



An
Bord
Pleanála

Inspector's Report ABP-317171-23

Question

Whether the use of the land as a motor parts and sales area is or is not development or is or is not exempted development.

Location

Boland's Motor Salvage, Nevinstown, Cloghran, Swords, Co. Dublin

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/014/23

Applicant for Declaration

Joseph Boland

Planning Authority Decision

Is not exempted development

Referral

Referred by

Joseph Boland

Owner/ Occupier

Joseph Boland

Observer(s)

None

Date of Site Inspection

12th March 2024

Inspector

Clare Clancy

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1.0 Site Location and Description

- 1.1. The referral site which is located in Nevinstown, is located approximately 1 km to the northeast of Dublin Airport along the R132 Swords road on the southern outskirts of Swords village. Boroimhe residential estate is located to the northwest of the site and Airside Retail Park is located to the northeast.
- 1.2. The site is located immediately to the west of the R132 a busy regional road which has a 60 km/hr speed limit and which it has direct access off. The road accommodates 5 laneways including bus lanes, and a northern bound cycle lane located adjacent to the site entrance. A public footpath runs along the roadside boundary of the site and there is a bus stop immediately north of the site.
- 1.3. There are existing single storey dwellings and associated accesses bounding the site to the north and to the south. The roadside boundary of the site is defined by palisade fencing which extends to part of the northern boundary, and the lateral and rear boundaries are defined by approx. 2+ metre high block walls. There is a portacabin at the front of the site which operates as an office / storage area and a shipping container adjacent to the northern boundary of the site.
- 1.4. There are crashed vehicles, vehicles being repaired, vehicles which appear to be for sale and 2 vehicle recovery trucks within the site. Scrap metal, wheels, tyres and various types of rubbish including stacks of concrete blocks were also present on the site. Vehicles were noted to be parked outside the site adjacent to the R132.

2.0 The Question

- 2.1. Whether the use of the land as a motor parts and sales area is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 27th April 2023 the Planning Authority decided that the use of the land as a motor parts and sales area is development and is not exempted development, having regard to:

- Section 5(1) of the Planning and Development Act 2000 (as amended) and
- Article 9(1)(a)(iii) of the Planning and Development Regulations (as amended).
- The proposal constitutes works and is therefore development within the meaning of the Planning and Development Act 2000 (as amended), and the proposal is development which is not exempted development due to:
 - Absence of conclusive evidence to demonstrate the historical use of the site prior to 01st October 1964 resulting in the Planning Authority being unable to determine that the actives carried out constitute exempted development by reason of the duration of time that they have existed on site.
 - The nature of the existing commercial operation adjacent to the R132 regional road would constitute a traffic hazard and does not accord with the restrictions / limitations on exempted development as set out under Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

- 27th April 2023 – The Planning Report refers to relevant policies of the Fingal Development Plan 2023-2029, the planning history of the referral site and adjoining sites and the relevant statutory provisions, including the following:
 - The zoning of the site is ‘GB’ – Green Belt, the objective for which is to protect and provide a greenbelt. Vehicle sales outlet, industry / light industry, vehicle servicing / maintenance garage are uses not permitted under the zoning.
 - A cycle lane and the proposed Swords to City Centre Bus Connects Core Bus Corridor / NTA Strategic Transport Route are indicated along the eastern site boundary.
 - An indicative route for MetroLink is indicated across the north western section of the site.

- A list of the supporting documentation provided with the referral is set out.
- Notes that between 01st October 1964 and 03rd July 1986, there has been a material change in the nature of activities on the site resulting in an intensification of use.
- Applicant has not sufficiently demonstrated that the uses and operations of the site have been in existence pre-1963 and that the use has continued uninterrupted to date, and that additional activities have not been introduced over time.
- Queries landownership.
- The development is not exempted development pursuant to Article 9(1)(a)(iii) of Planning and Development Regulations 2001 (as amended) as it would endanger public safety by reason of traffic hazard and / or obstruction of road users.
- Considered to be sub-threshold development due to location, nature and scale of the development, taking account of criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended).
- Considered that no AA issues arise, having regard to the location of the site relative to European designated sites.

3.2.2. Other Technical Reports

- Transportation Planning Section – Raises issue with the suitability of the existing commercial operation, sightlines obstructed by parked vehicles, operational activity arising from moving vehicles adjacent to public footpath giving rise to traffic hazard. Other issues raised in regard to the formal layout of the site in terms of car parking, footpaths, deliveries to site by HGVs and tow trucks. The site is adjacent to the Swords to City Centre Bus Connects Core Bus Corridor which could potentially prejudice its operation.
- Environment Department – Boland Motor Salvage is the subject of enforcement action in relation to a breach of the Waste Management Act (operation of a waste facility with no valid waste permit in place) – notes failure to comply with

Section 55 notice (cease accepting waste and End of Life Vehicles (ELVs), cease dismantling EVs, dispose of all waste to an authorised facility.

