



An
Bord
Pleanála

Inspector's Report ABP 301038-18

Question

Whether or not the proposed development (use of rear of premises to accommodate bouncy castles for the purpose of communion and/or confirmation and similar functions on a limited number of occasions per annum) does or does not constitute exempted development.

Location

The Badhrán Bar, 84 Bridge Street, Dundalk, Co. Louth

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S52018/1

Applicant for Declaration

Cathal Byrne

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Cathal Byrne

Owner/ Occupier

Cathal Byrne

Observer(s)

None

Date of Site Inspection

2nd February 2019

Inspector

Joanna Kelly

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1.0 Site Location and Description

1.1. The site in question is located within the town boundary of Dundalk, a designated growth centre in the National Planning Framework and Draft Eastern and Midlands RSES. The site in question is located along Bridge Street to the north of the town centre where the existing structure on site is in use as a public house – The Bodhrán Bar. There are existing residential properties northwest of the lands the subject of this referral, which back onto the yard of the public house. The lands to the rear of the public house appear to be used as a car park associated with the commercial properties on Bridge Street. Access to these lands is via Patrick Street between existing residential properties.

2.0 The Question

2.1. The referrer in this instance is seeking a determination as to whether the proposed development i.e. use of rear of premises to accommodate bouncy castles for the purposes of communion and/or confirmation parties and similar functions on a limited number of occasions per annum is development and whether it constitutes exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

A declaration was issued by Louth County Council, dated 1 February 2018, setting out that the proposed works is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The erection of a bouncy castle within the yard area constitutes an act of construction and therefore constitutes “works” within the meaning of the act.
- “Works” is classed as “development” within the meaning of section 2 of the Act.

- The use of the area for a bouncy castle play area is materially different to the use of the yard area for the storage of beer barrels etc. associated with the public house.
- With regard to Class 37 of the Regulations, the use of the land as a bouncy castle play area is not considered to constitute a fair, funfair, bazaar or circus or any local event of a religious, educational, political, social, recreational or sporting character and as such it cannot benefit from the exempted development.
- Planner recommended a Declaration of Exemption be refused.

3.2.2. Other Technical Reports

None noted

4.0 Planning History

File Ref. No. 15/680 Permission refused for retention of smoking area and beer garden to rear of existing property and all associated site works. The two reasons for refusal pertained to (i) injury to the amenities of the area and would depreciate the value of property within the vicinity of the site and (ii) materially contravention of the town centre zoning as the use would give to 100% site coverage.

File Ref. No. 16/224 Permission granted for retention of permission of smoking area and permission for the construction of a new store to the rear of existing property and all associated works.

Condition 3 set out that “the smoking areas to the rear shall only be used for smoking by the patrons of the public house. There shall be no entertainment provided within the designated smoking area”.

Notably the area subject to this Referral was indicated as a yard and not a beer garden which was previously refused on the plans submitted with this application.

File Ref. No. 16U081

Relates to the investigation of the yard as a beer garden and that the associated activities were impacting on the amenities of adjoining residential properties.

5.0 Policy Context

5.1. Development Plan

The Dundalk Environs Plan 2009-2015 as extended is the statutory plan. The public house is located on lands zoned “town centre”.

5.2. Natural Heritage Designations

None

6.0 The Referral

6.1. Referrer’s Case

- The structure and grounds of Bodhrán Bar has been a licenced premises since 1852.
- The yard within which the bouncy castles are set up is a multi-functional space which is accessible and often used by customers.
- It is used as a storage area and as a space for summertime barbeques.
- Whilst the premises are equipped with a smoking area off the rear door the yard which is not partitioned off is also popular with customers for smoking, sitting out and for taking fresh air.
- The premises are used for celebratory events such as confirmations, communions and birthday and anniversary parties.
- In 2017 no more than 10 of these parties which included a bouncy castle set up in the rear yard.

