



An
Bord
Pleanála

Inspector's Report ABP-309964-21

Question

Whether the use of an outdoor gantry loading crane is or is not development or is or is not exempted development.

Location

Booth Precast Limited, Ballymullen, Abbeyleix, Co. Laois.

Declaration

Planning Authority

Laois County Council

Planning Authority Reg. Ref.

105

Applicant for Declaration

Booth Precast Limited.

Planning Authority Decision

Is development and is not exempted development

Referral

Referred by

Booth Precast Limited

Owner/ Occupier

Booth Precast Limited

Observer(s)

Michael and Mary Whelan
Tom McEvoy

Date of Site Inspection

21st May, 2021

Inspector

Stephen Kay

1.0 Site Location and Description

- 1.1. This case relates to a referral submitted under s.5(3)(a) of the Planning and Development Act, 2000 (as amended) where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 1.2. The site of the subject referral is located approximately 2km to the north west of the village of Ballinakill and c.2.5km to the south of Abbeyleix. The site is accessed via the local road that connects Ballinakill and Abbeyleix and which joins with the N77 at Ballymullen Cross immediately to the south of Abbeyleix. This local road is narrow and has poor horizontal alignment. The access to the Booth Precast site itself is via a long access road off the local road.
- 1.3. The site the subject of this referral comprises the majority of the lands that are part of the operation of Booth Precast in this location. The existing operation on the site and included within the identified site boundary comprise a number of activities and areas with the most significant being the manufacture of precast concrete products, concrete plant, extraction of sand and gravel and sand and gravel processing / washing.
- 1.4. It should be noted that there is a concurrent referral on the site relating to surface water management measures and cessation of surface water discharge from the site (ABP Ref. ABP-309575-21) and this file accompanies the current case. This report should be read in conjunction with this concurrent case.
- 1.5. The outdoor gantry crane which is the subject of this referral has been constructed / erected and is located at the southern end of the overall site and on the south western side of the concrete manufacturing building in this part of the site. The gantry crane structure comprises an extension of an existing crane that is located within this shed and which extends out into the yard area on the south western side of the building. The form of the structure erected comprises a steel frame that roughly follows the pitched roof form of the adjoining shed structure to the north east. with horizontal rails on which the crane runs. The overall height of the shed is indicated as being 12.48 metres as per drawing No. 20-56-P-03-04 submitted with the referral and, based on observations at the time of inspection of the site, the external gantry structure would therefore appear to also be approximately this height. The form of the steel supports constructed and onto which the crane is attached has

a pitched form that could provide for the future enclosure of this area and extension of the existing shed.

- 1.6. The drawings submitted with the referral do not in my opinion provide a very accurate representation of the structure the subject of this referral. Specifically, the submitted drawings show the steel support structures scaling to approximately 10.0 metres above ground level in this part of the site and approximately the same overall height as the shed when the stated dimension is c.12.48 metres. The submitted drawings also do not accurately show the height of the horizontal rails on which the crane mechanism runs, with this being significantly lower in the submitted drawings than was observed on site. .

2.0 The Question

- 2.1. The question as posed by the referrer is as follows:

Whether the erection of an outdoor gantry is or is not development and is or is not exempted development.

It is recommended that the wording of this question would be amended to reflect the fact that the gantry supports a crane mechanism and that this structure is connected to an existing gantry crane within an existing shed. The recommended revised wording is therefore as follows:

Whether the erection of an outdoor gantry mounted crane extending an existing gantry crane located within an existing shed used for the manufacture of concrete products is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority issued a declaration that the gantry crane structure as erected on site comprised development which was not exempted development.

3.2. Further Information

3.2.1. As detailed below, prior to issuing a decision the Planning authority requested further information on potential discrepancies between the drawings submitted with the section 5 referral case and those submitted with the planning application for the shed structure permitted under Laois County Council Ref. 10/288 / ABP Ref.

PL11.239206. The request for further information specifically cited that the adjoining building has a permitted height of c.7.9 metres and the gantry structure is shown at the same height as the building and with a height of c.12.5 metres.

