



An
Bord
Pleanála

Inspector's Report ABP-306976-20

Question	Whether construction works at the existing permitted waste recycling and transfer station is development which is exempted development
Location	Units 1-3 Churchfield Industrial Estate, John F Connolly Road, Churchfield, Cork
Planning Authority	Cork City Council
Planning Authority Ref.	R560/19
Referral	
Referred by	Elmwick Ltd. t/a Red Fox Recycling
Owner/Occupier	Elmwick Ltd. t/a Red Fox Recycling
Date of Inspection	17 th June, 2020
Inspector	Kevin Moore

1.0 Introduction

1.1 On 20th December 2019, Elmwick Ltd. T/A Red Fox Recycling sought a declaration from Cork City Council on the question whether construction works at the existing permitted waste recycling and transfer station at Units 1-3 Churchfield Industrial Estate, John F Connolly Road, Churchfield, Cork is development which is exempted development. The proposed works were stated to be as follows:

- demolition of an annex (50m²) to be replaced by a portacabin;
- improvement of existing drainage on site by means of the installation of surface water drainage;
- concreting of the existing yard;
- installation of a weighbridge;
- wash down area; and
- marking out of car and truck parking spaces.

1.2 On 19th February 2020, the planning authority issued its declaration determining that the construction works constituted development that was not exempted development. This concurred with the Council Planner's assessment.

2.0 Site Location / Description

2.1 Units 1-3 Churchfield Industrial Estate are located on the northern side of John F. Connolly Road in Garranabraher in north-west Cork City. Churchfield Industrial Estate is sited to the west and north of housing estates and is bounded to the west by playing pitches. It comprises a mix of light industrial uses with several waste-related facilities also. Units 1-3 are sited behind an existing industrial unit (Unit 4 - Sample Studios multi-media arts studio) and comprise a warehouse-type structure and yard behind. The site is flanked to the east and west by other industrial/waste units.

3.0 The Question

3.1 The question before the Board is:

Whether construction works at the existing permitted waste recycling and transfer station at Units 1-3 Churchfield Industrial Estate, John F Connolly Road, Churchfield, Cork is development which is exempted development.

4.0 The Referrer's Submission

The following is submitted from Elmwick Ltd. T/A Red Fox Recycling:

4.1 Introduction

- The proposed works the subject of the referral are:
 - demolition of an annex (50m²);
 - improvement of the existing drainage on site by means of the installation of surface water drainage;
 - concreting of the existing yard;
 - wash down area; and
 - marking out of car and truck parking spaces.
- The installation of a weighbridge and a replacement portacabin have been removed from the referral and a planning application will be submitted for these in due course.

4.2 Planning Legislation and Precedence

- None of the restrictions under Article 9 of the Planning and Development Regulations apply to the consideration of the exemption available under section 4(1)(h) of the Planning and Development Act.

- The key test on exemption under section 4(1)(h) is whether the resulting appearance would be inconsistent with the character of the original structure and not whether it would be materially changed.

4.3 Planning History

- The existing waste recycling and transfer station was permitted and implemented under Planning Applications T.P. 04/28034 (Unit 3) and T.P. 04/28849 (Units 1-2).
- These permissions allowed for the segregation and processing of a variety of waste, excluding food/organic waste.
- Planning Application T.P. 12/35137 for an extension of the waste recycling and transfer station, granted in 2012, was not implemented.
- The permitted land use is a waste recycling and transfer station.
- The site was previously occupied by another company who operated a waste permit. The permit is valid until 31st October 2021. The site has been subject to successive waste permits issued by the Council since 2008. The site was sold in 2018 and, due to the change of ownership, there is a current application for a waste permit for the proposed operator.

4.4 The Referral

'Development'

- It is not disputed that the proposed works constitute development within the meaning of section 3(1) of the Planning and Development Act.

'No Other Exemptions'

- Section 4(1)(h) applies to the existing drainage on site, the concreting of the existing yard and the nature of the minor works.

- The works are those that are for the improvement of the facility, being works which do not materially affect the external appearance of the facility so as to render the appearance inconsistent with the character of the existing permitted structure or of neighbouring structures.
- The proposed works do not materially affect the character of the structure.
- In support of the submission, reference is made to Cairnduff -v- O'Connell (1986) ILRM 465 and to a previous Board decision under ABP Ref. 18.RL3585.
- Having regard to Class 50(a) of the Planning and Development Regulations, the demolition of the annex is exempted development as it does not abut another building in separate ownership and the cumulative floor area of the annex to be demolished does not exceed 100m².

