



An
Bord
Pleanála

Inspector's Report ABP-301523-18

Question	Whether the erection of an addition of a structure to the rear of a brewery comprising three fermentation tanks and associated cladding constitutes development and is or is not exempted development
Location	Flesk Road, Killarney, County Kerry
Declaration	
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	EX 632
Applicant for Declaration	Killarney Brewing Company Ltd.
Planning Authority Decision	Not Exempted Development
Referral	
Referred by	Killarney Brewing Company Ltd.
Inspector	Kevin Moore

1.1. Site Location / Description

- 1.1. Killarney Brewing Company is located on the west side of Flesk Road to the south of Killarney town centre. It comprises a micro-brewery that includes a visitor's interpretive area, a merchandise sales area, a tap room and ancillary food service and restaurant area. There is a yard, service area and parking area to the rear of the building. Three fermentation tanks are sited at the northern end of the yard adjoining the commercial property that abuts the premises.

2.0 The Question

- 2.1 The question before the Board is:

Whether the erection of an addition of a structure to the rear of a brewery comprising three fermentation tanks and associated cladding constitutes development and is or is not exempted development.

3.0 Planning Authority Declaration

- 3.1 On 3rd April, 2018, Kerry County Council issued a declaration stating that the works the subject of the referral do not constitute exempted development, having regard to the works coming within the scope of section 2(1) of the Planning and Development Act, the works coming within section 3(1) of the Act, and the nature of the development not coming within the scope of Class 21, Part 1, Schedule 2 of the Planning and Development Regulations.

4.0 Planning Authority's Reports

4.1 Planning Report

The Senior Executive Engineer submitted that the originally permitted development was for an integrated tourism micro-brewery and that it was assessed by the Council having regard to its location on the Muckcross Road and the residential zoning of the land in the Killarney Town Development Plan. It was stated that exemption at Class 21 is restricted to land occupied and used by an industrial undertaker for the carrying on, and for the purposes of, any industrial purpose and that the overall development on the site is for the purposes of tourism and not for industrial purposes. It was concluded that the exemption available at Class 21 does not apply in this case and that the works constitute development which is not exempted development.

5.0 The Referrer's Submission

5.1 It is submitted:

- * The addition is a structure of the nature of plant and machinery and is exempted development based on the provisions of Schedule 2, Part 1, Class 21 of the Planning and Development Regulations 2001.
- * The brewing activities that take place on the site can be considered an industrial process under the definition in the Planning Regulations and the Killarney Brewing Company may be considered an industrial undertaker.
- * The proposed addition can be considered a structure on the basis of the definition in section 2 of the Planning and Development Act. It is required to accommodate equipment that is integral to the brewing process and will not provide for workspaces. The structure would not have a roof and is freestanding. The iron frame for the cladding would be fixed to the ground within the defined planning unit.

- * The proposed addition will be constructed in similar materials to the steel cladding on the existing building. It would not result in any visual impact and would not materially alter the external appearance of the premises.
- * The proposed structure would reach a height of just over 6 metres above ground level and so would not exceed the 15 metre limit as defined in Class 21. Equally it does not exceed the height of the existing premises and would be visible to the rear of the site only.

6.0 **Statutory Provisions**

6.1 **Planning and Development Act 2000**

Section 2(1)

In this Act, except where the context otherwise requires—

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –

- (a) Where the context so admits, includes the land on, in or under which the structure is situate, and ...

“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)

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.

Section 4(1)

The following shall be exempted development for the purposes of this Act - ...

- (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;

6.2 **Planning and Development Regulations, 2001 (as amended)**

PART 2 - Exempted Development

Article 5(1)

In this Part –

“industrial building” means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

“light industrial building” means an industrial building in which the processes carried on or the plant and machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;

<p>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—</p> <p>(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,</p> <p>(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,</p> <p>(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.</p> <p>(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.</p>	<p>the premises of the undertaking.</p> <p>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.</p>
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7.0 **Assessment**

7.1 **Relevant Planning History**

7.1.1 Under ABP Ref. RL08.3361, the Board determined that the change of use of the Kerry Mineral Water Supply Co. Ltd. building to a craft brewery was development that was not exempted development. Kerry County Council, in the making of its Declaration leading to the referral to the Board, determined that the use of part of the building as a brewery by Killarney Brewing Co. Ltd. constituted an industrial use.

7.1.2 Under Planning Authority Ref. 16/620, Kerry County Council granted retention permission for a development that included the change of use of the unit to an

integrated tourism micro brewer. The site for that proposed development equated to the site the subject of the referral submitted now for the Board's consideration.

7.1.3 It is reasonable to ascertain from the planning authority's own understanding of the nature of activities that occur at the Killarney Brewing Company Ltd. premises that it consists of a brewery and associated or ancillary activities and that the use as a brewery constitutes an industrial use.

7.2 **The Question of Development**

7.2.1 The fermentation tanks and their associated cladding would comprise a "structure", being a structure or other thing constructed or made on and in the land. The installation of the fermentation tanks and erection of the associated cladding to screen these tanks would involve the carrying out of "works" by way of construction and alteration which would be carried out on and over land. The subject matter would, thereby, constitute "development" in accordance with the provisions of sections 2(1) and 3 of the Planning and Development Act.

