



An  
Bord  
Pleanála

## Inspector's Report ABP-304548-19

### Question

Whether the change of use from the manufacturing of kitchen units to manufacturing steel fabrication is or is not development or is or is not exempted development.

### Location

Rathgory, Dunleer, Co. Louth.

### Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5 2019/16

Applicant for Declaration

Liam and Deirdre Ryan

Planning Authority Decision

Is exempted development

### Referral

Referred by

Liam and Deirdre Ryan

Owner/ Occupier

Kevin Wall

Observer(s)

None

Date of Site Inspection

23<sup>rd</sup> of August 2019

Inspector

Angela Brereton

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## 1.0 Site Location and Description

- 1.1. The application site is located in the rural area on unzoned land at the end of a laneway in the townland of Rathgory to the south of Dunleer. The site is accessed via a narrow cul-de-sac public road off the R132 and lies to the east of the M1. The site comprises of 1 no. building (floor area 858sq.m) with a ridge height of 6.5m on a concreted and gravelled yard area of .27ha. The northern section of the site had been used for storage and racking of steel girders with manufactured products. This now appears to have ceased. There was steel fabrication activity in connection with the use ongoing within the building on the day of the site visit.
- 1.2. The site is divided by the cul-de-sac narrow surfaced public road (L-22905) and the land within their ownership on the northern side of the road is now used for parking of cars and vehicles associated with the use. The road in the area of the site is not in good condition and has some uneven surface areas and potholes. There are some one off ribbon houses to the west with vehicular accesses on either side of this access roadway.

## 2.0 Planning Authority

### 2.1. Question to the Council

Whether the use of a building previously granted permission and used for the manufacturing of kitchen units to a use for steel fabrication is or is not development or is or is not exempted development within the meaning of the Planning and Development Act 2000 (as amended).

### 2.2. Referrer's Case to the Council

Brady Hughes Consulting submitted a Section 5 Referral to the Council on behalf of proximate local residents Liam and Deirdre Ryan. In summary (note many of the issues raised are considered further in the context of their Referral to the Board below) they raise the following issues:

- They provide a background to the history of development on the subject site.
- The steel fabrication business is detrimental to their residential amenities.

- The change of use from timber workshop and showroom (specified in Condition no. 1 of Reg.Ref. 05/1008 to machining and fabrication of heavy steel sections for the construction industry is development as defined in the Planning and Development Act 2000 (as amended) and is such that it requires planning permission.
- They refer to case law and to intensification of use. They consider that a material change of use has occurred.
- The use has materially changed from the timber workshop envisaged in the Reg.Ref.05/1008 permission. The character of the use has altered and is not consistent with the permitted use (condition no.1 refers).
- The current use is no longer light industrial, it is a heavy industrial use that has an impact on the proper planning and sustainable development of the area.
- It is their opinion that the content of Article 9(1)(a) subsections (i),(iii) and (xi) of the Planning and Development Regulations 2001 (as amended) disappplies any exemption that may have been considered to apply.
- Article 10 of the Regulations is also relevant, in particular 10(1)(b) and they provide details of this. They also refer to Part 4 of Schedule 2 and Class 4: Use as a Light Industrial Building.
- The use permitted in Reg.Ref. 05/1008 could be operated in a residential area whereas the current heavy industrial steel fabrication and assembly business is not such a use. They include photographs of the subject site.
- This constitutes 'Development' as defined by the Planning and Development Act 2000 (as amended) and does require planning permission.

### 2.3. Declaration

Louth County Council concluded that the change of use of the property for steel fabrication is exempted from the requirement to obtain planning permission under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

## 2.4. Planning Authority Reports

The report refers to the planning history of the site, and the following statutory provisions:

- Planning and Development Act 2000 (as amended)

Sections 2, 3 and 4.

Planning and Development Regulations 2001 (as amended)

Article 9(1), Exempted Development – Classes of use, Part 4.

Also: Irish Planning Law and Practice (O'Sullivan and Shepherd)

intensification and regard to Material change of use of a structure or land.