4.0 Planning History

4.1. Referral site:

- PA Ref. FS5/013/10 – “Whether the use of the premises for the purposes of dismantling motor vehicles, for towing and storage of such vehicles and for the carrying out of crash repairs and associated businesses has been in existence prior to 1963 and constitute exempt development by reason of time they have existed on site”.

The Planning Authority deemed in the absence of conclusive evidence to demonstrate that all the land uses on site had been in existence prior to 1963, and in the absence of sufficient detail in relation to the intensification or otherwise of such uses over this period, that they were unable to make a declaration as to whether or not the activities on site constitute exempted development by reason of time they existed on site (May 2010).

- ABP Ref.: 314724-22 – Application by TII for the Railway Metrolink – Estuary to Charlemount via Dublin Airport application site boundary encompass / traverses the referral site.

Adjoining site to north:

- PA Ref. F06A/1786 / ABP Ref.: PL6F.222002 – Permission refused for the retention and continuance of change of use of part land from previous use as lands used for the storage of pallets to the present use of lands for sale of motor cars.
- PA Ref. ENF06/133c – Warning Letter issued.
- PA Ref. 93B/0170 – Permission granted for extension to rear. Condition no. 2 notes that all of the site shall be restored to residential use, no further commercial development shall take place.

Adjoining Site to South

- PA. Ref. F00A/0815 & ABP Ref. PL 06F.121873 – Permission refused for the construction of a new workshop and associated site works.

4.2. Similar Cases Decided by the Board

Similar cases decided by the Board in relation to the change of use of land for motor sales include the following:

- **RL.2645** – The Board decided that the use of the area of land located to the immediate southwest of the existing petrol filling station/forecourt area, and separated from same by means of a lockable gated access for the sale of fuel, groceries, and the display of motor vehicles for sale, was development and was not exempt development (November 2009).
- **RL.2633** – ‘Whether the use of premises for car sales and servicing is or is not exempted development’. The Board concluded that the site (excluding the part in use for monumental works) had a long term use for activities related to the motor trade comprising car sales, car servicing, cleaning / valeting and petrol retailing as elements of that use, the balance of these elements within the historic motor trade use varied over time, the use was not abandoned and the resumption of use of the premises for car sales and servicing (without petrol sales) is not a material change of the historic use as there were no material planning consequences arising from the use of the premises for car sales and servicing. The Board decided that the resumption of use of the premises did not constitute a material change in use and was therefore not development (December 2009).
- **RL.2381** – The Board decided that the use of the property (petrol station forecourt) for the display and / or storage of motor vehicles constitutes a material change of use in the land and therefore constitutes development pursuant to Section 3 of the Act, and does not come within the scope of Section 4 of the Act, is development and is not exempted development (April 2007).

5.0 Policy Context

5.1. Development Plan

5.1.1. Fingal Development Plan 2023-2029

- The zoning of the site is 'GB' (Green Belt) the objective for which is to protect and provide a greenbelt. Industry, Vehicles Sales Outlet and Vehicles Serving / Maintenance Garage are uses that are not permitted in principle.
- The following Specific Objectives are noted:
 - The 'Indicative Route' for the Metrolink encompasses / traverses the referral site.
 - An indicative road proposal route immediately adjoins the site to the north.
 - The GDA Cycle Network plan route is shown along the main road R132, passing the site.

5.2. Natural Heritage Designations

5.2.1. The nearest European sites in close proximity to the appeal site are the following:

Designation	Site Code	Distance
pNHA Feltrim Hill	001208	approx. 2 km to east of site
SPA Malahide Estuary	004025	approx. 3.7 km to east of site
SAC Malahide Estuary	000205	approx. 3.7 km to east of site
pNHA Malahide Estuary	000205	approx. 3.7 km to east of site
pNHA Sluice River Marsh	001763	approx. 5.4 km to southeast of site
SPA Baldoyle Bay	004016	approx. 6.4 km to southeast of site
SAC Baldoyle Bay	000199	approx. 6.4 km to southeast of site
pNHA Baldoyle Bay	000199	approx. 6.4 km to southeast of site
SPA Rogerstown	004015	approx. 6.5 km to north of site
SAC Rogerstown	000208	approx. 7 km to north of site
pNHA Rogerstown	000208	approx. 7 km to north of site
SPA North-west Irish Sea	004236	approx. 7.2 km to east of site

