



An
Bord
Pleanála

Board Direction 10.RL3590

The submissions on this file and the Inspector's report were considered at a Board meeting held on October 22nd, 2019.

The Board decided, as set out in the following Order, that an existing steel structure included during the construction of an existing hangar building to support the sliding doors to the front of the building at Kilkenny Aerodrome, Holdensrath, Co. Kilkenny is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether an existing steel structure included during the construction of an existing hangar building to support the sliding doors to the front of the building at Kilkenny Aerodrome, Holdensrath, Co. Kilkenny is or is not development or is or is not exempted development.

AND WHEREAS Eoin Nevin, Irish Sky Diving Club, Kilkenny Aerodrome, Holdensrath, Co. Kilkenny, requested a declaration on this question from Kilkenny County Council, and the Council issued a declaration on the 4th day of May 2017 stating that the matter was development and was not exempted development.

AND WHEREAS Eoin Nevin referred this declaration for review to An Bord Pleanála, on the 29th day of May 2017.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) The planning history of the site, including planning permission register reference number P06/1286 (as extended under planning permission register reference number P11/520), and the terms and conditions of that permission,
- (c) The nature and extent of the works that have been carried out and the date when such works were carried out,
- (d) The documentation on file, including details of inspection of the site carried out by officials of the planning authority,
- (e) Relevant case law, and in particular *Horne vs Freeney* [1982 IEHC 20], and
- (f) The report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The hangar building was authorised under planning permission register reference number P06/1286, and condition number 1 of that permission required that the development in question was to be carried out and completed in accordance with the application documents;
- (b) The steel support structure that is the subject matter of the present referral was not included in the application documents of that planning permission;

- (c) The erection of the steel support structure that is the subject matter of the present referral involved the carrying out of works, and therefore constitutes development, as defined in the Planning and Development Act 2000, as amended;
- (d) On the basis of the documentation on the file, the Board is satisfied that the erection of the subject steel structure took place during the construction of the hangar building, rather than after that permitted hangar building had been completed. Having regard to the scale, nature and character of the steel support structure, it is considered that this does not represent a *de minimis* alteration to the permitted hanger building, but rather the addition of a new structure on either side of the front elevation of the hangar building;
- (e) As the hangar building was not carried out and completed, in accordance with the terms and conditions of planning permission register reference number P06/1286, prior to the erection of the steel structure, the subject steel support structure is not a permitted development;
- (f) Because the hanger was not completed at the time of erection of the steel support structure, the subject steel support structure would not come within the scope of Section 4 (1)(h) of the Planning and Development Act, 2000, as amended, not being works for the maintenance, improvement or other alteration of an existing structure, but rather works carried out during the construction of that structure, that is, the hangar building, and having regard to case law, the exemptions afforded under Section 4 (1)(h) cannot be availed of as the hanger building had not, prior to the works, first been built and completed in accordance with the plans and particulars of planning permission register reference number P06/1286, and therefore the steel support structure is not exempted development.
- (g) There are no other exemptions under the Planning and Development Act 2000, as amended, or under the Planning and Development Regulations 2001, as amended, which would apply in this instance.

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 an existing steel structure included during the construction of an existing hangar building to support the sliding doors to the front of the building at Kilkenny Aerodrome, Holdensrath, Co. Kilkenny is development and is not exempted development.

Board Member

Date: 22nd October 2019

Philip Jones