



The Secretary,  
An Bord Pleanala,  
64 Marlborough Street,  
Dublin 1.

25<sup>th</sup> April 2022

Joe Bonner BA MRUP Dip Env Eng Dip Proj Mgt MIPI

**AN BORD PLEANALA**

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

**25 APR 2022**

Fee: € 220 Type: cheque

Time: 16:50 By: hand

**Re Section 5 - Planning and Development Act 2000 –  
Request for Review of Declaration of Dublin City Council ref. EXPP: 0069/22**

Dear Secretary,

On behalf of Mrs. Bridget O'Neill, Glenbower, 1 Saint Pappin Road, Dublin 11, (the referrer) we wish to refer to the Board for review, a Section 5 declaration (Ref. 281) issued by Dublin City Council on 30<sup>th</sup> March 2022. The final date for submission of this review to the Board is 26<sup>th</sup> April 2022, so it has been submitted with the statutory timeframe. Please also find enclosed a cheque for the appropriate fee in the sum of €220.00 made payable to An Bord Pleanala.

The question asked of Dublin City Council was: -

*Whether the construction of a refuse bin storage area on behalf of the Public Domain Office of Dublin City Council, adjacent to the front of Eurospar, 129-131 Ballymun Road, Glasnevin, Dublin 11 (9) for the exclusive use of the adjacent Eurospar shop and the storage of waste therein and on the adjacent public footpath and parking spaces is or is not development and is or is not exempted development.*

The decision of Dublin City Council, was that: -

*In pursuance of its functions under the Planning & Development Acts 2000 (as amended), Dublin City Council has by order dated 30-Mar-2022 decided to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).*

**Reasons & Considerations:**

*On the basis of the available information and for the reason and considerations set out in the above report, and having regard to the relevant legislation cited above, the project as described is*



*development, exempt under Section 4(1)(f) of the Planning and Development Act (2000) as amended from the general obligation to obtain permission under Section 32 of the Planning and Development Act 2000 (as amended).*

It is the consideration of Mrs O'Neill, notwithstanding the decision of Dublin City Council, that the refuse bin store is not exempted development.

For the purposes of this referral we refer the Board to Appendix 1 which is a copy of the cover letter dated 28<sup>th</sup> February 2022 which was submitted to Dublin City Council and sets out the basis by why it is considered that the refuse bin store is not exempted development.

### **1.0 Planning Officers Assessment on Section 5 Declaration (and comments thereon)**

The Planning Officer's Assessment of the Section 5 Declaration (Appendix 2) sets out the statutory provisions that are considered to apply to this referral, namely Sections 2(1), 3(10), 4(1)(f), 4(4), 4(4A), 5(1), 5(2)c, 179, 179(6) of the Planning and Development Act 2000, and Articles 80 and 250(1) from the Planning and Development Regulations 2001 (as amended)

The Planning Officer's assessment notes that an enforcement complaint of alleged unauthorised development relating to the same issue, was opened on 9<sup>th</sup> August 2021 and closed on 10<sup>th</sup> December 2021 as it was deemed to be exempted development. Therefore it would be reasonable to infer that Dublin City had already made its mind up in respect of the Section 5 referral question that is the subject of this review.

The Planning Authority has relied upon what appears to be the spoken word of the Public Realm Officer, upon which they have relied heavily in reaching their consultation while no report was received from the Transportation Planning department.

The Planning Officer accepts that the structure involves works but while ad-hoc storage of refuse has been ongoing in this area for a prolonged period of time, the Planning Officer is incorrect to link the bin store with any previous unauthorised bin storage on the public footpath and a material change of use of the public space has changed as a permanent structure has been erected in July 2021.

The legislative basis for the decision of Dublin City Council is found in Section 4(1)(f) of the Act, which states:-  
The following shall be exempted developments for the purposes of this Act—

*development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;*



The Planning Officer also recognises that Section 4(1)(f) must be interpreted in association with Section 178 and 179 of the Act and does not give unrestricted powers to the local authority (as opposed to Planning Authority). The Planning Officer stated: -

To interpret Section 4(1)(f) as a standalone provision, with no regard to Section 178 and Section 179, would risk according local authorities with largely unrestricted powers of development, and render null and void the entirety of Part 8 of the Planning and Development Regulations 2001 (as amended). It is appropriate in the context of this particular referral, to the Local Authority, to consider both Section 178 and Section 179.

The Planning Officer also notes that: -

Section 178 notes that the council of a city shall not effect any development in the city which contravenes materially the development plan.

The Planning Officer concludes that as the area is zoned Z3, the development of a bin store of the public footpath does not contravene materially the Development Plan.

In the absence of a report from the Transport Planning Section, it seems to have been overlooked that the bin store is located immediately on the edge of the public road and has created a traffic hazard as it has created a danger to pedestrians, cyclists, those with mobility impairments and to traffic as cars entering and exiting the adjacent car parking spaces must now reverse or drive directly onto the public road, with limited and no vision lines available in some circumstances. If a private individual applied for permission for a structure of this nature it is likely that it would be assessed in terms of traffic safety and would be refused as constituting an endangerment to traffic and public safety and the same principles must apply to Dublin City Council.

#### **No exemption**

The final paragraph of the Planning Officer's report, prior to their recommendation, states: -

For the avoidance of doubt, it is noted that no exemption for this project exists under the Planning and Development Regulations 2001 (as amended). It is further noted that Article 6 and Article 9 of those Regulations apply a number of restrictions in which developments are not exempt, including (for example) development in areas of archaeological interest, development that would obstruct a public right of way, or development that would create traffic hazard. However, these restrictions do not apply to developments that are exempted under the Act.

There are two matters of interest in this paragraph. Is Dublin Council's finding that the provision of a solid structure on the edge of a public road footpath that severely restricts the available sightlines both on the public road and from the parking spaces does not constitute a traffic hazard or are they saying it does



constitute a traffic hazard but it doesn't matter as the development is deemed by DCC to be exempted development under the provisions of the Planning and Development Act. We ask that the Board examine this matter in detail in its assessment of the referral question.

The second and equally, if not more important issue that the first sentence that states: -

For the avoidance of doubt, it is noted that no exemption for this project exists under the Planning and Development Regulations 2001 (as amended).

We refer to the following case law that is applicable to the current referral, is taken from Irish Planning Law and Practice – O'Sullivan and Shepard.

#### Byrne v Commissioner of Public Works

[350]–[360]

**Byrne v Commissioners of Public Works**

[1994] 1 IR 91

The imposition of a consultative procedure (by virtue of the LG(PD)A 1963, s 84) on state authorities in the case of building and extension works would be absurd if in addition the same works had to be the subject of a planning application and ultimately, a possible appeal to An Bord Pleanála. It was held consequently that developments undertaken by state authorities were exempt from the requirement to obtain planning permission.

