



An
Bord
Pleanála

Inspector's Report 312183-21

Question

Whether the erection of a steel container for use as a temporary shelter, a drying room and personal storage room for on-site staff is or is not development and is or is not exempted development.

Location

Ballyonan, Broadford, Co. Kildare

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

ED/00900

Applicant for Declaration

John Keegan

Planning Authority Decision

Is development and is not exempted development

Referral

Referred By

John Keegan

Owner/Occupier

Owner

Observer(s)

None

Date of Site Inspection

26th May 2023

1.0 Site Location and Description

- 1.1. The subject site is located at Ballyonan, Broadford, Co. Kildare, a rural area, proximate to the border with Co. Meath. The site is located approx. 1 km due west of the M4 motorway and is accessed from local road L1011, via regional road R148. The site is bounded by the local road along its western boundary, by agricultural lands to the north, east and south, and by rural dwellings to the south/south-west.
- 1.2. The site is in use as a sand and gravel quarry which is operated by Keegan Quarries. The structure to which this referral relates is located adjacent to a weighbridge proximate to the site entrance.

2.0 Application for Declaration

- 2.1. The application was lodged with Kildare County Council on 21st October 2021. The submitted documentation includes the following:
 - Application Form
 - Cover Letter
 - Maps and Drawings
- 2.2. The proposal includes the following:
 - The use of a steel container as a temporary shelter, a drying room and personal storage room for on-site staff.
 - The steel container is 6.10 m x 3.05 m in size and has been modified to include 2 no. windows and 1 no. door.
 - The container has no foundations, no permanent power supply, no water or sewerage connections and is located beside a weighbridge.

3.0 The Question

- 3.1. Based on the information which was submitted to Kildare County Council by the Referrer on 21st October 2021 and to the Board on 13th December 2021, I consider that the question before the Board is **whether the use of a steel container as a temporary shelter, a drying room, and a personal storage room for on-site staff, is or is not, development, and is or is not, exempted development?**

4.0 Planning Authority Declaration

4.1. Declaration

- 4.1.1. A declaration was issued by Kildare County Council on 17th November 2021, which can be summarised as follows:
- 4.1.2. The proposal is development and is not exempted development for the following reason:

The erection of a steel container for use as an on-site welfare facility (temporary shelter, drying room and personal storage room) constitutes the carrying out of works which results in development as defined by Section 3(1) of the Planning and Development Act, 2000 (as amended).

5.0 Planning Authority Reports

5.1. Planning Report (17th November 2021)

- 5.1.1. Kildare County Council's Planning Officer noted that the applicant had not identified which specific class of the Planning Regulations the exemption was being sought. Class 16 was noted to relate to structures in connection with a development during the period it is being carried out. Class 17 was noted to relate to temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.
- 5.1.2. The Planning Officer considered that the subject structure is related to the ongoing quarrying use, which is not in operation under a consent process, but rather a registration process under Section 261 of the Act. As such, it was concluded that the proposal constitutes development, which is not exempted development.

5.2. Other Technical Reports

5.2.1. None.

6.0 Planning History

6.1. **Planning Authority Reg. Ref. 21/931:** Planning permission sought for retention of 2.25 ha development area consisting of 3 no. settlement ponds, 3 no. stockpiles and all ancillary site works for a period of 3 years.

6.2. The Planning Authority issued a notification on 5th April 2022 confirming that it was precluded from considering the application as it included the retention of development which would have required: (i) an EIA, (ii) a determination as to whether an EIA is required, or (iii) an AA.

6.3. **Planning Authority Reg. Ref. 19/1138; ABP Ref. 312162-21:** Planning permission sought on a development area of approx. 1.05 ha, including the use of a weighbridge, wheel-wash, the erection of a staff office and administration building, car park area, access road and improved site entrance, concrete and ready-mix batching plant, block yard and associated infrastructure. The proposed site access will be from the L-1011 local road, to the north of an existing sand and gravel pit, (QR45). An EIAR and Appropriate Assessment accompanies this application. Revised by significant further information consisting of; amendments/clarification to the Environmental Impact Assessment Report (EIAR).

