



Planning and Development Acts 2000 to 2017

Planning Authority: Cork County Council

Planning Register Reference Number: D/271/17

WHEREAS a question has arisen as to whether (1) the renewal of existing factory number 1, authorised under planning register reference number 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 Limited care of Irish Concrete Federation of 8 Newlands Business Park, Naas Road, Clondalkin, County Dublin 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 the Ducon Concrete Limited 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, and

- (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 2000 Act, hereby decides that the renewal of existing factory number 1, authorised under planning register reference number 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 are development and are not exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2018.