Byrne v Commissioner of Public Works is relevant as it deemed that development that was subject to public consultation was exempted development. Dublin City Council did not erect the bin store on foot of a Part 8 process or following public consultation and did so on the authority of the public realm officer, who does not have any Statutory Authority or functions under the provisions of the Planning and Development Act 2000 (as amended) or Regulations 2001 (as amended).

#### Howard v Commissioner of Public Works

There are two cases cited under the same heading but judgements were set down in different courts and the judgement summaries are set out below. The key elements, that are considered to apply to the current referral are: -

- Developments undertaken by state authorities were not being specifically included in S4 and consequently they cannot rely on those exempted development provision and thus were not exempt from the necessity to obtain planning permission.
- The plain meaning of the LG(PD)A 1963 was that permission is required for any development which is not exempted development

This last extract from the second Howard judgements must be considered in the context that the planning officer specifically stated that no exemption exists in the legislation for the bin store.





[364]

**Howard v Commissioner of Public Works**

[1994] 1 IR 101

Developments undertaken by the state authorities are not included in the LG(PD)A 1963, s 4 (which section sets out a number of classes and developments which are exempted developments) or in the regulations made thereunder. There is no presumption that a statute of general application does not apply to the state and in the interpretation of such statutes the ordinary canons of statutory interpretation will apply. Applying these canons of interpretation, developments undertaken by the state authorities were not being specifically included in s 4 and consequently they cannot rely on those exempted development provisions and thus were not exempt from the necessity to obtain planning permission.

[365]

**Howard v Commissioners of Public Works**

[1994] 1 IR 122, SC

There was no presumption that the state was not bound by statutes of the Oireachtas nor was there a presumption that the state was bound. Having regard to such principles, the plain meaning of the LG(PD)A 1963 was that permission is required for any development which is not exempted development. The exempted development section (LG(PD)A 1963, s 4) did not include works undertaken by state authorities as exempted development and consequently planning permission was required for such works.

The fact that state authorities were required by s 84 to undertake certain consultation procedures did not as a matter of statutory interpretation by implication have the effect of exempting the state generally from the requirements of obtaining planning permission.

### 3.0 Conclusion

It is considered that sufficient information has been submitted in the initial Review (Appendix 1) and in this referral, to demonstrate that the rationale behind the decision of Dublin City Council that the bin store is exempted development is incorrect:-

*Whether the construction of a refuse bin storage area on behalf of the Public Domain Office of Dublin City Council, adjacent to the front of Eurospar, 129-131 Ballymun Road, Glasnevin, Dublin 11 (9) for the exclusive use of the adjacent Eurospar shop and the storage of waste therein and on the adjacent public footpath and parking spaces is or is not development and is or is not exempted development..*

It is requested that the Board overturns the determination of Dublin City Council and finds that in this particular case, the bin store is not exempted development.

Yours Sincerely



Joe Bonner



## **Appendix 1**

Cover letter dated 29<sup>th</sup> August 2021 which was submitted to Dublin City Council including application form and drawings





Director of Services,  
Planning & Property Development Department  
Block 4  
Floor 2  
Civic Offices  
Wood Quay  
Dublin 8

28<sup>th</sup> February 2022

**Re: Section 5 Referral – Planning and Development Act 2000 (as amended)**  
**Planning Authority – Dublin City Council**  
**Location – Adjacent to Eurospar 129-131, Ballymun Road, Dublin 9**

Dear Director,

On behalf of Mrs. Bridget O'Neill, Glenbower, 1 Saint Pappin Road, Dublin 11, are submitting a request in writing seeking a declaration from Dublin City Council under section 5 of the Planning and Development Act 2000 [as amended], on the following question: -

*Whether the construction of a refuse bin storage area on behalf of the Public Domain Office of Dublin City Council, adjacent to the front of Eurospar, 129-131 Ballymun Road, Glasnevin, Dublin 11 for the exclusive use of the adjacent Eurospar shop and the storage of waste therein and on the adjacent public footpath and parking spaces is or is not development and is or is not exempted development.*

We will provide information below in order to assist Dublin City Council in answering the above question.

The majority of the information in section 1 was already provided as part of an enforcement complaint.

### Section 1 Background to Referral

The general location of the development is identified by a red circle in image 1 below which is an extract from [www.landdirect.ie](http://www.landdirect.ie) and the land owned by the Alderman of Dublin City is highlighted in pink.

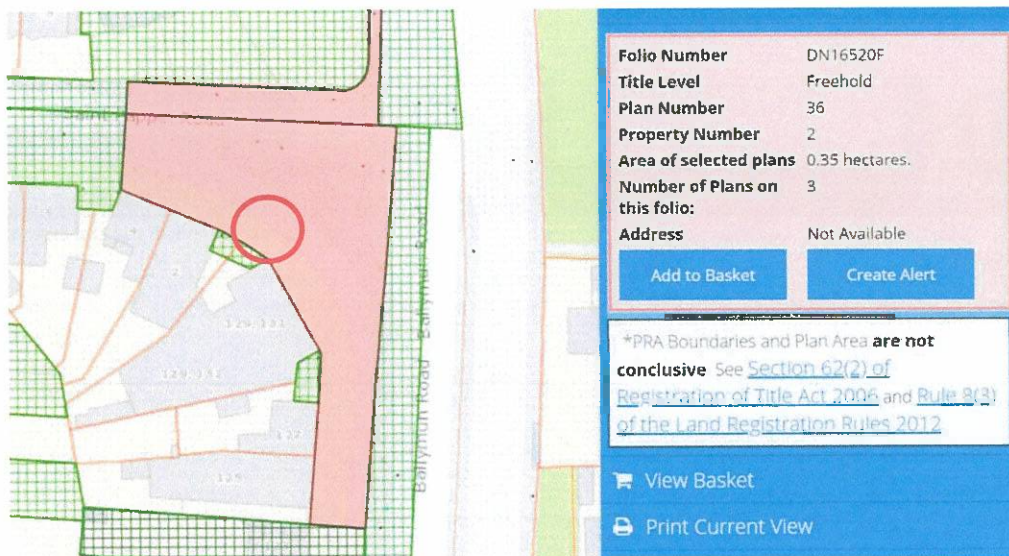


Image 1 Landholding on which unauthorised development has been carried out from [www.landdirect.ie](http://www.landdirect.ie)

The works that are subject of this referral have been carried out to lands owned by the Alderman of Dublin City as per the Folio that is included as Appendix 1 to this submission and a burden on the property is included below as image 2.

