



An
Bord
Pleanála

Inspector's Report ABP-314977-22

Question

Whether the installation of a water storage tank 13.65m in diameter and 4.254m in height is or is not development or is or is not exempted development

Location

Maryfield, Ballinlough, Cork City

Declaration

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

R739/22

Applicant for Declaration

Murphy Transport Limited

Planning Authority Decision

Is development is not exempted development

Referral

Referred by

Murphy Transport Limited

Owner/ Occupier

Murphy Transport Limited

Observers

None

Date of Site Inspection

4th March 2024

Inspector

Margaret Commane

Contents

1.0 Site Location and Description	3
2.0 The Question	3
3.0 Planning Authority Declaration.....	3
3.1. Declaration.....	3
3.2. Planning Authority Reports	4
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Cork City Development Plan 2022-2028.....	6
5.2. Natural Heritage Designations	6
6.0 The Referral.....	6
6.1. Referrer’s Case.....	6
6.2. Planning Authority Response.....	8
7.0 Statutory Provisions.....	8
7.1. Planning and Development Act, 2000 (as amended).....	8
7.2. Planning and Development Regulations, 2001 (as amended)	9
8.0 Assessment.....	12
8.1. Is or is not development.....	12
8.2. Is or is not exempted development	12
8.3. Restrictions on exempted development	13
8.4. Appropriate Assessment.....	15
8.5. Environmental Impact Assessment Screening.....	15
9.0 Recommendation.....	15

1.0 Site Location and Description

- 1.1. The appeal site, at Maryfield, Ballinalough, Cork City, is 0.88Ha in size and located on the northern side of Ballinalough Road, c. 240 metres west of the junction of Ballinalough Road and the R852. The appeal site is currently used for the storage of vehicles associated with a transport company and features a no. of prefabricated office spaces along its western boundary, corrugated sheds with internal tank washes location centrally, a storage warehouse along its northern boundary and an external yard area used for the storage of trucks and tanks. The applicable water storage tank is located in the southernmost part of the site, separated from Ballinalough Road by a c. 27 metre wide garden area which serves a dwelling located immediately east of the site entrance.
- 1.2. The area surrounding the subject site is a mature residential area featuring a mix of one to two storey detached and semi-detached dwellings in a variety of architectural styles, interspersed with more recent infill residential developments, including the recently constructed Aylesbury Estate to the immediate north.

2.0 The Question

- 2.1. The applicant asks the following question: - Whether the installation of a water storage tank 13.65m in diameter and 4.254m in height is or is not development or is or is not exempted development.

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), on 5th October 2022 which stated that the proposed water storage tank **IS** development and is **NOT EXEMPT** Development.

3.2. Planning Authority Reports

3.2.1. *Planning Report*

The report of the Planning Officer, dated 5th October 2022 sets out the planning history for the site, the facts of the case, the relevant planning legislation, and their conclusion. The assessment conclusion is summarised as follows:

- In the context of the first issue for consideration, whether or not the matter at hand is 'development', it was concluded that it is development.
- The next issue for consideration is whether or not the matter at hand is exempted development. It is considered that the proposal comes within subsection (2) of Section 4 of the Planning and Development Regulations, 2001 (as amended).
- I consider that Article 6 and Class 21 applies, as the installation of a water storage tank is considered to be development in the category of *"the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery" "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"*.
- Having assessed the proposal against Class 21 and its conditions and limitations I find as follows: -
 - Condition/Limitation 1: - the tank is clearly visible from the public roadway. While it is noted that previously a number of tanks/trailers would be stored in this location on the site, it is considered that the storage of these tanks/trailers was a more transient use and were not a permanent, fitted fixture in this location and could be moved/removed from this location easily if required. The water tank is a permanent fixture constructed on a concrete apron and is clearly visible from the public roadway. In this regard, it is considered that the tank would materially alter the external appearance of the premises of undertaking, and therefore is not considered to be exempted development.
 - Condition/Limitation 2: - the tank is stated as being 4.254 metres in height and therefore will not exceed the stated height of 15 metres.