Their assessment included the following:

- They have regard to the planning history and provide that having established that the applicant has permission for a manufacturing/industrial use on the site, the issue of change of use or the intensification of the permitted use given the existing use of the site is explored using case law.
- They concluded that it has been established that permission for a manufacturing/industrial use (steel fabrication) exists for the following reasons:
  - The permission granted for kitchen/manufacturing workshop under ref. no. 05/1008.
  - The accepted definition of workshop.
  - The definition of an industrial process under the P&D Regulations 2001.
  - The commercial levies attached to permission 05/1008.
  - The existing use is not a material change of use from that previously permitted.
  - There has been no significant change in the use of the structure or land which is material in planning terms for development to be deemed to have taken place. Continuation of use does not amount to development.

- Given the definition of ‘development’, the authorised planning history of the property as a manufacturing workshop and based on the information available to the planning authority, they consider that the existing use (steel fabrication) falls under the scope of the existing permission on site and there is not a change of use and as such does not constitute development.
- Based on the plans and information submitted to the PA, they consider that the proposed development does fall under the scope of the Exempted Development – Classes of use, Part 4 of the Planning and Development Regulations 2001-2012 (as amended).

## 2.5. Other Technical Reports

None

## 3.0 Planning History

The Planner’s Report provides a detailed planning history of the site. This includes the following:

- Reg.Ref.05/1008 – Permission granted subject to conditions by the Council for a Change of use of existing outbuildings from storage use to timber workshop and showroom, to include reclad of existing building with metal cladding, new septic tank, car parking and all associated works.

Condition no.1 is of note and is referred to in the Assessment Section below.

- Reg.Ref.18/711 –Retention Permission refused by the Council for retention of outdoor steel storage area in conjunction with adjoining business, vehicle turning area and car parking as constructed was refused by the Council in October 2018. Reasons for refusal included adverse impact on residential amenities and depreciate the value of property, excessive noise caused by loading and unloading of steel and by heavy good vehicles turning on the subject site resulting from the storage and operation of the commercial business on the subject site, visual intrusion and injurious to amenities and contrary to the proper planning and sustainable development of the area.

Copies of these decisions are included in the Appendix to this Report.

### **3.1. Enforcement**

#### UD Case 17/U103

There is a considerable history of enforcement on the Planning History file. This includes a Warning letter issued to Mr Kevin Wall (owner of the land) regarding the unauthorised outdoor steel storage and vehicle turning area.

Planning application lodged under Reg.Ref. 18/711 – retention refused.

Subsequently this storage area and turning area has been removed. UD case closed.

## **4.0 Policy Context**

### **4.1. Louth County Development Plan 2015-2021**

The subject site lies in a rural area to the east of the M1, south of the town of Dunleer and north of Monasterboice. The site is not subject to any specific designations and it is removed from features of archaeological interest, designated scenic routes, views or and prospects and from sites of nature conservation interest, including European Sites.

Section 3.3 provides the Rural Development Strategy and this includes regard to and support for sustainable Rural Enterprise.

### **4.2. Natural Heritage Designations**

There are no proximate designated sites.

## **5.0 The Referral**

### **5.1. The Question to the Board**

- The Referrer's Question is whether or not the change of use that has already occurred at this specific premises was or was not development, and whether it would require planning permission, given that there was a condition attached

to the original planning permission specifically limiting the use of the building to 'timber workshop'.

## 5.2. Referrer's Case to the Board

Brady Hughes Consulting has submitted a Section 5 Referral to the Board on behalf of Liam and Deirdre Ryan. Their case includes the following:

### *Background*

- His clients have a young family and live adjacent to the site and premises.
- This building was used as a timber workshop by Kevin Wall (owner of the building) from 2006 to 2008 approx. During that time they had a good relationship with the business which operated in accordance with the provisions of permission Reg.Ref.05/1008.
- Following the closure of Mr Wall's timber workshop, the premises was occupied by Swift Engineering Ltd around 2013.
- Swift Engineering Ltd make and erect steel framed buildings.
- This changed Mr Wall's furniture business to Swift Engineering's heavy steel fabrication business and has had a significant adverse impact on their residential amenities.
- This is in respect of noise, vibration, hours of operation, number of employees, number and nature of deliveries and road safety (in particular the safety of pedestrians).
- It is the case that this change in use and working practices in this building adjacent to their home has had a detrimental effect on the value of their property.