### Part 3 - Burdens and Notices of Burdens

#### Particulars

THE PROPERTY HAVING BEEN ACQUIRED BY THE REGISTERED OWNER THEREOF FOR ITS STATUTORY PURPOSES IS SUBJECT TO SUCH RESTRICTIONS AGAINST ALIENATION OR LETTING AS MAY BE CONTAINED IN THE STATUTORY ENACTMENTS RELATING TO SUCH PROPERTY

Image 2

Extract from Part 3 of Folio 16520F.

Image 3 is an aerial image that shows the junction of Saint Pappin Road and Ballymun Road and also shows the slip road that runs in front of the commercial buildings including Eurospar and it too is also called Saint Pappin Road. This slip road appears to be a public road and is used by traffic seeking to avoid the signalled junction, as well as providing perpendicular parking on either side, for persons accessing the commercial premises in the immediate area. It is noted that there are no pedestrian crossing points between the parking areas and pedestrians are required to take a chance in crossing the road as they move between the parked cars. Such a layout would not be permitted in 2021 and as will be demonstrated below the recently constructed bin storage structure for which it is considered that no planning exemption exists, has significantly increased the risk to pedestrians, cyclists, wheelchair users and motorists by reason of obstruction of road users and constitutes a traffic hazard.



The approximate location of the bin storage structure is outlined in red in image 3 below.

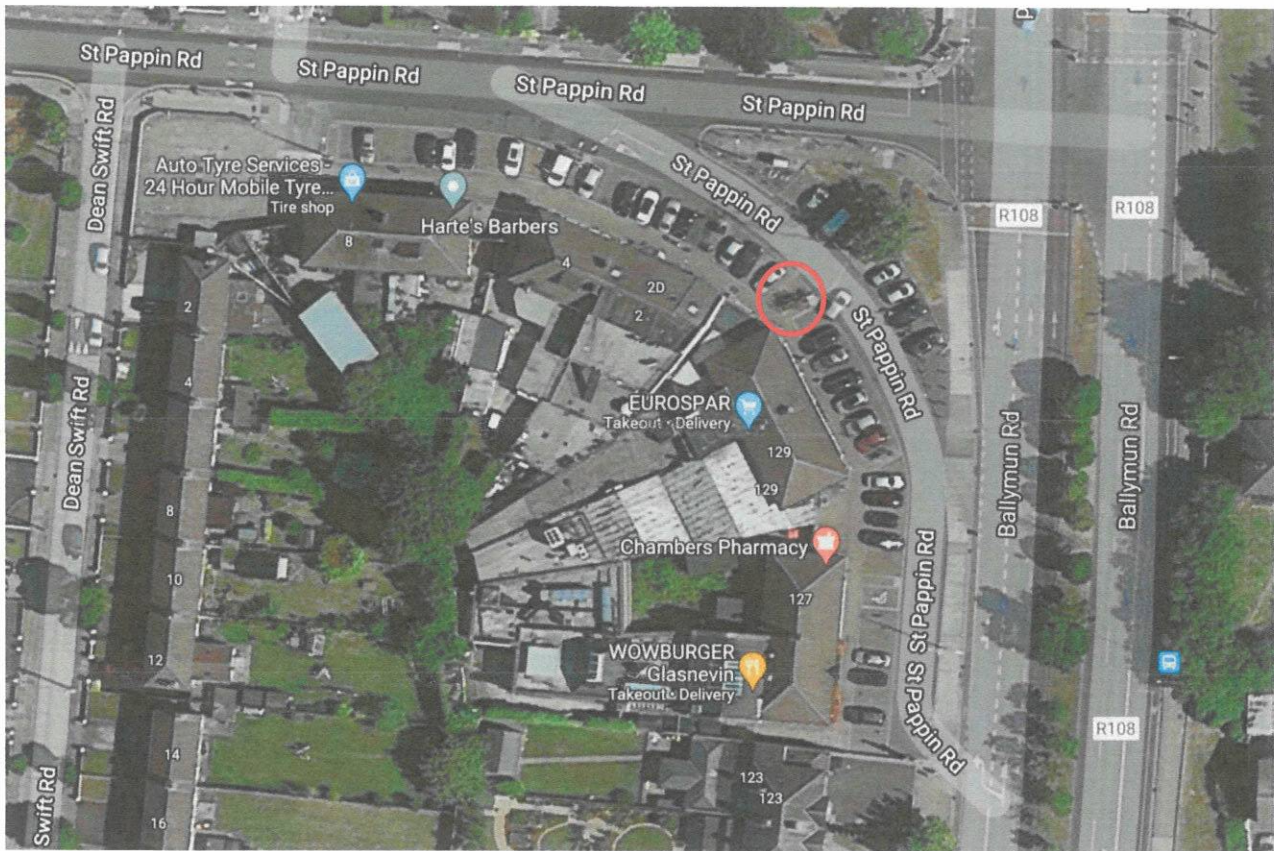


Image 3 Aerial photo of development from [www.googlemaps.com](http://www.googlemaps.com)

Images 4 to 7 below are photos of the area before and after the works were carried out.

Prior to the construction of the bin storage structure in July 2021, the public footpath and crossing area and at least one parking space were being used in an unauthorized manner, as a de facto bin store as per image 4 and for the storage of trolleys associated with the Eurospar shop. This had also spread to the area in front of the Paddypower betting shop as per image 5.





Image 4 Area in front of Eurospar was being used to store waste and trolleys and block parking spaces



Image 5 Trolley storage spreading to other areas where pedestrians cross, endangering pedestrian safety



The bin storage that has been erected under the instruction of the Public Realm Officer of Dublin City Council has resulted in the removal of two car parking spaces and it is understood that it is being used for the sole benefit of a commercial premises (i.e., Eurospar), that does not appear to have sufficient instore storage capacity to store its bins due to continued incremental expansion within the footprint of the shop. It is understood that Eurospar has been storing its waste and trolleys on the public footpath and in car parking spaces for a prolonged period and from Mrs. O'Neill's correspondence with the Public Domain Officer, she has been told that the construction of the bin store is entirely for the benefit of the commercial Eurospar shop. Even in the storage area is to be used by other premises, this does not change its planning status.

There is no record of an application for planning permission having been made in respect of the development and no evidence has been made available that the development was permitted via the Part 8 process. When contacted by Mrs. O'Neill, the Public Domain Officer stated that she had authorized the works, but no further details were provided of what powers the Public Domain Officer has to authorise such a structure .

As well as taking up 2 parking spaces, Images 6 and 7 also show the doors open onto a further car parking spot thereby eliminating three car parking spots while the structure has been built to the very edge of the public road, thereby interfering with sight lines for vehicular traffic, pedestrians and cyclists.



