



An
Bord
Pleanála

Inspector's Report ABP-305573-19

Question

Whether the specified use of 6 buildings at Collenbeg, Collon, Co. Louth is or is not development or is or is not exempted development.

Location

Collenbeg, Collon, Co. Louth.

Declaration

Planning Authority

Louth County Council

Planning Authority Reg. Ref.

S5 2019/37

Applicant for Declaration

Barry Davis.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Barry Davis.

Owner/ Occupier

Barry Davis.

Observer(s)

None.

Date of Site Inspection

18th February 2020.

Inspector

Deirdre MacGabhann

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1.0 Site Location and Description

- 1.1. The subject site is located c.2.5km south east of Collon and c.7km north west of Drogheda, in the townland of Collonbeg, Co. Louth. The site lies to the north of a regional road, the R168, and access to the site is via a minor road (L2295) off the regional road. The M1 lies c.2.5km to the east of the site.
- 1.2. The site is broadly L shaped, with a hardcore lane from the L2295 providing access to a cluster of structures and associated concrete or hardcore yards. There are eight structures in total. Six of the buildings are referred to in this reference case (numbered 1 to 6 on the submitted plans). Two buildings are not included in the referral, one adjoining building no. 6 and one to the north of the complex. At the time of site inspection, building nos. 1, 2 and 3 were occupied by a drilling company, with building nos. 1 and 2 used for office and administrative purposes and building no. 3 for storage of drill rigs and equipment. Building no. 5 was in part used for storage (catering equipment). The remainder of this building, building no. 4 and 6 were not available for inspection.

2.0 The Question

- 2.1. The question before the Board is whether the following uses within the buildings specified below (and illustrated on the Site Plan submitted with the referral) are or are not development and are or are not exempted development:
 - Building 1 –Office/meeting room.
 - Building 2 – Office.
 - Building 3 – Repair and storage of vehicles.
 - Building 4 – Storage of dry goods.
 - Building 5 – Repair and storage of machinery.
 - Building 6 – Storage of dry goods.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 19th September 2019 Louth County issued a Declaration under section 5 of the Planning and Development Act 2000, as amended, stating that the works were development but not exempted development.

3.2. Planning Authority Reports

Planning Reports

- 3.2.1. The Planning Report (18th September 2019) refers to the planning history of the site and relevant legislation. It makes the following arguments in respect of the referred use:

- **Development.** The buildings on the site are not used by the same operator and are not utilised for the repair, service, storage and sales of machinery. The development would be a *de facto* industrial estate and would constitute a material change of use, and therefore development.
- **Exempted development.** The works constitute a material change of use and therefore are not considered to be exempt development.
- **Conditions of a Permission.** The development contravenes condition nos. 1 and 9 attached to PA ref. 07/1509 (the parent permission) which require that the development be carried out in accordance with the plans lodged and be used in accordance with the that specified in the application and not for any other industrial, business or commercial use (respectively).

The site outlined in the subject application is larger than the one granted under the parent permission. The information submitted under PA ref. 07/1509 indicated that agricultural machinery to be stored on site. The works specified in the section 5 declaration do not relate to agricultural machinery, but to a *de facto* industrial estate..

The development therefore contravenes article 9(i) of the Planning and Development Regulations, 2001, as amended.

- **Character of a landscape/protected view or prospect.** The cumulative impact of the development, which is large and industrial in scale, design and layout, in conjunction with the existing large scale industrial development and infrastructure on this site would materially contravene policies HER 27 and HER 31 of the County Development Plan and be inconsistent with the Development Assessment Criteria for Development Zone 6.

