



An
Bord
Pleanála

Inspector's Report ABP-318300-23

Question

Whether the construction of a plant structure for storage purposes is or is not development and is or is not exempted development.

Location

Main Street, Dunkineely, Co. Donegal.

Declaration

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

S5 23/46

Applicant for Declaration

Charles Vial

Planning Authority Decision

Is not exempted development

Referral

Referred by

Charles Vial

Owner/ Occupier

Charles Vial

Observer(s)

Tommy & Veronica McWhinnie

Date of Site Inspection

21st April 2024

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located in the centre of Dunkineely, on the northern side of the national secondary road (N56), which runs through this small settlement. Dunkineely is situated at the northern landward end of St. John's Point, and Killybegs lies c. 5.6km to the west "as the crow flies".
- 1.2. The site is accessed directly off the N56 by means of a gated entrance, which lies between 2 no. detached, street-fronted, two-storey dwelling houses. This site is of regular shape, and it is formally laid out with a cluster of modern buildings within its north-western quadrant, external vehicular circulation space and a car park in its southern half, and a grassed area in its north-eastern quadrant. The eastern of the 2 no. dwelling houses also lies within the southern portion of the site.
- 1.3. The proposed plant structure would be sited in the north-eastern corner of the site. It would be of rectangular form under a double pitched roof with a vehicular access door in its gabled western elevation. This plant structure would be used to store plastic type fish containers.

2.0 The Question

- 2.1. The question asked by the referrer is whether the erection of plant structures for industrial purposes is or is not development or is or is not exempted development. The referrer's accompanying case is set out in his letter of 19th October 2023, in which reliance is placed upon Class 21(iii) of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2023.

3.0 Planning Authority Declaration

3.1. Declaration

The PA declared that the proposed plant structure for storage purposes is development, and it is not exempted development, as it does not come within the scope of Class 21(iii) of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2023.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The case planner states that the proposed development would be used for the storage of containers over a floorspace of 300 sqm and under a roof with a ridge height of 7m. He/she also concludes that this development is not considered to be plant or machinery or structures comprising plant or machinery.

3.2.2. Other Technical Reports

None

4.0 Planning History

Site:

- 97/278: Retention of extension to existing fish factory: Permitted.
- 98/1512: Retention and completion of fish factory extension, housing fish processing at ground floor level and packaging storage at first floor level: Permitted.
- 99/2469: Retention and completion of fish factory extension, housing fish processing at ground floor level and packaging storage at first floor level, including compressor unit for freezer plant: Refused at appeal PL05.116893.
- 15/50744:
 - (A) REMOVAL OF EXISTING LOADING RAMPWAY, ROOF & SIDEWALL FORMING COVERED LOADING BAY, FIRST FLOOR ACCESS STAIRS AND DECKING AND BOUNDARY WALLS,
 - (B) CONSTRUCTION OF A SINGLE STOREY EXTENSION TO THE EASTERN SIDE OF THE EXISTING FACTORY WITH A LOADING BAY, EXTENDED RAISED EXTERNAL LOADING AREA WITH NEW LOADING RAMPWAY SERVING BOTH TH EXISTING AND PROPOSED BUILDING AND A ESB SUB-STATION. ALL LINKED TO THE EXISTING BUILDING VIA A NEW CENTRAL STAIRWAY SERVING THE FIRST FLOOR OF THE EXISTING BUILDING. PEDESTRIAN ACCESSTO THE REAR OF THE BUILDING,
 - (C) NEW ESCAPE STAIRWAY FROM THE FIRST FLOOR OF THE EXISTING BUILDING,

(D) NEW ACCESS/CIRCULATION STAIRS & RAILINGS ADJACENT TO THE EXISTING LOADING BAY,

(E) REMOVAL OF EXISTING FACTORY WASTE WATER TREATMENT AND STORAGE TANKS AND INSTALLATION OF A NEW DAF (DISSOLVED AIR FLOATATION) TANK TO TREAT THE FACTORY WASTE WITH A STORAGE TANK TO STORE THE LIQUID WASTE PRIOR TO REMOVAL OFF SITE,

(F) NEW SIGN TO THE ROAD FACING ELEVATION OF THE EXISTING BUILDING,

(G) ALL ASSOCIATED WORKS AND SITE WORKS INCLUDING CONNECTION TO EXISTING STORM SEWER, ADDITIONAL PARKING ETC. ALL LOCATED AT EXISTING PREMISES:

Permitted.