### *Constitutes Development*

- They are of the view that changing the use from a timber workshop to a steel fabrication facility constitutes development and that it is development which requires a grant of planning permission.

- Their reasons for forming this view are set out in the documents submitted to Louth Co.Co. with their declaration application.
- Their main reason is that condition no. 1 of permission Reg.Ref. 05/1008 limits the use to timber workshop, and it limits its operation to accord with the details and information provided to the planning authority, on foot of which permission was granted.

#### *Intensification of Use*

- They consider that an intensification of use has occurred relative to the current business, with increased staff, longer hours of work, outside activities etc.
- They believe that there are environmental risks and traffic risks associated with the current operation, and that these were not considered in 2005 when permission for the timber workshop was being considered.
- They consider that a material change of use has occurred and note that the effects of change on their ability to enjoy living in their home relative to noise, disruption, weekend and late night working etc.

#### *The Council's Decision*

- They consider that the Council's decision does not properly reflect the question posed. Their Question now put to the Board is as noted above.
- The Question the Council considered related to a 'building' but the decision issued related to 'the property'. They consider that a broad question of principle was considered and then applied to this specific property.
- They do not consider that this is the correct approach – the specifics of this property are very relevant, but they were not considered in any meaningful way.
- They provide that no rationale is provided for the conclusions reached in the Planner's Report.
- They note that Condition no.1 of Reg.Ref. 05/1008 has not been referred to nor considered in the Planner's Report and they provide that this condition is material to the question they submitted to the Council.

- The scope of this permission is limited significantly by its conditions and these are not considered.

#### *Case Law*

- The Referrer asks the Board to examine the case law referred to in the Planner's Report.
- Various cases are noted and it appears that they justify the decision reached. They believe that the judgements issued in every one of these cases supports their client's position.
- They provide details of these cases relative to this Referral. In their opinion none of the cases quoted support the conclusion reached by the PA in any way.

#### *Conclusion*

- They ask that the details and information they have submitted to the Council with their application be taken into consideration by the Board when determining this Section 5 declaration referral.
- They consider that the change from timber work shop to steel fabrication facility, noting condition no.1 of Reg.Ref.05/1008 is 'Development' as defined by the Planning and Development Act 2000 (as amended) and that it does require planning permission.

### **5.3. Planning Authority Response**

Louth County Council provide that they have no further comment to make over and above the Planner's Report dated 1<sup>st</sup> of May, 2019.

### **5.4. Owner/ occupier's response**

The response from Kevin Wall C/O Swift Engineering includes the following:

#### *Background*

- Planning application Reg.Ref. 05/1008 was enacted and a new business operated on the premises for a number of years but due to the downturn in

the economy, it ceased operation. The building then lay unoccupied until Swift Engineering started their steel manufacturing business in 2013.

- At that time, it was deemed that the nature of the work being carried out by Swift Engineering did not require permission as per the Planning and Development Regulations 2001 – Schedule 2 Part 4 Classes of Use (in particular Class 4).
- Confirmation was then sought from the Planning Authority. They have submitted letters from the Council in connection with Ref.17 U103. This includes that it is their opinion that the change of use from timber workshop to steel fabrication unit would not constitute a material change of use from the permission granted (Reg.Ref.05/1008 refers). However, they note that external storage was not part of this permission and the Council provides that the external storage of steel material is unauthorised as it is adjacent to the public road L-22905-0.
- They note that the Council's declaration under Section 5 of the Planning and Development Act 2000 (as amended) established that permission for a manufacturing/industrial use (steel fabrication) exists on site and provide a summary of the Council's reasoning relative to this issue.