- In each instance, the bouncy castle was available between the hours of 12pm and 7pm only. Licensing laws prohibit the presence of children within the property after 7pm.
- An outside contractor installs and collects the bouncy castle on the same day.
- A Section 5 declaration was submitted to the planning authority on 12th January 2018.
- The question before the Board is whether the proposal constitutes development as defined by Section 3(1) of the Planning and Development Act, as amended or exempted development as defined under Class 37 of Schedule 2, Part 1 of the Planning and Development Regulations 2001.
- The planning authority considered the proposal to be a material change of use and was considered to be development and was not exempt from planning permission.
- It is suggested that the temporary and impermanent nature of the proposal and the sporadic and infrequent occasions when the yard is used is insufficient to meet the letter and spirit of Section 3 (1) definition of development.
- The proposal does not constitute a material change of use. It does not give rise to any substantive or material intensification of the existing business activity on site.
- The proposal does not result in the opening up of a section of premises which isn't already open and accessible to customers.
- Use of the yard is informal. It is an ancillary and subservient service provided to existing customers and as such is incidental to the main use of the premises.
- Reference is made to RL.3140 regarding internal works and reconfiguration of ground floor facilities and the occasional, infrequent and informal use of part of an equestrian centre in Mullingar.
- The presence of a bouncy castle within the yard does not in itself attract any additional/external customers.

- In circumstances where the Board consider that the proposal did represent development, it is concurrently proposed that such development would be deemed exempted development under Class 37.
- In support of the Class 37 exemption, reference is made to the 09.RL.3309 which related to the question of a temporary outdoor cinema screening event at the M4 interchange park, Celbridge. In this case it was concluded that the proposal constituted works as defined under section (2) (1) of the Planning and Development Act, 2000 as amended and development under Section 3(1) of the Planning and Development Act 2000 as amended. The Board decided that the proposed development consisted of temporary use of lands for a local event of cultural, recreational or social character and involved the placing of a temporary or moveable structure or object on the lands in connection with such a use which came under the scope of Class 37.
- The proposal in this referral does not give rise to excessive source of noise or disturbance. It will not generate any noises which are inconsistent with and incomparable to other similar noise sources in the adjoining residential areas.
- It is considered that the Planning Authority's decision in respect of the Section 5 referral was incorrect.

6.2. Planning Authority Response

- No further submission to make over and above the Planner's report dated 29th January 2018.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

Section 2 (1) of the Planning and Development Act as amended provides interpretation as follows:-

“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) the Planning and Development Act as amended states that:

“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.

Section 4 relates to Exempted Development

Section 4(1) describes when development shall be ‘exempted development’.

Section 4(2) provides that the Minister may by regulations provide any class of development to be exempted development. The Regulations which are applicable in this case are Planning and Development Regulations, 2001 (S.I. 600 of 2001).

Section 229 of the Planning and Development Act, 2000 (as amended) defines “event” as follows:

(a) A public performance which takes place wholly or mainly in the open air or in a structure with no roof or a partial, temporary or retractable roof, a tent or similar temporary structure and which is comprised of music, dancing, displays of public entertainment or any activity of a like kind, and

(b) Any other event as prescribed by the Minister under Section 241

7.2. Planning and Development Regulations, 2001, as amended

Part 2 of the Planning and Development Regulations 2001 as amended relates to Exempted Development.

CLASS 37	Limitations
Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.	<ol style="list-style-type: none">1. The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.2. On the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.

Article 9 (iii) sets out restrictions on exempted development: (i) contravene a condition attached to permission under the Act or be inconsistent with any use specified in a permission under the Act, (iii) endanger public safety by reason of such as traffic hazard

Article 10 relates to 'change of use'. Article 10(1) states that subject to certain restrictions 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.

7.3. Other

RL.3309 The question arose as to whether a certain event, comprising an outdoor cinema 'event' at the M4 Interchange Park, Celbridge, Co. Kildare is or is not development or is or is not exempted development. IN this instance, ABP concluded that the erection of a proposed outdoor cinema screen on a temporary basis constitutes 'works' which in turn constitutes development as defined under section 3(1) of the Act. The development cam within the scope of Class 37 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 as amended. It was also concluded that the development would not be affected by any of the restrictions on exemption under Article 9(1)(a) of the Planning and Development Regulations 2001 as amended. The proposed outdoor cinema event at the M4 Interchange Park is considered to be development and is exempted development.

