



An  
Bord  
Pleanála

## Inspector's Report 300975-18

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### Question

Whether the removal of an existing roof and gutter and the replacement of roof and gutter and associated works and an extension is or is not development and is or is not exempted development.

### Location

Ballycumber, County Offaly.

### Declaration

Planning Authority

Offaly County Council

Planning Authority Reg. Ref.

DEC 18/1.

Applicant for Declaration

Ballycumber Exports Ltd.

Planning Authority Decision

Is not exempted development.

### Referral

Referred by

Ballycumber Exports Ltd.

Owner/ Occupier

Ballycumber Exports Ltd.

Observer(s)

None.

Date of Site Inspection

4<sup>th</sup> May 2018.

Inspector

Derek Daly.

## **1.0 Site Location and Description**

- 1.1. The appeal site is located on the eastern approach to the village of Ballycumber in County Offaly. The site has frontage onto a local road which defines the site's northern boundary. The remaining boundaries adjoin open lands.
- 1.2. On the site itself there is a commercial premises Brackens of Ballycumber, which is the subject of this referral.

## **2.0 The Question**

- 2.1. Whether the removal of an existing roof and gutter and the replacement of roof and gutter and other associated works and an extension is or is not development and is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

The declaration of the planning authority dated the 2<sup>nd</sup> of February 2018 was that;

- (i) The demolition and removal of the existing roof, gutters etc.
- (ii) Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new roof ridge location being now centred on the overall width while the original was off centre.
- (iii) Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater good.
- (iv) Erection of a supporting, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure.
- (v) Retention of the majority of the existing internal walls save only for the upper portions of the north elevation masonry between the gutter level and the lintel level of the external door opens with sheeting consistent with and matching the profiled roofing.

(vi) The carrying out of an extension to the west (Ballycumber side) measuring c. 20 metres (gable) by c. 16 metres (front elevation).

Is development and is not exempted development.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Report**

The planning report dated the 30<sup>th</sup> of January 2018 refers to;

- The submissions made.
- Reference is made to relevant legislation including sections 2(1) and 3(1) of the Planning and Development Act 2000 as amended.
- The planning history of the site.
- Reference is made to Class 21 of the Planning and Development Regulations 2001 as amended in relation to exempted development for industrial purposes and that there is no exemption to permit the structure without the benefit of planning permission.

### **4.0 Planning History**

#### **P.A. Ref. 77/349**

Permission granted for a workshop on the site.

#### **P.A. Ref. 01/341**

Application for a new roof to existing workshop and oil interceptors. Does not appear to have been determined following a request for further information.

### **5.0 Policy Context**

#### **5.1. Development Plan**

Provisions of development plan not relevant to the current referral.

## 6.0 The Referral

### 6.1. Referrer's Case

The referrer submission c/o Vitruvius Hibernicus dated the 19<sup>th</sup> of February 2018 indicates

- Reference is made to the submission made to the planning authority dated the 9<sup>th</sup> of January 2018 a copy of which is submitted.
- The referral arises from an enforcement notice served and the referrer contends that the development is exempted development.
- The site works are not the subject works of the enforcement notice.
- There have been pre-existing buildings on the site for over 50 years.
- There is no relevant planning history.
- An extension was built in mid-2017 and the extension is the same width as the pre-existing and located at the east gable facing Ballycumber. The area is 320m<sup>2</sup> and the roof and wall matches that which is on the existing building.
- It is clear that was built constitutes works and constitutes development and it is not argued that it is not development but it is argued that it is exempted development.
- The definition of works and development as stated in the Planning and Development Act is outlined.
- It is submitted that the works carried out on the existing shed is exempted development.
- These works include;
  - (a) The demolition and removal of the existing roof, gutters etc.
  - (b) Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new roof ridge location being now centred on the overall width while the original was off centre.