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer sets out the following:

- Appealing the Planning Authority's decision and seeking a declaration in regard to the ongoing use of lands as a motor parts and sales operation. The business which has changed hands is in operation since before 1963, is exempt from planning.
- Response to Planning Authority reason 1
 - All the land uses purported by the council to be occurring, car dismantling, part sales, motor sales and repairs and vehicle towaway can be classified as motor sales and repairs which is a single land use in most development plans and are not deemed to be separate land uses, as suggested by the Planning Authority.
 - Submitted sufficient evidence to show the business was taking place before 1964. The range of use would have been greater than at present.
 - The intensification of the lands for the development of the business has been as a result of the development of the economy, population increase and the increase in the number of vehicles on the road.
 - An analogy of a graveyard is given to demonstrate comparison. A graveyard and an increase in grave stones reflects population increase over the years, with the number of people working in the graveyard remaining the same. The operation of the site is very much the same with the number of vehicle 'carcasses' on the land being reflective of population increase and vehicle numbers rather than intensification of the business.
 - While the site has been more extensively used over the period, this intensification does not warrant an intensification thus deeming a change of use, but a natural expansion outside the control of the referrer.
 - The business is small scale, employs 2 to 3 people, derelict vehicles are transferred to a foundry when a sizable number are ready for collection.

- The lands should not be considered an intensifications of business at the site, as the number of employees, the number of trips to / from the site has not significantly changed over the years.
- Supporting documentation was provided, including affidavits from previous owners and operators of the business and a statutory declaration that the property is not a family home.
- Response to Planning Authority reason 2
 - The entrance to the site is setback approx. 10 metres from the side of the R132, a 17 m wide road R132 with 80 km/hr speed limit.
 - Sight distances in each direction from 2.5 m setback are over 160 m in each direction. The site has safe access.
 - Parking of cars on the area outside the boundaries to the premises occurs at present which will cease in the event of the declaration being decided.
 - The R132 has multiple entrances to commercial premises close to the referral site.
 - The alignment of the road is straight and wide and the suggestion that the nature of the commercial operation constitutes a traffic hazard is difficult to countenance given that the level of traffic arriving and leaving would be substantially less than that of the adjoining filling station or industrial premises across the road and requests that the Board does not consider this reason for refusal in their deliberations on the subject referral.
- The site was purchased 1984, all structures (except portacabin) were present, the structures were burnt down 2012, the business has always been motor trade and includes sales and motor parts involving car dismantling, part sales, motor sales, repairs and towaway vehicle service. The use of the site is a generic motor trade use with no particular emphasis on sales, repairs, dismantling.
- Reference is made in regard to Section 2(1) of the Act with specific reference to the meanings of 'unauthorised structure, and 'unauthorised use', and Section 3(1) in regard to 'development' and Section 4(4) relating to a development availing of exemption, where EIA and / or AA is required. It is submitted that

there is nothing in the Act that would require the landowner to seek planning permission for the 'proposed changes', particularly as there will be no intensification of use or change of use on the site that is not exempt. It is submitted that the changes proposed are not material and must be deemed exempt.

- In relation to Section 4(4), no AA is required, given the nature of the proposed development, the distance to the closest Natura 2000 site and the absence of a receptor pathway, no negative impacts are anticipated.
- Reference is made to the Planning and Development Regulations 2001 (as amended) in regard to Article 5(1) the meaning of 'business premises' and Article 9(a). It is submitted that change of use could be restricted by the provisions of Article 9(1)(a)(iii). The site has safe access and there is no residual argument to suggest that the use endangers public safety by reason of a traffic hazard, or obstruction of road users.

6.2. Planning Authority Response

- 6.2.1. The Planning Authority submitted that having assessed and had regard to the appeal submission and the original application, it remains the opinion of the Planning Authority that the proposed development comprises development and is not exempted development.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- Section 2(1) – Meaning of 'works', 'unauthorised structure', 'unauthorised use', 'exempted development'.
- Section 3(1) – Development.
- Section 3(2)(b)(iii) – Material change of use.
- Section 4(1) – Exempted development in particular sub-section (2).

- Section 4(4) – Development shall not be exempted development if an EIA or an AA of the development is required.
- Section 5 – Declaration and referral on development and exempted development.

