



An
Bord
Pleanála

Board Direction
BD-000487-18
ABP-300148-17

The submissions on this file and the Inspector's report were considered at a Board meeting held on June 14th 2018.

The Board decided, generally in accordance with the recommendation of the Inspector and as set out in the following Order, that the renewal of existing factory number 1, authorised under Planning Reg. No. 01/6934, and the addition to this factory by way of erection of a loading mechanism over an existing authorised loading area, at Ballymacquirk, Kanturk, County Cork, is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether (1) the renewal of existing factory number 1, authorised under Planning Reg. No. 01/6934, is exempted development under Section 4 (1)(h) of the Planning and Development Act, 2000, as amended and (2) the addition to this factory by way of erection of a loading mechanism over an existing authorised loading area is exempted development under Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, at Ballymacquirk, Kanturk, County Cork.

AND WHEREAS Ducon Concrete Ltd requested a declaration on this question from Cork County Council and the Council issued a declaration on the 17th day of October 2017 stating that the matter was development and was not exempted development.

AND WHEREAS Ducon Concrete Ltd referred this declaration for review to An Bord Pleanála, on the 8th day of November 2017.

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

- (a) Sections 2, 3 and 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Classes 16, 21 and 50 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the site and the pattern of development in the area,
- (e) Relevant case law, and in particular the Supreme Court judgement in the case of Cronin (Readymix) Ltd -v- An Bord Pleanála & ors [2017] IESC 36, and
- (f) The submissions on file and the report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The renewal of the factory building and the addition of the loading mechanism both involved the carrying out of works, and therefore constitutes development;

- (b) The renewal of the factory building involved demolition, and such demolition does not come within the scope of Class 50 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, because it does not comply with Condition and Limitation Number 2(b) of that Class, and therefore is not exempted development;
- (c) The replacement of the building does not come within the scope of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, not being “development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure”, as the works resulted in the demolition of the original structure, and accordingly there was no structure to be maintained, improved or altered;
- (d) There are no exemptions provided for in the Act or Regulations by which the reconstruction or replacement of a demolished building would constitute exempted development, and the replacement of the factory building is, therefore, not exempted development;
- (e) The provision of the loading mechanism involves an extension to the factory building, and an extension to a structure does not come within the scope of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, as determined by case law;
- (f) The loading mechanism is not a temporary structure or a structure of the nature of plant and machinery needed temporarily in connection with the carrying out of development of lands, but is a permanent structure used for the carrying out of the business of the industrial enterprise on the overall site, and therefore does not come within the scope of Class 16 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended;
- (g) The loading mechanism, which is a part of the structure of the renewed factory building number 1, is not “plant or machinery”, but is part of the

factory building (which itself is not exempted development) and therefore would not come within the scope of Class 21 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, or, in the alternative, if within the scope of this Class, it would not comply with Condition and Limitation Number 1 of that Class, as it materially alters the external appearance of the factory building in question, and is therefore not exempted development, and also would not be exempted development by reason of the restrictions on exemption set out in Article 9 (1)(a)(viii) of these Regulations, as it involves an extension to the factory building in question, which building is not authorised by any planning permission and is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the renewal of existing factory number 1, authorised under Planning Reg. No. 01/6934, and the addition to this factory by way of erection of a loading mechanism over an existing authorised loading area, at Ballymacquirk, Kanturk, County Cork, is development and is not exempted development.

Board Member

Date: 15th June 2018

Philip Jones