



An  
Bord  
Pleanála

## Inspector's Report ABP-305436-19

### Question

Whether or not the subdivision of the unit into two separate units, whether the use of part of the existing building for use for storage of materials and whether the use of the yard Area 3 for the storage of materials is or is not development or is or is not exempted development at Jarretstown, Dunboyne, Co. Meath.

### Location

Jarretstown, Dunboyne, Co. Meath.

### Declaration

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

RAS51941

Applicant for Declaration

Peter Cafferky, Derek Hynes &  
Tommy Gallagher

Planning Authority Decision

Is development requiring planning  
permission

### Referral

Referred by

Peter Cafferky, Derek Hynes &

|                                |   |
|--------------------------------|---|
| <b>Owner/ Occupier</b>         | Tommy Gallagher<br>Peter Cafferky, Derek Hynes &<br>Tommy Gallagher |
| <b>Date of Site Inspection</b> | 05/12/2019  |
| <b>Inspector</b>               | Conor McGrath   |

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## 1.0 Site Location and Description

- 1.1. The appeal site is located in Jarretstown, Co. Meath, a rural area approx. 3km south of Dunboyne and approximately 1.5km west of the edge of development at Hansfield / Phibblestown, in the Fingal county area, and 3km north of Leixlip. The site comprises a stated site area of 0.5ha. The western part of the site is occupied by two long-established commercial / industrial sheds set back from the public road. the smaller, western unit has a separate vehicular access to a rear yard area.
- 1.2. The eastern part of the site is open and surfaced with hard core, with a separate vehicular access. The area is served by a narrow local road and there are residential properties in the surrounding area, particularly to the southwest of the site on the opposite side of the road.

Note: The S.5 referral to the Board notes and corrects an error on the drawings submitted to the planning authority in respect of the floor area of unit 1.

## 2.0 The Question

- 2.1. In July 2019, the referrers put the following three-part question to Meath County Council:
  1. Whether or not the subdivision of the unit into two separate units is or is not development or is or is not exempted development?
  2. Whether the use of part of the existing building for use for storage of materials is or is not development or is or is not exempted development?
  3. Whether the use of the yard Area 3 for the storage of materials is or is not exempted development?

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The planning authority declaration issued on 22/08/2019 and stated:

This development is development requiring Planning Permission.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

Unit 1 and associated yard area is in use as a storage depot for telecoms equipment / cabling etc. The site is in three separate ownership folios.

Question1: The subdivision of the building into two warehouse units constitutes development, contravenes condition no. 1 of P75/1168 and is inconsistent with the specified use. Sub-division is not exempted development.

Question 2: The applicants state that one unit is being used for storage of building materials and telecoms materials. It is not specified which unit is being used for which use. Condition no. 1 of P75/1168 restricts use of the building and does not allow for any flexibility in terms of use. The change of use within a use class is not exempt under Class 9 as it contravenes condition no. 1 of P75/1168. This change is a material change of use, and the storage of materials is therefore considered to constitute development. The storage of materials which are not associated with the use specified under condition no. 1 is not exempted development.

Question 3: It is assumed that Yard Area 3 is the large open yard to the east of the subject buildings, although this is not specified. The storage of materials is considered to constitute development. The storage of materials not associated with the specified use under condition no. 1 of P75/1168 is not exempted development.

## 4.0 Planning History

**PA ref. P75/1168:** Permission granted to Quality Feeds Ltd for retention of existing use and buildings on the site, subject to 3 no. conditions, including:

- That the use of the building shall be restricted to redistribution of animal feed-stuffs and activities incidental thereto, and that in particular, processing of feedstuffs and other manufacturing activities shall not be carried on.

Reason: To confine uses to those acceptable in the area in accordance with the proposals in the applicant's architects' letter of 07/01/76

**PA ref. 77/1082:** Permission granted for a weighbridge on the western side of the buildings.

**PA ref. 78/1501 ABP ref. PL17.5/46243:** The planning authority refused planning permission for an extension on the eastern side of existing store buildings, extending into Yard Area 3. On appeal this was granted permission subject to 4 no. conditions. This permission does not appear to have been implemented.

**ABP ref. 17.71035** Permission refused for two houses on these lands in June 1986..

**PA ref. 98/2094:** Permission refused for a bungalow within eastern Yard Area 3 of the referral site.

**PA ref. 00/1675:** Permission refused for a bungalow within eastern Yard Area 3 of the referral site.

**PA ref. 00/1258 ABP ref. PL17.127077:** Permission refused on appeal in 2002 for development comprising the demolition of part of existing warehouse approved under planning register reference number P75/1168, and construction of a replacement warehouse with office accommodation, including septic tank and puraflo effluent treatment system. This application related to Unit 1 on the site.

