



An
Bord
Pleanála

Inspector's Report 308153-20

Question

Whether the use of an existing building and associated storage area for the temporary storage of baled recyclable waste pending export is or is not development and is or is not exempted development.

Location

Former TATA Steel site, Tivoli Industrial Estate, Cork City

Referral

Referred by

Cork City Council

Owner/Occupier

Forge Hill Recycling Unlimited Company

Observer(s)

None

Date of Site Inspection

01/11/22

Inspector

Pauline Fitzpatrick

1.0 Introduction

Cork City Council made a submission to the Board under section 5 of the Planning and Development Act, seeking confirmation whether the use of an existing industrial building and associated storage area at the Former TATA Steel site in the Tivoli Industrial Estate is or is not development and is or is not exempted development. The submission was received on the 8th September, 2020.

The Board is advised that the site was subject of an earlier referral under section 5. File ref. ABP-306161-19 refers. The question posed in that instance was whether the use of an existing industrial site and buildings as a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is or is not development and is or is not exempted development

2.0 Site Location and Description

- 2.1. The site relating to the referral is located within the Tivoli Industrial Estate, which is located between the River Lee and the N8 Cork to Dublin Road and is on the east side of Cork City. The Cork to Cobh railway line is located to the north of the site and runs parallel with the N8. Access to the industrial estate is via the Silversprings Junction flyover on the N8.
- 2.2. The site contains a large building with an office annex that was formerly in use by TATA Steel with associated parking and marshalling yards. The site is bounded by the industrial estate access roads to the north and west and by the Port of Cork shipyards and warehouses to the south and east.

3.0 The Question

- 3.1. The question referred to the Board is:-

Whether use of an existing industrial building and associated storage area in the port of Cork for the temporary storage of baled dry recyclable wastes pending export from the port to overseas recycling facilities is development and, if so, is it exempted development.

4.0 The Referrer's Submission

The following is submitted from Cork City Council:

- In reference to the site's planning history, it is noted that neither of the parent permissions explicitly permitted a 'factory' or established the principle of the undertaking of 'industrial processes' on the site.
- The proposed use does not accord with the definition of 'Industrial Process' as set out in Article 5(1) of the Planning and Development Regulations but maybe better described as a repository as detailed in the same article.
- It has not been established that the proposed use is not a material change of use.
- The inspector's report on the previous referral found that the proposal for the site would not require appropriate assessment as it would not be likely to have a significant effect on the integrity of the nearest European sites. As the proposal is largely similar to that previously assessed the same conclusion is reached.

Details submitted with the referral include copies of planning permissions associated with the site's planning history and a copy of a submission forming an application to Cork City Council from Forge Hill Recycling Unlimited Company seeking a declaration on the question to which the referral relates.

5.0 Response by Forge Hill Recycling Unlimited Company

The submission by O'Callaghan Moran and Associates on its behalf can be summarised as follows:

- It operates a non-hazardous waste recovery facility at Forge Hill under an integrated emissions licence. The sources are primarily household and commercial dry recyclable collections.
- The mixed wastes are mechanically separated by type. The segregated materials are baled and stored prior to export for further processing.
- The Covid19 pandemic presents a significant threat to the export of the recyclable materials. A ban or severe disruption in exports would have major

implications for Forge Hill Recycling's household and commercial waste collections. It has limited storage space at its Forge Hill facility. Once capacity has been reached it would have to stop accepting and processing waste. To maintain household and essential business collection services, additional contingency off-site storage capacity is required.

- The only activity carried out on the subject site would be storage. A baling unit would be provided to repair any bale damaged in transit from its facility. The maximum amount stored will be 24,000 tonnes. Once access to the overseas processing facilities is regained it will arrange for the removal of the bales from the Tivoli site and will resume exporting directly from the Forge Hill facility.
- A waste permit is required.
- The current authorised use of the site is for industrial purposes and the existing permissions on the site (ref. nos. 73/4551 and 77/6677) are still valid. The temporary storage of baled recycled materials comes within the definition of industrial use.
- It does not constitute a material change of use.
- With regard to Article 5(1) of the Planning and Development Regulations, 2001, the treatment of waste to recovery recyclables with the subsequent baling of the recovered materials is an industrial process and the storage of the bales is incidental to this process.

6.0 Statutory Provisions

6.1. Planning and Development Act 2000 (as amended)

Section 2(1)

In this Act, except where the context otherwise requires— “structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate

“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

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.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders’ waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

Section 177U (9) - in deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

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;

“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 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 – ...

(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, ...

Article 10(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.

Schedule 2 Part 1

Exempted Development – General

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development for industrial purposes</i> CLASS 22 Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process</p>	<p>The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.</p>

Part 4 Exempted Development – Classes of Use

CLASS 5 - Use as a wholesale warehouse or as a repository.