*Condition no.1 of Reg.Ref. 05/1008*

- They have regard to the Referrer's assertion that the new activity being carried out on site, different materials, different machinery, different products is supposedly in contravention of this condition. It is their opinion that the exempted use and class of uses outlined in the Planning and Development Regulations 2001 does not allow for this to be a valid argument or reason for unauthorised development.
- If this argument were put forward to all change of use exemptions then there would be no exemptions allowed under the Regulations.
- The omission of the showroom does not result in material contravention. This results in a reduction of traffic visiting the site.

### *Regard to Operations*

- There are a total of 6 employees who work in the workshop during the hours of operation 8.00am - 6.00pm.
- They provide details of delivery of steel manufacturing materials on a weekly basis by articulated lorry. Once the manufacturing is carried out the products (steel gates, steel frame structures etc.) then need to be removed from the workshop and delivered to site for erection. Some of the large items need to be taken away on a similar truck to which the delivery was carried out and this is carried out once a week or sometimes every 2 weeks. These delivery numbers change from week to week depending on the workload and materials on order but on average there would be 3 articulated lorry movements per week.
- They note that the practice of using the area for outdoor steel storage has ceased operation and the area was returned to its original use as a car park in accordance with Reg. Ref. 05/1008. Louth Co. Co. were satisfied with this and confirmed that the unauthorised case was closed (they include a letter to this effect).
- They request the Board to agree with the decisions of the Council on all of these matters raised in this referral on the section 5 declaration application.

## **6.0 Statutory Provisions**

The appropriate legal context for the referral is the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended). The following specific provisions are relevant to this case:

### **6.1. Planning and Development Act, 2000**

Section 2(1) - Interpretation

In this Act, except where the context otherwise requires –

- “*use*”, in relation to land, does not include the use of the land by the carrying out of any works thereon.

- “unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—
  - (a) exempted development (within the meaning of section 4 of the Act of 1963 or *section 4* of this Act), or
  - (b) development which is the subject of a permission granted under Part IV of the Act of 1963 F21[or under *section 34, 37G* or *37N* of this Act], being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;
- “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

#### Section 3(1)

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

#### Section 4(1)

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

(h) development consisting of the use 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**

Part 2

### Article 5

Exempted Development

Interpretation for 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 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;

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is-

(a) for or incidental to the making of any article or part of an article, or....

“industrial undertaker” means a person by whom an industrial process is carried on and “industrial undertaking” shall be construed accordingly;

#### Article 6(1)

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 2.

#### Article 9(1)

This provides *Restrictions on Exemption* to which article 6 relates.

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

#### Article 10

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

#### Part 4

#### *Exempted development – Classes of Use*

Class 4 – Use as a light industrial building.

## 7.0 **Assessment**

### 7.1. **The Question**

- 7.1.1. It is of note that two similar but varied Questions paraphrased differently have been put forward, relative to the Council's determination and in the Referrer's submission to the Board and these have been noted above. Having regard to this issue I would consider a slight reformatting of the Question to the Board to take account of these issues as follows:

*Whether the change of use of a building previously granted permission (Register Reference no. 05/1008 refers) and used as a timber workshop for manufacturing of kitchen units to its current change of use for steel fabrication is or is not development or is or is not exempted development.*

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

- 7.2.1. The definition of development at s.3(1) of the Act provides that a material change of use of a structure or land would comprise development within the meaning of the Acts. The subject of this referral relates to a change of use from the manufacturing of kitchen units to use for steel fabrication. In this case I would consider that there is a material change of use from the permitted timber workshop with associated showroom/display area (Condition no. 1 of Reg.Ref.05/1008 refers) to the separate use as steel fabrication unit.

