

**SIMON CLEAR & ASSOCIATES
PLANNING AND DEVELOPMENT
CONSULTANTS**

Planning Department,
Dublin City Council,
Civic Offices,
Wood Quay,
Dublin

7th October 2019

AN BORD PLEANÁLA
07 OCT 2019
LTR DATED _____ FROM _____
LDG- 01974619 LDG- _____
ABP- _____ ABP- _____

07 OCT 2019
Fee: € 220 Type: Bank Draft
Time: 10 32 By: Hanel

**Re: Section 5 Declaration in respect of 170 Rathmines Road Lower, Dublin 1
(Protected Structure – Ref.7225)**

Dear Sir/Madam,

On behalf of the applicants, Farmer Browns Eatery Limited, I wish to refer the decision of Dublin City Council to declare the development 'not exempt' at the rear of 170 Rathmines Road Lower, Dublin 1 to An Bord Pleanala for review and determination. The Planning Authority's reference number is 0373/19 and the decision was made on 10th September 2019.

My clients, as applicants, were served with the Declaration and any person issued with a declaration may, on payment of the described fee, refer the declaration for review by ABP within 4 weeks of the notification of declaration.

I enclose the Planning Authority notification of Declaration and the requisite fee in the sum of €220.



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Darran Quaile B.A. MRUP MSc BLUP MIPI

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Introduction

The subject premises is located at 170 Rathmines Road Lower, is a Protected Structure and is part of a terrace of 3-storey over basement buildings. The basement of the subject building is in use as a restaurant and the upper floors are in residential and office use.

A declaration on development and exempted development was sought by our client's to determine:-

Whether the replacement of existing ventilation system with a new ventilation extractor hood to the roof over the kitchen area located to the rear of 170 Rathmines Road Lower, Dublin 1 is or is not development and is or is not exempted development.

The subject premises have operated as a café/restaurant since c.1989 and the current occupiers have been trading from the premises since 2016. The current occupiers upgraded the extraction hood on foot of communications with an Environmental Health Officer (EHO) in Dublin City Council in February 2019. The Environmental Health Officer informed the applicant that complaints had been received from neighbouring residents relating to odours/fumes associated with the kitchen extraction system.

Expert advice was sought in relation to a new ventilation system and the extraction hood shown below was put into place to avoid odours/fumes impacting the occupants of the neighbouring properties.



Photograph of Extraction Hood Currently in Place

The kitchen area, over which the ventilation extractor hood is located, is an extension to the original building to the rear of 170 Rathmines Road Lower and is not part of the original fabric of the Protected Structure.

The ventilation unit is necessary for the operation and use of the restaurant and the ventilation unit has been placed in a position so as to reduce any undue negative impact on the occupants of neighbouring properties and has been provided to the requirements of the EHO.

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Conservation Officer's Report

The decision of the Planning Authority is reliant on the assessment of a Conservation Officer, without comment from the Planning Department in the context of inspection from the public realm.

A Conservation Officer carried out a site visit on the subject premises and the report accompanying the decision can be summarised as follows:-

- It is acknowledged by the Conservation Officer that the vent is located on the roof of a late 20th Century extension to the rear of the subject property and not directly attached to the Protected Structure;
- It is deemed that the vent is *'highly conspicuous and clearly visible from the laneway to the immediate south.'*
- The Conservation Officer concludes that *'the inappropriate scale and finish of the ventilation hood is considered to adversely affect the character and rear setting of the Protected Structure and that of neighbouring Protected Structures.'*
- It is considered *'the subject ventilation extractor hood renders the appearance of the property inconsistent with the character of the structure and that of neighbouring structures under Section 4(1)(h) of the Planning and Development Act 2000 (as amended).'*

No professional comments or assessment from a Planning Officer on the Conservation Officer's Report are contained in the Planning Authority's assessment and declaration and there is no review of history, context or precedent referrals, as would be expected, or reference to Planning Regulations.

Relevant Section 5 Referrals

RL2402

ABP determined that the replacement of the extraction system comes within the scope of section 4(1)(h) of the said Act, being works of maintenance or improvement 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. In this determination it was concluded that the replacement of an extraction system is development and is exempted development.

RL3474

The subject referral related to a Protected Structure and the erection of an extractor plant and ducting and whether it is or is not development and is or is not exempted development. ABP determined that the extractor plant and ducting would 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 and that the extractor plant and ducting would not materially affect the character of the structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. It was concluded that the extractor plant and ducting to the rear of the building is development and is exempted development.

Grounds of Referral

The premises has been functioning and operating as a café/restaurant since c.1989 and has had a ventilation system in place during this time. The extraction hood is necessary for the operation and use of the restaurant and it is considered that the upgrading of an extractor system is exempted development under Section 4(1)(h) and Section 57(1) of the Planning and Development Act 2000 (as amended), being works for the maintenance, improvement and alteration of the permitted structure.