'Abandonment and Unauthorised Use'

- The existing and established waste recycling and transfer facility was authorised by the City Council who issued waste permits from 2008, including those in 2008, 2011 and 2016. The latter is in place until 31st October 2021. The permit was only surrendered as it is required by legislation due to the change of ownership.
- A signed statement is attached which relates to a record of the history of the site and details how the site has been in use as a waste transfer and recycling station since 2008.
- A waste permit application was submitted to the Council in 2019 and is on hold pending resolution of the planning issue at hand.
- Commercial rates have been paid to the Council on the site from 2008 to 2019.
- The use of the premises is not unauthorised as the site has the benefit of permissions under T.P. 04/28034 and T.P. 04/28849. Both permissions were implemented, they allow for the segregation and processing of a

variety of waste, excluding food/organic waste, and are consistent with previous and proposed waste permits.

'Intensification and Material Change of Use'

- The planning authority's position that the established use has been abandoned, while it contends that an intensification of use will occur because of the proposed works, is contradictory as the permitted use cannot be considered to be abandoned if it is also contended that it is to be intensified.
- The level of works is at best minor in nature and they would typically be carried out for maintenance or improvement purposes in respect of any permitted long-standing use.
- There are no conditions attached to the permissions granted under T.P. 04/28034 and T.P. 04/28849 that restrict the annual tonnage to be processed at the site.
- No intensification occurs as a result of the proposed works. The maintenance works will only improve the existing yard area. No other works that are proposed would lead to an intensification of use. Traffic movements would be consistent with the successive waste permits.
- The original waste permit was issued on the basis of an annual tonnage of 30,000T of which residual waste was not to exceed 7,500T per annum. The waste permit application now before the Council seeks a maximum annual tonnage of 24,000T.

'Environmental Impact Assessment and Appropriate Assessment'

- Having regard to Article 93 and Section 10 of Part 2 of Schedule 5 of the Planning and Development Regulations, a mandatory EIA is not required.
- The proposed development does not fall under the thresholds of Schedule 5 Part 1 (Annex I) or Schedule 5 Part 2 (Annex II).

- It potentially fits into Class 11(b) of Schedule 5 of Part 2. The maximum annual tonnage proposed is 24,000T, which is below the prescribed threshold. Having regard to section 103(1) of the Planning and Development Act and to an examination of the nature, size and location of the development, there is no real likelihood of significant effects on the environment.
- The closest European sites are Cork Harbour SPA and the Great Island Channel cSAC which are c.20km away. Having regard to this, the nature and scale of the proposed development, and the nature of the receiving environment, no appropriate assessment issues arise. The proposed development would not be likely to have a significant effect individually or in combination with other plans and projects on a European site.

5.0 The Planning Authority's Considerations

5.1 The Planner's report prior to the issuing of the planning authority's Declaration included the following:

- All items referred to in the referrer's submission would comprise 'development'.
- The drawings submitted do not show the location of the subject annex. There does not appear to be any annex or structure abutting buildings in separate ownership.
- No information has been submitted regarding the scale, location and design of the proposed portacabin. This question cannot be determined.
- Exemptions cannot be found for the drainage improvements, concreting of the yard, weighbridge installation, the wash down area and the marking out of car and truck spaces. The "industrial processes" referred to the exempted development regulations do not apply as waste is not an "article".

- There is a lack of compliance documentation on file in relation to the 2004 planning permissions. It is also unclear if permission was enacted within five years of the grant of permission and, if it was, if it was enacted in its proper form.
- It is clear that the site has not been in use for a significant length of time (since 2011) and in July 2019 the site was cleared. It is considered that abandonment can be established in this case.
- The carrying out of the proposed works would constitute a material change of use. If the intensification in use was to be the subject of a planning application, material planning considerations would arise beyond those that occurred in determining any previous permission. The exact nature of the waste to be accepted is unclear, the implications in terms of waste processing are unclear, and different planning considerations on traffic, vehicles used, volume/storage/frequency of removal of waste, access and lighting, noise, water management, use of equipment and production methods, and the extension of the physical area of operation are new issues to be considered.
- The original planning permission in 2004 allowed for 2600 tonnes of waste to be accepted at the site per annum. The current waste licence application seeks to process 24,000 tonnes of waste.
- There are substantive changes proposed for the upgrading of the infrastructural development of the site, which clearly indicate a more intensive increase in activity. The undertaking of these works leads to an intensification of use on the site and would therefore be taken as having changed materially.
- It is proposed to alter the external appearance of the premises by the installation of surface water drainage, replacement of gravel with concrete, installation of a weighbridge, a wash down area and marked

parking. Section 4(1)(h) does not apply as the works are significant and would materially alter the character of the premises.