- 7.2.2. It is noted that as per the Planning History submitted the Council confirmed that while they did not consider it material, a change of use has occurred on this site from a timber workshop and showroom to steel fabrication workshop and external steel storage. The Planning Authority have confirmed that the later unauthorised external storage activity on site has now ceased. They concluded in response to the Section 5 Referral Submission that the change of use from timber workshop to steel fabrication workshop would not constitute a material change of use. However, having regard to the extant permission and to the issues raised by the Third Party Referrer, I would not consider that it has been ascertained in the documentation submitted that an intensification of use or a material change of use has not occurred.
- 7.2.3. In addition, when considered the materiality of the change in the context of the proper planning and sustainable development of the area there are in my opinion potential issues relating to intensification of use, change from light industrial and traffic issues which arise, that may have implications for this rural area and the residential amenities of adjoining properties. Having regard to these considerations, it is my opinion that the change of use from permitted timber workshop to use for steel fabrication purposes would constitute a material change in the use of this structure such that it would comprise development.

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

- 7.3.1. Under the Irish planning system, development can lawfully be carried out in either of the following circumstances:
- In accordance with the terms of the planning permission granted for it; or
  - In the case of an exempted development, without planning permission but in accordance with the terms of the exemption.
- 7.3.2. The main issue of relevance to this Referral is whether the steel fabrication use is deemed to be in accordance with the permission granted. It is of note that Permission 05/1008 which is relative to the subject site (as noted in the Planning History Section above) included Condition no. 1 which is as follows:

*The works shall be carried out in strict accordance with the lodged plans and specifications submitted to the Planning Authority, save for the conditions*

*attached below. In any event the proposed building shall be used as a timber workshop with associated showroom/display area.*

*Reason: In order to prevent unauthorised development.*

- 7.3.3. The wording of this condition and the restriction provided relative to the stated use is considered to be quite specific. Under Art. 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended) the use would contravene this condition, it is therefore submitted that the exemptions provided for under Art.6 and set out in the Second Schedule of the Regulations are not exempted in this case.

#### **7.4. Restrictions on exempted development**

- 7.4.1. Therefore, the limitation on exemptions set out at Art.9(1)(a)(i), namely that the development would not '*contravene a condition attached to a permission under the Act, or be inconsistent with any use specified in a permission under the Act*' would apply. Article 10 (1)(b) relevant to *Changes of use* is also of note i.e the development would contravene Condition no.1 of Reg.Ref.05/1008.
- 7.4.2. It is of note that in relation to Article 6 - Schedule 2 Part 1 – *Change of Use* – Class 14 does not provide an exemption relation to such a change of use.
- 7.4.3. It is not considered that it has been demonstrated that the use for 'steel fabrication' would fit into the interpretation of 'light Industrial' as provided in Article 5, Part 2 *Exempted Development* of the Planning and Development Regulations 2001 (as amended). Rather it would appear to fit more into 'industrial process'. Therefore, the exemption provided in Part 4 relative to Class 4 *Use as a light industrial building* would not apply.

#### **7.5. Regard to Precedent Cases**

- 7.5.1. The Referral cases noted below while the uses are not similar to those aforementioned in the current Referral, nevertheless are of interest as they raise the issue of material change of use, relative to conditions limiting the use and relating to extant permissions for such sites.

- 7.5.2. In Referral Ref.06F.RL3092 a Question arose as to whether the change of use of existing heavy vehicles storage yard to use as storage for containers holding domestic items at Ballymadrough, Donabate, County Dublin, is or is not development or is or is not exempted development. In this case in summary the Board concluded that such a change would be a material change of use having regard to condition no. 1(b) of the permission granted under Reg.Ref. no. 91A/1541 which stipulates that “ the site shall not be used for any other purpose except the storage of heavy vehicles..” The Board decided that the said change of use is development and is not exempted development.
- 7.5.3. In Referral Ref.88.RL.2959 a Question arose as to whether the proposed change of use of an existing car showroom to use as a shop/retail use at Nyham Motors, The Bypass, Cloughmacsimon, Bandon, County Cork is or is not development or is or is not exempted development. In this case in summary the Board concluded that the proposed change of use as a shop does not constitute exempted development by reasons of Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as amended. The Board had regard to Condition no.4 of Reg.Ref. 04/4380 and decided that the proposed change of use of an existing car showroom to use as a shop/retail use is a material change of use and is development and is not exempted development.
- 7.5.4. In Referral Ref.09. RL.2936 a Question arose as to whether the use of a portion of the overall premises for ancillary purposes, comprising multi-purpose display, reception, storage and sale activities at Unit WIE, Tougher’s Business Park, Ladytown, Naas, County Kinsale is or is not development or is or is not exempted development. In this case in summary the Board conclusion included that the said change of use of part of the light industrial unit would contravene condition no. 2 of Reg. Ref. 05/1880 which limits the use of the units to solely for light industry/warehousing/associated vehicle parking and associated office uses and for no other uses. The Board considered that the change from light industrial unit uses to include the display and sale of goods constitutes a material change of use and is development and is not exempted development.
- 7.5.5. In Referral Ref.08.RL2268 a Question arose as to whether a change of use from industrial use permitted under Reg.Ref. no.2871/79 to use for the purposes of consolidating and processing dry recyclable materials at Gortacolopa, Fossa,