6.4. Kildare County Council issued Notification of the Decision to Refuse Permission for this application on 9th November 2021 for 3 no. reasons which may be summarised as follows:

(1) The EIAR has not provided an assessment of the material to be imported via the R-148 when the remaining sand and gravel adjacent to the site is exhausted and an adequate assessment of the reasonable alternatives that are relevant to the project has not been provided. It is also considered that the proposed development would endanger public safety by reason of traffic hazard and obstruction to road users.

(2) The Planning Authority is not satisfied that the development would not give rise to water pollution and be prejudicial to the health of residents in the vicinity of the site.

- (3) The Planning Authority is not satisfied that the assessment of, or proposed mitigation measures relating to, noise generated by the proposed activities on site has been adequately addressed in the submitted EIAR.
- 6.5. This decision is subject to a first-party appeal which is currently before An Bord Pleanála.
- 6.6. **Planning Authority Reg. Ref. 19/1138; ABP Ref. 308209-20:** Planning permission sought on a site of approx. 1.05 ha for a weighbridge, wheel-wash, the erection of a staff office and administrative building, car park area, access road and improved site entrance, concrete and ready-mix batching plant, block yard and associated infrastructure. The proposed site access will be from the L-1011 local road, to the north of the existing sand and gravel pit.
- 6.7. Kildare County Council issued Notification of the Decision to Refuse Permission for the proposed development on 24th August 2020 for 3 no. reasons which can be summarised as follows:
- (1) The EIAR has not provided an assessment of the material to be imported via the R-148 when the remaining sand and gravel adjacent to the site is exhausted and an adequate assessment of the reasonable alternatives that are relevant to the project has not been provided. It is also considered that the proposed development would endanger public safety by reason of traffic hazard and obstruction to road users.
- (2) The Planning Authority is not satisfied that the development would not give rise to water pollution and be prejudicial to the health of residents in the vicinity of the site.
- (3) The Planning Authority is not satisfied that the assessment of, or proposed mitigation measures relating to, noise generated by the proposed activities on site has been adequately addressed in the submitted EIAR.
- 6.8. This decision was subject to a judicial review with the Planning Authority's decision subsequently quashed by the High Court.
- 6.9. **Planning Authority Ref. ED/828:** The erection of a temporary steel container for use as an on-site welfare facility constitutes the carrying out of works which results in development which is not exempted development.
- 6.10. **S. 261A (QRA 01-001):** Kildare County Council determined that the requirements in relation to the registration under S. 261 were not fulfilled and that development was

carried out after 1st February 1990 which would have required a determination as to whether an EIA was required, but that such determination was not carried out or made. It was also identified that there would have been potential for significant impacts arising from the quarrying activities on the River Boyne and River Blackwater cSAC and SPA.

- 6.11. An Bord Pleanála determined that development was not carried out on site after 26th February 1997 that would have been likely to have had a significant effect on any European site having regard to the small scale of the quarry, the level of processing undertaken on the site, the lack of potential for connectivity to watercourses, the limited potential for connectivity to a European site and the minimal extent to which the quarry developed after 26th February 1997.
- 6.12. **S. 261 Quarry Registration – QR45:** Granted by An Bord Pleanála subject to 40 no. conditions.
- 6.13. **Planning Authority Reg. Ref. 94/474:** Planning permission refused to open a sand and gravel pit.

7.0 Natural Heritage Designations

- 7.1. The closest European sites include River Boyne and River Blackwater SAC (site code: 002299) and River Boyne and River Blackwater SPA (site code: 004232) both of which are located approx. 2.5 km north-east of the subject site at their closest points and Mount Hevey Bog SAC (site code: 002342) which is located approx. 5 km to the north-west at its closest point.