3.2.2. The response received from the referrer states that a detailed planning search or examination of the adjoining building was not undertaken and that that the focus is the gantry crane as constructed. Stated that *'if some of the adjacent building planning reference 10/288 has been constructed too high we will inform the client and advise that a retention application may be required.'*

3.3. Planning Authority Reports

3.3.1. Planning Reports

The initial report of the Planning Officer on file notes that the stated dimensions of the crane structure are 50 metres in length, 13 metres in width and 12.5 metres in height. The initial report highlights a number of potential discrepancies between the drawings submitted with the section 5 referral case and those submitted with the planning application for the shed structure permitted under Laois County Council Ref. 10/288 / ABP Ref. PL11.239206 and that these should be clarified by way of further information.

A second report subsequent to the submission of a response to the request for further information notes the fact that Article 9 of the Planning and Development Regulations sets out a number of restrictions on exemptions, one of which is where the development would contravene a condition attached to a permission. In the case of the proposed development the second planning officer report states that it is evident that works to the permitted building were undertaken such that it has not been constructed in accordance with the permission granted. Reference is made to the wording of condition No.1 attached to the decision of the Board under ref. PL11.239206 which requires that development be undertaken in accordance with the plans, particulars and documents submitted. Stated that the existing adjacent building is unauthorised and that on that basis, the development undertaken cannot be exempted development.

3.3.2. Other Technical Reports

None on file.

4.0 Planning History

The following planning history relates to the Booth Concrete site and is referenced on file.

- Laois County Council Ref. 10/290; ABP Ref. PL11.239204 – Permission granted by the Planning Authority and decision upheld on appeal to the Board for the retention of an existing precast concrete manufacturing building.
- Laois County Council Ref. 10/289; ABP Ref. PL11.239205 – Permission granted by the planning authority and decision upheld on appeal to the Board for the retention of an existing single story maintenance garage building.
- Laois County Council Ref. 10/288; ABP Ref. PL11.239206 – Permission granted by the Planning Authority and upheld on appeal for the retention of an existing precast concrete product manufacturing building.
- Laois County Council Ref. 07/1451 – Permission granted for the replacement of existing hardstanding area with a concrete surface.

- Laois County Council Ref. 06/24; ABP Ref. PL11.218941 – Permission granted by the Planning authority and upheld on appeal for the retention of existing industrial unit with office, toilets and septic tank plus hardstanding and car parking area.
- Laois County Council Ref. 98/780 – Permission granted by the Planning authority for the construction of a two storey office building ancillary to the existing concrete works.
- Laois County Council Ref. 95/300 – Permission granted by the planning authority for the retention of concrete plant, extraction of sand and gravel and washing facility.

5.0 Policy Context

5.1. Relevant Referral Cases

5.1.1. I have undertaken a review of the referrals database in order to determine if there are any history cases that relate to development of the same form as that the subject of this case. No examples very similar to the current case or relating to cranes, gantry cranes or other similar structures were identified on the database.

5.1.2. The following case relating to s.4(1)(h) are noted:

RL2139 – relates to the erection of 7 no. floodlights around an existing playing pitch. The Board determined that the erection of the floodlights was an addition to an existing structure and not come within s.4(1)(h) not being works for the maintenance, improvement, or repair of a structure.

RL2191 – relates to the repair and maintenance of an existing workshop in Kilkenny. The Board determined, inter alia, that the structure had not been built in accordance with the permission granted, and that the repair and maintenance of this unauthorised structure would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure and would not, therefore, come within the meaning of section 4 of the Planning and Development Act, 2000:

5.2. Development Plan

The site is located on lands that are located outside of any identified settlement and which are not zoned for any particular purpose. There are no specific objectives including protected views of prospects impacting on the site.

5.3. Natural Heritage Designations

5.3.1. The site is not located in or close to an European sites. The closest such site to the site the subject of this referral are as follows:

- Lisbigney Bog SAC (site code 000869) which is located c.2.5km to the south of the site at the closest point.
- The River Barrow and River Nore SAC (site code 002162) which is located c.2km to the south west of the subject site at the closest point,
- The River Nore SPA (site code 004233) which is also located c.2km to the south west of the subject site at the closest point.

6.0 The Referral

6.1. Referrer's Case

The following is a summary of the main issues raised in the case presented by the referrer:

- That the site is covered by several planning permissions which taken together form an industrial facility for the processing of aggregates and manufacturing of concrete products.
- That the development undertaken which is the subject of the s.5 referral is internal to the site and is not generally visible from the from the site boundary.