Reasons for refusal:

- Additional non-agricultural use would be contrary to development plan policies and objectives to protect and provide for agriculture in this rural area.
- Traffic hazard because of the additional traffic movements generated on a narrow rural road unsuitable for use by heavy transport vehicles.

**PA ref. 00/1259:** Permission refused for alterations to the front façade of the existing warehouse building and provision of office accommodation within. This decision followed and reflected that of PA ref. 00/1258 above.

**PA ref. DA40437:** Permission refused in 2004 for a bungalow within eastern Yard Area 3 of the referral site.

**PA ref. DA50418:** Permission refused in 2005 for a bungalow within eastern Yard Area 3 of the referral site.

## Local Authority Enforcement Cases

The planning officers report notes the following enforcement history:

**UD17066:** Warning letter issued in respect of change of use of agricultural zoned site to commercial use.

**UD02188:** Enforcement notice served regarding concreting a builders yard, storage of plant and machinery, workshop and store buildings, burning of rubbish.

## Relevant Referral Cases

I note the following ABP referral cases which may be considered to be of relevance to this case:

**PL06S.RL2525:** In relation to whether the use of a portion of the building for wine importing, storage and distribution is or is not development or is or is not exempted development, the Board determined that the proposed use is of a type which comes within Class of Use 5 of Part 4 of Schedule 2 to the Regulations (Wholesale warehouse or as a repository).

**PL06D.RL3582:** The Board determined that:

- (a) internal works comprising the closure of two internal door openings in the party wall between two units would constitute “works” that are “development”,
- (b) the works necessary to subdivide the units come within the scope of Section 4(1)(h), and are, therefore, exempted development, and
- (c) the subdivision into two office units would not give rise to increased traffic movements or any other activity that would have material consequences and, therefore, would not constitute a material change of use:

**PL06S.RL3420:** The Board determined that:

- (a) the subdivision of Unit 16 into two separate units constitutes development, and this subdivision comes within the scope of section 4(1)(h) and is, therefore, exempted development.

**PL29N.RL2308:** The Board determined that:

- (a) the proposed subdivision of retail unit, to create two new retail units does not constitute a material change in the use of any structure or other land,

- (b) the subdivision involves the carrying out of works and is development,
- (c) the works affect only the interior of the structure and come within the scope of section 4(1)(h)

**PL28A.RL2464:** The Board determined that:

- (a) the erection of a wall separating two retail uses is “development”, and
- (b) the said wall affects only the interior of the structure and comes within the section 4 (1)(h).

## 5.0 Natural Heritage Designations

The site is not zoned for any natural heritage or conservation purposes. The closest site is the Rye Water Valley / Carton SAC (001398), approx. 2.6m southwest of the site.

## 6.0 The Referral

### 6.1. Referrer’s Case

The three questions should be determined separately.

- Permission was granted under ref. 75/1168 to Quality Feeds Ltd. The site was sold in 1999 and has been in use for storage since.
- The permitted use under PA ref. 75/1168 would fall under Class 9 of the 1964 regulations - use as a wholesale warehouse or enclosed repository building for any purpose. The current use would also fall under this class.
- The planning authority decision is unreasonable and no reasons are given therefor.

**Question 1: Whether or not the subdivision of the unit into two separate units materials is or is not development or is or is not exempted development?**

- Subdivision of the premises constitutes works, as defined in S.2(1), which works were undertaken within the fabric of the building and are exempt under S.4(1)(h).



- Subdivision does not impact on the permitted use for storage.
- There is no material change of use in this instance and the works are exempt under the provisions of S.4(1)(h).
- Sub-division does not give rise to increased traffic movement or other impacts.
- Previous referral cases are cited where it was determined that such sub-division was exempted development.