8.0 The Referral

8.1 Referrer's Case

8.1.1. The Referrer submits the following:

- The placement/erection of a steel shipping container for use as a temporary shelter, a drying room and personal storage room for on-site staff is exempted development under Class 16 and/or Class 17 and/or Class 18 of Schedule 2, Part 1 of the Planning and Development Regulations.
- The development in question is used for the on-site staff at the sand and gravel pit, which meets the description of development (column 1) and conditions and limitations (column 2) for these classes.
- The steel container is 6.10 x 3.05 m in size and 3.09 m high and was modified to include 2 no. windows and 1 no. door.
- There are no foundations, no permanent power supply and no water or sewerage connections to the container, which sits on original ground beside the weighbridge.
- Planning permission is being sought for a development adjacent to the sand and gravel pit (KCC ref. 191138) comprising a concrete and ready-mix batching plant, block yard and associated infrastructure, with a staff office and administrative building. With a grant of permission for this development, the steel container will no longer be necessary and can be removed from site and thus is temporary in nature.
- It is requested that the Planning Authority's decision be overturned, and the proposal be considered exempt development.

8.2 Planning Authority Response

8.2.1. A response from the Planning Authority was received by the Board on 18th January 2022. The Planning Authority confirms its decision that the proposal is development which is not exempted development.

9.0 Statutory Provisions

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

- 9.1.1. **Part 1, Section 2(1)** of the Act states that, “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”.
- 9.1.2. **Part 1, Section 2(1)** of the Act defines the term “**mine**” as “an excavation or system of excavations made for the purpose of, or in connection with, the getting, wholly or substantially by means involving the employment of persons below ground, of minerals (whether in their natural state or in solution or suspension) or products of minerals”. The term “minerals” includes stone, slate, clay, gravel, sand and other natural deposits except peat.
- 9.1.3. **Part 1, Section 2(1)** of the Act defines the term “**quarry**” as “an excavation or system of excavations made for the purpose of, or in connection with, the getting of minerals (whether in their natural state or in solution or suspension) or products of minerals, being neither a mine nor merely a well or bore-hole or a well and bore-hole combined, and shall be deemed to include –
- (i) any place on the surface surrounding or adjacent to the quarry occupied together with the quarry for the storage or removal of the minerals or for the purposes of a process ancillary to the getting of minerals, including the breaking, crushing, grinding, screening, washing or dressing of such minerals but, subject thereto, does not include any place at which any manufacturing process is carried on;
 - (ii) any place occupied by the owner of a quarry and used for depositing refuse from it but any place so used in connection with two or more quarries, and occupied by the owner of one of them, or by the owners of any two or more in common, shall be deemed to form part of such one of those quarries as the Minister may direct;

- (iii) any line or siding (not being part of a railway) serving a quarry but, if serving two or more quarries shall be deemed to form part of such one of them as the Minister may direct;
- (iv) a conveyor or aerial ropeway provided for the removal from a quarry of minerals or refuse.

9.1.4. **Part 1, Section 3(1)** of the Act states that “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”.

9.1.5. **Part 1, Section 4(1)** sets out the various forms and circumstances in which development is exempted development for the purposes of the Act.

9.1.6. **Part 1, Section 4(2)(a)(i)** states that “the Minister may by regulations, provide for any class of development to be exempted development for the purposes of this Act, where he or she is of the opinion that –

- (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,”

9.1.7. **Part 1, Section 4(4)** states that “notwithstanding.... any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required”.

9.1.8. **Part XAB, Section 177(U)(9)** states that “in deciding a declaration or 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”.

9.2. **Planning and Development Regulations, 2001 (as amended)**

9.2.1. **Article 6 (1)** states that “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.