- That the structure is less than 15 metres in height and does not materially change the appearance of the industrial facility. On this basis, it is submitted that the provisions of s.4(1)(h) of the Planning and Development Act, 2000 is relevant in relation to the development.
- Submitted that the gantry development which is for the loading of bulky concrete elements is an addition to existing plant and is therefore exempted development under Class 21 of Part 1 of the Second Schedule of the Regulations.
- Submitted that none of the restrictions on exemptions set out in Article 9 of the Planning and Development Regulations, 2001 are applicable in this case.

6.2. Planning Authority Response

No response received.

6.3. Observer

An observation on the referral has been received from Mr Tom McEvoy and Mary and Michael Wheelan who are residents of Ballymullen, Abbeyleix, Co. Laois. The following is a summary of the main issues raised in this observation:

- That there would be intensification of use of the site and there is already a court order restricting traffic to 8am to 6pm Monday to Saturday. These times are not being complied with.
- That there is unauthorised development, and the retention of the gantry is now sought.
- That there are other activities on the site that do not have permission. For example, there are two concrete batching plants. There is also a scaffolding business operating from the site.
- That Booth concrete do not have a discharge licence and are pumping waste into rivers.

- That none of the developments undertaken have been the subject of EIA.
- That the permission Ref. 12/46 was granted despite there not being a valid site notice. Permission for the retention of the concrete manufacturing building was granted by the Board under Ref. PL11.239206.
- That the overall site at Ballymullen has been extended in several directions in recent years. Correspondence relating to unauthorised development attached with the observation.
- That the effects of the increased traffic have to be considered in assessing this referral.
- That the parent permission for activity on the site is Ref. 95/300 which relates to the retention of concrete plant, extraction of sand and gravel and washing facility on the site.
- Noted that no assessment of compliance with the EIA directive has been carried out and that retention permission is not available for developments that have commenced where EIA is required.
- That conditions attaching to Refs. 95/300 and 98/780 are not being complied with and the Planning Authority are not enforcing them.
- That the site is adjacent to Abbeyleix Bog otherwise known as Killamuck Bog which covers an area of c.109ha. and which contains three Annex I habitats. This site is not designated as a European site however the site is drained by a natural drain between the bog and a man made drain to the east both of which are connected to the River Nore.
- The observation is accompanied by a significant number of documents including legal papers relating to disciplinary proceedings against a solicitor, correspondence with the Planning Authority, aerial photographs of the site, planning history and enforcement documents, photographs of traffic accessing the site and a timeline / survey of traffic accessing the site.

6.4. First Party Response to Submission Received from Observer

The following is a summary of the main issues raised in the submission of the observer:

- That the comments in the observers submission are not relevant to the issue for assessment which is the section 5 reference.
- That the development is within the parameters of Class 21 of Part 1 of the Second Schedule of the Regulations.
- That the observations seek to open the planning status of the overall facility which has been in operation for almost 50 years.
- That the development the subject of the section 5 reference does not in any way change the output of the factory and does not result in any additional vehicular movements to or from the site.
- That the application is not for retention of the crane as stated in the observation.
- That the unauthorised development cases cited in the observation do not relate to the Booth Concrete site. There are no open unauthorised development files relating to the site.
- The observer is correct that Booth Concrete does not have a discharge licence. The water recycling system on the site has been upgraded to remove the requirement to discharge off site.
- That the footpath provided opposite the observers house was undertaken by Laois County Council and has greatly improved safety.
- That the observer does not provide any information or expertise to support the statement made regarding the impact on the environment.
- That the motivation of the observer is to be compensated financially for living near a quarry.
- That the court order and financial settlement agreement referenced became redundant once planning permission was granted in 2010.

- Not clear what is the relevance of a number of photographs attached with the observation.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

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.

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 1 of the Second Schedule

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 used 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 an 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.

Conditions and Limitations

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.

8.0 Assessment

8.1. Introduction

8.1.1. The content of the third party observation submitted in relation to this referral are noted. These observations relate significantly to the planning history of the site and to the implications of the activity undertaken at the site for the amenity of the observer and are not all specifically relevant to the assessment of a referral as to what is or is not development and is or is not exempted development. Where issues raised in the third party observation submitted are specifically relevant to the assessment of this referral these issues are referenced in the relevant sections below.

8.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the outdoor gantry mounted crane 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. Likewise planning enforcement is a matter for the Board and does not fall within the jurisdiction of the Board.