4.0 Planning History

4.1. The following planning applications are referred to in the course of the referral:

- PA ref. 05/179 – Permission refused for change of use from agricultural machinery yard and store to yard for repair, service, storage and sale of machinery. Reasons for refusal were related to traffic hazard (inadequate junction with the public road/sightlines) and insufficient detail in application to allow a full assessment.
- PA ref. 06/1090 – Permission refused for change of use of existing agricultural machinery yard and store to yard for repair, service, storage and sales of machinery, and relocation of access lane to the site (inappropriate access onto Regional road).
- PA ref. 07/1509 – Permission granted for the change of use of existing agricultural machinery yard and store to store and yard for repair service, storage and sales of machinery, conversion of two stone buildings to office accommodation and stores. Condition no. 1 requires the development to be carried out in accordance with the plans submitted. Condition no. 9 requires the development to be used in accordance with that specified in the application and not for any other industrial, business or commercial use. It is stated in the Planning Report that accompanied the application, and in correspondence from the applicant, that the applicant had clarified by way of further information that the type of machinery to be stored on the premises was agricultural.
- PA ref. 18/495 – Retention and permission was refused for (a) retention of extension to existing building for general storage, (b) retention and completion of partially constructed agricultural store, and (c) retention of

hardcore area towards the southern part of the site for parking of vehicles and machinery. (NB. These buildings that fall outside of the subject site, but are in the same complex). In summary, reasons for refusal were (1) material contravention of Policy RD 41 (applicant failed to demonstrate that the agricultural store was a bona fide agricultural development in Development Control Zone 6), (2) material contravention of Policy RD 41, development was a *de facto* extension of an unauthorised industrial complex, (3) material contravention of Policy RD 9 and RD 13 and impact on scenic amenity of the area, (4) material contravention of Policy HER 27 and HER 31 (large scale of industrial development) and inconsistency with development assessment criteria for Development Control Zone 6 (maintenance of landscape of Tentative Monasterboice World Heritage Site), (5) public health, and (6) surface water drainage. The application for the development included an appropriate assessment screening report and landscape and visual impact assessment.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The subject site falls within Development Zone 6. This zone covers the sensitive landscape that has been designated around Monasterboice Tentative World Heritage Site. Policies RD 41 and RD 42 apply. These permit only limited development appropriate to these heritage and cultural landscapes. Large scale intensive industrial, agricultural or commercial development is not considered appropriate with the zone.

5.2. Natural Heritage Designations

- 5.2.1. The subject site is removed from sites of natural heritage interest. The nearest designated site lies c.1.3km to the north west of the site and comprises Mellifont Abbey Woods proposed Natural Heritage Area (001464). Other sites are >5km away.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer makes the following arguments:

- **Need and justification.** The applicant's father originally operated an agricultural machinery/equipment importation business from the site where agricultural machines/equipment was imported, repaired and sold on within Ireland. The business declined such that the buildings were either underused or vacant.

In response to the decline in the business the applicant's father sought out similar operators for machinery storage/sales/repair uses. The machines/equipment currently stored/repared at the site are not agricultural. However, the original permission was for commercial agricultural storage/repair purposes, not related to the applicant's farm business and not restricted to sole use by the applicant or to agricultural use. There is no planning difference between the permitted 'agricultural machinery and equipment storage/repair/sales business' on the premises and the 'machinery storage/repair and storage' business that currently operate from the premises.

There are no sales taking place from the present uses on the site. Uses are limited to storage and repair:

- **Material change of use.** There is no material difference between the use of the buildings for the repair/storage of agricultural equipment and the use of the buildings for repair/storage of other goods and equipment. There is no material change to the effects of the development, by way of traffic, noise, dust etc., and no change to the entity as a whole, with no visual or functional difference between that permitted under PA ref. 07/1509 and that which currently exists at the site (*Cairnduff v O'Connell*, 1986, IR 73; *McCabe v Coras Iompair Eireann*, 2006, IEHC 356). The current uses have no material effect on the external appearance of the buildings or yard area. Condition no. 9 of the permission under PA ref. 07/1509 did not restrict the uses to agricultural structures, to the business of the applicant or a single user.

