



An
Bord
Pleanála

Inspector's Report ABP-304098-19

Question

Whether the change of use from furniture manufacturing and associated storage to commercial self-storage is or is not development or is or is not exempted development

Location

132a Richmond Road, Dublin 3

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0057/19

Applicant for Declaration

Brendan Stanley

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Brendan Stanley

Owner / Occupier

John McGuirk / Dublin City Storage

Observer(s)

None

Date of Site Inspection

18th June 2019

Inspector

Colm McLoughlin

Contents

1.0 Site Location and Description	3
2.0 The Question	3
3.0 Planning Authority Declaration.....	4
4.0 Planning History.....	5
5.0 Policy & Context	6
6.0 Statutory Provisions	6
6.1. Planning and Development Act 2000, as amended	6
6.2. Planning and Development Regulations 2001-2019	7
7.0 The Referral.....	8
8.0 Assessment.....	9
8.1. Introduction	9
8.2. Is or is not development?	10
8.3. Is or is not exempt development?	10
9.0 Appropriate Assessment.....	12
10.0 Recommendation	14

1.0 Site Location and Description

- 1.1.** The referral site, fronting onto Richmond Road and backing onto the Tolka River, measures approximately 0.6ha in area and is located on the north side of Dublin, 1.9km from the city centre. A commercial premises trading as Dublin City Storage, operates from the site with signage along the front façade and forecourt. It contains a collection of attached single-storey structures the largest of which features a curved galvanised roof and is situated to the front, behind a raised parapet and set back 14m from the roadside. A reception to the facility is situated inside the front entrance to the building. Within the assemblage structures to the rear of this reception there are self-storage units and lockers of varying sizes, each opening onto a network of narrow internal corridors. The forecourt accommodates a steel container and commercial refuse collection bins.
- 1.2.** The northern side of Richmond Road is dominated by residential uses, while the southern side containing the referral site is characterised by a mix of commercial and residential uses, including a fuel service station and apartment complexes. Adjoining to the west is a residential property and adjoining to the east is a vacant commercial yard with a large shed structure to the rear. Ground levels in the area drop gradually moving eastwards following the Tolka River.

2.0 The Question

- 2.1.** The following is questioned by the referrer:
- ‘no requirement for change of use as existing use as a storage facility and previously as a furniture manufacturer and storage facility has not changed significantly. Would this be development or exempted development’.
- 2.2.** Following a review of the submitted information, in the interest of clarity and to comprehensively address matters raised by the referrer, it is considered appropriate that the question referred to the Board be reworded and addressed by the following question:
- whether the change of use from furniture manufacturer and associated storage to commercial self-storage, is or is not development or is or is not exempted development.

2.3. I intend to proceed with my assessment on the basis of the reworded question.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. Pursuant to Section 5 of the Planning and Development Act 2000, as amended (hereinafter referred to as 'the Act'), on the 6th day of March, 2019, the planning authority declared that the change of use from furniture manufacturing and associated storage of completed furniture (light industrial building) to a storage facility, which contains a large number of self-storage walk-in units of various sizes for short and long term rental (repository), is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The recommendation within the report of the Planning Officer (February 2019), reflects the declaration issued by the planning authority and can be summarised as follows:

- the previous use as a furniture manufacturers and associated storage of completed furniture would fall within the planning definition of a 'light industrial building';
- the present use as a storage facility would fall within the planning definition for a 'repository';
- the change of use would be material, and is therefore considered to constitute development;
- there are no specific legislative provisions that would exempt the change of use of a light industrial building to a repository, therefore, the development would not constitute exempted development.

3.2.2. Other Technical Reports

- None received.

4.0 Planning History

4.1. Referral Site

4.1.1. The planning history associated with the referral site, includes the following planning application:

- Planning Ref. 2332/12 – retention permission was refused by the planning authority in May 2012 for change of use of the premises (343sq.m) from furniture manufacturing / retail to car sales and associated works, due to the lack of adequate provision for parking and servicing on site and the resultant impact on traffic congestion, parking availability and the residential amenities of the immediate area.

4.1.2. The following enforcement cases relate to the referral site:

- Enforcement Ref. E0952/18 – a warning letter was issued in October 2018 under Section 152 of the Act, regarding an alleged change of use and erection of buildings and structures;
- Enforcement Ref. E0060/12 – an enforcement case was opened in February 2012 regarding a change of use from a furniture showroom to a car sales business, without the benefit of planning permission;
- Enforcement Ref. E0258/02 - change of use from a saw mill to a shop, with air vents blocked between Nos.128 & 132 Richmond Road. This case was closed as the use was considered to have been established for more than five years, according to the Planner's Report under Planning Ref. 2332/12.