**Image 6** Bin store built to edge of public road without any known authorisation and a traffic hazard





**Image 6** Bin store built to edge of public road without any known authorisation and a traffic hazard

Images 7 to 11 were taken on 23rd July 2021, when the newly constructed area, which is not covered, contained full bins which are attracting birds, foxes and other vermin, and have also resulted in the placement of trolleys on the public car parking spaces and on the footpath, indicating that the storage area is insufficient for the needs of the Eurospar shop.



**Image 7** View of the excessive storage being carried out in the public area in front of Eurospar



Image 8 was taken from the opposite side of the bin storage area to image 7 and as well as trolleys, waste pallets were also dumped on the public space adjacent to the road.



Image 8 View of the excessive storage and waste left outside newly constructed unauthorised structure



Image 9 View of the excessive storage and waste left outside bin storage area



On 26th July 2021 the exterior of the structure was painted changing the character of the bin store.



Image 10 Painted exterior of the unauthorised bin storage structure

## Section 2 Response of Dublin City Council

The Enforcement Section of Dublin City Council response as follows on 10<sup>th</sup> December 2021. The full response is attached as Appendix 2.

10 December 2021.

**Re: EuroSpar, 129-131 Ballymun Road, Dublin 9.**

Dear Sir/Madam,

I refer to your planning enforcement complaint regarding the above premises.

An inspection and enquiries undertaken by the Area Enforcement Officer revealed that the bin store located at the above address was installed with the approval of Dublin City Council's Public Domain Officer for the area and is deemed to be exempted development under Section 8 of the Planning and Development Regulations.

On this basis, the planning enforcement file has now been closed

### **Section 3 Further clarification sought**

In response to Dublin City Council's letter of 10th December 2021, further clarification was sought in a letter dated 16th December 2021. The letter stated: -

Further to the receipt of your letter dated 10th of December 2021, which was received today, the 16th of December 2021 in respect of an enforcement complaint regarding the erection of a bin store at the front of Eurospar, 129 to 131 Ballymun Road, Dublin 9, I note the contents of your response to the enforcement complaint and I also note that the Area Enforcement Officer has stated that the bin store was installed with the approval of Dublin City Council's Public Domain Officer for the area and is deemed exempted development under Section 8 of the Planning and Development Regulations.

While I appreciate the response provided, it is entirely unclear what Regulations you are referring to as there is no Section 8 in the Planning and Development Regulations 2001 (as amended) which it is assumed you are referring to. There is however both an Article 8 and a Part 8, which refers to and involves a process/set of actions to be carried out by a local authority when it intends to carry out specific types of development.

I would appreciate if you could specify the exact part/section/article of the Planning and Development Legislation (Act or Regulations) that Dublin City Council is relying upon to determine that the bin store is exempted development and provide me with a copy of the reports prepared to inform this decision.

Two months later no acknowledgement or response has been received from Dublin City Council.

### **Section 5 Site in February 2022**

The consequences of the construction of the bin storage area are felt not just in the physical structure itself but also in the impact that the structure is having on the public realm that is supposed to be protected by Dublin City Council.

Images 11 to 15 below from February 2022 show the condition that the public footpath and road are being left in as a result of the approval issued by Dublin City Council's Public Domain Officer.

While it may not have been the objective or intention of the development that does not appear to be subject to any public consultation or planning application process, it is the reality that neighbours have to live with and is not considered acceptable.



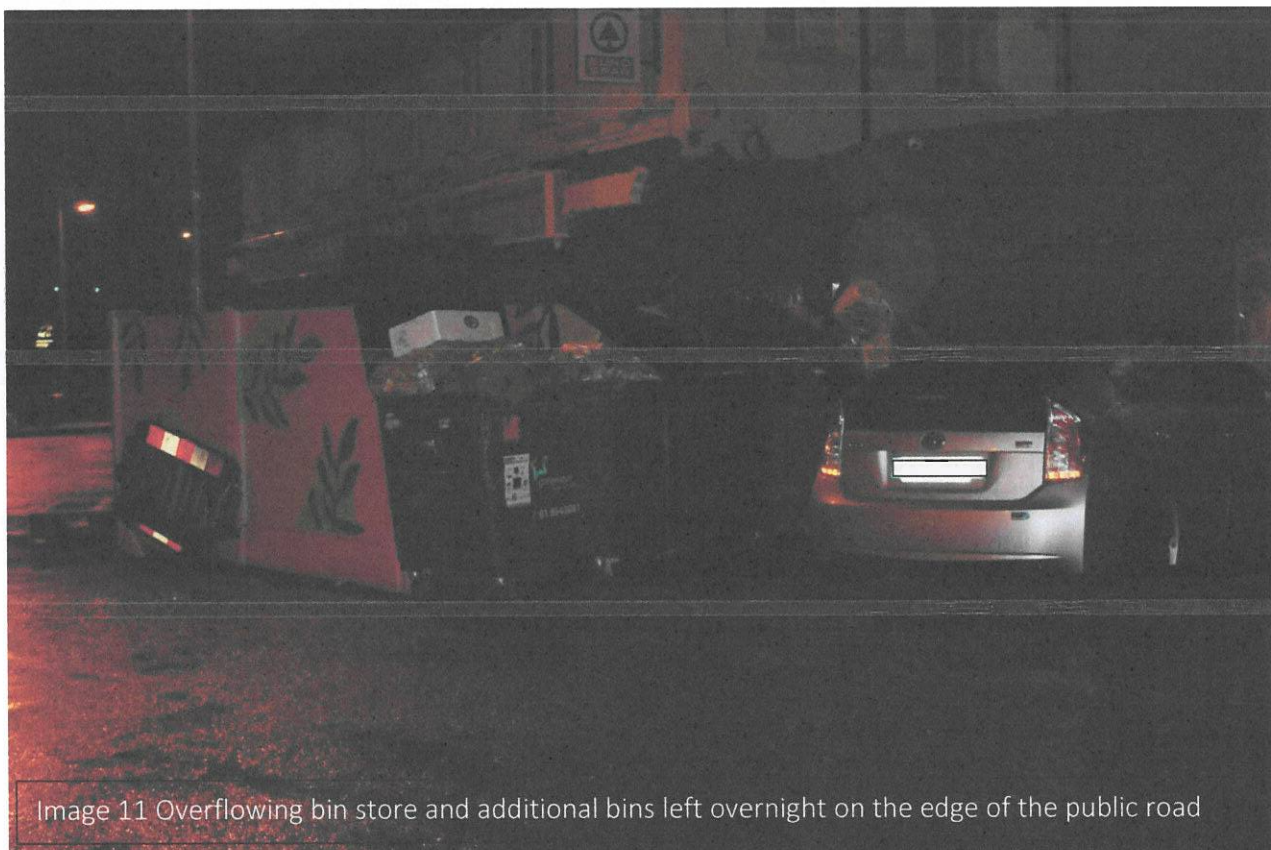


Image 11 Overflowing bin store and additional bins left overnight on the edge of the public road



