



An  
Bord  
Pleanála

## Inspector's Report ABP-315171-22

### Question

Whether the temporary parking of machinery for approximately three days to facilitate the functioning of an online auction is or is not development and is or is not exempted development

### Location

Compound at Gortnahown,  
Mitchelstown, Co Cork

### Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

D25822

Applicant for Declaration

John Condon

Planning Authority Decision

Is not exempted development

### Referral

Referred by

John Condon

Owner/ Occupier

John Condon

Observer(s)

N/A

**Date of Site Inspection**

21 December 2023

**Inspector**

Claire McVeigh

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## 1.0 Site Location and Description

- 1.1. The referral site is located south of Mitchelstown, County Cork positioned outside of the development boundary for the town and adjacent to the M8 Motorway close to Junction 13. The site is access off a local road from the R639 and is in the townland of Gortnahown. Mapping indicates a stream/watercourse is running through the north-eastern portion of the site. The stated site area is 2.147 ha.
- 1.2. The lands had been in use as a road construction compound for the construction of the M8 Motorway and the referrer purchased these lands from Cork County Council in 2014. The referral site has large sections of hardstanding with containers stored, a number of portacabins and parts of machinery and tyres. A sign on the gate advertises 'Container & Cabin Rentals & Sales'. The predominant land use in the wider vicinity of the site is agricultural with an extensive ribbon development of one-off housing along the access local road.

## 2.0 The Question

- 2.1. The question before the Board relates to whether the temporary parking of machinery for approximately three days to facilitate the functioning of an online auction, is or is not development, and is or is not exempted development. I note that it is not explicitly stated how many times the online auction is intended to be held or if it is a one-off event for approximately three days.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

- 3.1.1. Cork County Council issued a declaration (Ref: D/258/22) that the temporary parking of machinery for approximately three days to facilitate an online auction is development and is not exempted development for the following reasons:

*The temporary parking of machinery for approximately three days to facilitate the function of an online auction comes within the scope of the definition of development contained in section 3, Planning and Development Act 2000 (as amended). There is no relevant express exemption provided for in either section 4, Planning and*

*Development Act, 2000 (as amended) or Article 6 Planning and Development Regulations, 2001 (as amended).*

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports (Dated 21/10/2022 and endorsed by A/Senior Executive Planner 25/10/2022)**

- The planning authority note that the site comprises a former road construction compound associated with the construction of the motorway scheme. Class 16 as it relates to the provision of structures, works, plant or machinery needed temporarily in connection with a development during the period in which it is being carried would not have necessitated a separate planning consent process for the as built construction compound. Conditions and limitations to this class of exempt development requires the land to be reinstated at the expiration of that period save as being authorised or required by a permission under the Act.
- The road construction compound has not been reinstated. The lands remain in a hardstanding form with various elements of former development associated with the construction of the motorway still evident. The compound in its current form may be considered unauthorised development.
- The lands are part of the designated town greenbelt for Mitchelstown. It is considered that the visiting of patrons for the purposes of viewing machinery for an online auction would constitute a material change of use of these lands in respect to the use of the site, impact on residential amenities in addition to traffic and parking considerations and constitutes development.
- Refers to section 4 of the Act and Article 6 of the Regulations with respect to development that is defined as exempted development. The referrer draws reference to Class 37 relating to the use of land for any fair, funfair, bazar or circus or any local event...it is considered that the parking of machinery on site for the purposes of an online auction does not relate to the use of land for a fair, funfair, bazaar or circus. With regard to a local event, it is considered that this would relate to a community type event which is freely attended by members of the public and not undertaken for a commercial purpose.

- It is considered that there are no other exemptions provide in legislation which would apply to the subject referral.

## 4.0 Planning History

- 4.1.1. No relevant planning history pertaining to the lands directly.

Note in planner's report reference to ABP Ref. No 04.ER2007/ 04.MS2002 M8 Motorway Scheme granted pursuant to section 49 (10) of the Roads Act, 1993 and statement that the former construction compound would have been constructed as part of the M8 motorway scheme.

### Relevant Referrals

- 4.1.2. I have examined the Boards database of references and referrals. The following case is relevant in the context of the issues raised in the current referral:

ABP RL20.RL3471 – The question related to whether the occasional use of land as an overspill car park and the use of temporary lighting in association with that use is or is not development or is or is not exempted development. The Board determined that the occasional use of the land as an overspill car park and the use of temporary lighting in association with that use is not exempted development and does not come within the scope of Class 37 Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, not being of itself a local event, and there are no exemptions provided for in the said Planning and Development Act, 2000 (as amended) by which such a use as a car park would be exempted development.