**Question 2: Whether the use of part of the existing building for use for storage of materials is or is not development or is or is not exempted development?**

- The permitted use of the building is as a warehouse, for storage of animal feedstuffs. This can be categorised as a “Repository” as defined in Article 5.
- The current use is as a warehouse, for different materials namely the storage of building materials and telecoms cables.
- Citing the Lackagh Rock case, it is argued that there is no material difference in terms of the impacts arising from the permitted and current uses on the site.
- The current use would not give rise to any additional traffic generation and would not involve visits by members of the public.
- The planning authority decision is based on condition no. 1 of 75/1168, which was intended to restrict activity to storage and redistribution and to prevent processing activity.
- There is no manufacturing or processing activity being carried out on the site currently and use for storage of building materials and telecom cables would not contravene that condition.
- Condition no. 1 does not remove normal exempted development rights.
- Condition no. 1 of 75/1168 was not attached to permission for the extension granted under PL17.5/46243, which made no reference to animal feedstuffs.
- In all subsequent applications, the buildings are referred to as warehouse by the planning authority and the Board.
- Use as an animal feed storage area was superceded by the 1978 application for a store, and condition no. 1 of 75/1168 is therefore not applicable.
- The planning authority failed to address the question of sub-division separately from the use of the premises.

**Question 3: Whether the use of the yard Area 3 for the storage of materials is or is not exempted development?**

- The planning authority decision is unreasonable given the permitted warehouse use of the buildings.
- The yard is a secure storage area associated with the permitted warehouse use.
- Use for the storage of building materials would not result in a material change of use of the building and would not give rise to an increase in traffic.
- Such use is exempted development.
- Condition no. 1 of 75/1168 referred only to building and not to yard areas and has been superceded.

**6.2. Planning Authority Response**

In response to the S.5 referral, the planning authority make the following points:

- The matters raised were fully considered and evaluated in the assessment of the S.5 declaration.
- With regard to S.4(1)(h), the Board are directed to the permitted external appearance of the building under P75/1168 and P78/1501, which does not include a large full height double door to the rear of unit no. 1 as constructed.
- Subdivision of the building into two units is considered to materially affect the external appearance of the structure, rendering it inconsistent with the character of the structure / neighbouring structures.

**7.0 Statutory Provisions**

**7.1. Planning and Development Act, 2000**

Section 2

“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, 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 developments 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;

## 7.2. **Planning and Development Regulations, 2001**

Part 2 Exempted Development - Article 5.

“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;

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.

Article 9 Restrictions on exemption.

- (1) 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 Changes of use.

- (1) 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

Part 4 – Exempted Development – Classes of Use

Class 5, Use as a wholesale warehouse or as a repository.

## 8.0 **Assessment**

8.1. It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the subject matter in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development. The onus of proof is on the party seeking to prove the exemption, and the development in question must fall clearly and unambiguously within the terms of the exemption claimed.

8.2. **Question 1: Whether or not the subdivision of the unit into two separate units is or is not development or is or is not exempted development?**

8.2.1. I consider that this question is limited to the sub-division of a permitted structure into two separate units and does not raise any questions of change of use. I note the historic decisions of the Board in relation to similar questions.

- 8.2.2. The referrers confirm that works have been undertaken in relation to this subdivision and that such works constitute development. The nature and extent of works undertaken to sub-divide the two units are not evident on-site and do not affect the external appearance of the building.
- 8.2.3. Having reviewed the planning history and inspected the site, I am satisfied that subdivision of the property into two units, not giving rise to any change of use and not resulting in any change to the external appearance of the structures would fall within the scope of S.4(1)(h) of the Planning and Development Acts, and would constitute exempted development.
- 8.2.4. I note reference in the planning authority submission to a doorway to the rear of unit no. 1. This door opens onto the rear yard area and provides the means of access to the unit. The original entrance to the front of the building has been partially blocked up internally, however, the external appearance of the structure has not been affected by such works. The rear entrance is not visible from the public road or surrounding lands and is not out of character with the structures on the site. Whilst I do not consider that it falls within the scope of the question currently before the Board, I consider that it could be seen to fall within the scope of S.4(1)(h).

**8.3. Question 2: Whether the use of part of the existing building for use for storage of materials is or is not development or is or is not exempted development?**

- 8.3.1. The question as framed by the referrers refers to the use of part of the existing building for storage of materials. It is not stated which part of the building is referenced or what the other part of the building is used for. From inspection of the site, I note that unit no. 1 is used for the storage of construction and other materials and equipment. Unit no. 2 does not appear to be actively or intensively used but is in use for storage purposes. In this regard and having reviewed the documentation relating to this case, I conclude that the referral is intended to relate to the use of Unit no. 1 and recommend therefore that the question should be reformulated, as follows:

“Whether the use of existing Unit no. 1 for use for storage of materials, not comprising solely animal feedstuffs, is or is not development or is or is not exempted development?”

