 06D.RL3227 An Bord Pleanala reversed the DLR LA decision.

The Inspector's report should be read by the DLR LA before committing itself once again to this same course of action and decision as the reasoning set out in that section 5 application apply to this instance also. It would save our client considerable distress, time and money not to be once again forced into this planning merry go round. It could also save the DLR LA time and money by accepting the previous arguments that were accepted by An Bord Pleanala. The DLR LA is after all duty bound to take on board the decisions of An Bord Pleanala which in this instance it appears not to be doing. There can be no doubt that section 4(1)(h) applies in this instance.

Having reviewed this and similar planning issues and the position taken by DLR Co Co, we would like to make the following comments.

Case 1) ENF 133/12 Bhagwan's Pharmacy Ballinteer, a single storey pitched roof shed that had been used for storage was demolished. Some of the external walls were retained, as was the boundary wall with the public footpath. The shed was then converted into a consultation room for the ancillary use of a Pharmacy it was attached to. The existing floor was removed and a new one floor poured, New foul drainage pipes were laid and taken outside of the property into the public footpath where they were connected to the public drainage system and inspection chambers set into the public footpath. The original pitched roof was removed and a new flat roof constructed but at a higher level with velux type rooflights installed. The boundary walls were raised. A new wc and wash hand basin were installed. A new wall was built using the public footpath as the foundation for that wall and a new gully was installed into the Public footpath. This was referred to DRL Local Authority your reference ENF 133/12. The Local Authority was asked to determine if unauthorised works had taken place and it was decided by the Local Authority that the works were exempted development. Our client on that occasion was very disappointed by the Local Authority decision but she was aware that the applicant on that occasion was well connected and her protests were never going to get anywhere. DLR LA decided 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 are exempted development.

Case 2) ENF-113-16 Unit 2 The Mart on the Old Bray Road, considerable works had been undertaken and it was difficult to monitor what was going on, as it was all being done with the shutters pulled down. It appeared however; that the property has been extended to the rear and the front portion had been completely refitted to serve as a restaurant with what appears to have been an emphasis on the takeaway market. The front of the shop had been changed considerably, old signage has been covered over, new brightly coloured tiling and a new shutter have been installed changing the look of the premises quite a bit. We were unable to locate a planning permission one and because of the brightly coloured yellow tiles and the new signage we did not believe that DLR could considered the works an exempted development.

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We were very surprised to be told by letter dated 22nd July 2016 that DLR LA did consider the works as exempted development. They considered the rear extension exempted development because it would only be used for 30 day or less each and for a farmers Type market so under **Class 37** section 2 part 1 of the Planning & development exempted Development Regulations 2001 (as Amended). There was no mention of the new livery colours and signage the LA chose to completely ignore this portion of the complaint.

We lodged this complaint because of the difficulties a number of our client's were experiencing with DLR LA with regard to this very same matters and we needed to test their position.

Case 3) The Barbers in Cornelscourt Village only 100 m from Unit 2 the Mart was cited for painting a small picture of a scissors and a comb on his wall. He was ordered to remove it or face prosecution. The client in this subject application Mr. Chawke also finds himself regularly receiving warning letters for the slightest thing. For instance, Mr. Chawke has allowed for the last 20 plus years the sale of Christmas trees on the environs of The Goat site. This has also been the subject of enforcement by DLR LA yet, it also clearly qualifies under the same **Class 37** section 2 part 1 of the Planning & development exempted Development Regulations 2001 (as Amended). The view taken by DLR LA was however; not so enlightened they instead believed that the use could only be statute barred if it was in continuous existence for 7 years or more. Thankfully; after a reply from ourselves they have not progressed that matter any further. If our client places any signage for even the shortest of time advertising a sporting event, promoting our national team, or runs a promotion in the Goat, he receives a warning letter.

In support of our client's position we refer you to:

Case 4) An Bord Pleanála Reg Ref: **35 RL 2850**. This was referred to An Bord Pleanála by Athy, Town Council on the 25th day of February, 2011: The Planning Authority Reference Number: **UD/10/1**. A questions arose as to whether the renovation of a service station to include:

1. the removal of underground fuel storage tanks (20,000 litres) and the installation of two underground fuel storage tanks (30,000 litres);
2. the construction of a new drainage layout and services duct layout;
3. the erection of four number "Amber" signs and droplet logo signs on the stanchions of the canopy structure;
4. the erection of new side cladding and three number "Amber" signs and droplet logos on the canopy structure; and
5. the erection of new cladding and the new logo "Diesel", "Petrol", "Costcutter" "Hotfood/Deli" and "Fresh Coffee" on the roadside double pole ID sign;

at Woodstock Service Station, Woodstock Street, Athy, County Kildare, are or are not exempted development: and whereas the said questions were referred to An Bord Pleanála by Athy Town Council on the 25th day of February, 2011:

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

- (a) section 4 of the Planning and Development Act 2000, as amended,
- (b) articles 6, 9 and Part 2 of Schedule 2 to the Planning and Development Regulations 2001, and
- (c) the planning history of the site:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) The removal of underground fuel storage tanks (20,000 litres) and the installation of two underground fuel storage tanks (30,000 litres) of limited scale, located underground, does not result in intensification of the site, does not raise new planning issues and comes within the scope of section 4(1)(h) of the Planning and Development Act, 2000;
- (b) The construction of a new drainage layout and services duct layout, on the basis of the evidence submitted, does not raise new planning issues and comes within the scope of section 4(1)(h) of the Planning and Development Act, 2000;
- (c) The erection of four number "Amber" signs and droplet logo signs on the stanchions of the canopy structure, which provide information about the relevant pump and which are smaller than the company logos previously permitted and generally comes within the scope of section 4(1)(h) of the Planning and Development Act, 2000;