Image 12 Overflowing bin store and additional bins left overnight on the edge of the public road





Image 12 Storage cages and pallet left overnight on the edge of the public road



Image 12 Storage cages and waste left overnight on the public footpath

## **Section 5      Referral question**

Having failed to get a specific response to the questions raised via her Enforcement complaint, Mrs. O'Neill now wishes to get an answer, based specifically on legislation, to the following referral question, that will explain the exact legislative provisions that exist, in the opinion of Dublin City Council, to permit it to erect a bin storage facility on public lands for the benefit of Eurospar 129-131, Ballymun Road, Dublin 9. The question is :-

*Whether the construction of a refuse bin storage area on behalf of the Public Domain Office of Dublin City Council, adjacent to the front of Eurospar, 129-131 Ballymun Road, Glasnevin, Dublin 11 for the exclusive use of the Eurospar shop and the storage of waste therein and on the adjacent public footpath and parking spaces is or is not development and is or is not exempted development*

We look forward to a detailed response and enclose the appropriate fee of €80.00.

Yours Sincerely,

Joe Bonner



## Appendix 1

Folio for lands on which unauthorised development has been carried out

# Land Registry

County Dublin

Folio 16520F

## Register of Ownership of Freehold Land

### Part 1(A) - The Property

Note: Unless a note to the contrary appears, neither the description of land in the register nor its identification by reference to the Registry Map is conclusive as to boundaries or extent

For parts transferred see Part 1(B)

No.	Description	Official Notes
1	PLANS :31 DIVISION : 11 BOOK : 21 A PLOT OF GROUND SITUATE ON THE WEST SIDE OF BALLYMUN ROAD IN THE PARISH OF GLASNEVIN AND DISTRICT OF GLASNEVIN NORTH  THE REGISTRATION DOES NOT EXTEND TO MINES AND MINERALS	FROM FOLIO 4102
2	The property shown coloured Red as plan(s) 30, 36 on the Registry Map, situate in the Parish of GLASNEVIN, in the Electoral Division of BALLYGALL C.  THE REGISTRATION DOES NOT EXTEND TO MINES AND MINERALS  PLANS ADDED UNDER Q2011LR006700J & OTHERS	FROM FOLIO 4102

# Land Registry

County Dublin

Folio 16520F

## Part 1(B) - Property Parts Transferred

No.	Prop No:	Instrument:	Date:	Area (Hectares) :	Plan:	Folio No:
1	1	95DN09920	16-SEP-1996		70	DN99041F

# Land Registry

County Dublin

Folio 16520F

## Part 2 - Ownership

Title ABSOLUTE

No.	The devolution of the property is subject to the provisions of Part II of the Succession Act, 1965
001	<div data-bbox="188 875 359 936">21-OCT-1977 R479/78</div> <div data-bbox="422 875 1332 936">THE RIGHT HONOURABLE THE LORD MAYOR ALDERMEN AND BURGESSES OF DUBLIN CITY HALL, CORK HILL, DUBLIN IS FULL OWNER</div>

# Land Registry

County Dublin

Folio 16520F

## Part 3 - Burdens and Notices of Burdens

No.	Particulars
001	<p>THE PROPERTY HAVING BEEN ACQUIRED BY THE REGISTERED OWNER THEREOF FOR ITS STATUTORY PURPOSES IS SUBJECT TO SUCH RESTRICTIONS AGAINST ALIENATION OR LETTING AS MAY BE CONTAINED IN THE STATUTORY ENACTMENTS RELATING TO SUCH PROPERTY</p>

## Appendix 2

### Dublin City Council response to Enforcement Complaint



Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council

Feidhmiú Pleanála  
An Roinn Pleanála & Forbairt Maoine  
Bloc 4, Uirlár 2, Oifigí na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8

Planning Enforcement,  
Planning & Property Development Department,  
Block 4, Floor 2, Civic Offices  
Wood Quay, Dublin 8  
T. 01 222 2147 E. [planningenforcement@dublincity.ie](mailto:planningenforcement@dublincity.ie)

Mr. Joe Bonner  
The Airport Hub  
Unit 1 Furry Park Industrial Estate  
Swords Road  
Santry  
Dublin 9

10 December 2021.

**Re: EuroSpar, 129-131 Ballymun Road, Dublin 9.**

Dear Sir/Madam,

I refer to your planning enforcement complaint regarding the above premises.

An inspection and enquiries undertaken by the Area Enforcement Officer revealed that the bin store located at the above address was installed with the approval of Dublin City Council's Public Domain Officer for the area and is deemed to be exempted development under Section 8 of the Planning and Development Regulations.

On this basis, the planning enforcement file has now been closed

Yours sincerely,

For Acting Planning Enforcement Manager

Ref: Karl McGovern  
Tel: 222 3010  
Please quote file ref: E0637/21  
Email: [planningenforcement@dublincity.ie](mailto:planningenforcement@dublincity.ie)





DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT



**SECTION 5 APPLICATION FORM**

NAME OF APPLICANT: Bridget O'Neill

ADDRESS OF APPLICANT: Glenbower, 1 Saint Pappin Road, Dublin 11

EMAIL ADDRESS: bridgetmc123@gmail.com

TELEPHONE NO. Day: \_\_\_\_\_ Mobile: 086 8362211

NAME OF AGENT AND AGENT'S ADDRESS: Joe Bonner Town Planning Consultant  
Unit 1, The Airport Hub, Furry Park, Old Swords Road, Santry, Dublin 9, D09 WY06

TELEPHONE NO. Day: \_\_\_\_\_ Mobile: 087 750 9637

ADDRESS FOR CORRESPONDENCE (if different from above)

Joe Bonner Planning

LOCATION OF SUBJECT SITE: Adjacent to Eurospar 129-131, Ballymun Road, Dublin 9

Is this a Protected Structure or within the curtilage of a Protected Structure? ☒ No

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? ☐ N/A

**Please provide details of works (where applicable) or proposed development. (Note: only works listed and described under this section will be assessed under this section 5 application. Use additional sheets if required.)**

Unauthorised bin storage structure and use of same and footpath for storage of waste

Please refer to attached report for further details

List of plans, drawings etc. submitted with this application

Planning Report containing photos and description of works

Please state Applicant's interest in this site: Affected neighbour

*If applicant is not owner of site, please provide name & address of owner:*

Alderman of Dublin City

Are you aware of any enforcement proceedings connected to this site?

*If so please supply details:*

ED0637/21

See attached Planing Report for further details

Where there previous planning application/s on this site? ☐

*If so please supply details:*

No application lodged for this development

Signed \_\_\_\_\_ Date \_\_\_\_\_

#### **NOTES**

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.