7.0 Planning History

I note the following planning history relating to the site:

P.A. Reg. No. T.P. 4551 - Permission granted for the erection of a steel stock depot, offices, etc. at Tivoli Industrial Estate, subject to 4 conditions, on 26th February 1974.

P.A. Reg. No. T.P. 6677 - Permission granted for an additional covered area at the existing steel depot at Tivoli Industrial Estate on 24th March 1977.

ABP-306161-19 - the Board decided that the use of the existing industrial site and buildings as a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is development and is not exempted development.

8.0 Assessment

Comparable to the previous referral on the site under ref. ABP 306161-19 certain details pertaining to what processes were undertaken in the original TATA Steel premises and when it ceased to operate are not provided. In addition as referenced by the inspector on the previous referral there is insufficient information available to make a determination on whether the TATA Steel use has or has not been abandoned. Notwithstanding, I consider that there is sufficient information before the Board to address the question raised.

Is or is not development

From the details provided the building and associated storage area is proposed to be used for the temporary contingency storage of baled recyclable materials, only, with a baling unit to be provided to repair any bale damaged in transit from the Forge Hill recycling facility. 24,000 tonnes is the maximum to be stored at the site.

From the absence of details indicating the contrary no upgrading or improvement works are proposed to allow the site to function to meet the needs of the proposed activity. As such 'works' do not appear to be required on the site

I consider that the question before the Board relates to 'use'.

I refer the Board to the inspector's assessment on the previous section 5 referral in terms of the planning history on the site and the purpose of the original building and

lands. He concluded that the permitted structure on site is a depot that functions as a store for steel and constitutes a 'repository' as per the definition for same set out in Article 5 of the Planning and Development Regulations, 2001, as amended. The inspector noted that whilst the storing of the steel stock was conceivably incidental to processing of steel the depot was not permitted to undertake any 'process' in the form of making, repairing etc. any articles of steel. On this basis it was concluded that the TATA Steel building was not an 'industrial building' in accordance with the definition set out in the Planning and Development Regulations because it was not permitted to be used for the carrying on of any industrial process at that site. The inspector also concluded that stock be defined as constituting an accumulated supply of a particular item, product, material etc.

Having regard to section 3 (2) of the Planning and Development Act, 2000, as amended, which specifies specific uses whereby the use of the land shall be taken as having materially changed I do not consider that the baled dry recyclable materials would be classified as either builder's waste, rubbish or debris.

Having regard to Article 10(1) of the regulations and Class 5 of Part 4 – Exempted Development which specifies use as a wholesale warehouse or as a repository, I consider it reasonable to conclude that the proposed temporary storage of baled recyclables would be consistent with the 'storage' or 'repository' permitted use with no business being transacted on the site. With regard to the caveats listed in subsections (a) to (d) I note the following:

- (a) the development does not involve the carrying out of any works,
- (b) it does not contravene a condition attached to the permissions granted on the site,
- (c) it would not be inconsistent with any use specified or included in the said permissions,
- (d) the existing use of the site as a repository is a permitted use and consists of the resumption of use which has not been abandoned.

On this basis I submit that the use of the site for storage of dry baled recyclable material prior to export, only, does not constitute a material change of use. Thus the question posed to the Board does not constitute development as defined in Section 3(1) of the Act.

8.1. **Appropriate Assessment**

I note and concur with the inspector's assessment on the previous referral.

Having regard to utilisation of established structures within a serviced, industrial estate and to the significant separation distances and extensive urban fabric between the site and Natura 2000 sites in the wider area, it is reasonable to conclude that, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposal, individually or in combination with other plans or projects, would not be likely to have a significant effect on any designated European Site. The proposed storage of bales of dry recyclable waste prior to export would not require an appropriate assessment because it would not be likely to have a significant effect on the integrity of a European site.

9.0 **Recommendation**

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

9.2.

WHEREAS a question has arisen as to whether use of an existing industrial building and associated storage area in the port of Cork for the temporary storage of baled dry recyclable wastes pending export from the port to overseas recycling facilities is development and, if so, is it exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Cork City Council on the 8th day of September, 2020:

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

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended

- (b) Articles 5 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) Part 4 of Schedule 2 Exempted Development – Classes of Use of the Regulations
- (d) The planning history of the site,
- (e) The pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the permitted development on the site comprising a depot that functions as a store for steel constitutes a ‘repository’ with regard had to the definition for same as set out in Article 5 of the Planning and Development Regulations, 2001, as amended.
- (b) the use of an existing buildings for the temporary storage of baled dry recyclable wastes falls within the above permitted use and, therefore, is not a material change of use and is not development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the use of an existing industrial building and associated storage area in the Port of Cork for the temporary storage of baled dry recyclable wastes pending export from the port to overseas recycling facilities is not development.

Pauline Fitzpatrick
Senior Planning Inspector

November, 2022