- (c) Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater goods.
  - (d) Erection of a supporting, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure.
  - (e) Retention of the majority of the existing internal walls save only for the upper portions of the north elevation masonry between the gutter level and the lintel level of the external door opens with sheeting consistent with and matching the profiled roofing.
- Reference is this regard to Section 4(1)(h) and the consideration of what is defined as works in section 2 of the Act
  - In relation to the extension the supporting argument is also Section 4(1)(h) which provides for works and the definition of works refers to extension within the definition of works.
  - On this basis the extension is exempted development. there is no conditions or limitations attaching to the nature, use, height or area of the extension so exempted as would have applied if the extension as built fell into the exemptions of section 4(2) and the exemption classes made under the regulations.
  - Reference is also made to *Cairnduff v O'Connell* in support of the case for exemption.
  - Photographs and sketch drawings are also submitted.

## 6.2. Planning Authority Response

No response received.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### 7.1.1. Section 2(1) In this Act, except where the context otherwise requires

“Exempted development” has the meaning specified in *section 4*; “structure” means any building, structure, excavation or other thing constructed or made on, in or under land, or any part of the structure so defined and (a) where the context so admits, includes the land on, in or under which the structure is situate”;

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

#### 7.1.2. **Section 3**

Subsection (1) In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

#### 7.1.3. **Section 4 Subsection (1)**

The following shall be exempted developments for the purposes of this Act –

**Subsection (h)** development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Subsection (2) relates to regulations for any class of development to be exempted development for the purposes of this Act.

#### 7.1.4. **Section 5.**

Section 5(1) relates to a question arising 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.

#### 7.1.5. **Section 32**

This section has a general obligation to obtain permission in respect of any development of land not being exempted development and in the case of development not authorised for the retention of unauthorised development.

## 7.2. Planning and Development Regulations, 2001

7.2.1. **Article 6(1)** of the said regulations provide that “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”.

7.2.2. **Article 9. (1)** Development to which article 6 relates shall not be exempted development for the purposes of the Act and outlines restrictions in relation to exempted development.

7.2.3. SCHEDULE 2 PART 1 *Exempted Development — General*

### ***Development for industrial purposes***

#### **CLASS 21**

(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—

(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,

(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,

(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

#### Conditions and Limitations

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.

2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

## **CLASS 22**

Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process.

### Conditions and Limitations

The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.

## **8.0 Assessment**

### **8.1. Is or is not development**

8.1.1. The initial question arises in relation to whether the construction as carried out is or is not development.

8.1.2. The works as carried out involves six distinct stated matters referred to in section 3.1 of this report. Items (i) to (v) inclusive relate to works carried out to an existing structure and item (vi) is a physical extension to the building. Works as defined in section 2 (1) includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. The works as carried out, I consider, involve in relation to all matters referred, the carrying out of works on, and over or land and an extension to the premises and therefore constitutes development within the definition of development as stated in Section 3 (1) of the 2000 Act. This issue in relation to constituting development is not disputed by the referrer.

### **8.2. Is or is not exempted development**

8.2.1. The main issue arises as to whether the development is or is not exempted development.



- 8.2.2. The referrer contends that the works as carried out are exempted development and is reliant on section 4(1)(h) of the 2000 Act in support of this position.
- 8.2.3. Prior to consideration of section 4(1)(h) of the 2000 Act there are specific provisions in the Planning and Development Regulations 2001 as amended in relation to exempted development for industrial purposes as stated in Schedule 2 Part 1 *Exempted Development — General* of the Planning Regulations 2001 as amended. Exemptions for industrial purposes are limited to two classes 21 and 22 which are outlined in section 7.2.3 of this report. Based on the provisions as set out exempted development for industrial purposes is very limited and is largely related to plant, machinery infrastructure and storage. It does not make reference to building works and provides for limitations that any such development shall not materially alter the external appearance of the premises of the undertaking.
- 8.2.4. I would also note that the provisions in the regulations as stated do not also proscribe any exemption in relation to any physical extension of floor area as is provided for other classes of development as for example residential development. In this regard the reference in the planning authority based on the provisions of the planning regulations is I consider correct.
- 8.2.5. The issue therefore to consider is whether exempted development has occurred in the context of section 4(1)(h) of the 2000 Act.
- 8.2.6. Section 4(1)(h) indicates “*the following shall be exempted developments for the purposes of this Act –*  
*development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures*”;
- 8.3. I propose to consider items (i) to (v) initially which relates to works to a pre-existing building and subsequently to address item (vi) which relates to an extension to the building.
- 8.3.1. There is no dispute that there was a pre-existing building and many of the works carried out involve works to this building.