RL.3140 The question arose as to whether internal works and reconfiguration of ancillary ground floor facilities and the occasional, infrequent and informal use of part of the equestrian centre as a dining area ancillary to the principal equestrian use is or is not development or is or is not exempted development. ABP concluded that the use of an upper floor viewing gallery of an equestrian centre for a dining area, for no more than 20 days per year is a change of use, this change of use is ancillary to the principal equestrian use on the site. The ancillary use would not give rise to material impacts in terms of wastewater or in planning terms generally having regard to the nature, scale and context of both the principal and ancillary uses, and the said use is therefore not a material change of use. ABP decided that the occasional, infrequent and informal use of an upper floor viewing gallery of an equestrian centre for a dining areas, for no more than 20 days per year, is not development.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. The question to be determined is whether the proposed use of the rear yard of an existing public house to accommodate bouncy castles for the purposes of communions, confirmations and similar functions from 12 midday to 7pm on a limited

number of occasions is or is not development and is or is not exempted development.

- 8.1.2. "Development" is defined in the Planning and Development Act as amended, except where the context otherwise requires, as 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.
- 8.1.3 Bouncy castles are inflatable objects with their use generally being temporary in nature. In this instance, the Referrer has indicated that the bouncy castles are taken down and removed each evening after use. The ephemeral nature of the bouncy castles would indicate that they do not require a means of being held/secured in place. I am of the opinion, that there are no "works" involved in this case as there is no act or operation of construction, excavation, demolition, extension, alteration, repair or renewal required to erect the bouncy castle.
- 8.1.4 It remains to be determined whether (i) there is a change of use as a consequence of using the bouncy castle for functions on the land as outlined by the referrer and (ii) whether this change of use is material so as to constitute development. Upon inspection, I noted that the yard was not generally open to the patrons/public, contrary to the submission by the referrer. An existing door leads from the lounge of the public house via a corridor which opens into the smoking area which was granted permission under File ref. 16/224. There is an existing fire door within this smoking area that leads to the yard which confusingly refers to "Smoking Area beyond this gate". The yard is generally in use as a storage area, containing refuse bins, beer kegs/barrels etc. A barbeque was observed, however, there were no picnic benches or other evidence that the area was in use as a beer garden. Notably, planning permission was refused for the use of this yard as a beer garden and retention of a smoking area under File Ref. No. 15/680 for reasons pertaining to impact on amenities of the area. This decision was not appealed. A subsequent application File Ref. No. 16/224 was sought to retain the smoking area and for the construction of a new store to the rear which was granted permission. The area in which the bouncy castles would be placed is indicated on these plans as a yard. Therefore, it is considered that there would be a change of use to this yard area in that it would now be open to the patrons of the public house when events such as

communions/confirmations occur so as to facilitate access to and supervision of the users of the bouncy castle.

8.1.5 The question therefore is whether this change of use is material. This area is used as a storage yard associated with the public house and while there is a link from the smoking area to this yard, it would appear to be for emergency purposes only. I note that signage on the door states “no alcohol beyond past this gate”. Furthermore, the yard was previously refused permission under File Ref. No. 15/680 for use as a beer garden for reasons pertaining to impact on residential amenities. The store area as indicated on Drawing No. 10214-703 pertaining to File Ref. No. 16/224 has not been constructed but rather a shed is located in this area. While not of particular relevance to this referral before the Board, I observe that the rear boundary of the yard differs in the floor plans submitted with File Ref. No. 15/680 and File Ref. 16/224. Pursuant to my inspection of the lands, I note that the floor plan pertaining to the former application appears to correspond with the existing rear boundary of the yard.

8.1.6 With regard to precedent case regarding intensification, I refer to RL.2185 where a question arose as to whether the provision of a beer garden on a paved area, enclosed by fencing and partly covered by a canopy, and the provision of picnic tables thereon, to the rear of a public house, is or is not development and is or is not exempted development. The Board decided that the development was not exempted development as follows:

- The terrace, fencing, and canopy constituted works that were development per Section 3 of PDA, 2000; and did not come within the scope of the exempted development provisions of Schedule 2 of PDR, 2001.
- The use of part of the yard of the licensed premises as a beer garden had material consequences in terms of the proper planning and sustainable development of the area
- The use as a beer garden constituted a material change of use, being an extension of the net floorspace of the commercial activity and consequently an intensification of use.