## 5.0 Policy Context

### 5.1. Cork County Council Development Plan 2022-2028

- 5.1.1. The site is located outside the development boundary of Mitchelstown and within the zoned greenbelt for the town. The town greenbelts define the visual setting around the main towns and have been established to prevent sprawl and control linear roadside development (paragraph 5.4.4)

- 5.1.2. The referral site is located in the designated 'High Value Landscape' (HVL). Paragraph 14.8.9 outlines that considerable care will be needed to successfully locate large scale developments without them coming unduly obtrusive. Objective GI 14-10: Draft Landscape Strategy refers.
- 5.1.3. The referral site sits approximately 100m to the east of the designated Scenic Route 3 – National primary route between Moorepark and Mitchelstown.

## 5.2. Natural Heritage Designations

The nearest designated sites to the referral site are detailed below:

- pNHA Ballindangan Marsh (Site Code 000899) approximately 5km west of the referral site.
- pNHA Glenacurrane River Valley (Site Code 002035) approximately 6.5km north of the referral site.
- SAC Blackwater River (Cork/Waterford) SAC (Site Code 002170) approximately 7km southeast of the referral site.
- SAC Lower River Suir (Site Code 002137) approximately 9.2km northeast of the referral site.

## 6.0 The Referral

### 6.1. Referrer's Case

- The referral has been made by the landowner, John Condon, who made the request for the section 5 declaration. The compound is a fully serviced secure site with a hard-standing and road access purchased from Cork County Council in 2014. There is commercial electricity supply with 3 phase connection available through its own substation, mains water, sewage system, and telephone connection points.
- History of the compound post completion of the M8 Motorway phase – Roadbridge/Sisk/JV maintained a presence in the compound 2009-2010. Bord Gas/Gas Grid used the compound in 2010-2011 for the construction of the extension of the Gas network to Little Island.

- All topsoil was removed from the site prior to purchase as it was used on embankments for planting during construction of the M8. Cork County Council did not reinstate the compound. Photographs attached.
- Lands sold as a compound from Cork County Council. The stamp duty on the property was calculated at the commercial rate in 2014. The compound is rated as an industrial yard (Ref. 6172104LV08). Copy of bill for property levy and receipt attached.
- The holding of an online auction in Mid Munster in an agricultural area is completely congruent with Section 8 of the Cork County Development Plan in relation to the circular economy and the rural economy. Point 8.8.1.
- The planner identified the road access as the L-5711-0 local road, this road was the former N8 national route until 1969.
- Questions the relevance of the planner's reference to the land 'greenbelt' zoning. The compound has been in existence usage prior to the creation of multiple Cork County development plans and the point raised by the planner is mute.
- The machinery will likely be associated with Agri farming practices, the auctioneer (Martin Lonergan) is a specialist in Agri-related business. However, states it is hard to quantify exactly the type of machinery which will be stored in the compound for the facilitated of an online auction.
- The parking of the items in the compound will leave no indelible imprint on the surface of the compound. There will be no development above or below the ground and no physical development other than the storage of machinery. No environmental damage will occur.
- Fairs, funfairs, bazaars or circuses are all activities that generate an income, are in areas that are secured and sealed off to prevent injury to members of the public. Flower shows/garden fetes, festival, concerts car shows, ploughing matches and machinery exhibitions so not require planning permission event though they generate an income and have often a security perimeter.



- The service of being able to offer used Agri-machinery or machinery objects related to Agri-practices will benefit the entire local community by providing others with ability to reuse and repurpose machinery following purchase.
- Issues highlighted with respect to the delayed availability of the planner's report from the planning authority and the reference to 'the Board' on the decision letter instead of An Bord Pleanála impact on the content of the referral.

## 6.2. Planning Authority Response

Response received outside of the appropriate period of 4 weeks beginning on the day on which a copy of the appeal was sent by the Board (section 129 (2) (a) of the Planning and Development Act, 2000 (as amended) and submission returned.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### Section 2 – Interpretation

- 'development' has the meaning assigned to it by section 3 and 'develop' shall be construed accordingly.
- Exempted development has the meaning specified in section 4.
- 'unauthorised use' means, in relation to land, use commenced on or after 1 October 1964, being a use, which is a material change in use of any structure or other land and being development other than-
  - (a) Exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or
  - (b) Development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34, 37G, 37N or 293 of this Act being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.

- “structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

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

### Section 3 – Development

**Section 3.** In this Act, except where the context otherwise requires, "development" means—

(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or

(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).]

