



An
Bord
Pleanála

Inspector's Report ABP-311087-21

Question

Whether importation, processing, recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling is or is not development and is or is not exempted development.

Location

The Maltings Business Park, Athy, Co. Kildare.

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00867

Applicant for Declaration

Gill Skip Hire Ltd.

Planning Authority Decision

Is development but not exempted development

Referral

Referred by

Gill Skip Hire Ltd.

Owner/ Occupier

Gill Skip Hire Ltd.

Observer(s)

None

Date of Site Inspection

27th July 2022

Inspector

Ian Boyle

1.0 Site Location and Description

- 1.1. The site is within the Maltings Business Park, Athy, Co. Kildare. The business park is situated on the western side of the Grand Canal, which runs through the north part of the town in a northwest - southeast direction before it meets the River Barrow near The Horse Bridge.
- 1.2. The site is surrounded by industrial uses and is accessed directly from the N78 to the north. It comprises an access route, old industrial structure, and a hardstand area – the latter which has been used as a storage and sorting yard.
- 1.3. The site has been used historically for industrial processes and activities for many years, including the production of malt and storage of grain.
- 1.4. The appeal site includes both the site access / wayleave and central area within the existing business park and is under the control of the Applicant.
- 1.5. A Section 5 Declaration is being sought by the Referrer in respect of the proposed industrial use, which constitutes processing and recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling. Residual waste will be sent off site for further treatment or disposal.
- 1.6. The referrer states that an annual amount of 5,000 tonnes of waste materials is accepted to the site for processing. The source of the waste will be skip waste mainly containing demolition waste from construction sites and also from house renovations and clearance. The processed material will be transported offsite for final recovery at authorised facilities.
- 1.7. There will be no permanent deposition or long term storage of waste at the facility. All storage will be temporary in line with the production of recycled materials and contained within the building. It is proposed to store empty skips only in the rear yard.
- 1.8. Waste will be processed and separated both manually and by the use of small mobile plant to move materials into designated bays prior to onward transport offsite. Mobile plant will be used to screen heavier objects from the incoming waste. All activities will be carried out in accordance with a waste permit as required.

2.0 The Question

The question referrer is:

‘Whether or not the processing, recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling at the Maltings Business Park, Athy, Co. Kildare is or is not development and is or is not exempted development.’

- 2.1. The Referrer states that the historical and existing use of the site is industrial. Therefore, it is submitted that the use of the existing industrial building and yard for a waste transfer facility and ancillary storage is industrial and does not constitute a material change of use and, therefore, does not require planning permission.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority issued a Declaration under Section 5 of the *Planning and Development Act 2000 (as amended)* (‘the Act’), on 14th July 2021, stating that the proposed development is development and is not exempted development.

3.1.1. Planning Report

- In relation to Class 21 of the Planning and Development Act, 2000 (as amended), the definition for industrial process is ‘for the purpose of any industrial undertaking to carry out the following:
 - (a) for or incidental to the making of any article or part of an article, or
 - (b) for or incidental to the altering, 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,
- The development does not result in the creation of any articles but the processing of construction waste for further waste processing elsewhere off site.

- The development does not result in any of the aforementioned as what is occurring onsite is processing and temporary storage of construction waste for further waste processing elsewhere off site. Therefore, the development being carried out onsite is not exempted development as per Class 21.
- Class 22 of the Planning and Development Act, 2000 (as amended), does not apply as the waste materials being processed must be generated at the subject site in connection with the industrial process being carried out within the curtilage of the industrial site.
- In this instance, the construction waste arises offsite, is transported to the subject site for processing and temporary storage, and then further processed elsewhere off the site at another location.
- It is recommended that the Applicant be advised that the proposal is development and is not exempted development.

4.0 Planning History

None relevant.

5.0 Policy Context

5.1. Athy Town Development Plan 2012 – 2018

The subject site is zoned 'A – Town Centre'.

5.2. Natural Heritage Designations

The nearest European Site is the River Barrow and River Nore SAC (Site Code: 002162), which is roughly 380m to the east.

The Ballyprior Grassland SAC (Site Code: 002256) is situated approximately 9km west.