Application shall be forwarded to: Dublin City Council, Planning Registry  
Section, Block 4, Floor 0, Civic Offices, Wood Quay, Dublin 8.  
Contact Details: Phone: 01 222 2149 Fax: 01 222 2675

## **Section 5 Declaration for Protected Structures**

### **Required Documents**

1. *Application form* (The application form should be used to provide a numbered list of all the proposed works. Two copies of all supporting information should be submitted).
2. *Application fee* (€80)
3. 2 copies of the *site location map* (location clearly outlined in red).
4. A photographic record of the historic fabric to be affected/impacted upon by the proposed works and a general photo of the building. (notes can be added to these photos to explain the proposed works)
5. An outline explaining justification for and assessment of the impact of the proposed works on the protected structure.
6. A method statement outlining the proposed works to include a specification of the materials to be used.
7. Elevation, plan and detail drawings where appropriate.

The Department of Arts, Heritage and the Gaeltacht Advice Series documents are recommended reading before submitting a Section 5 application for proposed works to a protected structure. These publications contain the best practice advice for conservation work and knowledge of best conservation practice must be clearly demonstrated in all applications. (See links below)

<http://www.dublincity.ie/Planning/HeritageConservation/Conservation/Pages/DoEHLGArchitecturalHeritagePublicationsandConservationAdviceSeries.aspx>

[A Guide to the Repair of Historic Brickwork:](#)

[The Repair of Wrought and Cast Iron Work :](#)

[A Guide to the Repair of Older Buildings:](#)

[A Guide the Repair of Historic Windows:](#)

[Roofs - A Guide to the Repair of Historic Roofs.pdf](#)

[Ruins - The Conservation and Repair of Masonry Ruins.pdf](#)

[Energy Efficiency in Traditional Buildings.pdf](#)

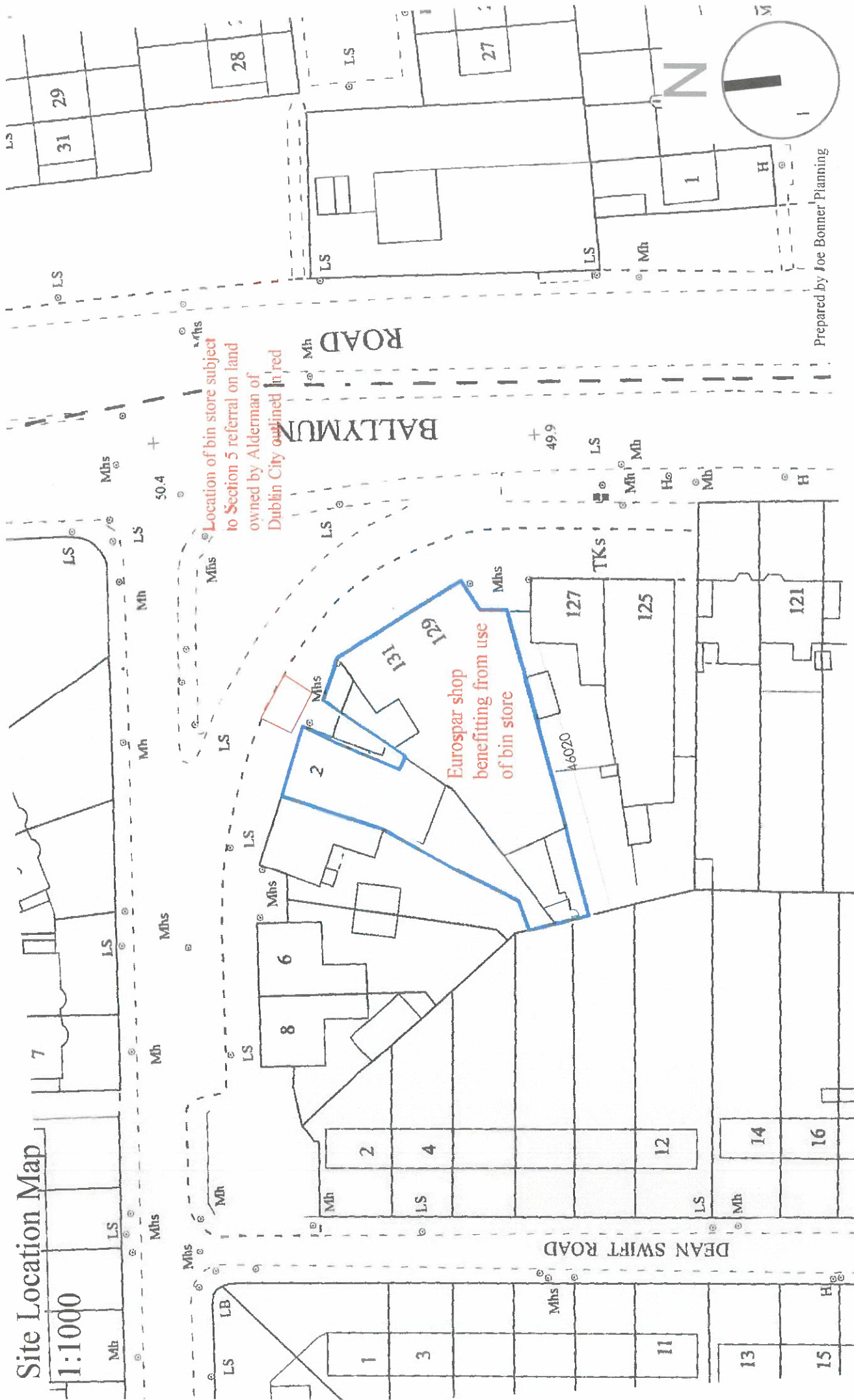
[Access - Improving the Accessibility of Historic Buildings & Places.pdf](#)

[Places of Worship - The Conservation of Places of Worship 2011.pdf](#)



# Site Location Map

1:1000



Prepared by Joe Bonner Planning



## **Appendix 2**

### **Planning Officer's Assessment of the Section 5 Declaration**





Dublin City Council  
Declaration on Development and Exempted Development  
Section 5 of the Planning and Development Act 2000

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EXPP: 0069/22

APPLICANT: Bridget O'Neill

ADDRESS: Adjacent to Eurospar, 129-131, Ballymun Road, Dublin 9

QUERY:

EXPP: Unauthorised bin storage structure and use of same footpath for storage of waste.

SECTION 5 RECEIVED ON: 3 March 2022

Zoning: Z3 (to provide for and improve neighbourhood facilities), which covers the buildings in the neighbourhood centre and the parking area immediately in front of it.

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The following statutory provisions are relevant in this instance.