- 9.2.2. **Schedule 2, Part 1, Class 16** of the Regulations defines the following as exempted development: “the erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.
- 9.2.3. The following conditions and limitations are set out in Column 2 of this Class:
“Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.
- 9.2.4. **Schedule 2, Part 1, Class 17** of the Regulations defines the following as exempted development: “the erection, construction or placing on land on, in over or under which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.
- 9.2.5. The following conditions and limitations are set out in Column 2 of this Class:
“Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent or approval or confirmation granted under the Act or any other enactment”.
- 9.2.6. The Referrer also submits that **Schedule 2, Part 1, Class 18** may also be relevant in this case which defines the following as exempted development: “the erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of mining is to be carried out pursuant to a permission under the Act, of structures, works, plant or machinery needed.

9.2.7. The following conditions and limitations are set out in Column 2 of this Class:

“Such structures, works, plant or machinery shall be removed when commissioning of the mine, and any ancillary structures or facilities, has been completed pursuant to a permission under the Act”.

9.2.8. **Article 9** sets out the following relevant restrictions on exempted development:

(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.

10.0 **Assessment**

10.1. The purpose of this Referral is to determine whether the use of a steel container as a temporary shelter, a drying room, and a personal storage room for on-site staff, is or is not, development, and is or is not, exempted development?

10.2. **Is or is not development**

10.2.1. As set out in Section 10.0 of this report, “development” means, except where the context otherwise requires, the carrying out of works on, in, over or under land, while “works” includes any act or operation of construction or excavation.

10.2.2. Having regard to the nature of the proposal, comprising the erection on a steel container on the subject site, I consider it is reasonable to conclude that the proposal constitutes “development” within the meaning of the Act. The focus, therefore, is on whether or not the proposed development constitutes exempted development.

10.3. Is or is not exempted development

- 10.3.1. I consider that the development would not fall within any of the categories of exemptions set out in Section 4(1) of the Act. I consider that Classes 16 and 17 of the Planning and Development Regulations, 2001 (as amended) are relevant to the determination of this case. The Referrer submits that Class 18 is also relevant in this case and as such, this class will also be considered.
- 10.3.2. **Classes 16** relates, inter alia, to the erection of structures on site needed temporarily in connection with a development during the period in which it is being carried out, either pursuant to a permission under the Act or as exempted development. **Class 17** relates, inter alia, to the provision of temporary on-site accommodation for persons employed/engaged in connection with the carrying out of the development, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment as exempted development, during the period in which it is being carried out. **Class 18** relates, inter alia, to the erection, construction or placing on land where mining is to be carried out pursuant to a permission under the Act, of structures, works, plant or machinery needed.
- 10.3.3. In reviewing the planning history for the site and having regard to the nature of the activities undertaken thereon, I note that the steel container structure has not been erected in association with development which has been granted pursuant to a permission under the Act. While there is a concurrent appeal case relating to the subject site before the Board (ABP Ref. 312162-21), this case has not yet been determined. As such, I consider that the exempted development provisions under Class 16 and Class 17, which require such development to be carried out “pursuant to a permission under the Act” or “any permission, consent, approval or confirmation granted under the Act or any other enactment” respectively, are not applicable in this instance.
- 10.3.4. While the Referrer submits that the development may also fall under the exempted development provisions of Class 18, I note that this class relates to land on which mining is to be carried out pursuant to a permission under the Act. Having regard to the definition of a mine set out in Part 1, Section 2 of the Act, and the registration of the existing sand and gravel quarry under S. 261 of the Act, I consider that the exempted development provisions of Class 18 do not apply in this case.

- 10.3.5. As such, based on the foregoing, I consider that the placing of the steel container on the site is development which is not exempted development.
- 10.3.6. In the event the Board disagrees with my assessment above, and in the interests of completeness, the provisions of Section 4(4) of the Act which effectively de-exempts any development which attracts a requirement for Environmental Impact Assessment (EIA) or Appropriate Assessment (AA) are considered below.