4.2. Relevant Referrals

4.2.1. The following referral is considered relevant:

- ABP Ref. PL29C.RL.3137 – in February 2014 the Board declared that the change of use from a furniture manufacturing facility to a whiskey distillery at 33 Mill Street in Dublin 8, was development and was not exempted development, as there was no authorisation to use the site for an industrial use, the change of use was material and there were no planning exemptions allowing for the change of use.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The referral site has a zoning objective 'Z10 - mixed-use inner suburban/inner city sites' within the Dublin City Development Plan 2016-2022, with a stated objective to consolidate and facilitate the development of inner-city and inner-suburban sites for mixed uses, with residential the predominant use in suburban locations and office/retail/residential the predominant uses in inner-city locations.

6.0 Statutory Provisions

6.1. Planning and Development Act 2000, as amended

- 6.1.1. Section 2(1) of the Act states the following:
- 'development' has the meaning assigned to it by Section 3;
 - 'structure' means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined;
 - 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'
- 6.1.2. Section 3(1) of the Act states that:
- '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 over land'.
- 6.1.3. Section 4(1) of the Act sets out various forms of development that are exempted development.
- 6.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.
- 6.1.5. Section 4(4) of the Act exempted development provided for under subsection 4(1)(a), (i), (ia) and (l) and subsection 4(2) is restricted, if an environmental impact assessment or an appropriate assessment is required.
- 6.1.6. Section 157(4)(a) of the Act includes the following:

- ‘no warning letter or enforcement notice shall issue and no proceedings for an offence under this Part shall commence:

(i) in respect of a development where no permission has been granted, after seven years from the date of the commencement of the development.

6.2. Planning and Development Regulations 2001-2019

- 6.2.1. For the purposes of interpretation, Article 5(1) within Part 2 of the Regulations referring to ‘exempted development’ provides the following definitions that are of relevance in the consideration of this case:
- ‘light industrial building’ means an industrial building in which the processes carried on or the plant or 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;
 - ‘repository’ means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;
- 6.2.2. Article 10(1) of the Regulations states that development, which consists of a change of use within 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, inter alia, -
- (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.
- 6.2.3. Part 4 of Schedule 2 to the Regulations specifies that:
- Class 4 refers to use as a light industrial building;
 - Class 5 refers to use as a wholesale warehouse or as a repository.

6.2.4. Article 11 of the Regulations states that:

- development commenced prior to the coming into operation of this Part and which was exempted development for the purposes of the Act of 1963 or the 1994 Regulations, shall notwithstanding the repeal of that Act and the revocation of those Regulations, continue to be exempted development for the purposes of the Act.

7.0 The Referral

7.1 Referrer's Case

7.1.1. The referrer's submission was received by An Bord Pleanála on the 1st day of April 2019 and was accompanied by a site location map, correspondence from the site owner, correspondence stated to be from two previous leaseholders of the premises, extracts from the internet referring to an operation on Richmond Road and street view images of the subject premises. The submission can be summarised as follows:

- light industrial, warehousing and repository use has been long established on the site (pre-1963);
- the history of the site clearly points to the use as a repository, despite planning applications not specifically referring to this, and this repository use should be allowed to continue;
- after 1965 the premises was subdivided into specific storage areas, as was also the case until April 2015, when the premises was last in use as a furniture storage facility;
- it is accepted that the internal alterations to the layout to provide a modern storage facility may require the submission of a planning application for retention permission.

7.2 Planning Authority's Response

7.2.1. The planning authority did not respond to the referrer's submission.

7.3. Observations

7.3.1. None received.

8.0 Assessment

8.1. Introduction

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area, but rather whether or not the matters in question constitute development, and if so, fall within the scope of exempted development within the meaning of the relevant legislation.
- 8.1.2. In their referral, the referrer provides information regarding the historical uses of the site, including correspondence stated to be from previous occupiers of the premises and the current owner of the site. Several of the claims set out conflict with the details contained in the planning history for the site. It is stated that prior to 1963 the premises was used as a sawmill and that between 1963 and 1965 the premises continued to be used as a sawmill, but with timber goods manufactured and stored on site. These operations continued under new management for an unspecified period and at some stage following this and for a seven-year period, a Mexican furniture store and makers operated from the premises with sales to the public. An enforcement case (Ref. E0258/02), referred to by the planning authority in their report when considering Planning Ref. 2332/12, related to a change of use from a saw mill to a shop. According to the planning authority, this case was closed as the use was considered to have been established for more than five years.
- 8.1.3. From April 2013 to April 2015 the referrer claims that the premises was used as a furniture repository for a furniture store. Another statement provided by the owner states that the premises was used as a furniture repository and sales premises from 2008 to 2019. Photographs along the front of the premises are included with the referral and these appear to be extracted from online streetview images of the area. The images are understood to date from June 2009, June 2014 and July 2014. The more recent images from 2014 reveal that the forecourt area to the premises accommodated furniture of various types.