Planning and Development Act 2000 (as amended)

Section 2 (1) 'Interpretation' of the Planning and Development Act 2000 (as amended) states as follows:-

*In this Act, except where the context otherwise requires-*

*"development" has the meaning assigned to it by Section 3, and "develop" shall be construed accordingly;*

*"exempted development" has the meaning specified in section 4;*

*"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

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

*In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.*

Section 4 (1) f 'Exempted Development' of the Planning and Development Act 2000 (as amended) states as follows:-

*The following shall be exempted developments for the purposes of this Act— development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;*

Section 4(4) 'Exempted Development' of the Planning and Development Act 2000 (as amended) states as follows:-

*Notwithstanding paragraphs (a) , (i) , (ia) and (l) of subsection (1) and any regulations under subsection (2) , development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

**Section 4(4A) 'Exempted Development' of the Planning and Development Act 2000 (as amended) states as follows:-**

*Notwithstanding subsection (4) , the Minister may make regulations prescribing development or any class of development that is —*

*( a ) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*

*( b ) as respects which an environmental impact assessment or an appropriate assessment is required,*

*to be exempted development.*

**Section 5 'Declaration and referral on development and exempted development' of the Planning and Development Act 2000 (as amended) states as follows:-**

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

**Section 5(2)c**

( c ) A planning authority may also request persons in addition to those referred to in paragraph (b) to submit information in order to enable the authority to issue the declaration on the question.

**Section 178 (2) 'Restrictions on development by certain local authorities' of the Planning and Development Act 2000 (as amended) states as follows:-**

*The council of a city shall not effect any development in the city which contravenes materially the development plan.*

**Section 179 'Local authority own development' of the Planning and Development Act 2000 (as amended) states as follows.**

179. — (1) ( a ) *The Minister may prescribe a development or a class of development for the purposes of this section where he or she is of the opinion that by reason of the likely size, nature or effect on the surroundings of such development or class of development there should, in relation to any such development or development belonging to such class of development, be compliance with the provisions of this section and regulations under this section.*

*( b ) Where a local authority that is a planning authority proposes to carry out development, or development belonging to a class of development prescribed under paragraph (a) (hereafter in this section referred to as " proposed development " ) it shall in relation to the proposed development comply with this section and any regulations under this section.*

*( d ) This section shall also apply to proposed development which is carried out within the functional area of a local authority which is a planning authority, on behalf of, or in partnership with the local authority, pursuant to a contract with the local authority.*

**179 (6) This section shall not apply to proposed development which —**

*( b ) is necessary for dealing urgently with any situation which the chief executive considers is an emergency situation calling for immediate action,*

*( c ) consists of works which a local authority is required to undertake—*

*(i) by or under any enactment,*

*(ii) by or under the law of the European Union, or a provision of any act adopted by an institution of the European Union, or*

*(iii) by order of a court,*

## **Planning & Development Regulations 2001 (as amended)**

**Part 8 of the Planning and Development Regulations 2001 (as amended) set out the 'requirements in respect of specified development by, on behalf of, or in partnership with local authorities' as follows:**

### **Article 80**

**Development prescribed for purposes of section 179 of Act.**

80. (1) Subject to sub-article (2) and sub-section (6) of section 179 of the Act, the following classes of development, hereafter in this Part referred to as "proposed development", are hereby prescribed for the purposes of section 179 of the Act —

- (a) the construction or erection of a house,
- (b) the construction of a new road or the widening or realignment of an existing road, where the length of the new road or of the widened or realigned portion of the existing road, as the case may be, would be—
  - (i) in the case of a road in an urban area, 100 metres or more, or
  - (ii) in the case of a road in any other area, 1 kilometre or more,
- (c) the construction of a bridge or tunnel,
- (d) the construction or erection of pumping stations, treatment works, holding tanks or outfall facilities for waste water or storm water,
- (e) the construction or erection of water intake or treatment works, overground aqueducts, or dams or other installations designed to hold water or to store it on a long-term basis,
- (f) drilling for water supplies,
- (g) the construction of a swimming pool,
- (h) the use of land, or the construction or erection of any installation or facility, for the disposal of waste, not being—
  - (i) development which comprises or is for the purposes of an activity in relation to which a waste licence is required or (ii) development consisting of the provision of a bring facility which comprises not more than 5 receptacles,
- (i) the use of land as a burial ground,
- (j) the construction or erection of a fire station, a library or a public toilet, and
- (k) any development other than those specified in paragraphs (a) to (j), the estimated cost of which exceeds €126,000, not being development consisting of the laying underground of sewers, mains, pipes or other apparatus.

### **Article 250 (1)**

#### **Screening for Appropriate Assessment**

In order to ascertain whether an appropriate assessment is required in respect of a development which it proposes to carry out a local authority shall carry out a screening of the proposed development to assess, in view of best scientific knowledge, if the development, individually or in combination with other plans or projects, would be likely to have a significant effect on a European site.

## **ASSESSMENT**

### **Post-'63 Planning History:**

#### **129-131 Ballymun Rd / 2 St. Pappins Rd, Dublin 9**

WEB1148/22

RETENTION of part change of use from Retail to Coffee Shop (2 St. Pappins Rd), and for Retention of Rooflights (129-131 Ballymun Rd front & rear) repairs & alterations at Eurospar, 129-131 Ballymun Rd / 2 St. Pappins Rd, Dublin 9.

Live file, not yet assessed. Decision due 13 April 2022.

#### **129-131 Ballymun Road, Dublin 9**

2581/19 (ABP ref ABP-304667-19)

Permission is sought for a mixed use building extension development including 14 No 1 bed apartments with balconies/open space at first, second, third and fourth floor,

commercial offices extension at first floor to rear, access stairs, lifts, green roof, solar panels and ancillary works.

Refused for two reasons by ABP (including height scale and design, and residential amenity), following first party appeal.

1528/01

Two storey extensions to front / side of costcutters supermarket.

Permission granted with conditions.

1643/97

To alter the front elevation, make minor alterations to the supermarket and change the use of the first floor from residential to commercial use.

Permission granted with conditions.

1198/76

Shop extension and conversion of stores to sales area.

Permission refused.

1738/74 (plan no 1983/74)

Alterations and extension

Permission granted with conditions.

It is noted that no conditions in the applications above referred to waste storage.

**Enforcement:** E0637/21 – alleged unauthorised building works. Opened 9 August 2021. Closed 10 December 2021. Reason for Closure: Exempted Development.

This enforcement file refers to the bin store.

**Referrals:**

Public Domain Officer North West Area – no report received at time of writing.

Transport Planning – no report received at time of writing.