10.4. **EIA Screening**

- 10.4.1. The proposed development does not fall within a class of development for the purposes of EIA with reference to Schedule 5 of the Planning and Development Regulations, 2001 (as amended). Having regard to the nature and scale of the proposal, comprising a free-standing steel container, it is considered that it would not result in a real likelihood of significant effects on the environment. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.
- 10.4.2. As such, I am satisfied that the provisions of Part 1, Section 4(4) of the Act with respect to EIA do not apply in this case.

10.5. **AA Screening**

- 10.5.1. An AA screening report has not been provided with the Referral documentation. I note that Kildare County Council's Planning Officer concluded that, having regard to the proximity of the nearest SAC site, and the relatively small-scale nature and extent of the proposal, the potential does not exist for significant effects on the Natura 2000 network and that an AA was not required.
- 10.5.2. I agree with the Planning Officer's assessment in this instance. The steel container has no foundations and no water or sewerage connections. There are no hydrological connections between the subject site and any European site. While surface water run-off will arise on foot of the development, I note that it can readily be absorbed to ground having regard to the footprint of the development. As such, I am satisfied that the proposed development would not be likely to have significant effects on any European site, and consequently, that in-combination impacts would not arise on foot of the development.

10.5.3. I consider, therefore, that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on River Boyne and River Blackwater SAC (site code: 002299), River Boyne and River Blackwater SPA (site code: 004232) and Mount Hevey Bog SAC (site code: 002342), or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required. I am satisfied, therefore, that the proposed development does not fall within the scope of Part 1, Section 4(4) of the Act.

10.6. Restrictions on exempted development

10.6.1. I am satisfied that the de-exemptions provided under Article 9(1)(a)(i) and (viiB) do not apply in this instance.

10.7. Precedent Referral Cases

RL2110

10.7.1. The use and placing of a container at Motor Services, Showgrounds, Monahan Road, Cork is development which is not exempted development.

10.8. Conclusion

10.8.1. In my opinion, the use of a steel container as a temporary shelter, a drying room and a personal storage room for on-site staff, constitutes "works" and therefore constitutes "development" within the meaning of the Act. I further consider that the proposed development does not constitute exempted development under Class 16, Class 17 or Class 18 of Schedule 2, Part 1 of the Planning and Development Regulations, 2001 (as amended).

11.0 Recommendation

11.1. I recommend that the Board issue an order as follows:

11.2. **WHEREAS** a question has arisen as to whether the use of a steel container as a temporary shelter, a drying room and a personal storage room for on-site staff, is or is not, development, and is or is not, exempted development:

AND WHEREAS John Keegan requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 17th day of November, 2021 stating that:

(1) the erection of a steel container for use as an on-site welfare facility (temporary shelter, drying room and personal storage room) constitutes the carrying out of works which results in development as defined by Section 3 (1) of the Planning and Development Act, 2000 (as amended)

AND WHEREAS John Keegan referred this declaration for review to An Bord Pleanála on 13th day of December, 2021:

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

- (a) Sections 2(1), 3(1), 4(1), 4(2)(ai), 4(4) of Part 1 and Section 177 (U)(9) of Part XAB of the Planning and Development Act, 2000, as amended,
- (b) Articles 6(1) and 9(1)(a)(i) and (viiB) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 16, 17 and 18 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (d) The documentation on file and the report of the Planning Inspector

AND WHEREAS An Bord Pleanála has concluded that –

- (a) the said steel container comes within the scope of Sections 2(1) and 3(1) of the Act, as amended, and consists of the carrying out of works and therefore constitutes development, and
- (b) the said steel container does not come within the scope of Class 16, 17 or 18 of Part 1, Schedule 2, of the Planning and Development Regulations, 2001, as amended,

11.3. **NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3) of the 2000 Act, hereby decides that the use of a steel container as a temporary shelter, a drying room and a personal storage room for on-site staff, is development which is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Louise Treacy
Senior Planning Inspector

22nd June 2023