



An
Bord
Pleanála

Inspector's Report ABP-300665-18

Question

Whether the proposed change of use from garage/filling station to car wash/valeting use is or is not development or is or is not exempted development.

Location

Loughboy Filling Station, Mell,
Drogheda, Co. Louth

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5/2017/36

Applicant for Declaration

Eugene O'Connor

Planning Authority Decision

Is development and is not exempted development.

Referral

Referred by

Eugene O'Connor

Owner/ Occupier

Eugene O'Connor

Observer(s)

None

Date of Site Inspection

7th May 2018

Inspector

Karla Mc Bride

1.0 Site Location and Description

- 1.1. The referral site is located on the W side of Drogheda in County Louth and the surrounding area is mixed use in character. The site is located on the S side of the R168 Loughboy Road and it is occupied by an existing garage building with forecourt area. The site is bound to the W by a vacant 2-storey house, to the E by a commercial building and to the S by a field, and there is a discount food store located opposite on the N side of the R168 and a residential area to the SE. Photographs and maps in Appendix 1 describe the site and environs in more detail.

2.0 The Question

- 2.1. Whether the proposed change of use from garage/filling station to car wash/valeting use is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Having regard to:

- (a) Section 2, 3 & 4 of the Planning and Development Act, 2000 (as amended),
- (b) Part 4 of the Planning and Development Regulations 2001 (as amended),
- (c) Article 10 of the Planning and Development Regulations 2001 (as amended),

The development is “development” and is not “exempted development”.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the planning officer noted and recommended the following:

- The site was previously in use as a car repair/filling station which had a forecourt area with 2 fuel pumps.
- Works have been carried out and the site is currently used as a car wash.

- The existing & proposed uses do not fall within any of the Part 4 Exempted Development - Classes of Use in Schedule 2 and are therefore sui generis.
- Regard was had to Article 10(a) with respect to change of use and the carrying out of works other than works which are exempted development, as works have been carried out on the site.
- Concluded that the change of use from filling station/car repairs to car wash/valeting is not exempted development.
- Recommended that the development is “development” & is not “exempted development”.

3.2.2. Other Technical Reports

- None on file

4.0 Planning History

Enforcement UD File:17 U142 – Alleged unauthorised motor vehicle car wash and Warning Letter issued on 19/09/2017.

5.0 Policy Context

5.1. Louth County Development Plan & Drogheda Town Plan

The site is located within an area covered by the Louth County Council Development Plan 2015 to 2021 & the Drogheda Borough Council Development Plan 2011-2017.

The site is located within a Level 1 Settlement in the County Development Plan and it is covered by the “RE” zoning objective which seeks “To protect and/or improve the amenity of developed residential communities” in the Drogheda Borough Plan.

5.2. Natural Heritage Designations

- River Boyne & River Blackwater SAC to S
- Boyne Coast & Estuary SAC & pNHA to E
- Boyne Estuary SPA to E

6.0 The Referral

6.1. Referrer's Case

- Council have accepted that the filling station/garage existing at this location prior to the introduction of the 1963 Act and as such the use is established.
- The garage provided services such as vehicle & puncture repairs, servicing, petrol supplies as well as ancillary vehicle cleaning & washing.
- Some panel beating was undertaken by the previous owner who had a crashed car yard to the immediate rear of the site.
- Request the Board to overturn the Council's Declaration and to rule that the current use was in existence on the site prior to the introduction of the Planning Act and as such it is an established use.
- Witnesses can verify the long-established use of the site as a car wash.

6.2. Planning Authority Response

- No further comment.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Section 2 (1) of the Act states: -

"In this Act, except where the context otherwise requires –

"development" has the meaning assigned to it by Section 3.

"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) of the Act states that “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) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

7.2. **Planning and Development Regulations, 2001**

Article 6(1) of the Regulations states:

Subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) (a) of the Regulations sets out various circumstances development to which Article 6 relates would not be exempted development for the purposes of the Act and this includes (iii) endanger public safety by reason of a traffic hazard or obstruction of road users.

Article 10 (1) (a) of the Regulations states:

Development which consists of a change of use within any one of the classes of use specified in Part 4 of schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not involve the carrying out of works other than works which are exempted development.

Article 10 (2) (b) (ii) of the Regulations state:

Nothing in any class in Part 4 of Schedule 2 shall include any use as a motor services station.

Schedule 2 of the Regulations:

The existing and proposed uses are not listed in Part 1 or Part 4 of Schedule 2 as being Exempted Development.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. In the case of the items that are the subject of this referral, it is quite evident that they involve the carrying out of works, as defined, and hence constitute development within the meaning of the Act.