8.2. Is or is not development?

- 8.2.1. The existing premises operates as a self-storage facility for domestic and commercial customers, with a range of storage and locker units. Prior to issuing their declaration on this case, the planning authority was satisfied that the present use could be considered as a 'repository', based on the interpretation provided in Article 5(1) of the Regulations. Based on the information on the file, my site visit and information available, I am satisfied that the present use for self-storage fits the planning definition of a 'repository'.
- 8.2.2. The first issue therefore, is whether the use of this site as a self-storage facility, is development. In the question initially put forward to the planning authority and in the referral to the Board, the referrer stated that the previous use of the premises was as a furniture manufacturers and storage facility. Based on the interpretation provided in Article 5(1) of the Regulations, the previous use of the premises would, therefore, be as a light industrial building.
- 8.2.3. The current use of the site as a self-storage facility has arisen as a result of a change of use from the previous use as a light industrial building. For such change of use to be classified as 'development', it must be a material change of use. Case law (Monaghan County Council v. Brogan [1987] I.R.333 [S.C.]) indicates that the term 'material' in this context means material in planning terms, that is whether the issues raised by the change of use would raise matters that would normally be considered by a planning authority if it were dealing with an application for planning permission, such as residential amenity, traffic safety or policy issues in relation to statutory plans. It is quite evident that such issues would be raised from this change of use, including the implications for traffic, servicing and car parking along a busy and relatively narrow road, and the amenity of neighbouring properties. Therefore, I am satisfied that the change of use is material, and, therefore, that this material change of use is 'development' within the meaning of Section 3 of the Act.

8.3. Is or is not exempt development?

Authorised Use

- 8.3.1. The only planning application I am aware of relating to the site is Planning Ref. 2332/12, which relates to a refusal of retention planning permission in May 2012 for

a car sales use to operate from the premises. This planning application describes use of the premises prior to lodgement of the application as being for 'furniture manufacturing / retail'. The referrer notes that there is no planning permission authorising a specific use for the site. Therefore, I am satisfied that the use of the site as a self-storage facility has not been authorised by a grant of planning permission.

Established Use

8.3.2. The referrer contends that since 1963 the premises was used solely as a furniture repository premises, as part of a light industrial use, and that this justifies that the present use would constitute exempted development.

8.3.3. In theory, if the development had taken place prior to the 1st day of October, 1964, the operative date for the Local Government (Planning and Development) Act 1963, and such use had remained at the same level and had not materially intensified, nor been abandoned, then it would be 'established' and hence would be exempted development. However, there is no evidence that this is the case here, and indeed the information available would appear to comprehensively counter this claim. The evidence provided by the referrer suggests that the use of the site between 1963 and 1965 was as a saw mill, which again could be considered as a light industrial building. Therefore, I am satisfied that the use of the site as a self-storage facility has not been established.

Exemptions

8.3.4. Article 10(1) of the Regulations states that development, which consists of a change of use within one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act. Part 4 of Schedule 2 includes Class 4 (use as a light industrial building) and Class 5 (use as a repository). The use of the site as a commercial self-storage facility is development, and is not exempted development because there is no provision in the Act or the Regulations, by which it would be exempted.

Restrictions

8.3.5. For completeness, I address the potential for restrictions to exempted development under Section 4(4) of the Act (appropriate assessment) within Section 9.0 of this report.

Long-Established Use

8.3.6. The referrer contends that due to the time period that has elapsed, the repository use of the site has become a long-established use and a grant of planning permission would not be required to make this present use authorised. The present use is therefore considered by the referrer to be immune from enforcement action by the planning authority, presumably based on an assumption that Section 157(4) would provide for this. This is incorrect, as there is no link between Sections 5 and 157(4) of the Act. Simply because a development, without the benefit of planning permission, is claimed to have been established prior to the coming into force of the Local Government (Planning and Development) Act 1963 and it may be immune from prosecution or enforcement, this does not alter the fact that the development is unauthorised. The development remains unauthorised, even if enforcement action may be statute barred. If it is not exempted development, it cannot become exempted over time. It is either exempted development or it is not, based on the legislation. In this case, as I have outlined above, the subject development is not exempted development.