- **Exempted development.** If the works are development at all, they are exempted development as any works undertaken to facilitate the current uses consist of the carrying out of works for the maintenance, improvement and alteration of the structures and do not materially alter their external appearance (section 4(1)(h) of the P&D Act 2000, as amended).
- **Article 9.** The works do not conflict with any of the matters set out in Article 9 of the Planning and Development Regulations 2001 (as amended).
 - The present uses of the site do not in any material way contravene a condition of a permission (condition no. 9 of 07/1509) are not inconsistent with any use specified in a permission (condition no. 1 of 07/1509).
 - They do not comprise the widening of a means of access to a public road;
 - Or interfere with the character of a landscape or protected view;
 - Do not require appropriate assessment (as determined by the planning authority under PA ref. 18/495); and
 - Do not comprise an unauthorised structure and it is submitted that the use of the subject buildings is not unauthorised.
- **Article 10.** If the present uses are a change of use at all, in the context of PA ref. 07/1509, they are exempted development as they would fall within Class 5, Part 4 of the Planning and Development Regulations, 2001, as amended ‘*Use as a wholesale warehouse or a repository*’ and would be exempted development by virtue of article 10 of the Planning and Development Regulations, 2001.

6.2. Planning Authority Response

- 6.2.1. No further comments (letter to Board of the 21st October 2019).

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

- Section 3 – Development.
- Section 4 – Exempted development, in particular sub-section (2) and (4).
- Section 5 – Declaration and referral on development and exempted development.

7.2. Planning and Development Regulations, 2001, as amended

- Article 3 – Interpretation – ‘industrial building’, ‘industrial process’ and ‘repository’.
- Article 6 – Exempted Development, in particular sub-section (1).
- Article 9 – Restrictions on exemption, in particular sub-section (1)(i) and (vi).
- Article 10 – Changes of use, in particular sub-section (1) and Class 21, Part 1 of Schedule 2 ‘Development for Industrial Purposes’ and Class 5, Part 4 of Schedule 2 ‘Use as a wholesale warehouse or as a repository’.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. Section 3(1) of the Planning and Development Act 2000 (as amended) defines development as ‘the carrying out of any works on, in or under land or the making of a material change in the use of any structures or other land’.
- 8.1.2. Under PA ref. 07/1509 planning permission was granted for ‘change of use of existing agricultural machinery yard and store to store and yard for repair, service and sales of machinery, conversion of two stone buildings to office accommodation and stores’. In the course of the application, the applicant submitted further information which stated that agricultural machinery would be stored at the premises (letter from Aidan Geraghty to PA dated 6th December 2007) and the permitted use is therefore clearly tied to a specific type of use i.e. agricultural. This use, whilst not expressly stated in the wording of the permission, it is inextricably tied to the

permission which is defined by details and documents submitted with the planning application.

- 8.1.3. From the information on file and from my inspection of the site, the principle use of the site would appear to be for the repair and storage of dry goods (e.g. catering equipment) and machinery (e.g. drilling equipment), with ancillary office/meeting room accommodation i.e. there is no agricultural use on the site and a change of use has occurred.
- 8.1.4. The referrer argues that there is no material change to the effects of the development, for instance by way of traffic, noise, dust etc. This may well be the case with the existing profile of uses on site. However, what is at issue here is the principle of the use of the site and in this regard I would argue that the use of the site as a yard for the repair, storage and sale of agriculture machinery is well defined and its impacts identifiable and predictable. In contrast the use of the site for the repair, service and sales of machinery is undefined, open ended and could have quite different attributes, for example, with the potential for more significant effects by way noise, dust, traffic, use of petrochemicals and even landscape effects, given the potential for large machinery to be stored on the site and its location in Development Zone 6.
- 8.1.5. I would consider, therefore, that the use of the site for the repair and storage of machinery, storage of dry goods, office and meeting room is a material change of use from the permitted use.

8.2. Is or is not exempted development

- 8.2.1. Section 4(1) of the Act provides that certain specified works are exempted development for the purposes of the Act. Section 4(1)(h) refers to works for the maintenance or improvement of a structure, which only affect its interior. In this instance, it is the change of use of the structure which is in question and I do not consider that this section of the Act is applicable.
- 8.2.2. Section 4(2)(a) of the Act enables the Minister to make regulations to provide for any class of development to be exempted development for the purposes of the Act where he or she is of the opinion that by reason of its size, nature or limited effect on its

surroundings, the carrying out of such development would not offend against the principles of proper planning and sustainable development.