While I am of the opinion, that there are no “works” involved in this instance, I consider that the use of the yard for accommodating bouncy castles for the purposes of communions/confirmations would represent an extension of the net commercial

floorspace associated with the existing public house. In order to access this yard the fire door from the smoking area to the yard would be required to be open at all times or removed to ensure access to this area. giving rise to new material planning considerations such as intensification of use, impact on residential amenities, traffic/parking considerations. I, therefore, conclude that the use of the rear yard for the purposes to accommodate bouncy castles is a material change of use and as such constitutes “development”.

8.2. Is or is not exempted development

8.2.1. In respect of Part 4 of Schedule 2 of the Planning and Development Regulations 2001, as amended, Article 10 provides that 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—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

8.2.2. In this regard, I refer the Board to the previous permission File Ref. No. 15/680 in which the applicant sought to retain a smoking area and beer garden to the rear of the existing property that the planning authority refused. The subsequent application to retain the smoking area indicated the area subject to this referral as a yard. Therefore, the use of the yard for the purposes of accommodating bouncy castles would in my opinion be inconsistent with the permitted and established use of the yard for storage purposes. Again, I refer to the signage which indicates that “no alcohol past this gate”. I also note that previous plans indicated an emergency fire escape route across this yard.

8.2.3. Where the Board concludes that the previous refusal for a beer garden and the subsequent permission for retention of a smoking area and yard (as indicated on the plans associated with File ref. 16/224 does not restrict the yard solely to use as a storage yard, I will refer to the exempted development provisions for completeness of this assessment which provide for circumstances in which a material change of use, though classified as development is exempt. The Referrer considers Class 37 to be of relevance in this instance which is cited as follows:-

“Development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.”

8.2.4. The question before the Board does not relate to the use of land for any fair, funfair, bazaar or circus. With regards to any “local event” I consider that consideration should be given to whether the use of the lands in question for accommodating a bouncy castle for the purposes of communion and/or confirmation and similar functions associated with a public house constitute a “local event”. It is my opinion that a “local event” refers to a community type event that is open to members of the public to attend. The functions referred to in the question before the Board are private in nature and are hosted within the structure and lands associated with the public house, a commercial entity. There would be restricted access to the lands in question in that only patrons of the public house and those attending the private function would be able to attend. Therefore, I do not consider that occasions referenced by the Referrer can be considered “local events” and as such I conclude that this Class of exemption does not apply. There are no other exemptions provided in the Planning Acts and Regulations, by which the development would 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 use of the rear yard associated a public house to accommodate bouncy castles for the purposes of communion and/or confirmation parties and similar functions on a limited number of occasions is or is not development or is or is not exempted development:

AND WHEREAS on behalf of Cathal Byrne, Tony Ewbanks care of Environmental Heritage Planning, 154 Riverside Drive, Red Barns Road, Dundalk, Co. Louth requested a declaration on this question from Louth Council and the Council issued a declaration on the 1st day of February 2018 stating that the matter was development and was not exempted development:

AND WHEREAS Tony Ewbanks on behalf Cathal Byrne referred this declaration for review to An Bord Pleanála on the 28th day of February, 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;
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended;
- (d) Articles 6 and 10 of the Planning and Development Regulations, 2001, as amended;

- (e) the planning history of the site including planning register reference number 15/680 and 16/224;
- (f) the character and pattern of development in the area; and
- (g) the submissions on file:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use of the rear yard for accommodating bouncy castles associated with events such as communions and/or confirmations or similar events for a limited number of days per year is a change of use;
- (b) The use of the area in question for accommodating bouncy castles would give rise to an intensification/increase in floor area associated with the public house which is not considered ancillary to the public house;
- (c) The use of the area in question would give rise to material planning consequences arising in relation to traffic, noise and general disturbance and accordingly this use constitutes a material change of use in this particular instance, and is, therefore, development;
- (d) The planning history pertaining to the site which establishes the use of the yard for purposes of storage and means of emergency fire exit and the use of the area for accommodating a bouncy castle is inconsistent with the specified use;
- (e) This use does not come within the scope of Class 37 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as the occasions referred to are not considered to be local events;

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 use of the premises of the public house to accommodate bouncy castles for the purpose of communion, and/or confirmations and similar functions on a limited number of occasions is development and is not exempted development.

Joanna Kelly
Senior Planning Inspector

3rd February 2019

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