- 16/51041

(A) REMOVAL OF EXISTING LOADING RAMPWAY, ROOF AND SIDEWALL FORMING COVERED LOADING BAY, FIRST FLOOR ACCESS STAIRS AND DECKING AND BOUNDARY WALLS,

(B) CONSTRUCTION OF A SINGLE STOREY EXTENSION TO THE EASTERN SIDE OF THE EXISTING FACTORY WITH A LOADING BAY, EXTENDED RAISED EXTERNAL LOADING AREA WITH NEW LOADING RAMPWAY SERVING BOTH THE EXISTING AND PROPOSED BUILDING AND AN ESB SUB-STATION. ALL LINKED TO THE EXISTING BUILDING VIA A NEW CENTRAL STAIRWAY SERVING THE FIRST FLOOR OF THE EXISTING BUILDING. PEDESTRIAN ACCESS TO THE REAR OF THE BUILDING,

(C) NEW ESCAPE STAIRWAY FROM THE FIRST FLOOR OF THE EXISTING BUILDING,

(D) CONVERSION OF EXISTING OFFICES LOCATED ON THE FIRST FLOOR OF THE EXISTING FACTORY BUILDING INTO A LABORATORY WITH SEPARATE OFFICE,

(E) NEW ACCESS/CIRCULATION STAIRS AND RAILINGS ADJACENT TO THE EXISTING LOADING BAY,

(F) REMOVAL OF EXISTING FACTORY WASTE WATER TREATMENT AND STORAGE TANKS AND INSTALLATION OF A NEW DAF (DISSOLVED AIR FLOTATION) TANK TO TREAT THE FACTORY WASTE WITH A STORAGE TANK TO STORE THE LIQUID WASTE PRIOR TO REMOVAL OFF SITE,

(G) NEW SIGN TO THE ROAD FACING ELEVATION OF THE EXISTING BUILDING,

(H) REFURBISHMENT & EXTENSION OF EXISTING DWELLING LOCATED AT THE FRONT OF THE SITE (ROADSIDE) AND CONVERSION TO AN OFFICE INCLUDING AN EXTENSION TO THE REAR OF EXISTING BUILDING, RAISING THE EXISTING RIDGE LINE, ASSOCIATED BUILDING SIGNAGE & RECONNECTION TO EXISTING FOUL AND STORM SEWERS,

(I) ALL ASSOCIATED WORKS AND SITE WORKS INCLUDING CONNECTION TO EXISTING STORM SEWER, ADDITIONAL PARKING ETC.

Refused at appeal PL05E.247263 for the following reasons:

1. It is a policy of the planning authority, as set out under Policy ED-P-16 in the County Donegal Development Plan 2012-2018, as varied, that any proposal for economic development use, in addition to other policy provisions of the Development Plan, will be required to meet (inter alia) the following criteria:

(a) be compatible with surrounding land uses existing or approved,

(b) not harm the amenities of nearby residents,

(c) not create a noise nuisance, and

(d) be capable of dealing satisfactorily with any emissions.

The site is located in an area of residential/town centre uses where the proposal to extend and intensify the existing non-conforming use on the site would result in a significant enlargement of an industrial development. Having regard to its scale and proximity to dwellings and other town centre uses, the nature of the industrial activities carried out on site and in particular the odour nuisance generated; and the proximity of HGV turning areas to third party properties, it is considered that the proposed development would seriously injure the amenities and depreciate the value of property in the vicinity by reason of noise, odour and as a result of traffic movements associated with the development. Accordingly, the proposed development would not be compatible with surrounding land uses and would contravene Policy ED-P-16 as set out in the Development Plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would facilitate intensification of the existing use which already generates significant volumes of traffic, including heavy goods vehicles and lorries, at a town centre site to which only restricted access is available, such that traffic entering and leaving the site causes congestion on the public road, the N56, and conflicts with other road users, including pedestrians

using the public footpath. The proposed development would, therefore, endanger public safety by reason of traffic hazard and obstruction of road users.

- 22/50015: Retention of entrance gates, stoned car parking area, and all associated works and site works: Refused.
- S5 23/48: Referral case in which the PA held that the provision of a hardstanding and its use as a staff car park is development, which is not exempted development.
- UD 1773: Enforcement notice served with respect to the provision of a hardstanding and its use as a staff car park.

Adjoining site to the north:

- 03/700: Change of use from existing livestock mart buildings and yard to a fishnet manufacturing, storage, and handling facility and for permission for the illumination of existing yard and buildings to incorporate 2 no. sliding doors to front elevation of existing livestock mart building and all associated site works: Permitted.
- S5 23/24: Referral case in which the PA held in response to a similar question to the current one that the subject structure is development, which is not exempted development.