- 8.3.2. Central to this referral is the nature of the permitted use on the site. The historic nature of the parent permission is such that full details of the planning application and permission granted under PA ref. P75/1168 are not available. Condition no. 1 of P75/1168 for retention of existing uses and buildings on the site, specifically refers to the use of buildings for “*redistribution of animal foodstuffs and activities incidental thereto*”. No processing of feedstuff or other manufacturing activities were permitted. The stated reason for this condition was “To confine uses to those acceptable in the area – in accordance with the proposals in Applicants’ Architects Letter of 7/1/76.” A copy of this letter was requested from the planning authority but has not been received.
- 8.3.3. I do not accept the referrers argument that the permitted use under 75/1168 has been superceded by the 1978 application. That subsequent application did not seek permission for a change of use and such permission was not implemented on the site.
- 8.3.4. The referrers argue that the permitted use of the buildings equates to warehouse / storage use and that the structures comprise a repository as defined in Article 5. I note that under 06S.RL2525, it was previously determined that use for the import, storage and distribution of wine came within Class of Use 5 of Part 4 - Use as a wholesale warehouse or as a repository. I consider that this would confirm the nature of the permitted use on the site and I concur with the referrers in this regard.
- 8.3.5. It is acknowledged that there has been a change in the nature of materials being stored on the site. The referral refers to the storage of building materials and telecoms cabling. The question before the Board refers only to the use of the building for the storage of materials generally and does not specify those materials. The question therefore is whether the use of the buildings for storage of materials generally, not comprising animal foodstuffs for redistribution or other incidental activities, is development and is or is not exempted development.
- 8.3.6. I consider that the use of the building for the storage of materials would fall within Class 5, Use as a wholesale warehouse or as a repository. I note that there is no public access to the facility and that the use would not give rise to additional traffic movements. No change of use class therefore arises.

8.3.7. Article 10(1) provides, however, that a change within a class of use specified in Part 4, shall be not be exempted development if they would—

- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission

8.3.8. Condition no. 1 of the parent permission specifically restricts the nature of the materials which may be stored and distributed from the premises. The proposed use for general storage not related to animal feedstuffs would be inconsistent with the terms of this condition.

8.3.9. While the permitted and proposed uses are both regarded as falling within Class 5, I conclude the use of unit 1 for storage of materials other than animal feedstuffs would be inconsistent with condition no. 1 of 75/1186 and would not therefore be exempted development, having regard to article 10(1) of the regulations.

**8.4. Question 3: Whether the use of the yard Area 3 for the storage of materials is or is not exempted development?**

8.4.1. The documentation submitted with the S.5 application and referral do not specify the location of yard Area 3. It is understood that it relates to the eastern part of the site, to the east of Unit no. 2. The question relates only to the use of the lands and does not include any works.

8.4.2. I note that while this area was included within the red line boundary of 75/1186, it is not clear if any uses were specified for these lands previously. Condition no. 1 of 75/1186 refers to the use of buildings only and no reference is made to external storage on the site. The referrers argue that the use of the lands for the storage of materials is associated with the permitted use of the warehouse. I note, however, that the definition of “repository” excludes the use of lands occupied by such structures.

8.4.3. I consider that any storage use of Yard Area 3 would have been ancillary to the primary use of the buildings as specified in condition no. 1 of P75/1168 and the Yard did not constitute a separate planning unit. I note that ownership of the yard has been separated from the adjoining buildings since the parent permission was granted and that use of the lands has been severed from that of the buildings, as

evidenced in reports on the previous planning cases relating to these lands, in particular PA ref. 98/2094, which reported use of the yard area for storage unrelated to use of the buildings.

- 8.4.4. I have concluded in relation to question no. 2 above that the use of that building for storage of materials generally is not exempted development. Any ancillary use of these lands for storage would therefore also not be exempted development.
- 8.4.5. I do not consider, however, that it has been established that these lands were used for storage in connection with the permission granted under 75/1168. No evidence of the nature or extent of such uses in this regard has been submitted. Subsequent applications on the lands did not identify the use of these lands for storage or other uses associated with the warehouse buildings. I note in particular that the planning application form in respect of PA ref. 78/1501, ABP ref. PL17/5/46243 stated that the existing use of these lands was as "grazing lands". I am not satisfied therefore that these lands were in use for storage associated with the use permitted under P75/1168. The use for the storage of materials would therefore constitute a change of use.
- 8.4.6. I note that there is no exemption available for the use of lands for storage of materials associated with a warehouse building. The exemption under Class 22 cannot be availed of given the warehouse or repository use of the existing structures.
- 8.4.7. In considering the materiality of the change of use, regard is had to the severance of the unit from the adjoining structures, the scale of the site relative to such structures, the traffic movements likely to be generated by such independent use and the consistent refusal of permission on the site on grounds of traffic hazard. I consider that the use of the lands for the storage of building materials would constitute a material change in the use of the lands and would constitute development and not be exempted development.