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

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

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

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

(ii) the storage of caravans or tents, or

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

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

### Section 4 – Exempted Development

**Section 4 (3)** A reference in this Act to exempted development shall be construed as a reference to development which is—

(a) any of the developments specified in subsection (1) or (1A), or

(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

**Section 4 (4)** Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

## 7.2. Planning and Development Regulations, 2001

### Part 2 – Exempted Development

7.2.1. **Article 6 (1)** - Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

7.2.2. **Article 9 (1)** - Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would (relevant excerpts referenced)

(iii) Endanger public safety by reason of a traffic hazard or obstruction to road users.

(vi) Interfere with the character of the landscape, or view or prospect of special amenity value or of special interest, the preservation of which is an objective of the Development Plan for the area in which the development is proposed for, pending the variation of a Development Plan or the making of a new Development Plan in the Draft Variation of the Development Plan or the Draft Plan.

(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,

(viiC) Consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000 (viii) 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,

(viii) 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,

7.2.3. **Article 10. (1)** Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not —

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised, and which has not been abandoned.

(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

(b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—

(relevant excerpts included)....

(iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,

(iv) for a taxi or hackney business or for the hire of motor vehicles,

(v) as a scrap yard, or a yard for the breaking of motor vehicles,

Schedule 2, Part 1: Exempted Development

<p><b>Class 16</b></p> <p>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.</p>	<p><b><i>Conditions and limitations</i></b></p> <p>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.</p>
<p><b>Class 17</b></p> <p>The erection, construction or placing on land on, in, over or under which, or on land adjoining 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 onsite 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.</p>	<p><b><i>Conditions and limitations</i></b></p> <p>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, approval or confirmation granted under the Act or any other enactment.</p>
<p><b>Class 37</b></p> <p>Development consisting of the use of land for any fair, funfair, bazaar or</p>	<p><b><i>Conditions and limitations</i></b></p> <p>1. The land shall not be used for any such purposes either continuously for a</p>

<p>circus or any local event of a religious, cultural, educational, political, social, recreational, or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.</p>	<p>period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.</p> <p>2. On the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.</p>
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## 8.0 Assessment

The purpose of this referral is not to determine the acceptability or otherwise of the temporary parking of machinery for approximately three days to facilitate the functioning of an online auction 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.

### 8.1. Is or is not development

- 8.1.1. The question put forward by the referrer relates to whether the use of a compound for the temporary parking of machinery for approximately three days to facilitate an online auction is or is not development and/or is or is not exempted development. The referrer states that the machinery is likely to be associated with Agri farming practices, however, it is difficult to quantify the type of machinery which will be stored. As already noted in the question, section 2.0, I highlight to the Board that it is not made clear in the documentation submitted how many times a year the online auction is intended to be held or if it is a one-off event for approximately three days.
- 8.1.2. The referrer's case states that such as use can be considered to be exempted development under the provisions of Class 37, Part 1, Schedule 2 of the Planning and Development Regulations, which sets out the conditions and limitations to the exemption applicable to use of the land for any fair, funfair, bazaar or circus of any local event of a religious, cultural, educational, political, social, recreational or

sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use.

- 8.1.3. The first question to consider is whether or not the proposal constitutes 'development' under the definition in the Planning Act. Section 3 (1) of the Act defines 'development' as the 'carrying out of any works on, in, over or under lands or the making of any material change in the use of any structures or other land'. In terms of determining whether the use is 'development' in this referral the relevant test to apply is to establish if there is a change of use and whether this is a material change in the use of any structure or other land.
- 8.1.4. Notwithstanding the current planning status of the subject lands, which I shall assess in 8.4 below, the use of the land to display machinery for sale, via online auction, has no connection with the previous use as a construction compound. The change of use would give rise to members of the public coming to view the machinery in advance of the auction. I am of the opinion, therefore, that there is a change in use. Section 3 subsection (2) (b) declares that where land becomes used for the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of ...the sale of goods the use of the land shall be taken as having materially changed. Therefore, the use of the land to display machinery for sale, via online auction, in my opinion constitutes a material change in the use of the land and, therefore, constitutes development.

## 8.2. **Is or is not exempted development**

- 8.2.1. In respect to whether the development is or is not exempted development it must be determined whether the proposed use of the land to display for sale machinery can be construed to fall within a class of development as set out in section 4 of the Planning and Development Act 2000 (as amended), or Article 6 of the Planning and Development Regulations. The referrer suggests that the proposed use of the lands for the temporary parking of machinery for approximately three days to facilitate the functioning of an online auction is congruent with a fair or a bazaar as provided for under Class 37.
- 8.2.2. Class 37 sets out specific type of use of land on a temporary basis. I am of the opinion that the use of the land to display machinery, for sale via online auction, is

not a fair, funfair, bazaar or circus. In addition, I do not consider the use of land to display machinery to sell online such a use consistent with a 'local event' of a religious, cultural, educational, political, social, recreational or sporting character. Therefore, I am of the view that Class 37 does not, therefore, apply to the temporary parking of machinery for approximately three days to facilitate sales in an online auction.