Killarney, County Kerry constitutes a material change of use and is or is not development or it is not exempted development. The Board concluded that the proposal is not an industrial process as defined in Article 5 of the Planning and Development Regulations 2001(as amended), constituted a material change of use and is development and is not exempted development.

## **7.6. Regard to Case Law**

7.6.1. The Planner's Report had regard to 'Irish Planning Law and Practice' O'Sullivan and Shepherd, relative to material change of use of a structure or land and to issues concerning Intensification of Use. They quote from a number of legal cases relative to these issues. The Referrer asks the Board to examine the case law referred to in the Planner's Report as they consider that the judgments issued in every one of these cases supports their position and provide a description of such.

7.6.2. However, in this case, as noted above, the main issue is that the change of use is material because it does not comply with the stated and specific use in Condition no. 1 of Reg.Ref. 05/1008. Therefore, the issues relative to intensification of use etc, while it appears (from the Referrer's submission and as noted in the unauthorised development file) that it may be a consideration relative to differences in the operations between the previous permitted use and the current use, is not quantified and it is not considered to be the pertinent issue in this case.

## **7.7. Screening for Appropriate Assessment**

7.7.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 Recommendation

8.1. 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 of a building previously granted permission (Register Reference number 05/1008 refers) and used as a timber workshop for manufacturing of kitchen units to its current change of use for steel fabrication is or is not development or is or is not exempted development.

**AND WHEREAS** Liam and Deirdre Ryan requested a declaration on this question from Louth Council and the Council issued a declaration on the day of 3<sup>rd</sup> of May, 2019 stating that the matter was development and was exempted development:

**AND WHEREAS** Liam and Deirdre Ryan referred this declaration for review to An Bord Pleanála on the 23<sup>rd</sup> day of May, 2019:

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

- (a) Sections 2(1), 3(1) and 4(1)(h) of the Planning and Development Act, 2000, as amended, and
- (b) Articles 5(1), 6(1) and Articles 9(1)(i) and 10(1)(b) of the Planning and Development Regulations, 2001, as amended,
- (c) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) Case Law
- (e) the nature of the current use of the site

- (f) nature and authorised use of the site and the conditions attached to the permission for the said use granted under planning register reference number 05/1008, in particular condition number 1, and
- (g) the reason for the said condition which refers to the prevention of unauthorised development

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

- (a) The use of the site for steel fabrication would constitute a factual change to the authorised use of the site for such works.
- (b) Such change is considered to be a material change of use having regard to condition number 1 of the permission granted under planning register reference number 05/1008 which stipulates that “In any event the proposed building shall be used as a timber workshop with associated showroom/display area.”
- (c) The use currently on site is, therefore, development within the meaning of section 3(1) of the Planning and Development Act, 2000 (as amended),
- (d) The development would contravene a condition attached to the permission authorising the said use, and is therefore, not exempted development pursuant to Article 9(1)(a)(i) and 10(1)(b) of the Planning and Development Regulations, 2001 (as amended).

**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 said change of use from timber workshop with associated showroom/display area to steel fabrication unit is development and is not exempted development.

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Angela Brereton  
Planning Inspector

16<sup>th</sup> of September 2019