8.2. Is or is not development

- 8.2.1. The subject of this referral includes the erection of steel beams and support rails for the operation of a gantry crane. Based on the drawings submitted with the referral, the length of the steel support structure erected on site extends c.46 metres beyond the existing shed structure and has a width of c.11.5 metres. As per Drg. No. 20-56-P-03-04, the height of the structure is approximately the same as that of the adjoining shed which is indicated as having an overall height of 12.48 metres. In my opinion the erection of these support structures and the installation of the crane as observed on site comprise works on in or under land and therefore comes within the scope of the definition of development as set out at s.3 of the Planning and Development Act as amended.
- 8.2.2. With regard to the change of use element of the definition of development given at s.3 of the Act, the nature of the works undertaken is such that I do not consider that an actual change of use in the site has occurred. Given this I do not consider that the use of the overall site cannot be considered to have materially changed and therefore development by reason of a change of use of the site has not occurred

8.3. Is or is not exempted development

Section 4(1)(h) Planning and Development Act, 2000 (as amended)

- 8.3.1. The referrer contends that the site is covered by several planning permissions which taken together form an industrial facility for the processing of aggregates and manufacturing of concrete products. It is also contended that the development the subject of the referral is internal to the site and such that it does not materially change the appearance of the industrial facility. On this basis, it is submitted that the provisions of s.4(1)(h) of the Planning and Development Act, 2000 is relevant in relation to the development.

8.3.2. s.4(1) states that 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.

8.3.3. In terms of compliance with s.4(1)(h) of the Act, the first question is whether the works relate to a structure. In the circumstances of this referral, the works comprise the addition of an external gantry crane to an existing industrial shed permitted by the Board under Ref. PL11.239206. A “structure” is defined in s.2(1) of the Act as

‘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....’

In my opinion the existing shed structure on site comprises a structure as defined in the Act.

8.3.4. The next issue is whether the works could be considered to constitute works for ‘*the maintenance, improvement or other alteration of the structure*’ as provided for in s.4(1)(h). In the circumstances of this case, I consider that the addition of the steel supports external to the permitted shed comprise works that are more of an addition to the existing structure than an alteration as specified in s.4(1)(h). In making this judgement regard has been had to the significant scale of the works undertaken having a size as per the submitted drawings of c.48.5 metres in length, c.12.0 metres in width and c.12.5 metres in height. I also have regard to previous Board decisions on this issue, for example RL2139 relating to the erection of 7 no. floodlights around an existing playing pitch where the Board determined that the erection of the floodlights was an addition to an existing structure and did not come within s.4(1)(h) not being works for the maintenance, improvement, or repair of a structure.

- 8.3.5. On the issue of the impact of the works on the external appearance of the structure, I note the location of the works within the interior of an existing industrial site and the fact that the gantry is located adjoining and partially screened by existing shed structures. I also note the separation between the gantry structure as erected and the site boundaries and the absence of clear views of the gantry structure from locations off site. For these reasons I do not consider that the works the subject of the referral can be considered to 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.
- 8.3.6. I note that the report of the Planning Officer and the decision issued by the Planning Authority determine that the gantry crane as erected would not be exempted development as the works relate to a structure which would appear not to have been constructed in accordance with the planning permission issued. Specifically, the shed structure to which the external gantry crane has been added was permitted by the Board under ref. PL11.239206. Based on the report of the Planning Inspector on this case and the description of development contained at section 2.0 of that report, the maximum height of the shed permitted was 7.9 metres above ground level. The height of the shed as constructed and the crane gantry the subject of this referral is significantly higher than this at c.12.5 metres above ground level. It would therefore appear that the shed structure has not been constructed in accordance with the permission issued by the Board. Reference is made in the report of the Planning Officer on file to Article 9 of the Planning and Development Regulations 2001 (as amended) which sets out restrictions on the exemptions provided for under Article 6 and specifically sub paragraph (i) which requires that development would not contravene a condition attached to a permission. These restrictions on exemptions only relate to exemptions provided for under Article 6 of the Regulations and set out in the Second Schedule and do not act to restrict exemptions provided for under the Planning and development Act, 2000 (as amended), including s.4(1)(h)
- 8.3.7. I do not consider that there are any other parts of s.4(1) of the Act which are applicable to the circumstances of the subject case.