7.2. Planning and Development Regulations, 2001

- Part 2. Exempted Development. Article 5(1) – Interpretation for this Part defines meaning of ‘business premises’, ‘industrial process’.
- Article 6(1) – Exempted Development.
- Article 9(1) – Restrictions of Exemption.
- Article 10(1) – Changes of use, in particular sub-section:
 - (2)(b) (iii) for the sale or leasing, or display for sale or leasing, of motor vehicle.
 - (v) as a scrap yard, or a yard for the breaking of motor vehicles.

8.0 Assessment

8.1. Introduction

- 8.1.1. This case relates to a referral submitted under Section 5(3)(a) of the Planning and Development Act, 2000 (as amended) where the Planning Authority has issued a declaration on a referral and this determination is now the subject of appeal.
- 8.1.2. I have examined all the documentation on the file, inspected the site, and had regard to the legislative provisions set out in both the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended), and I consider that the principle basis on which the referrer has sought to establish is that the existing uses of the site that relate to the sale of motor vehicles and car parts is exempted development on the basis that the uses were established prior to the 01st October 1964.

8.2. Is or is not development

- 8.2.1. Section 3(1) of the Planning and Development Act 2000 (as amended) defines development as ‘the carrying out of any works, on, in or under land or the making of a material change in the use of any structure or land’.
- 8.2.2. The Planning and Development Regulations 2001 (as amended) under Article 10(2)(b) provides a distinction between the use of land for the activities in relation to the sale or leasing or display for sale of motor vehicles, and the use of land as a scrap yard or a yard for the breaking of motor vehicles.
- 8.2.3. On the day of site inspection I noted that the use of the site is for the dismantling of cars and such a use would be referred to in the Planning and Development Regulations 2001 (as amended) under Article 10(2)(b)(v) as ‘a scrap yard / yard for the breaking of motor vehicles’. This is supported by the fact that the site has a history of Waste Management Permits for the dismantling of cars, end of life vehicles (ELV) which I note from the file details would appear to be between the years 2004 and 2020.
- 8.2.4. The supporting documentation provided in the referral argues that the use of the site was established prior to 1963 and the 01st October 1964 Planning Act. Statutory declarations signed 03rd November 1981 and 03rd July 1984 are provided in relation to the previous owner of the site Ronald Johnston. On the 03rd November 1981, the declaration states that the property is not a “family home” by reason of the fact that it is a “business premises” being noted. On the 03rd July 1986, the signed declaration notes that the premises are used as a scrap yard. The declaration on the matter of the Planning and Development Acts 1963/1977 also signed the 03rd July 1984 notes that Ronald Johnston was the owner of the bungalow and outbuildings erected on the site and that as of the 01st October 1964, the premises were used for the purposes of dismantling motor vehicles, tow and storage of vehicles, carrying out crash repairs and associated businesses.
- 8.2.5. On the basis of this information, I would accept that the signed declarations confirm that the referral site has a history of operation from before the introduction of the Local Government (Planning and Development) Act 1963 on the 01st October 1964 relating to the dismantling of cars including ELVs i.e. a scrap yard, and that such a use would constitute development in accordance with Section 3(1) of the Act and that the use is

exempted development. In that regard, I would note that the previous Section 5 referral declaration made under PA Ref. FS5/013/10 would therefore appear to be overcome.

- 8.2.6. In the current referral before the Board, the Planning Authority raised the issue of when the landowner acquired the site, however I would consider that the established pre-1963 use of the land would pass to any new owner of the land, irrespective of date of acquisition.
- 8.2.7. Notwithstanding the above, the subject referral seeks to establish if the use of the land for the sale of motor vehicles and car parts is exempted development on the basis that the uses were established prior to the 01st October 1964. I note from the previous Section 5 Referral relating to the site PA Ref. FS5/013/10 refers, that the Planning Authority had sought to establish in its assessment if additional uses and operations that were ongoing at the site beyond dismantling vehicles, towing, storage and crash repairs, had in fact been in existence prior to 1963, but was unable to establish whether a material change in the nature of activities occurred, or if there had been an intensification in the level of activities, due to the absence of conclusive documentary evidence.
- 8.2.8. The elements of the existing business posed in this referral question which has not been substantiated by the referrer or described in the signed statutory declarations by the previous owner of the site, is the retail sale of motor vehicles and motor parts. I noted at time of site inspection that vehicles were parked outside of the site adjacent to the eastern boundary of the site facing in the direction of the public road, and within the site with one car displaying a 'for sale' sign, thus indicating that the referral site is in use for the sale of motor vehicles. I was however unable to determine if the retail sale of motor parts was taking place as there was no obvious indication of this occurring, e.g. display area, advertising signage.
- 8.2.9. The referrer contends that the use of the site is a 'generic motor trade use with no particular emphasis on sales, repairs or dismantling'. However I do not agree with this view as there does not appear to be any supporting documentation provided by the referrer to demonstrate that either vehicle motor sales and motor part sales operated from the site at any point.
- 8.2.10. In its determination of the subject referral, the Planning Authority concluded that the referrer had not demonstrated that additional activities / uses have not been introduced

over time, or that there had not been an intensification of the level of activities. I would concur with this assessment and consider that in the absence of such documentary evidence, I cannot conclude when the uses were introduced on the lands. I would however conclude that these uses were not part of the pre-1963 established use of the site, having regard to the Statutory Declarations submitted with the referral.