- Insufficient information has been submitted to enable a full assessment on appropriate assessment.
- Based on the level of activity proposed for the site, the location of the development in a built-up area and respect of adjoining uses/facilities located on John F Connolly Road which are of a similar nature, and hence the potential cumulative impacts of pollution, it is reasonable to conclude that it is likely that environmental impact assessment is required for this development. The question of a structured screening process would arise.

5.2 The Planner concluded:

- There are no exemptions for the proposed works.
- The permitted use has been abandoned.
- The undertaking of the works leads to an intensification of use on this site and would therefore be taken as having materially changed.
- If they were subject of a planning application, material planning considerations would arise beyond those that occurred in previous permissions.
- There is insufficient information to determine if the proposed works would require EIA and AA.

The construction works were determined to be development and not exempted development.

5.3 Further to the above, the planning authority's response to the referral, received by An Bord Pleanála on 22nd April 2020, requested the Board to uphold the declaration of the planning authority. Details were also provided on the non-payment of development contributions associated with planning permissions,

how the premises have been used (derived from inspections by the Environment Section), and on waste permits.

6.0 Statutory Provisions

6.1 Planning and Development Act 2000 (as amended)

PART I – Preliminary and General

Section 2(1)

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;

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3

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

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;

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

PART 2 - Exempted Development

Article 5(1)

In this Part -

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

“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
- (b) for or incidental to the making, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,

and for the purposes of this paragraph, “article” includes –

- (i) a vehicle, aircraft, ship or vessel, or
- (ii) a sound recording, film, broadcast, cable programme, publication and computer programme or other original database;

“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;

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 1.

Article 9(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, ...
 - (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, ...

Schedule 2

Part 1 Exempted Development – General

Column 1 Description of Development	Column 2 Conditions and Limitations
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Development for industrial purposes

Class 21

- (a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land uses as a dock, harbour or quay for the purposes of any industrial undertaking –
- (i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,
 - (ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,
 - (iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.
- (b) Any works for the provision within the curtilage of the industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

Miscellaneous

CLASS 50

- (a) The demolition of a building, or buildings, within the curtilage of –
- (i) a house,
 - (ii) an industrial building,
 - (iii) a business premises, or
 - (iv) a farmyard complex

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.
2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

1. No such building or buildings shall abut on another building in separate ownership.
2. The cumulative floor area of any such building, or buildings, shall not exceed:
 - (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and
 - (b) in all other cases, 100 square metres.
3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

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7.0 Planning History

7.1 I note the planning history relating to the site includes the following:

P.A. Ref. T.P. 04/28034

Permission for the retention of the change of use of unit 3 from warehousing to a waste recycling and transfer facility was granted in March 2004.

P.A. Ref. T.P. 04/28849

Permission for the retention of the change of use of units 1 and 2 from warehousing to a waste recycling and transfer facility was granted in November 2004.

8.0 Assessment

8.1 Introduction

8.1.1 I acknowledge that the referral to the Board relates to construction works that, since the declaration made by the planning authority, does not include the provision of a weighbridge and a portacabin. I further note that the construction works the subject of the referral still includes the demolition of a 50m² annex. While I note that there is a small annex to the main building that is located at the north-eastern corner of this building, I further note that at no time have plans or other details been provided by the referrer on this annex or if it can be confirmed that this is the annex in question. Furthermore, there is no understanding about the planning history or status of this annex. It is my submission that the Board is not in a position to draw any conclusions on this element of the proposed construction works as one cannot confirm the status of the annex and one cannot then seek to determine if its demolition can or cannot avail of exempted

development provisions. Therefore, I consider that it is reasonable to conclude that the determination by the Board should only focus on the proposed construction works that comprise:

- the improvement of the existing drainage on site by means of the installation of surface water drainage;
- the concreting of the existing yard;
- provision of a wash down area; and
- the marking out of car and truck parking spaces.

8.2 **The Question of Development**

8.2.2 The question before the Board relates to works at units within an established industrial estate. Such works would include acts of construction, excavation, and alteration in accordance with the definition of 'works' as set out in section 2 of the Planning and Development Act. The carrying out of these works would occur on, in, over and under land and would, therefore, constitute 'development' in accordance with the meaning of 'development' as set out in section 3 of the Planning and Development Act.

8.3 **The Question of Exempted Development**

8.3.1 **The Site's Planning History**

Planning permissions were granted for the retention of the change of use of the units on this site from warehousing to a waste recycling and transfer facility in 2004 under P.A. Refs. T.P. 04/28034 and P.A. Ref. T.P. 04/28849. Waste permits have been issued for this use on a consistent basis between 2008 and 2016, with the most recent permit issued being valid until 31st October 2021. It is

reasonable to ascertain that the established and permitted use on this site is a waste recycling and transfer facility.