Planning and Development Regulations, 2001 (as amended)

8.3.8. The referrer contends that the gantry crane structure as erected is exempted development by reference to Class 21 of Part 1 of the Second Schedule of the *Planning and Development Regulations, 2001* (as amended). Class 21 states as follows:

<p><i>Development for industrial purposes</i></p> <p>CLASS 21</p> <p>(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 used as a dock, harbour or quay for the purposes of any industrial undertaking—</p> <p>(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,</p> <p>(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,</p> <p>(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.</p> <p>(b) Any works for the provision within the curtilage of an 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.</p>	<p>1. Any such development shall not materially alter the external appearance of the premises of the undertaking.</p> <p>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.</p>
---	--

8.3.9. Article 5 of the *Planning and Development Regulations, 2001* (as amended) defines an industrial undertaker as follows:

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

In the circumstances of the subject referral, I consider that the referrer comes within the definition of a statutory undertaker as defined in Article 3 and that the activity undertaken on the site is an industrial undertaking.

- 8.3.10. The development undertaken or proposed to be undertaken on the site does not comprise development relating to private ways or railways Class 21 (a)(i) and also does not come within sewers, mains, pipes cables or other apparatus as specified in (a)(ii). The form of gantry crane erected on the site would however in my opinion come within the scope of (a)(iii) being the addition of plant or machinery or structures of the nature of plant or machinery.

8.4. Restrictions on exempted development

- 8.4.1. The conditions and limitations attaching to Class 21 of Part 1 of the Second Schedule requires firstly that the development shall not materially alter the external appearance of the premises and secondly that the height of any such plant or machinery shall not exceed 15 metres.
- 8.4.2. The scale, location, and form of the development the subject of the referral is in my opinion such that it would not materially alter the external appearance of the premises. Specifically, the crane gantry structure would not be any higher than the adjoining shed structure and the structure is centrally located within the industrial site and such that it would not have a material impact on views from outside the site.
- 8.4.3. In terms of height, the gantry crane structure as erected has an overall height of c.12.5 metres above ground level and would therefore not exceed the 15 metre maximum height specified.
- 8.4.4. In view of the above, the development the subject of the referral request would meet the conditions and limitations specified in Class 21 of Part 1 of the Second Schedule to the Regulations.
- 8.4.5. Exemptions provided for under Article 6 of the Regulations, including Class 21 of Part 1 of the Second Schedule, are limited by the restrictions on exemptions set out in Article 9. In the case of the subject site, the information presented by the Planning Authority indicates that the existing shed structure to which the gantry crane

extension has been added has not been constructed in accordance with the permission granted (An Bord Pleanála Ref. PL11.239206). Based on the report of the Planning Inspector on this case and the description of development contained at section 2.0 of that report, the maximum height of the shed permitted was 7.9 metres above ground level. The height of the shed as constructed and the crane gantry the subject of this referral is significantly higher than this at c.12.5 metres above ground level and it would therefore appear that the shed structure has not been constructed in accordance with the permission issued by the Board. Based on the information available therefore the Board is not satisfied that the shed structure to which the external gantry crane the subject of this referral is connected has been constructed in accordance with the permission granted.

- 8.4.6. Sub paragraph (i) to Article 9 requires that development would not contravene a condition attached to a permission and condition No.1 attached to the grant of permission issued by the Board requires that development would be constructed in accordance with the plans, particulars and documents lodged with the application except as may be required to comply with other conditions. In the case of the development the subject of this referral, I consider that the constructed gantry structure and constructed shed both appear to be materially higher than the permitted height of the shed under Ref. PL11.239206 and therefore such that the development the subject of this referral contravenes condition No.1 attached to this permission.
- 8.4.7. Sub paragraph (vii) to Article 9 requires that development would not '*consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use*'. In the circumstances of the site and development the subject of the subject referral I consider that the gantry crane structure is such that it comprises an extension of an unauthorised structure, namely the adjoining shed permitted under Ref. PL11.239206.
- 8.4.8. Having regard to the above, it is my opinion that the development the subject of this referral does not comprise exempted development under Class 21 of Part 1 of the Second Schedule by virtue of the fact that the carrying out of the development contravenes a condition attaching to An Bord Pleanála Ref. PL11.239206, thereby coming within Article 9(1)(a)(i) of the Planning and Development Regulations and

also comprises the extension of an unauthorised structure thereby coming within the provisions of Article 9(1)(a)(viii) of the same regulations.