The applicant has submitted the following in support of their query:

- Application form
- Ordnance Survey map outlining the site, and the adjacent Eurospar shop
- Planning report (prepared by Joe Bonner, Town Planning Consultant, agent for the applicant)

No drawings were provided, but a number of photographs were provided. A site visit was undertaken on 10 March 2021.

The applicant is a resident of St Pappin Road. The agent expands on their query in the planning report as follows: *Whether the construction of a refuse bin storage area on behalf of the Public Domain Office of Dublin City Council, adjacent to the front of Eurospar, 129-131 Ballymun Road, Glasnevin Dublin 11 for the exclusive use of the adjacent Eurospar shop and the storage of waste therein and on the adjacent public footpath and parking spaces is or is not development and is or is not exempted development.*

A Declaration under Section 5 of the Act assesses whether the project in question constitutes development, and (if so) whether that development is exempt. It is not an assessment of the planning merits of the project. In this instance, the project involves the construction of a four-sided enclosure without a roof, with concrete posts and timber panels, the whole painted. As the project involves construction, it constitutes works. As noted above, development can comprise works, and/or a material change of use. The applicant notes that the area in question has been used for the storage of waste for some time prior to the construction of the enclosure, and provides an undated photograph (image 4 of the submitted report) in support of this, showing four large commercial wheelie bins on the site, with a pallet and barrier adjacent. Publicly available mapping as well as the council's own aerial footage also indicate that the area in question has been used for over a decade for this purpose. As such, no material change of use is involved.

Due to the works involved, the proposal constitutes development. As noted above, an exemption exists under Section 4(1)f for *development carried out on behalf of, or jointly or in partnership with, a local authority*, which applies in this instance. The applicant states that the structure has been erected under the instruction of the Public Realm Officer of Dublin City Council, and the Public Realm Officer of the North West Area Office has confirmed that the development was carried out on behalf of the local authority by an outside contractor, under contract.

It is noted that Section 4(1)f exempts developments from the general obligation to obtain permission under Section 32 of the Planning and Development Act 2000 (as amended). It does not exempt the Local Authority or any body working jointly or in partnership with a Local Authority from their obligations under other sections of the Act, notably Section 178 and Section 179. To interpret Section 4(1)f as a standalone provision, with no regard to Section 178 and Section 179, would risk according local authorities with largely unrestricted powers of development, and render null and void the entirety of Part 8 of the Planning and Development Regulations 2001 (as amended). It is appropriate in the context of this particular referral, to the Local Authority, to consider both Section 178 and Section 179.

Section 178 notes that the council of a city shall not effect any development in the city which contravenes materially the development plan.

The area to the front of the neighbourhood centre (like the neighbourhood centre itself) is zoned Z3, to provide for and improve neighbourhood facilities. It is not a Conservation Area, or an Architectural Conservation Area, it is not located within any zone of archaeological interest, or adjacent to any sites of archaeological interest.

The project does not materially contravene the Development Plan. The provision of a structure to screen wheelie bins associated with an existing supermarket is in keeping with the Z3 zoning, the other policies of the Development Plan (including policies and objectives on the control and supply of car parking), and the proper planning and development of the area.

Regarding Section 179, and the associated Article 80 of the Planning and Development Regulations 2001 (as amended), this sets out a list of developments (noted above) which require a Part 8 application, the majority of which are clearly not at issue here. Subsection h is of interest:

*(h) the use of land, or the construction or erection of any installation or facility, for the disposal of waste, not being—*

*(i) development which comprises or is for the purposes of an activity in relation to which a waste licence is required or (ii) development consisting of the provision of a bring facility which comprises not more than 5 receptacles,*

'Disposal of waste' is not defined in the Planning and Development Act or Regulations, although an examination of the Waste Management Act 1996 indicates that the gathering of waste, including the preliminary sorting and storage of waste prior to transport to a waste treatment facility, falls under the rubric of waste collection, while waste disposal refers to landfill, incineration, biodegradation, and other such terminal processes, as well as civic waste facilities. As such, the project does not require a Part 8.

The development has been screened for AA. It has been found that significant effects are not likely to arise, either alone or in combination with other plans and projects that will result in significant effects to any Natura 2000 area. A full Appropriate Assessment of this project is therefore not required. Due to the limited scale of the development, an Environmental Impact Assessment is not required.

For the avoidance of doubt, it is noted that no exemption for this project exists under the Planning and Development Regulations 2001 (as amended). ), It is further noted that Article 6 and Article 9 of those Regulations apply a number of restrictions in which developments are not exempt, including (for example) development in areas of archaeological interest, development that would obstruct a public right of way, or development that would create traffic hazard. However, these restrictions do not apply to developments that are exempted under the Act.

Recommendation:

On the basis of the available information, and for the reasons and considerations set out in the above report, and having regard to the relevant legislation cited above, the project as described is development, exempt under Section 4(1)f of the Planning and Development Act (2000) as amended from the general obligation to obtain permission under Section 32 of the Planning and Development Act 2000 (as amended).

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**Natalie de Róiste**  
**Executive Planner**  
**25 March 2022**

**Siobhán O'Connor**  
**Senior Executive Planner**  
**29 March 2022**

## **Appendix 3**

### **Section 5 decision of Dublin City Council**





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.

T: (01) 222 2288

E. [decisions@dublincity.ie](mailto:decisions@dublincity.ie)

01-Apr-2022

Joe Bonner Town Planning Consultant  
The Airport Hub  
Unit 1, Furry Park  
Old Swords Road  
Santry  
Dublin 9  
D09 WY06

Application Number	0069/22
Application Type	Section 5
Registration Date	03-Mar-2022
Decision Date	30-Mar-2022
Decision Order No.	P2849
Location	Adjacent to Eurospar, 129-131, Ballymun Road, Dublin 9
Proposal	EXPP: Unauthorised bin storage structure and use of same footpath for storage of waste.
Applicant	Bridget O'Neill

- If you have any queries regarding this Decision, please contact the email 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 Acts 2000 (as amended), Dublin City Council has by order dated 30-Mar-2022 decided to issue a Declaration that the above proposed development is EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Acts 2000 (as amended).

**Reasons & Considerations:**

On the basis of the available information, and for the reasons and considerations set out in the above report, and having regard to the relevant legislation cited above, the project as described is development exempt under Section 4(1)f of the Planning and Development Act (2000) as amended from the general obligation to obtain permission under Section 32 of the Planning and Development Act 2000 (as amended).

**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.

T: (01) 222 2288

E. [decisions@dublincity.ie](mailto:decisions@dublincity.ie)

01-Apr-2022

Signed on behalf of Dublin City Council

\_\_\_\_\_  
for Administrative Officer

**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.

T: (01) 222 2288

E. [planning@dublincity.ie](mailto:planning@dublincity.ie)

01-Apr-2022