8.2.11. I note that the retail sale of motor vehicles would typically be referred to in the Planning and Development Regulations 2001 (as amended) under Article 10(2)(b)(iii) as 'for the sale or leasing, or display for sale or leasing of motor vehicles'. In that regard, I consider that the use or the partial use of the land for the retail sale of motor vehicles and motor parts is a material change of use to the land and therefore comprises development under Section 3(1) of the Act, and that such uses give rise to intensification of use that would result in material planning considerations in terms of safe access arrangements, increase in trips generated into and out of the site, turning movements onto a busy regional road, road traffic and pedestrian safety, car parking implications arising from customers visiting the premises.

8.3. **Is or is not exempted development**

8.3.1. Having established that the use of the land for the retail sale of motor vehicles and motor parts is development, the issue therefore is to consider whether the material change of use is exempted development.

8.3.2. Having regard to Section 4 of the Planning and Development Act 2000 (as amended), Articles 6 and Article 9(1)(a), Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), there are no specific exemptions in the legislation which apply to the use of land for the sale / display / leasing of motor vehicles or for the retail sale of motor parts. As noted previously, Article 10(2)(b) specifically lists a number of uses that are sui generis uses that are not within the general category of uses set out in Part 4 of Schedule 2 (Exempted Development – Classes of Use) which includes:-

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

It can be concluded that as the subject development cannot avail of exemption under either of the Planning and Development Act 2000 (as amended) or the Planning and

Development Regulations 2001 (as amended), the proposed development is not exempted development.

8.4. Restrictions on exempted development

- 8.4.1. In its declaration, the Planning Authority concluded that the use of land constituted development and was not exempted development pursuant to Article 9(1)(a)(iii) of the Planning and Development Regulations 2001 (as amended).
- 8.4.2. As no exemption is being availed of under Article 6 of the Planning and Development Regulations 2001 (as amended), Article 9(1) is not applicable in this instance. It would appear that the Planning Authority incorrectly referred to Article 9(1) in its determination.
- 8.4.3. Similarly, as no exemption can be claimed for under Part 4 of Schedule 2 which refers to 'Exempted Development – Change of Use' of the Planning and Development Regulations 2001 (as amended), Article 10(1) of the Regulations does not apply.

8.5. Appropriate Assessment – Screening

- 8.5.1. Having regard to the nature and scale of the existing development and the nature of the development as set out in the referral which is located in an established urban area, the developed nature of the landscape between the referral site and European sites and the lack of hydrological or other pathways between the site and European sites, it is considered that no Appropriate Assessment issues arise and that the development the subject of this referral would, not be likely to have a significant effect, either individually or in combination with other plants or projects on any European site.

8.6. EIA – Screening

- 8.6.1. The development the subject of this referral which is noted to have a site area < 5 hectares, does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended) and therefore is not subject to EIA requirements.

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 use of the land as a motor parts and sales area is or is not development or is or is not exempted development:

AND WHEREAS Joseph Boland requested a declaration on this question from Fingal County Council and the Council issued a declaration on the 27th day of April, 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Joseph Boland referred this declaration for review to An Bord Pleanála on the 23rd day of May, 2023:

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

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Article 5, 6 and 10(2) of the Planning and Development Regulations, 2001, as amended,
- (c) Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the site,
- (e) The submissions made by the referrer and the documentation contained on the referral file,
- (f) The fact that the use of the site for motor sales and the retail sale of motor parts is a material change of use of the site or part of the site.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The use of the site or the partial use of the site for the sale / display / leasing of motor vehicles and for the retail sale of motor parts is a material change of use to the land and constitutes development within the meaning of Section 3(1) of the Planning and Development Act 2000 (as amended).
- (b) There are no provisions within the Planning and Development Act 2000 (as amended) and in the Planning and Development Regulations 2001 (as amended) whereby the said change of uses are 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.

Clare Clancy
Planning Inspector
10th June 2024