8.5. Appropriate Assessment – Screening

8.5.1. The site is not located in or close to an European sites. The closest such site to the site the subject of this referral are as follows:

- Lisbigney Bog SAC (site code 000869) which is located c.2.5km to the south of the site at the closest point.
- The River Barrow and River Nore SAC (site code 002162) which is located c.2km to the south west of the subject site at the closest point,
- The River Nore SPA (site code 004233) which is also located c.2km to the south west of the subject site at the closest point.

8.5.2. There is no clear surface water pathway between the referral site and Lisbigney Bog SAC. A surface water pathway between the referral site and the River Barrow and River Nore SAC and the River Nore SPA is available via the watercourse that runs to the immediate south west of the referral site and into which the previously licenced water discharge point from the Booth Concrete site connected. The hydrological connection between this previous discharge point and the River Barrow and River Nore SAC and the River Nore SPA sites is c.8km.

8.5.3. Notwithstanding the above, the nature of the works which are the subject of this referral are such that no additional industrial activity would be likely to arise at the existing facility and no additional emissions or discharges such as would have potential impacts on the conservation objectives of any European site would be likely to be generated.

8.5.4. Having regard to the above, the works which are the subject of this referral are not likely to have significant effects on any of the above listed European sites in light of their conservation objectives.

8.6. Environmental Impact Assessment

- 8.6.1. Section 5(7A) of the Planning and Development Act as amended requires that the planning authority or the Board shall, in the respect of a development or proposed development specified in Part 2 of the Fifth Schedule to the Planning and Development Regulations, 2001 specify in its declaration or decision whether the development or proposed development the subject of the request or referral would be likely to have significant effects on the environment and require environmental impact assessment.
- 8.6.2. In the case of this referral, the development the subject of the referral request relates to the construction of a gantry mounted crane. The nature of the works the subject of this referral and the primary industrial activity on the site are not therefore such that they are a class of development specified in Part 2 of the Fifth Schedule of the Planning and Development Regulations, 2001 (as amended) and I do not therefore consider that an assessment of the likely significant effects on the environment is required in this case.

9.0 Recommendation

- 9.1. 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 erection of an outdoor gantry mounted crane extending an existing gantry crane located within an existing shed is or is not development and is or is not exempted development.

AND WHEREAS Booth Precast Limited requested a declaration on this question from Laois Council and the Council issued a declaration on the 22nd day of March, 2021 stating that the matter was development and was not exempted development:

AND WHEREAS Booth Precast Limited referred this declaration for review to An Bord Pleanála on the 16th day of April, 2021:

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 6(1) and article 9(1)(i) and 9(1)(vii) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 21 of Parts 1 Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the referral relates to the erection of an external gantry mounted crane which comprises works and therefore comes within the definition of development as set out at s.3 of the Planning and Development Act as amended.
- (b) the existing shed structure on site comprises a structure as defined in the Act and therefore comprises a structure for the purposes of s.4(1)(h) of the Planning and Development Act, 2000 (as amended),
- (c) the scale and location of the works undertaken are such that the addition of the gantry crane external to the permitted shed are considered to comprise works that comprise an addition to the existing structure rather than works for the maintenance, improvement or other alteration as specified in s.4(1)(h) and are

therefore such that the works do not come within the scope of s.4(1)(h).

- (d) the nature and location of the works the subject of the referral are such as to 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.
- (e) the referrer comes within the definition of 'industrial undertaker' set out in Article 5(1), is undertaking an industrial activity and the form of gantry crane erected on the site is considered to come within the scope of Class 21(a)(iii) of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended) comprising the addition of plant or machinery or structures of the nature of plant or machinery.
- (f) Based on the information available the Board is not satisfied that the shed structure to which the external gantry crane the subject of this referral is connected has been constructed in accordance with the permission granted (ABP Ref. PL11.239206) and therefore the development as constructed does not meet the requirements of sub paragraphs (i) and (vii) of Article 9 of the Planning and Development Regulations, 2001 (as amended).
- (g) That the works which are the subject of this referral are not considered such as to have any likely significant effects on any European sites in light of the conservation objectives of the relevant sites.
- (h) That the works which are the subject of this referral are not likely to have significant effects on any European sites

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 erection of an outdoor gantry mounted crane extending an existing gantry crane located within an existing shed used for the manufacture of concrete products is development and is not exempted development.

Stephen Kay
Planning Inspector

11th November, 2021