6.0 The Referral

6.1. Referrer's Case

The Referrer has appealed the Decision of the Planning Authority. The main issues raised can be summarised as follows:

- The subject site has been historically used for industrial processing since 1921 for the production and storage of malt and other ancillary processes.
- Exemption is sought under Classes 21 and 22 of Schedule 2 of the Planning and Development Regulations, 2001, as amended ('the Regulations')

Class 21

- The proposed industrial use as a materials recovery and waste transfer station to produce recovered / recycled concrete aggregates, recycled metal, timber and plastic from processed waste is in accordance with the definition of an 'industrial process' in Article 5(1)(a) and (b) and, therefore, the manufacturing of recovered articles and materials fall within the definition of an 'Industrial Process'.
- It is considered that the building at the Maltings Business Park proposed for use as a materials recovery and waste transfer station is also in accordance with the definition for an 'Industrial Building'.
- An 'industrial' building is inherently associated with an 'industrial process', which is defined by the Regulations, and the Planner's Report recognises the building to be 'industrial' in nature.
- As the proposed processes accord with the definition of an 'industrial process' within an 'industrial building' the proposed development falls within the requirements of Class 21.
- The development complies with Article 9 of the Regulations. An Appropriate Assessment Screening is appended to this referral.

Class 22

- The Planning Authority has misinterpreted the provisions of Class 22.
- The Planning Authority's assessment that 'the waste materials being processed must be generated at the subject site in connection with the industrial process being carried out within the curtilage of the industrial site' is not correct.
- Class 22 provides for the storage of all materials in connection with the industrial process and not solely the waste materials generated as a result of an industrial process.
- It is highly unusual for an industry to manufacture their own inputs prior to the manufacture of an article. The exception being mines and other natural resource industries.
- The Planning Authority states that as construction waste arises offsite, and is transported to the subject site for waste processing and temporary storage for further processing elsewhere offsite, that Class 22 does not allow for such an arrangement.
- Class 22 only relates to the storage of materials and wastes connected to an industrial process and it is inappropriate to make a determination as 'not exempted' development on the basis of Class 22.

6.2. Planning Authority Response

- The Planning Authority has nothing further to add.

6.3. Owner/occupier's response

- The owner/occupier is the referrer.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Article 6 of the Regulations state the following:

- (1) *Subject to Article 9 the 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 conditions and limitations specified in Column 2 of the Act opposite the mention of that Class in the said Column 1.*

Article 9 of the Regulations identifies circumstances by which development under Article 6 shall not be exempted development, including the carrying out of such development that 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.*

Section 2(1)

- *“Works” includes any act or operation of the construction, excavation, demolition, extension, alteration, repair or renewal.*

Section 3(1)

- *“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.*

7.2. Planning and Development Regulations, 2001 (as amended)

Part 2, Article 5(1)

- *“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 altering, 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 program or other original database;*

Schedule 2, Part 1: Exempted Development – 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 / 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.*

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.

Conditions / Limitations

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.

8.0 Assessment

8.1. Is or is not development

- 8.1.1. Having regard to the information on file and the description provided by the Referrer, the proposed development is being used for the processing, recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling. Waste is accepted from offsite sources, including building and construction sites, and residual waste sent off site for further treatment or disposal.
- 8.1.2. Therefore, the site is being used as a construction waste processing and waste transfer station (i.e. resource recovery and recycling centre), which is considered to constitute works under Section 2(1) of the Planning and Development Act, 2000 (as amended) and is, therefore, development as per Section 3(1) of the Act.

8.2. Is or is not exempted development

8.2.1. The site has been used historically for industrial processes and activities for many years, including the production of malt and storage of grain.

8.2.2. As noted above, it is being used as a materials recovery and waste transfer station.

8.2.3. The Referrer states in their submission that the proposed development is an industrial use, which constitutes the processing, recovery and temporary storage of waste materials so that they can be changed into recovered articles, such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling. There will be no permanent deposition or long term storage of waste at the facility and residual waste will be sent off site for further treatment or disposal.

8.2.4. The Referrer states that the proposed development, as a materials recovery and waste transfer station, is in accordance with Article 5(1), which is for an:

- **“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’;

and

- **"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 altering, 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,...’.

8.2.5. In my opinion, having regard to the type of processes that are onsite, which comprises the processing of waste materials, so that they can be recovered / changed into recovered articles for further processing elsewhere, this is a process that equates to the ‘making of articles’. The articles in this case are treated and recovered waste products, which I consider an industrial process.