- 8.3.2. In relation to assessing the changes and alterations to the building and to make some comparison between existing and pre-existing the primary measure to assess these changes is based on photographs submitted by the referrer and also photographs on the planning authority files in particular planning reference no 01/341.
- 8.3.3. There is some level of overlap between the five matters referred to as for example gutters/guttering are referred to in both items (i) and (iii) and (i) refers to demolition and (ii) to the replacement arising.
- 8.3.4. In relation to matters (i) and (ii) these relate to (i) the demolition and removal of the existing roof, gutters etc. and (ii) the replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new roof ridge location being now centred on the overall width while the original was off centre.

Based on the details available the roof removed was a typical galvanised metal barn type roof which was a common form of industrial premises at the time of its construction and it is replaced with a modern/current form of roof typical of a modern framed industrial structure. There is a change in the roof profile and the external material but in terms of physical scale and bulk but there is not no significant alteration. I consider the alterations would be within the definition of section 4(1)(h) in relation to the maintenance, improvement or other alteration of the structure and does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

The works in relation to gutters would largely be considered as maintenance and renewal of the structure. I consider that matters (i) and (ii) can be considered as exempted development within the provisions of section 4(1)(h).

- 8.3.5. In relation to (iii) the replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater good I consider these works in relation to gutters/guttering would largely be considered as maintenance of the structure. I consider that (iii) can be considered as exempted development within the provisions of section 4(1)(h).

8.3.6. In relation to (iv) the erection of a supporting, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure. These works are largely related to the support of the new roof and are internal to the structure. I consider that (iii) can be considered as exempted development within the provisions of section 4(1)(h).

8.3.7. In relation to (v) the retention of the majority of the existing internal walls save only for the upper portions of the north elevation masonry between the gutter level and the lintel level of the external door opens with sheeting consistent with and matching the profiled roofing. I consider (v) would be within the definition of section 4(1)(h) in relation to the maintenance, improvement or other alteration of the structure and does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

8.3.8. In support of the above I would refer to previous referrals RL3126 a referral related to the creation of an additional loading bay with roller shutter door in an industrial unit, where the Board decided that the development was exempted development, concluding that the loading bay with roller shutter was development, and that it did not alter the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

I would also refer to RL3433 which related to reroofing and the Board concluded that the re-roofing was works which was development and that having regard to the character and nature of the replacement roof which did not differ in material terms from the previous roof, the works consisting of re-roofing constituted development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures, and, therefore, come within the scope of section 4(1)(h) of the Planning and Development Act, 2000.

8.3.9. In conclusion I consider matters (i) to (v) are development and exempted development.

- 8.4. In relation to (vi) this relates the carrying out of an extension to the west (Ballycumber side) measuring c. 20 metres (gable) by c. 16 metres (front elevation).
- 8.4.1. The referrer in relation to the extension has made the supporting argument within the scope of Section 4(1)(h) as this section provides for works and the definition of works as stated in refers to extension within the definition of works.
- In effect the referrer has imposed the into Section 4(1)(h) the definition of "works" *includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal* as stated in section 2(1) of the 2000 Act, except where the context otherwise requires.
- 8.4.2. My initial observation is that matter (vi) is development which is a form of physical extension of the structure on the subject site and as already indicated the planning acts and regulations recognise extensions to structures occur and in certain cases there is provision for exemption for extensions in floor areas as for example dwellings subject to limitations but there is no such specific stated provision for the exemption for industrial purposes or a related existing use on the subject site.
- 8.4.3. I do not therefore accept the view expressed by the referrer that the extension is exempted development; that there is no conditions or limitations attaching to the nature, use, height or area of the extension so exempted as would have applied if the extension as built fell into the exemptions of section 4(2) and the exemption classes made under the regulations as there are clearly exemptions for industrial purposes outlined in the planning regulations and there is no exemption for extensions.
- 8.4.4. The reference to works is clear in referring to extension constituting works but this does not necessarily infer that any or every extension to a structure is exempt as there are specific provisions for extensions as exempted development subject to conditions and limitations in the regulations which the minister than proscribe under section 4(2).
- 8.4.5. I also consider that 4(1)(h) is clear in defining the nature of development as *"development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure"*. There is no specific reference to extension.