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- (d) The erection of new side cladding and three number "Amber" signs and droplet logos on the canopy structure, generally comes within the terms of the permitted development and the colour change of the canopy reflect the company colours in the same way that condition number 3 of TP/32/95 reflected the colour of the company for which the petrol filling station was applied for;
- (e) The erection of new cladding and the new logo "Diesel", "Petrol", "Costcutter" "Hotfood/Deli" and "Fresh Coffee" on the roadside double pole ID sign, are not out of character with the structure permitted and generally comes within the scope of section 4(1)(h) of the Planning and Development Act, 2000:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the said renovation of a service station at Woodstock Service Station, Woodstock Street, Athy, County Kildare is exempted development.

Case 5) An Bord Pleanála Reg Ref: RL 06D.RL3227. This was referred to An Bord Pleanála by Mr. Chawke following the refusal by DLR LA to properly consider his application for a declaration under section 5 reg ref DLR/54/14. The Inspector's report should be read by the LA before committing itself to this particular decision as the reasoning set out in that section 5 application apply to this instance also.

An Bord Pleanála's ASSESSMENT: *The first question which the Board must determine is whether or not the changes undertaken on site constitute 'works', and as such constitute 'development' in accordance with the criteria set out in the planning legislation. The changes to the glazed roof include replacing a mono-pitched glazed roof profile with a pitched roof profile and also increasing the surface area of the glazed roof above both beer gardens with changes also included increasing the height of the roof by just over 1 metre. These changes would constitute works in my view as they involve the construction, extension, alteration and, according to the applicant, the repair/renewal of the glazing above the beer garden. As the proposed changes constitute 'works' it naturally follows that the works undertaken constitute developments in accordance with the provisions of section 3(1) of the Act.*

If the Board agree with the above conclusion, the more pertinent question which arises is whether or not the works undertaken constitute development which could be considered exempted development under the provisions of the Act and Regulations. Having consulted the Exempted Development Regulations and in particular Article 6 and Article 9 of the Regulations, I can find no reference to any class of development which is directly related to or relevant to the works undertaken on the site in question.

I am therefore of the view that in order to ascertain whether or not the works undertaken constitute development which is exempted development, the Board should have particular regard to the provisions of sections 4(1)(h).

The owner/occupier of the premises argues that the works carried out were for the maintenance and improvement of the structures in question. It is suggested that the roofs were leaking and in generally poor condition. While this may be the case, it is clear that the owner/occupier of the premises did not replace like with like in carrying out the maintenance works. Changes were made in relation to the height, style and area of the glazed areas. However the key question is whether or not the alterations carried out materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures?

I consider it can be reasonably argued, based on my site inspection, and the drawings submitted that the alterations incorporated were relatively minor in the context of the overall premises. It is clear from both my site inspection and the drawings submitted that the premises incorporates an array of architectural styles with varying roof profiles, roof pitches, external finishes and an array of different materials for external cladding. It cannot be considered that the overall premises provides any form of architectural coherence. The works undertaken therefore cannot be considered out of context or incongruous to the overall architectural style relating to the premises or indeed the wider area.

The glazing areas in question are located to the rear of the building and are only readily visible from vantage points along Taney Road. The changes are not readily visible along the Goatstown Road, Lower Kilmacud Road or Mount Anville Road to the east of the site. It could be reasonably argued in my view that the works undertaken do not materially affect the external appearance of the structure so as to render it

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inconsistent with the character of the structure or of neighbouring structures. I therefore consider that the exemption provisions set out under section 4(1)(h) would apply in this instance and the works undertaken therefore constitute development which is exempted development.

This Section 5 application has arisen as a result of An Enforcement Notice from the local Authority which stated that the works along with a considerable list of other works were considered Unauthorised Development. Our Client does not agree with the Local Authority enforcement assessment and much of the Local Authority warning notice has been dispensed with amicably although there remain a few issues such as this to be resolved.

Our Client made a detailed representation to the Local Authority to have the alleged unauthorised works declared Exempted Development. The Local Authority refused to consider almost all of our client's submission while granting similar such declarations or ignoring similar infringements. The Local Authority appear to have a vendetta against our client or his agent and they appear to be making decisions where our client is concerned that are contrary to other similar situations for other applicants and their agents. The Local Authority do not appear to be acting in a fair and even handed manner and their decisions are in conflict with each other and appear to be arbitrary in nature.

The Local Authority were invited by us to refer this matter to An Bord Pleanala but they chose not to. It appears to us that DLR LA are incapable of making an unbiased decision with this particular client or ours. There is no let up from the Local Authority and our client regularly receives warning letters the vast majority of which amount to nothing. We have spoken to the Enforcement Department and while those conversations are always cordial and polite and the inspectors appear to be professional and genuine our client still feels that there is something or someone that has it in for him.

Yours Sincerely



Gary Solan
For and on behalf of
Architectural Construction Technology.

This document initially issued with the addressee as An Bord Pleanala and we corrected the typo however the Planning rules re submissions may have prevented the corrected version being attached to the file.