8.2. Is or is not exempted development

- 8.2.1. The referral site was used as a vehicle repair garage and petrol filling station for a prolonged period of time. It came to the attention of the County Council in mid-2017 that the site was being used as a vehicle car wash facility and that signage had been erected. Enforcement proceedings were initiated and a Warning Notice was served on the owner occupier on 19th day of September 2017. In response, the agent for the owner/operator stated that the garage and filling station had operated on the site since the mid-1950s, they were therefore established uses and that the washing of vehicles was one of those established uses. Following a further visit to the site which confirmed that the facility was still operating, the report of the Council's Enforcement section dated 24th day of November 2017 recommended that an Enforcement Notice be served in respect of the unauthorised vehicle car wash enterprise (including signage). The Enforcement Officer also noted that this use had only recently commenced, that the fuel pumps had been removed and a drainage channel installed. The agent for the owner/occupier stated that a Section 5 Declaration would be sought and the Enforcement Notice was not served at that time.
- 8.2.2. The agent for the owner/occupier reiterated the previous concerns and requested the Board to overturn the Council's Declaration and determine that the current use was in existence prior to the introduction of the Planning and Development Act 1963, and that the car wash/valeting facility is therefore an established use of the site.
- 8.2.3. The owner/occupier stated that the referral application related to a proposed change of use from garage/filling station to car wash/valeting use. However, it was noted during the site inspection that the forecourt area is currently being used as a car wash/valeting facility. The owner/occupier did not refer to the large screen that has been erected along the roadside boundary of the forecourt or the associated

advertising signage in the referral application, and no details were provided in relation to the disposal or treatment of runoff from the car wash facility.

- 8.2.4. In relation to the exempted development regulations, it is noted that neither of the past or current uses are listed in Part 1 or Part 4 of the Second Schedule of the Planning and Development Regulations, 2001, as amended, and both uses are therefore sui generis.
- 8.2.5. Notwithstanding this omission from the Second Schedule, it is noted that Article 9(1) (a) of the Regulations sets out the various circumstances whereby development would not be exempted development and this includes (iii) endanger public safety by reason of a traffic hazard or obstruction of road users. It is also noted that Article 10 (1) (a) states that development which consists of a change of use would not be exempted development if it involved the carrying out of works which are not exempted development. And Article 10 (2) (b) (ii) states that nothing in any class in Part 4 of Schedule 2 shall include any use as a motor services station.
- 8.2.6. Notwithstanding the long-established use of the site as a vehicle repair garage and petrol filling station, which may have included a small element of vehicle washing as part of the repair service, there is a distinction between a garage/filling station and a carwash /valeting use. Several dictionaries define a filling station as a place where petrol and other supplies for motorists are sold and a garage as a place where you can get your car repaired. A car wash is defined as area or structure equipped with facilities for washing vehicles and car valeting is defined cleaning the bodywork and interior of a car as a professional service.
- 8.2.7. The activities associated with the car wash facility require the use of large quantities of water and detergent along with the subsequent need for measures to manage the wastewater generated by this use. This activity could have an adverse impact on the receiving environment and place an additional strain on public services in the absence of appropriate measures for the management of contaminated run-off.
- 8.2.8. The turnaround time for vehicles using a vehicle repair garage and petrol filling station versus a carwash/valeting use would also be different. The car wash/valeting use could result in vehicles queuing along the frontage of the neighbouring sites which would in turn give rise to a traffic hazard along the regional road in close

proximity to a fork in the road and several other entrances to neighbouring retail and residential uses.

- 8.2.9. Having regard to the foregoing, the car wash/valeting use would result in an intensification of the use of the referral site which would therefore constitute a material change of use of the site, and it would endanger public safety by reason of a traffic hazard or obstruction of road users. The proposed change of use from a garage/filling station to a car wash/valeting use would not constitute exempted development.

9.0 Recommendation

- 9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the proposed change of use from a garage/filling station to a car wash/valeting use is or is not development or is or is not exempted development:

AND WHEREAS Mr. Eugene McKeown requested a declaration on this question from Louth County Council and the Council issued a declaration on the 14th day of December 2017 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 11th day of January 2018:

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

- (a) Section 2 (1) of the Planning and Development Act, 2000, as amended,

- (b) Section 3 (1) of the Planning and Development Act, 2000, as amended,
- (c) Section 4 (1) of the Planning and Development Act, 2000, as amended,
- (d) Part 4 of the Planning and Development Regulations, 2001, as amended,
- (e) The prevailing pattern of development and road layout in the area,
- (f) The intensification of the use of the site in relation to the disposal of wastewater and traffic generation,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The proposed change of use from a garage/filling station to car wash /valeting use is development and is not exempted development at Loughboy Filling Station, Mell, Drogheda, County Louth.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the proposed change of use from a garage/filling station to a car wash/valeting use is development and is not exempted development.

Karla Mc Bride
Planning Inspector

21st September 2018