The lack of input from a Planning Officer is evident in the assessment of the rear of the subject premises as the Conservation Officer's Report neglects to consider the surrounding context of the restaurant premises, particularly the context to the rear of the premises. The laneway located to the immediate south, known as Parker Hill, which the Conservation Officer deems that the vent is '*highly conspicuous and clearly visible from,*'

is a commercial laneway fronted by 2-storey warehouses in commercial use, including a major paint wholesale retailer. The commercial premises located on Parker Hill are 2-storey and 1 no. premises directly abuts the rear of no.168 and 170 Rathmines Road Lower.



Commercial Context to Rear of Farmer browns Restaurant Rathmines (Location of Extractor Hood marked with Red Dot)

The images below show the previous vent and the existing vent from Parker Hill Lane.



Google Streetview Image from Parker Hill with Previous Vent Outlined in Red¹

¹ Google Streetview Image taken from c.2.5m above the ground level. An Inspector's eyelevel would be at approximately 1.5m.

The photographs below were taken on 30th September 2019, with the camera held at eye level. The vent is located under a large tree, on a roof behind a high timber boundary fence in the second property in from the lane. In planning terminology, the vent is inconspicuous and insignificant in the view from the public realm, notwithstanding the view is from a back lane.



Photograph of New Ventilation Extractor Hood taken from Parker Hill



Image of New Ventilation Extractor Hood taken from Parker Hill

The extractor hood blends in with the surrounding context and 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 neighbouring structures.

As shown in the photographs above, neither the previous vent nor the current vent have any impact on the 'backland views' of the rear of the terraced properties and to the clock tower of Rathmines Town Hall as neither vent interferes with the view/appearance of these buildings.

It is evident from the photographic record of the premises that the current structure, although external, 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 neighbouring structures. As outlined above, the current structure was put in place on foot of advice from an Environmental Health Officer relating to complaints and is a significant improvement from the previous extraction system and avoids the dispersal of odours/fumes into the air.

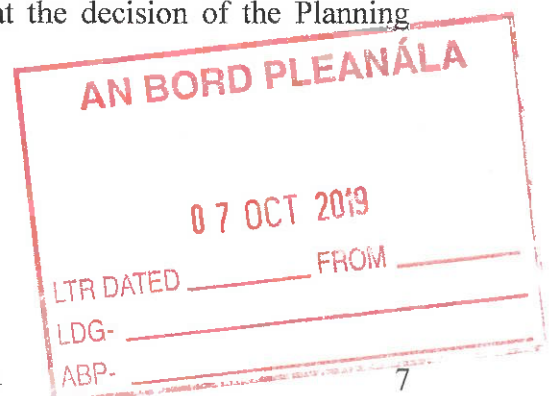
There is provision, under Class 41 (d) of the Planning and Development Regulations, 2001, as amended, that works consisting of or incidental to the carrying out of development in compliance with a notice under Section 26 of the Air Pollution Act, 1987, is exempted development. For some reason, Environmental Health Officers in Dublin City Council do not issue directions to property owners in writing, or explain what powers are being used when giving verbal directions, which is unhelpful.

Conclusion and Request

The ventilation system is located to the rear of the premises on the roof of an extension. There is no attachment to the original Protected Structure and no impact on any element that contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. It is requested that the decision of the Planning Authority is not upheld.

Yours sincerely,

Paula Shannon





An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urlár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

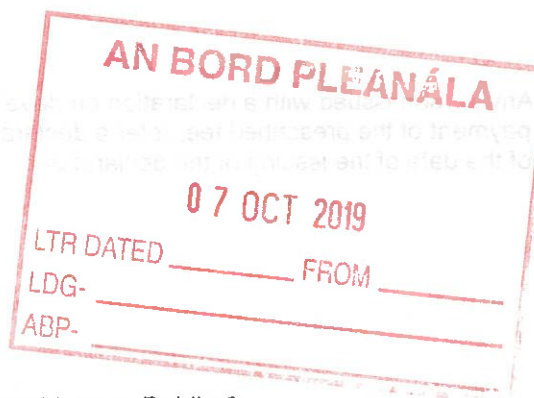
Planning & Property Development Department, Block 4, Floor 3, Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

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11-Sep-2019

Simon Clear + Associates
3, Terenure Road West
Terenure
Dublin 6W



Application Number	0373/19
Application Type	Section 5
Registration Date	14-Aug-2019
Decision Date	10-Sep-2019
Decision Order Number	P4922
Location	170, Rathmines Road Lower, Dublin 6
Proposal	EXPP: PROTECTED STRUCTURE: Whether the replacement of existing ventilation system with a new ventilation extractor hood to the roof over the kitchen area located to the rear of 170 Rathmines Road Lower is or is not development and is or is not exempted development.
Applicant Details	Farmer Browns Eatery Ltd.

- **If you have any queries regarding this Decision, please contact the number shown above**

Note:

Any person issued with a declaration on development and exempted development, may, on payment of the prescribed fee, refer a declaration for review by A Bord Pleanála within four weeks of the date of the issuing of the declaration.

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act 2000 (as amended), Dublin City Council has by order dated 10-Sep-2019 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000 (as amended).

Signed on behalf of Dublin City Council


For Assistant Chief Executive

An Roinn Pleanála & Forbairt Maoin, Bloc 4, Urlár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3, Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

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11-Sep-2019

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