9.0 Appropriate Assessment

9.1. Stage 1 – Screening

9.1.1. A report screening for Appropriate Assessment was not submitted as part of the referral.

9.1.2. The site is not directly necessary to the management of a European site. European sites proximate to the appeal site, including Special Areas of Conservation (SAC) and Special Protection Areas (SPA), which the appeal site could be indirectly connected with, comprise the following:

Site Code	Site Name	Distance	Direction
004024	South Dublin Bay and River Tolka Estuary SPA	1.5km	east
000210	South Dublin Bay SAC	4.2km	east
000206	North Dublin Bay SAC	4.5km	east

004006	North Bull Island SPA	4.5km	east
000199	Baldoyle Bay SAC	8.4km	northeast
004016	Baldoyle Bay SPA	8.9km	northeast
000202	Howth Head SAC	10.1km	northeast
003000	Rockabill to Dalkey Islands SAC	10.7km	east
004025	Malahide Estuary SPA	10.8km	northeast
000205	Malahide Estuary SAC	10.8km	northeast
004117	Ireland's Eye SPA	12.5km	northeast
002193	Ireland's Eye SAC	12.8km	northeast
004113	Howth Head Coast SPA	12.9km	northeast
004172	Dalkey Islands SPA	14.1km	southeast
001209	Glenasmole Valley SAC	14.3km	southwest
002122	Wicklow Mountains SAC	14.4km	south
004040	Wicklow Mountains SPA	14.7km	south

9.1.3. Qualifying interests and conservation objectives for each of the above sites are listed on the National Parks and Wildlife Services (NPWS) website (www.npws.ie).

9.1.4. The nearest pathway to the aforementioned designated sites from the appeal site is the Tolka River, which is situated along the rear boundary of the appeal site, flowing in an easterly direction directly into Dublin Bay. With the exception of the South Dublin Bay SAC (Site Code: 000210), South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), the North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC (Site Code: 000206), I am satisfied that the other sites proximate to the appeal site can be 'screened out' on the basis that significant impacts on these European sites could be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct hydrological or other pathway to the appeal site.

9.1.5. Having regard to the above, including the qualifying interests and conservation objectives for each of the above sites, the urban context and the commercial nature

of the development, I consider that the only potential pathway between the appeal site (source) and the four European sites (receptors) would relate to drainage during operation. There is a direct pathway to coastal SACs and SPAs via the Tolka River.

- 9.1.6. Having regard to the limited nature and scale of the development, involving a change of use where no construction works or intervention in the natural surrounds are involved, and the existing piped services, I am satisfied that there is no likelihood that pollutants from the development during operation could reach the designated sites in sufficient concentrations to have any likely significant effects on these sites in view of their qualifying interests and conservation objectives.
- 9.1.7. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the South Dublin Bay SAC (Site Code: 000210), South Dublin Bay and River Tolka Estuary SPA (Site Code: 004024), the North Bull Island SPA (Site Code: 004006) and the North Dublin Bay SAC (Site Code: 000206) in light of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment and submission of a Natura Impact Statement is not therefore required. Accordingly the restriction on exemptions under Section 4(4) of the Act, would not apply in this instance.

10.0 Recommendation

- 10.1.** 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 change of use from furniture manufacturer and storage facility to a commercial self-storage facility at 132a Richmond Road, Dublin 3, is or is not development or is or is not exempted development:

AND WHEREAS Brendan Stanley of Dublin City Storage, 132a Richmond Road, Dublin 3, requested a declaration on this question from Dublin City Council, and the Council issued a declaration on the 6th day of March,

2019, stating that the matter is development and is not exempted development:

AND WHEREAS Brendan Stanley referred this declaration for review to An Bord Pleanála on the 1st day of April, 2019:

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

- (a) sections 2, 3, 4 and 157 of the Planning and Development Act 2000, as amended,
- (b) articles 5 and 10 of the Planning and Development Regulations 2001-2019 and Classes 4 and 5 of Part 4 of Schedule 2 to those Regulations,
- (c) the planning history of the site,
- (d) the provisions of the Dublin City Development Plan 2016-2022,
- (e) the submissions on file from the referrer:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the previously use of the site for light industrial purposes as a saw mill for furniture manufacturing and associated storage and change to the current use of the site for commercial self-storage, constitutes a change of use, which is considered to be a material change of use and is, therefore, development within the meaning of Section 3 of the Planning and Development Act 2000, as amended, and;
- (b) there are no provisions in the Planning and Development Act 2000, as amended or in the Planning and Development Regulations 2001-2019, made thereunder, whereby the said change of use is exempted development, and;
- (c) on the basis of the planning history of the site, the Board is satisfied

that the said commercial self-storage use is not an authorised use and;

(d) on the basis of the evidence submitted on the file, the Board is satisfied that the said commercial self-storage use did not commence prior to the 1st day of October 1964, being the operative date of the Local Government (Planning and Development) Act 1963, and hence is satisfied that the use is not an established use and;

(e) the provisions in the Planning and Development Act 2000, as amended, which prevent the issuance of a warning letter or enforcement notice, or the taking of proceedings for any offence under the Act in respect of unauthorised development after a period of seven years from the commencement of that development, do not alter the status of that development nor do they establish it as exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the use of 132a Richmond Road, Dublin 3 as a self-storage facility, is development and is not exempted development.

Colm McLoughlin
Planning Inspector

13th January 2020