### **8.3. Restrictions on exempted development**

- 8.3.1. From the information available on file, the referral lands have been used in the past as a construction compound to facilitate the construction of the M8 motorway scheme and, the referrer states, after that a construction compound by Bord Gas/GasGrid up to 2011. The subject site was sold by Cork County Council as a land holding described in the advertisement included in the referral submission as follows: - "This holding was used as a road construction compound and has a hardcore surface."
- 8.3.2. Given that the extant permission has expired, and the land adjoining is no longer considered a development site and the structures, plant and machinery needed temporarily at this construction compound in connection with that completed development are no longer considered exempted development under Class 16. In addition, any on-site accommodation is no longer considered exempted development under Class 17.
- 8.3.3. Under the provisions of Class 16 and Class 17 the land is required to be reinstated. From my site visit it would appear that works to reinstate the construction compound has not been carried out and, as such, the construction compound appears to constitute an unauthorised structure. I highlight to the Board that details are not provided to confirm the original land use of the subject site prior to its use as a construction compound. Based on the information available, I am not satisfied that the existing structure and use of the lands is, therefore, not unauthorised.
- 8.3.4. Therefore, in conclusion, it would appear that the referral lands are a structure the use of which is an unauthorised use. Notwithstanding, that planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board, noting the restrictions on exemption under the provisions of article 9 (1)(a)(viii) where



the 'development' would "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" I am of the view that even if it were to be considered that the use of land for the display of machinery, on a temporary basis to facilitate an online auction, fell within scope of Class 37 this provision would not apply in this instance as it would appear that the referral lands are an unauthorised structure.

#### **8.4. Environmental Impact Assessment (EIA) Preliminary Examination**

- 8.4.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000 (as amended)). Schedule 5, Part 1 and Part 2 of the Planning and Development Regulations, 2001 (amended) sets out specified development for which EIA is mandatory and development which requires screening for EIA.
- 8.4.2. I acknowledge that the use of the existing hardstanding for the temporary parking of machinery will, as stated by the referrer, require no works to be undertaken. The EIA Directive does not usually apply to minor changes of use that do not include works or interventions. However, in this case where land becomes used for the sale of goods the use of the land shall be taken as materially changed and, as such, does not constitute a minor change of use (Section 3 (2) (b) of the Planning and Development Act, 2000 (as amended)).
- 8.4.3. It would appear that referral site is no longer considered exempted development under Class 16 and Class 17, as such, based on the information available, I am not satisfied that the construction compound is not an unauthorised structure. Notwithstanding, having regard to the size of the site and its location, together with the limited scope of the question to the use of the property only, and the absence of any known connectivity from the referral site to any sensitive location, there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 8.5. **Appropriate Assessment**

- 8.5.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the development would not 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 the temporary parking of machinery for approximately three days to facilitate the functioning of an online auction is or is not development or is or is not exempted development:

**AND WHEREAS** John Condon requested a declaration on this question from Cork County Council and the Council issued a declaration on the 25<sup>th</sup> day of October 2022 stating that the matter was development and was not exempted development:

**AND WHEREAS** John Condon referred this declaration for review to An Bord Pleanála on the 21<sup>st</sup> day of November 2022:

**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 of the Planning and Development Act, 2000,

- (c) Section 4 of the Planning and Development Act, 2000, as amended,
- (d) articles 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (e) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the temporary parking of machinery for sale via online auction constitutes development as defined under section 3(2)(b)(i) of the Planning and Development Act 2000 (as amended),
- (b) the temporary parking of machinery for approximately three days to facilitate the functioning of an online auction constitutes a material change of use of these lands and is development and is not exempted development as it does not come within the scope of Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended), not being of itself a local event,
- (c) there are no exemptions provided for in the said Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended), by which such use as temporary parking of machinery for sale via online auction would be exempted development, and
- (d) restrictions on exemptions provided for in Article 9 (1)(a)(viii) would apply it would appear that the referral lands are a structure the use of which is an unauthorised use.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act (as amended), hereby decides that the temporary parking of machinery for approximately three days to

facilitate the functioning of an online auction is not development and 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.

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Claire McVeigh

Planning Inspector

22 February 2024