5.0 Policy Context

5.1. Development Plan

Under the County Donegal Development Plan 2018 – 2024 (CDP), Dunkineely is categorised as being a layer 3 settlement, and the site is shown as lying within its framework boundary.

5.2. Natural Heritage Designations

St. John's Point pNHA & SAC (000191)

6.0 The Referral

6.1. Referrer's Case

- The referrer's fish processing business has operated on the site for the last 25 years and he currently employs c. 21 people. His business needs an additional plant structure for the storage of plastic fish containers. He, therefore, proposes to site such a structure within the curtilage of his existing factory premises.
- The referrer considers that the subject structure comes within the exempted development category set out in Class 21 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2023.
- The referrer cites the definition of "industrial process", which is set out under Article 2(1) of the Regulations, and which states that it is "any process, which is carried on in the course of trade or business, ...and which is (a)...for or incidental to the...cleaning ...packing ...adapting for sale...of any article." He states that his fish processing business would come within this definition, and so, under Article 2(1) of the Regulations, his business is an "industrial undertaker".
- The referrer cites Item (iii) of Class 21, which states "the installation or erection by way of addition or replacement of plant and machinery, or structures of the nature of plant and machinery." He defines "plant" as "buildings for carrying on industrial labour", and so, as the aforementioned cleaning, packing, and adapting for sale would entail industrial labour, Item (iii) is applicable.
- The referrer cites the conditions and limitations that apply to Class 21 exempted development categories, i.e., a height cap of 15m. As the subject structure would be 7m high, it would come within this cap.

6.2. Planning Authority Response

The PA confirms that the site is the subject of on-going enforcement action. It relies upon the case planner's report to explain its declaration that the subject structure is development, which is not exempted development.

6.3. Observer

The observers do not consider that the subject development is exempted development on the following grounds:

- Class 21(a) of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, 2001 – 2023, refers to land occupied and used by an industrial undertaker for the carrying on, and for the purposes of, any industrial process. The subject development would be sited on land, which forms part of open space associated with a dwelling house to the south. This land is thus in residential use, albeit that part of it is in use as an unauthorised car park. It has not received planning permission for a change of use to industrial use. Indeed, under PL05E.247263, a proposed extension to the existing factory to the east to provide a cold room was refused permission, as was the conversion of the dwelling house to offices.
- Under S5 23/48, the PA held that unauthorised development has occurred on the site, i.e., the provision of a hardstanding to the rear of the dwelling house and a car park for staff of the adjacent factory. (This development is the subject of enforcement notice UD1773). Under Article 9(1)(viii) of the aforementioned Regulations, exempted development is de-exempted in the presence of unauthorised development. Furthermore, the unauthorised car park referred to above was refused under application 22/50015.
- Condition and Limitation 1 of Class 21 of the Regulations cited above states that "Any such development shall not materially alter the external appearance of the premises of the undertaking." The size of the subject development and its visibility from both the adjacent Main Street (N56) through Dunkineely and from the rear of the dwelling house to the south are such that this Condition and Limitation would not be met, and so no exemption would arise.

- Under Article 9(1)(iii) of the aforementioned Regulations, exempted development is de-exempted if it would endanger public safety by reason of traffic hazard or obstruction of road users. The retention of entrance gates to and a car park on the site were refused under 22/50015 on the grounds of traffic and pedestrian safety. These grounds were cited, too, under an earlier refusal at appeal (PL05E.247263) for development on the site. The subject development would attract the same critique.
- Under 99/2469 and PL05.116893, the extension of the existing factory onto a site, which approximates to the one that the current subject development would be sited upon, was refused on the grounds that it would lead to an over intensification of use of a restricted industrial site.
- The referrer describes the use of the subject development as being for the storage of plastic fish boxes. Attention is drawn to S5 23/24, which established that a similar development constructed on the old mart site to the north of the factory, was not exempted development. In the light of the judgement in the case of Narconon Trust -v- An Bord Pleanala [2021] IECA 307, an applicant may not ask the same question again.
- The observers express the view that further development by the referrer should be undertaken on the old mart site, thereby avoiding the traffic and amenity issues posed by the subject site.

6.4. Further Responses

None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Under Section 3(1) of the Act, “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...”

Under Section 2(1) of the Act,

“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.

“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,

Under Section 5 of the Act:

(1) 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.