- 8.4.6. Reference is also made to *Cairnduff v O'Connell* in support of the case for exemption. *Cairnduff v O'Connell* outlined a number of character tests in relation to section 4(1)(h).
- 8.4.7. The works in question are I consider an extension to the floor area of a premises which are external to the structure and are not works for the maintenance and improvement of the structure. I would accept that the extension does not necessarily materially affect the external appearance of the structure or be inconsistent with the remaining character of the structure as the external finishes of the extension match the remainder of the structure.
- 8.4.8. In reaching the *Cairnduff v O'Connell* judgement a number of matters were referred to including street appearance, and matters such as shape, colour, design and layout. In the *Ian and Maureen Cairnduff v Peter O'Connell* property some of the works were replacing previous works. In the current referral an extension rather than solely replacement was constructed to the structure and the matters raised in *Ian and Maureen Cairnduff v Peter O'Connell* are not material to the main issue of the subject site which is an extension in floor area and this extension is a material to the structure/premises.
- 8.4.9. The development matter (vi) as constructed does not I consider apply within the scope of Section 4(1)(h) and I consider it is not exempted within the provisions of section 4(1)(h).

## 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

- (i) The demolition and removal of the existing roof, gutters etc.
- (ii) Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new roof ridge location being now centred on the overall width while the original was off centre.
- (iii) Replacement of guttering and rainwater downpipes materially

matching the external appearance of the replaced rainwater good.

- (iv) Erection of a supporting, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure.
- (v) Retention of the majority of the existing internal walls save only for the upper portions of the north elevation masonry between the gutter level and the lintel level of the external door opes with sheeting consistent with and matching the profiled roofing.
- (vi) The carrying out of an extension to the west (Ballycumber side) measuring c. 20 metres (gable) by c. 16 metres (front elevation).

is or is not development or is or is not exempted development:

**AND WHEREAS** Ballycumber Exports Limited requested a declaration on this question from Offaly County Council and the Council issued a declaration on the 2<sup>nd</sup> of February 2018 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 19<sup>th</sup> of February 2018:

- a. **AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to –
  - (b) Section 2(1) of the Planning and Development Act, 2000, as amended,
  - (c) Section 3(1) of the Planning and Development Act, 2000,
  - (d) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
  - (e) Section 4(2) of the Planning and Development Act, 2000, as amended,
  - (f) article 6(1) and article 9(1) of the Planning and Development

Regulations, 2001, as amended,

- (g) Schedule 2 Part 1 Exempted Development — General Development for industrial purposes Class 21

**AND WHEREAS** An Bord Pleanála has concluded that:

In relation to

- (i) The demolition and removal of the existing roof, gutters etc.
- (ii) Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new roof ridge location being now centred on the overall width while the original was off centre.
- (iii) Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater good.
- (iv) Erection of a supporting, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure.
- (v) Retention of the majority of the existing internal walls save only for the upper portions of the north elevation masonry between the gutter level and the lintel level of the external door opes with sheeting consistent with and matching the profiled roofing.

The development as carried out constitutes development

The development as carried out is exempted development

- (vi) The carrying out of an extension to the west (Ballycumber side) measuring c. 20 metres (gable) by c. 16 metres (front elevation)

The development as carried out constitutes development

The development as carried out is not exempted development

**AND WHEREAS** An Bord Pleanála has concluded that:

- (i) The demolition and removal of the existing roof, gutters etc.
- (ii) Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new roof ridge location being now centred on the overall width while the original was off centre.
- (iii) Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater good.
- (iv) Erection of a supporting, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure.
- (v) Retention of the majority of the existing internal walls save only for the upper portions of the north elevation masonry between the gutter level and the lintel level of the external door opes with sheeting consistent with and matching the profiled roofing.

The development as carried out constitutes development

The development as carried out is exempted development

- (vi) The carrying out of an extension to the west (Ballycumber side) measuring c. 20 metres (gable) by c. 16 metres (front elevation)

The development as carried out constitutes development

The development as carried out is not exempted development

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Derek Daly  
Planning Inspector

22<sup>nd</sup> May 2018