8.3.2 The Nature and Extent of the Question before the Board

The question before the Board relates to a number of specific construction works at an authorised waste recycling and transfer station, namely:

- the improvement of the existing drainage on site by means of the installation of surface water drainage;
- the concreting of the existing yard;
- provision of a wash down area; and
- the marking out of car and truck parking spaces.

8.3.3 Section 4

Section 4(1) of the Planning and Development Act sets out the primary provisions relating to exempted development. Section 4(1)(h) is as follows:

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;

The first issue to be determined is whether the proposed works are for the ‘*maintenance, improvement or other alteration*’ of the structure on this site. It is apparent that the works propose to improve the drainage system on the site, to

improve and alter the yard surface by concreting an existing gravel yard, to maintain and improve the functioning of the structure by the provision of a wash down area, and to improve the functioning of the structure by marking out car and truck spaces within the yard. It may reasonably be determined that the proposed construction works are 'maintenance and improvement' works in accordance with section 4(1)(h).

It is clear that the proposed construction works are not '*works which affect only the interior of the structure*' on the site.

The final consideration under section 4(1)(h) relates to whether the proposed construction works would '*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*'. I note that the proposed works would be undertaken to the rear of Units 1-3 and would not be visible from the public realm. They would constitute works primarily at or below ground level. As a result, they would not materially affect the external appearance of the structure on this site. The outcome of these works would be to provide improvements that would be compatible with the form and character of development on and in the vicinity of this site. They would not be inconsistent with the character of the existing structure on the site or of neighbouring structures.

Having regard to the above, it is reasonable to conclude that the proposed construction works fall within the exemptions set out under section 4(1)(h) of the Planning and Development Act. As the referral may rely on the provisions set out under section 4 of the Planning and Development Act, reference to the provisions in the subsequent Planning and Development Regulations do not require to be further considered.

8.3.4 Environmental Impact Assessment

The proposed construction works do not fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations.

8.3.5 Appropriate Assessment

The proposed construction works are minor improvement works set within an industrial estate that is within a built-up, serviced, urban environment. The site is over 5km from Cork Harbour SPA and more than 10km from Great Island Channel cSAC. It is reasonable to conclude that, on the basis of the information on the file relating to the nature and extent of the proposed construction works, these proposed works, individually or in combination with other plans or projects, would not be likely to have a significant effect on any designated European Site. Appropriate Assessment would not be required for these construction works.

9.0 CONCLUSION AND RECOMMENDATION

9.1 Having regard to the lack of information on the location, nature, extent and planning status of the annex proposed for demolition, this component of the construction works is excluded from the determination of this referral. The construction works the subject of the referral are, therefore, deemed to be as follows:

- the improvement of the existing drainage on site by means of the installation of surface water drainage;
- the concreting of the existing yard;
- provision of a wash down area; and
- the marking out of car and truck parking spaces.

9.2 My recommendation is as follows:

WHEREAS a question has arisen as to whether construction works at the existing permitted waste recycling and transfer station at Units 1-3 Churchfield Industrial Estate, John F Connolly Road, Churchfield, Cork is development which is exempted development:

AND WHEREAS the said question was referred to An Bord Pleanála on the 18th day of March, 2020:

AND WHEREAS the said question is limited solely to the following construction works:

- the improvement of the existing drainage on site by means of the installation of surface water drainage;
- the concreting of the existing yard;
- provision of a wash down area; and
- the marking out of car and truck parking spaces.

AND WHEREAS An Bord Pleanála, in considering this referral, had particular regard to:

- (a) sections 2(1), 3(1), and 4(1)(h) of the Planning and Development Act 2000 (as amended),
- (b) articles 5-11 of the Planning and Development Regulations 2001 (as amended),
- (b) Part 1 of Schedule 2 *Exempted Development – Classes of Use* of the Regulations,

- (c) The planning history of the site, and
- (e) the location of the proposed construction works within an authorised waste recycling and transfer station:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the construction works constitute ‘development’ for the purposes of the Planning and Development Act, and
- (b) the proposed works come within the scope of section 4(1)(h) of the Planning and Development Act 2000, as amended, being works for the maintenance, improvement or other alteration of Units 1-3 Churchfield Industrial Estate 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:

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 construction works, comprising the improvement of the existing drainage on site by means of the installation of surface water drainage, the concreting of the existing yard, the provision of a wash down area, and the marking out of car and truck parking spaces, constitute development and development that is exempted development.

Kevin Moore
Senior Planning Inspector
1st July, 2020