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

7.2. Planning and Development Regulations, 2001

Under Part 1 of Schedule 2 to Article 6 to the Regulations:

<i>Column 1</i> <i>Description of development</i>	<i>Column 2</i> <i>Conditions and Limitations</i>
<p><i>Development for industrial purposes</i> CLASS 21</p> <p><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</i></p>	<p><i>1. Any such development shall not materially alter the external appearance of the premises of the undertaking.</i></p> <p><i>2. The height of any plant or machinery, or any structure in the nature of plant or</i></p>

<p><i>on land used as a dock, harbour or quay for the purposes of any industrial undertaking—</i></p> <p><i>(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,</i></p> <p><i>(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,</i></p> <p><i>(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.</i></p> <p><i>(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.</i></p>	<p><i>machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.</i></p>
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Under Article 2(1) of the Regulations:

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is -

(a) for or incidental to the making of any article or part of an article, or 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;

*“industrial undertaker” means a person by whom an industrial process is carried on and
“industrial undertaking” shall be construed accordingly;*

7.3. **Other**

None.

8.0 **Assessment**

8.1. **Preliminaries**

- 8.1.1. The observers draw attention to a Section 5 application (23/24), which the referrer made concerning an existing freestanding building on the adjoining site to the north. The referrer asked a similar question to that being asked under the current Section 5 referral, and the PA declared that the building is development, which is not exempted development. The observers cite the case of Narconon Trust -v- An Bord Pleanala [2021] IECA 307, in which the Court of Appeal ruled that the Board had no jurisdiction to reconsider an identical question to that asked previously, which was the subject of a declaration by the PA. In this case, the question asked concerning the same property on both occasions.
- 8.1.2. Under the current referral, the subject structure is a proposal for the referrer’s site to the east of its fish processing factory, and so it relates to a different site and structure/building than under the earlier Section 5 application. I, therefore, take the view that the Board has the jurisdiction to consider the current referral, and so I do not concur with the appellants’ view that the Board should dismiss this referral as being invalid.
- 8.1.3. I conclude that the precedent set by the legal case cited by the observers is not directly comparable to the current referral, and so it does not debar the Board from considering this referral in the normal manner.

8.2. **The question**

- 8.2.1. The question, as asked by the referrer, is whether the erection of plant structures for industrial purposes is or is not development or is or is not exempted development. This question is phrased in the plural, whereas the submitted plans show one

structure only. Accordingly, for the sake of consistency, I consider that the question should be rephrased using the singular to read whether the erection of a plant structure for an industrial purpose is or is not development or is or is not exempted development.

8.3. Is or is not development

- 8.3.1. The submitted plans depict a freestanding portal framed building of rectangular form under a double pitched roof with standard finishes and a vehicular door in the western gabled elevation. This building would be sited on undeveloped land to the east of the referrer's existing fish processing factory.
- 8.3.2. Under Section 3(1) of the Act, development is defined as "the carrying out of any works in, on, over or under land" and works are defined as "any act or operation of construction". The provision of the above cited building would entail works of construction and so it would be development.

8.4. Is or is not exempted development

- 8.4.1. The referrer cites Class 21(iii) of the Regulations, which states the following:

(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—

(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,

(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,

(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

- 8.4.2. The observers question whether the grassed area in the north-eastern quadrant of the site lies within the industrial curtilage of the referrer's fish processing factory, i.e.,

in terms of Class 21, land occupied and used by an industrial undertaker for the carrying on, and for the purposes of, any industrial process. They contend that this grassed area is associated with the dwelling house in the southern portion of the site, and so it has a residential rather than an industrial use. They draw attention to the unauthorised staff car park, which now separates the grassed area from the dwelling house, and they also draw attention to the refusal at appeal of proposals for this grassed area and this dwelling house. Thus, while the referrer's ownership of the eastern half of the site is not contested, any industrial use of it has not been authorised and so it does not come within the ambit of Class 21 as land occupied and used by an industrial undertaker for the carrying on, and for the purposes of, any industrial process. Accordingly, the subject structure, which would be sited within the eastern half of the site, would not even be a candidate for exempted development.

- 8.4.3. During my site visit, I observed the undeveloped nature of the north-eastern quadrant of the site, and the absence of any industrial use upon it. I also observed the presence of the staff car park to the rear of the dwelling house in the south-east quadrant. I note its unauthorised status. I note, too, the extract from Land Direct in the observer's submission, which indicates that the eastern and western halves of the site are the subject of separate Folio Numbers.
- 8.4.4. The referrer has not addressed the question of the use of that portion of the site upon which the subject structure would be sited.
- 8.4.5. *Prima facie* I consider that the observers' contention that this portion of the site is *not* land occupied and used by an industrial undertaker for the carrying on, and for the purposes of, any industrial process is valid. Nevertheless, if the Board takes the contrary view, then further assessment of the subject structure would be required, and so I will continue to advise the Board as if this were the case.
- 8.4.6. The referrer states that the subject structure would be "a structure of the nature of plant or machinery". By way of support for this statement, he draws attention to the proposed industrial use of this structure, i.e., it would be used to store plastic fish containers, in conjunction with his existing fish processing factory. In this respect, he also draws attention to the definition, under Article 2(1) of the Regulations, of an industrial process, which is that it is "any process, which is carried on in the course of trade or business, ...and which is...for or incidental to the...cleaning ...packing