## 9.0 Appropriate Assessment Screening

9.1. The subject site is not designated for any nature conservation purposes. The closest European site is the Rye Water Valley / Carton SAC (001398), approx. 2.6m southwest of the site.

9.2. The Conservation Objective for that site is to maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected:

- 7220 Petrifying springs with tufa formation (Cratoneurion)\*
- 1014 Narrow-mouthed Whorl Snail *Vertigo angustior*
- 1016 Desmoulin's Whorl Snail *Vertigo moulinsiana*

The subject of the referral is not related to or necessary for the management of any European site and there will be no landtake or direct loss of habitat within any such site. Similarly, there are no direct connections between the site and any Natura Site.

On the basis of the information available, which I consider adequate in order to issue a screening determination, it is reasonable to conclude that the matters the subject of this referral individually or in combination with other plans or projects will not be likely to have a significant effect on European sites Rye Water Valley / Carton SAC (001398), or any other European site in view of the site's conservation objectives, and that Stage 2 Appropriate Assessment (and submission of an NIS) is not therefore required. In reaching this conclusion I took no account of mitigation measures intended to avoid or reduce the potentially harmful effects of the project on any European Site.

## 10.0 Recommendation

10.1. I recommend that the Board should decide this referral in accordance with the following draft order:

**WHEREAS** questions have arisen as to

(a) Whether or not the subdivision of the unit into two separate units is

or is not development or is or is not exempted development?

(b) Whether the use of existing Unit no. 1 for use for storage of materials, not solely comprising animal feedstuffs, is or is not development or is or is not exempted development?

(c) Whether the use of the yard Area 3 for the storage of materials is or is not exempted development?

**AND WHEREAS** Peter Cafferky, Derek Hynes and Tommy Gallagher requested a declaration on these questions from Meath County Council and the Council issued a declaration on the 22<sup>nd</sup> day of August 2019 stating that the matter was development requiring planning permission:

**AND WHEREAS** Peter Cafferky, Derek Hynes and Tommy Gallagher referred this declaration for review to An Bord Pleanála on the 16<sup>th</sup> day of September, 2019:

**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)(h) of the Planning and Development Act, 2000, as amended,

(d) Article 5 of the Planning and Development Regulations, 2001, as amended,

(e) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(f) Article 10(1) and Part 4 of Schedule 2, of the Planning and Development Regulations, 2001, as amended,

(g) the planning history of the site,

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

- (a) the subdivision of the unit into two separate units comes within the scope of the definition of “development” as set out in section 3 of the Planning and Development Act, 2000, and
- (b) Such subdivision affects only the interior of the structure and, therefore, comes within the exempted development provisions of section 4(1)(h) of the said Act
- (c) The permitted use of the structures falls within Class 5 of Part 4 of Schedule 2, use as a wholesale warehouse and repository and that use for the storage of materials would come within the same use class.
- (d) Use of the structures for the storage of materials, not comprising animal foodstuffs, would be inconsistent with the use specified in condition no. 1 of planning reference P75/1168 and the development therefore cannot avail of the exemption under the provisions of Class 9 of Part 4 of Schedule 2 of the planning and Development Regulations 2001, as amended, having regard to Article 10(1) of the same regulations.
- (e) The established authorised use of Yard Area 3 for storage purposes has not been demonstrated to satisfaction of the Board and the use of this area for the storage of materials would therefore constitute a change of use thereof,
- (f) Such change of use is regarded as material and is therefore development, having regard to the scale of the site, severance from the adjoining buildings and the potential traffic safety impacts, and is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred

on it by section 5 (X) (x) of the 2000 Act, hereby decides that the

a) Subdivision of the unit into two separate units is development and is exempted development.

b) Use of existing Unit no. 1 for storage of materials, not solely comprising animal feedstuffs, is development and is not exempted development

c) The use of the yard Area 3 for the storage of materials is development and is not exempted development.

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Conor McGrath  
Senior Planning Inspector

January 10<sup>th</sup> 2020