8.2.3. Article 6 of the Planning and Development Regulations 2001, as amended, refers to classes of development in Part 1 and 3 of the Act which are deemed to be exempted development, subject to the development complying with conditions and limitation of the Class and the requirements of Article 9 of the Regulations. The material change of use referred to here does not benefit from any of the exemptions set out in Part 1 or Part 3 and the limitations of Article 9, which apply only in respect of Article 6, are not relevant to the referral.

8.2.4. Article 10 of the Planning and Development Regulations 2001, as amended provides that development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that it would not involve carrying out works other than works which are exempted development, contravene a condition attached to a permission, be inconsistent with the use specified or included in a permission or be a development where the existing use is unauthorised. Class 5, Part 4 of the Schedule 2 refers to 'use as a wholesale warehouse or as a repository'. Repository is defined in the Regulations as:

'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'.

8.2.5. In order for the subject development to benefit from changes of use within this class, both the permitted development and the subject development must comprise the uses specified.

8.2.6. Neither the permitted nor subject development fall within the definition of wholesale warehouse (*'a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business'* – Article 5 of the Planning and Development Regulations, 2001, as amended).

8.2.7. My understanding of the definition of the term repository is that the use is mainly or primarily for storage, where the only other business carried out is supporting and secondary to the activity of storage. Under PA ref. 07/1509, permission was granted

for the use of the site for the change of use to '*store and yard for repair service, storage and sales of machinery, conversion of two stone buildings to office accommodation and stores*'. The principal use of the site is not therefore for storage. It comprises one of several stated concurrent functions of the site. Similarly, for the subject development, it is evident that use of the site for storage (e.g. catering equipment, drill equipment) occurs in tandem with its use for the repair and maintenance of machinery. Further, repair of the machinery is carried out not for the purpose of storage but for the purpose of the use of the machinery (e.g. with repair of the drilling equipment on site to facilitate its future use, not to facilitate its storage). I do not consider, therefore, that either the permitted use or the subject use of the site fall within Class 5, Part 4 of Schedule 2 of the Regulations or, consequently, that the subject development can benefit from the exemptions set out in Article 10 of the Regulations.

- 8.2.8. If the Board determine that the permitted and subject uses do fall within Class 5, I would consider that the subject development would not comply with the limitations of Article 10 for the reasons set out above i.e. it would be inconsistent with the agricultural use specified in the permission granted under PA ref. 07/1509.

9.0 Environmental Impact Assessment and Appropriate Assessment

- 9.1.1. Section 4(4) of the Planning and Development Act, 2000 (as amended) states that development shall not be exempted development if an environmental impact assessment or appropriate assessment is required. Having regard to the scale and nature of the proposed development (change of use) in an established site, I do not consider that the proposed development would give rise to any significant environmental effects to warrant environmental impact assessment. For the same reasons, I am satisfied that no Appropriate Assessment issues arise and do not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

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 following stated uses of the subject site are or are not development or are or are not exempted development:

- Use of building 1 as office/meeting room.
- Use of building 2 as office.
- Use of building 3 for the repair and storage of machinery.
- Use of building 4 for the storage of dry goods.
- Use of building 5 for repair and storage of machinery.
- Use of building 6 for storage of dry goods.

AND WHEREAS Barry Davis requested a declaration on this question from Louth County Council and the Council issued a declaration on the 19th day of September 2019 stating that the matter was development and was not exempted development:

AND WHEREAS Barry Davis referred this declaration for review to An Bord Pleanála on the 4th day of October, 2019:

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

- (a) Section 3(1) of the Planning and Development Act, 2000,
- (b) Section 4(2) and 4(4) of the Planning and Development Act, 2000, as amended,
- (c) Articles 6, 9 10 of the Planning and Development Regulations, 2001, as amended,
- (d) Class 5, Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site, and

(f) the pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The stated uses of the site comprise a material change of use from the permitted use of the site,
- (b) The stated uses do not benefit from the provisions of article 10 as they do not fall within Class 5, Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended and would be inconsistent with the limitations set out in Article 10 of the Regulations,

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 stated uses are development and are not exempted development.

Deirdre MacGabhann

Planning Inspector

1st May 2020