- It is not considered that any restrictions on exemption apply.
- It is concluded that the proposal is not exempted development.
- It is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly, it is considered that environmental impact assessment is not required.
- Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development, it is considered that the proposed development would not affect the integrity of these European sites. Accordingly, it is considered that appropriate assessment is not required.

4.0 Planning History

4.1. Subject Site

4.1.1. The following applications have been considered in relation to the subject site, or part thereof:

PA Reg. Ref. 09/34143

Permission was refused by Cork City Council in December 2009 for the construction of a 17 metre monopole to carry 3 no antennae and 1 no dish together with associated equipment cabinets and fencing.

PA Reg. Ref. 09/34143

Permission was refused by Cork City Council in August 2009 for the construction of a 20 metre monopole to carry 3 no antennae and 1 no dish together with associated equipment, cabinets and fencing.

There are no planning applications which are germane to the consideration of this referral.

4.2. Adjacent Sites

There have been no recent applications on sites adjacent to the subject site of relevance.

5.0 Policy Context

5.1. Cork City Development Plan 2022-2028

5.1.1. Land Use Zoning

The site is zoned 'ZO 01 - Sustainable Residential Neighbourhoods' in the Cork City Development Plan 2022-2028 with a stated objective '*to protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.*'

The existing transport depot operating on site is a long established non-conforming use. Sections 12.8 and 12.9 of the Cork City Development Plan 2022-2028 outlines the following in relation to non-conforming uses: - '*there are uses throughout the City that do not conform with the land use zoning objective for the area. Where such non-conforming uses are legally established, their reasonable expansion or improvement within their curtilage will be considered on their own merits provided there is no serious detrimental impact on the primary land use zoning objective for the area or environment, having regard to other relevant objectives of this Plan.*'

5.2. Natural Heritage Designations

The proposed development is not located within or immediately adjacent to any European site. The nearest European site is the Cork Harbour SPA (Site Code 004030) located c. 600 metres south.

6.0 The Referral

6.1. Referrer's Case

The issues raised by the referrer can be summarised as follows:

- The applicant does not dispute the fact that the proposed works constitute development within the meaning of Section 3(1) of the Act, 2000 (as amended). What is at issue is the rationale put forward by Cork City Council that these works constitute development which is not exempted development.

- It is contended that the water storage tank benefits from exemption under Class 21 of the Regulations, 2001 (as amended). It is argued that Articles 6 and 9, do not relate to, and do not affect, the exempted development provisions under Class 21, under which this declaration for exemption is sought.
- A water storage tank was erected within the grounds of Murphy Transport's transport depot. As such, the water storage tank is consistent with the existing and established industrial use of the transport depot.
- The key consideration centres around the restrictions on exemption outlined in Class 21:
 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.*
- The tank and associated hardstanding can be confirmed as meeting the requirements of Class 21, being in keeping with the nature of the structures on the site, it does not materially alter the external appearance of the premises and the height of the structure is well within the 15m limit set out. The development carried out has to materially alter the external appearance of the premises of the undertaking.
- The applicable regulation does not state that any view of the site from the public road is a consideration. Only whether its external appearance is materially altered. Whether its external appearance can be viewed from the public road is immaterial. While the site can be seen fleetingly from the Ballinlough Road, we find that its appearance has not been materially altered. In 2019, the applicable part of the site was occupied by parked storage tanks, the water storage tank now featuring in this part of the site comprises a very similar view. On this basis, it is submitted that the external appearance of the site has not changed in any material way.
- The Planning Authority conclusion makes an arbitrary point that the tankers/trailers parked and stacked at this location previously are capable of

being moved and the water tank is not and then uses this as the basis for arguing that a material change to the external appearance of the site has occurred. Tankers/trailers have been placed, parked and stacked at this location within the site for 25 years. The water tank is a moveable installation and not a permanent structure, as confirmed by the installer specifications. Basing a conclusion on an arbitrary distinction of the temporary or permanent nature of structures and views is irrelevant.

- None of the limitations set out in Article 9 of the Regulations apply in this instance.
- With regards to other sub articles set out, the proposal will not give rise to traffic hazard.

6.2. Planning Authority Response

None

7.0 Statutory Provisions

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

7.1.1. Section 2(1) states that, except where the context otherwise requires, –

"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.