- 8.2.6. It follows that the proposed development is in accordance with Article 5(1)(a) and (b) and that process(es) involved here would satisfy the requirements of the definition for an 'Industrial Process'.
- 8.2.7. I further note that an 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. Therefore, an industrial process is inherently associated with an industrial process, and I consider that both fall within the requirements of Class 21 for exemption purposes, for the reasons outlined above.
- 8.2.8. I do not consider that the proposed development would materially alter the external appearance of the premises, as the processes are internal to the business park within which it is situated, and away from public roads. Furthermore, the height of any proposed plant or machinery that would not exceed 15 metres (above ground level), or to replace any plant, machinery or structures on the site. Therefore, the conditions and limitations associated with Class 21 are complied with.
- 8.2.9. However, in relation to Class 22, I note that the processes proposed include the transportation and processing of residual waste for further treatment and disposal offsite. Class 22 specifically allows for the storage within the curtilage of an industrial building of materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process in connection with the industrial process carried on in the building (emphasis added). It does not allow for the delivery, unloading or acceptance of other materials, including waste materials, arising from sources offsite, which are unrelated to the industrial building in question, and then for onwards treatment and further processing elsewhere.
- 8.2.10. I acknowledge that the referrer makes the case that it would be unusual for an industry to manufacture their own inputs prior to the manufacture of an article, as would be the case for a typical industrial or manufacturing operation (save for mines or other natural resource industries). However, I do not consider this to be a comparable example and that the exemption under Class 22 does not, therefore, apply to the subject development in this instance.

8.3. Restrictions on exempted development

Appropriate Assessment

- 8.3.1. The Planning and Development Regulations, 2001 (as amended) Article 9(1)(a)(viiB) includes a restriction on exempt development where An Bord Pleanála ‘would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site’.
- 8.3.2. The nearest European Site is the River Barrow and River Nore SAC (Site Code: 002162), which is roughly 380m to the east. The Ballyprior Grassland SAC (Site Code: 002256) is situated approximately 9km west.
- 8.3.3. Following consideration of the ‘source-pathway-receptor’ model, particular consideration needs to be given to the likelihood of the proposed development of having a significant effect on the conservation objectives of a European Site in terms of the potential of pollution arising, due to the receipt and processing of bulky waste, and construction and demolition materials, which could lead to a deterioration in water quality for a Natura 2000 site. The waste processing will take place exclusively inside an existing building.
- 8.3.4. The Applicant submitted a Stage 1 Screening for Appropriate Assessment (AA Screening). The report was prepared by Golder Associates Ireland Limited and dated March 2021. The AA Screening Report concludes that the operation of the site – as a waste facility – will not cause a likely significant effect on Natura 2000 sites. In assessing the proposed development, I note that the Planning Authority considered that the project would not require a stage 2 appropriate assessment. I have also considered the report as part of my assessment.
- 8.3.5. In terms of whether the proposed development would have any significant likely effects of Natura 2000 sites, and their associated qualifying species, I note the following:
- The waste will only be housed within a concrete and steel framed building that is onsite. The building is on top of concrete pads, which is non-permeable surface, which would not allow any rainwater to interact with stored waste and for effluent to discharge from the site in this way.

- Water will not be used in the sorting or processing of waste, and the waste will remain dry at all times.
- No surface water or wastewater will be discharged into the River Barrow and that all water discharge will be directed into the mains sewerage system.
- Plant and machinery will be serviced and maintained regularly to avoid leakage risks.

8.3.6. Therefore, I am satisfied that subject to standard operational management practices, which would be part of the project, that this would be sufficient to avoid an indirect effect on water quality to a European Site. I am also satisfied that the operation of the facility would not result in potential for pollution from effluent via surface water, groundwater, dust or noise emissions.

8.3.7. In summary, having regard to the nature and scale of the proposed development, which is for a waste recovery and processing facility, the distance from the nearest European site, no Appropriate Assessment issues arise. Therefore, it is 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.

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 processing, recovery and temporary storage of waste materials into recovered articles, such as concrete, aggregates, metals, timber for onwards reuse, recovery and recycling is or is not development or is or is not exempted development:

AND WHEREAS Gill Skip Hire Ltd. requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 14th day of July 2021, stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 10th day of August, 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) article 5(1) of the Planning and Development Regulations, 2001, as amended,
- (d) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (e) the submissions of the parties to the referral:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The importation, processing, recovery and temporary storage of waste materials into recovered articles such as concrete, aggregates, metals and timber for onwards reuse, recovery and recycling constitutes ‘works’ and ‘development’ as defined in Section 2(1) and Section 3(1) respectively, of the Planning and Development Act, 2000, as amended, and
- (b) the proposed development does not come within the scope of Class 22, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended.

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 importation, processing, recovery and temporary storage of waste materials

into recovered articles such as concrete, aggregates, metals and timber for onwards reuse is development and is not exempted development.

Ian Boyle
Planning Inspector

28th June 2022