7.3 **The Question of Exempted Development**

7.3.1 Killarney Brewery is a brewery that produces beer in a building which the public may visit. There are complimentary activities within the building that may be understood to be facilities to enhance the visitor experience – a visitor interpretive area, a merchandise sales area, a tap room and ancillary food service and restaurant area. However, it is reasonable to determine that there would not be any Killarney Brewery premises without the beer product being brewed there.

- 7.3.2 It is reasonable to determine that the brewing of beer is an industrial process, a process which includes milling, mashing, boiling, filtering, maturing, fermenting and packaging. Thus, it is accepted that the brewery undertakes an “industrial process” as defined by Article 5 of the Planning and Development Regulations.
- 7.3.3 Killarney Brewing Company Ltd. produces the beer within this brewery and it is, therefore, reasonable to ascertain that this company constitutes an “industrial undertaker” as defined by Article 5 of the Regulations.
- 7.3.4 The building in which the Killarney Brewing Company functions is a structure that houses the brewery where beer is produced on the site. An industrial process takes place on this site in the form of brewing beer. Thus, the building may be understood to be an “industrial building” under the meaning so defined in Article 5 of the Regulations. Having regard to the nature and scale of the operation and its context within a residentially zoned area (the site is zoned ‘Existing Residential’ in the current Killarney Town Development Plan), it could also be understood to be a “light industrial building”, where the processes carried on or the plant and machinery installed are such that they are carried on and installed in a residential area without detriment to the amenity of that area. Notwithstanding the brewery being defined in this instance as either an “industrial building” or a “light industrial building”, the structure as a brewery remains “industrial” in function, albeit there are other ancillary activities that are not themselves industrial in function.
- 7.3.5 There is no definition of “plant” in the Planning and Development Act or in the Planning and Development Regulations. The Oxford English Dictionary definition of “plant” includes:
Machinery used in an industrial or manufacturing process.

The definition of machinery includes:

The components of a machine.

7.3.6 The fermentation process in the making of beer allows for the conversion of sugars to ethyl alcohol. The fermentation tanks at the Killarney Brewery can reasonably be understood to be “plant” or structures of the nature of plant which are integral to the brewing of beer at the site.

7.3.7 With reference to the ‘Description of Development’ under Class 21, Part 1, Schedule 2 of the Planning and Development Regulations, the following may be understood:

- The development the subject of the referral would be carried out by an industrial undertaker on land occupied and used by this undertaker for the carrying on, and for the purposes of, an industrial process, and
- It would comprise the installation of plant or structures of the nature of plant.

7.3.8 With regard to the ‘Conditions and Limitations’ under Class 21, the following may be understood:

- The fermentation tanks are sited in the yard to the rear of the premises, within the confines of the overall brewery premises site. They are understood as being part of, and associated with, the premises and, thereby, are understood as an integral part of the brewery. They are sited to the rear of the building and are not notably visible from the wider public realm. They adjoin structures that have been historically in industrial use and which retain their industrial character in appearance. Thus, the presence of the fermentation tanks to the rear of an industrial building in this context could not be construed as plant or structures the nature of plant that would materially alter the external appearance of the premises of the undertaking, i.e. the brewery.
- The height of the fermentation tanks, being plant or structures the nature of plant, reach a height of just over six metres above ground level. Thus, they do not exceed the limitation of 15 metres above ground level.

7.3.9 Having regard to these observations, the fermentation tanks may reasonably be determined to constitute exempted development in accordance with Class 21 of Part 1, Schedule 2 of the Planning and Development Regulations 2001.

7.3.10 I note that the referral also relates to the proposed cladding of the three fermentation tanks. This cladding would effectively be a covering of the tanks, although such covering would not include a roofing over these tanks. An iron frame would be fixed to the ground and on this frame the cladding would be erected to mask, and otherwise enclose, the tanks. The cladding is intended to be consistent in appearance with the rear of the premises on the site. The form and character of this cladding may reasonably be understood to provide for a better integration of the plant with its context and to enhance the visual presentation of this plant.

7.3.11 At issue with the proposed cladding is whether such cladding constitutes an integral component or part of the plant, i.e. the fermentation tanks. The cladding, which does not include any feature that would form a roof over the tanks, could not be understood to be a building for the housing of these tanks. Such cladding would have an aesthetic quality and, to some degree, a quality that protects the tanks from exposure to the elements, activities that could impact on them in the yard area, etc. To this end, the cladding could reasonably be understood to be a structure of the nature of plant as so referenced in Class 21 as its function could reasonably be understood to be integral to the maintenance of the fermentation tanks.

8.0 Recommendation

8.1 I recommend as follows:

WHEREAS a question has arisen as to whether the erection of an addition of a structure to the rear of a brewery comprising three fermentation tanks and associated cladding constitutes development and is or is not exempted development

AND WHEREAS the said question was referred to An Bord Pleanála by Killarney Brewing Company Ltd. on the 30th day of April, 2018:

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

- (a) sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended,
- (b) Articles 5 and 6 and Class 21, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended, and
- (c) the documentation on file and the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the said installation addition would come within the scope of sections 2(1) and 3(1) of the Planning and Development Act, 2000, as amended, and would constitute development, and
- (b) the said addition would come within the scope of Class 21, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, comprising plant or structures the nature of plant relating to development by an industrial undertaker for the carrying on, and for the purposes of an industrial process:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the said provision of a structure to the rear of the brewery comprising three fermentation tanks and associated cladding is development and is exempted development.

Kevin Moore

Senior Planning Inspector

3rd September, 2018.