"use" in relation to land, does not include the use of the land by the carrying out of any works thereon.

"land" includes any structure and any land covered with water (whether inland or coastal).

"structure" as any building, structure, excavation or other thing constructed or made on, in or under any land, or 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.

7.1.2. Section 3(1)(a) defines “development” as:

“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.”

7.1.3. Section 5(1) states that:

“If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.”

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

7.2.1. Article 6 provides (subject to the restrictions in Article 9) for the classes of exempted development under column 1 of Parts 1, 2 and 3 of Schedule 2, subject, where applicable, to the conditions and limitations imposed upon such classes as set out in column 2. The referrer makes specific reference to Class 21.

7.2.2. Schedule 2, Part 1, Class 21 of the Planning and Development Regulations, 2001 (as amended) provides an exemption for:

Column 1 Description of Development	Column 2 Conditions and Limitations
<i>Development for industrial purposes</i> (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,	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

<p>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>height of the plant, machinery or structure replaced, whichever is the greater.</p>
--	--

7.2.3. I also note Schedule 2, Part 1, Class 22 of the Planning and Development Regulations, 2001 (as amended) provides an exemption for:

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

packing materials or fuel, or the deposit of waste arising from the industrial process.	contiguous or adjacent to the curtilage of the industrial building.
---	---

7.2.4. Article 5(1) defines "industrial building" as:

“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”.

7.2.5. Article 5(1) defines "industrial process" as:

“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

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”;

7.2.6. Article 5(1) defines "industrial undertaker" as:

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

7.2.7. There is no definition of “plant” in the Planning and Development Act, 2000 (as amended) or in the Planning and Development Regulations, 2001 (as amended). The Oxford English Dictionary defines “plant” and “machinery”, respectively, as follows:

“Machinery used in an industrial or manufacturing process.”

“The components of a machine.”

8.0 Assessment

The question under consideration in this referral is as follows: - whether the installation of a water storage tank 13.65m in diameter and 4.254m in height is or is not development or is or is not exempted development.

8.1. Is or is not development

- 8.1.1. The first matter to consider is whether the erection of the water storage tank on the land in question comprises development. Drawings submitted with the Section 5 referral show a water storage tank measuring 13.65m in diameter and 4.254m in height. The documents state that the tank was installed adjacent to the southern boundary in January 2022 but has not yet been commissioned for use. Once commissioned, the water contained therein will be used for the cleaning and washing of trucks and tanks. I can confirm that, on the occasion of the site inspection, the water storage tank was in place on the site but was not yet in active use.
- 8.1.2. Under Section 3(1)(a) of the Planning and Development Act, 2000 (as amended), (hereafter referred to as the Act), “development” includes “*the carrying out of any works in, on, over or under land*”, where “works” includes “*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal*”, and “land” includes “any structure”. In the light of these definitions, I am satisfied that the water storage tank would constitute development. This would not appear to be an issue to the Referrer and the Planning Authority who are both in agreement with this.

8.2. Is or is not exempted development

- 8.2.1. It is accepted by all sides that there is an established use of the site as a transport depot, albeit that there is no planning history relating to this.
- 8.2.2. The Class 21 exempted development provision states that ‘*development of the following descriptions, carried out by an industrial undertaker on land occupied and used... for the purposes of, any industrial process...*’ and lists part (iii) as:

The installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

With the qualification that:

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.*

8.2.3. I am satisfied that, having regard to the provisions of Article 5(1) of the Planning and Development Regulations, 2001 (as amended), and the descriptions contained therein; to the description given (by the Referrer and the Planning Authority) of the activities which are carried out at the transport depot; and to the nature and appearance of the site and structures within it; that the facility can be considered to be an “industrial undertaking”.

8.2.4. Class 21 subsection (a)(iii) specifically refers to ‘*the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery*’. Having regard to the mechanical components featuring in the context of the water storage tank and its nature, I am satisfied that the water storage tank can be considered to be in the nature of plant or machinery.

8.2.5. Having regard to the foregoing, I consider that the Class 21 exemption set out under the Planning and Development Regulations, 2001 (as amended), applies in this instance, subject to satisfaction of the conditions and limitations set out in Column (which will be considered in the subsequent section).

8.2.6. The Class 22 exempted development provision deals with 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. I do not consider the water storage tank introduced on site would fall within any of the categories of storage items listed therein, therefore, I do not consider that the Class 22 exemption set out under the Planning and Development Regulations, 2001 (as amended), applies in this instance.

8.3. Restrictions on exempted development

8.3.1. Article 9 of the Regulations sets out a number of restrictions on exempted development. In the context of Class 21, 2 no. such restrictions are outlined. I have reviewed these restrictions in relation to the subject development.

- 8.3.2. The first restriction outlines that: - *'any such development shall not materially alter the external appearance of the premises of the undertaking.'* The Planning Authority contends that, given the permanent nature of the water storage tank and the fact that it is clearly visible from the public roadway, it would materially alter the external appearance of the premises of undertaking, and therefore is not considered to be exempted development.
- 8.3.3. While I would agree with the Planning Authority that the installation of the water storage tank would alter the external appearance of the subject premises, I would form a contrary view regarding that alteration constituting a material one. The applicable water storage tank is located in the southernmost part of the site, separated from Ballinalough Road by a c. 27 metre wide landscaped/garden area which serves a dwelling located immediately east of the site entrance. A block wall/an established hedge features along the southern boundary of this garden as well as a fence along its northern boundary, immediately south of the applicable water storage tank. A vehicular entrance point featuring centrally along the southern boundary wall provides a break in the block wall/established hedge and affords persons traversing Ballinalough Road views of the applicable water storage tank over the internal fence. These views are limited given the size of the applicable gateway and, as illustrated by the images included in the referrers submission (streetview images from 2019 and 2022), the applicable water tank is similar in terms of visual appearance as the storage tanks previously occupying this part of the subject site. Although it would alter the external appearance of the subject premises, I do not consider this alteration to be material.
- 8.3.4. With regards to the second restriction outlined in relation to Class 21, at 4.254 metres the applicable water storage tank is less than the maximum height of 15 metres specified.
- 8.3.5. Having regard to the foregoing, should the Board consider that the development is exempted under Class 21, I am satisfied that none of the restrictions apply directly to the subject proposal.

8.4. **Appropriate Assessment**

- 8.4.1. Having regard to the nature and extent of the development within an established urban area, and that the distance of the site to nearest European site, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.5. **Environmental Impact Assessment Screening**

- 8.5.1. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

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 installation of a water storage tank 13.65m in diameter and 4.254m in height at Murphy Transport Limited Maryfield, Ballinlough, Cork City, is or is not development or is or is not exempted development:

AND WHEREAS Murphy Transport Limited requested a declaration on this question from Cork City Council and the Council issued a declaration on the 5th day of October 2022, stating that the matter was development and was not exempted development:

AND WHEREAS Murphy Transport Limited referred this declaration for review to An Bord Pleanála on the 28th day of October 2022:

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

- (a) Section 2(1) and 3(1) of the Planning and Development Act, 2000 (as amended),
- (b) Articles 6(1) and 9(1) of the Planning and Development Regulations, 2001 (as amended),
- (c) Classes 21 and 22 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended),
- (d) The planning history of the site, and
- (e) The pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the installation of a water storage tank 13.65m in diameter and 4.254m in height is development within the meaning of Section 3 of the Planning and Development Act, 2000 (as amended),
- (b) The activity carried on within this site can be considered to be in the nature of an “industrial undertaking” as defined in Article 5(1) of the Planning and Development Regulations, 2001 (as amended),
- (c) Class 21(a)(iii) of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001 (as amended), applies in this instance, as the water storage tank is considered to be in the nature of plant or machinery, and the water storage tank is not considered to materially alter the external appearance of the premises of the undertaking and its height does not exceed 15 metres,
- (d) Class 22 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001 (as amended), does not apply in this instance as the water storage tank would fall within any of the categories of storage items listed therein,

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 installation of a water storage tank 13.65m in diameter and 4.254m in height is development and is 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.

Margaret Commane
Planning Inspector

11th March 2024