...adapting for sale...of any article.” He further draws attention to the definition of an industrial undertaker, under Article 2(1) of the Regulations, as being “a person by whom an industrial process is carried on”.

- 8.4.7. I accept that the referrer’s fish processing factory is an industrial process and that the use of a structure for the storage of plastic fish containers in conjunction with this factory would be an industrial process, too.
- 8.4.8. Turning to what would be an appropriate description of the subject structure, the referrer states that this would be “a structure of the nature of plant or machinery”. He seeks to elucidate this statement by defining plant as “buildings for carrying on industrial labour”. He does not provide a citation for this definition, which appears in neither the Act nor the Regulations. Common definitions of plant and machinery for tax purposes are assets that are used by a business for the purpose of carrying on the business and are not stock in trade, the business premises, or part of the business premises. (The difference between plant and machinery is that generally machinery will have moving working parts, and plant will not).
- 8.4.9. Under Article 2(1) of the Regulations, structure is defined as including as “any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined”. However, under Class 21(iii) the reference is not to structure *per se*, but to “a structure of the nature of plant or machinery”, which indicates a merger between any structure and the plant and machinery being supported by that structure.
- 8.4.10. Under the referrer’s submitted plans, discussed under Section 8.3 of my assessment, the subject structure reads as a building, which would be used to store plastic fish containers, i.e., it would be a warehouse. If the plastic fish containers are regarded as plant, then the subject structure would neither resemble their nature nor merger with them. I, therefore, consider that the subject structure would not be “a structure of the nature of plant or machinery”, and so it would not be exempted development under Class 21(iii).
- 8.4.11. If the Board takes a contrary view on the subject structure, then for any exempted development to be conferred, the conditions and limitations under Class 21 would need to be complied with. The referrer addresses the second of these, i.e., the height cap of 15m, which the subject structure would meet, with its ridgeline of 7m.

The observers draw attention to the first of these conditions and limitations, which states that “Any development shall not materially alter the external appearance of the premises of the undertaking.” They contend that the size of the subject structure and its visibility from both the adjacent Main Street (N56) through Dunkineely and from the rear of the dwelling house to the south are such that this condition and limitation would not be met.

8.4.12. The referrer has not addressed the first condition and limitation. I consider that the subject structure, which would be sited in a grassed area within the north-eastern quadrant of the site that has not previously been developed, would result in development that would materially alter the external appearance of the premises of the undertaking. Accordingly, the subject structure would not be exempted development.

8.4.13. I conclude that the subject structure would not be exempted development under Class 21 of the Regulations.

8.5. Restrictions on exempted development

8.5.1. In the light of my conclusion under Section 8.4, the subject structure is not exempted development, and so the question of restrictions on exempted development, i.e., de-exemption under Article 9 of the Regulations does not arise.

8.5.2. Nevertheless, the observers draw attention to the on-going enforcement action on the site, and they cite Article 9(1)(a)(viii) of the Regulations, which de-exempts development, which would otherwise be exempted development, where it 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.”

8.5.3. I understand that the on-going enforcement action on the site is against the provision of a hardstanding to the rear of the dwelling house and a car park for staff, all within the southern portion of the site. The subject structure would be a new freestanding one, which would be sited in the north-eastern quadrant of the site. Accordingly, it would be unaffected by the enforcement action.

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 erection of a plant structure for an industrial purpose is or is not development or is or is not exempted development:

AND WHEREAS Charles Vial requested a declaration on this question from Donegal County Council and the Council issued a declaration on the day of 28th September, 2023 stating that the matter was development and was not exempted development:

AND WHEREAS Charles Vial referred this declaration for review to An Bord Pleanála on the 20th day of October, 2023:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Class 21 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site, and
- (g) the pattern of development on the site:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The subject structure is a building, which would be used as a warehouse in conjunction with the referrer's existing fish processing factory.
- (b) The referrer has not demonstrated that the portion of the site upon which the subject structure would be sited lies on land occupied and used by an industrial undertaker for the carrying on, and for the purposes of, any industrial process.
- (c) The subject structure would not be a "a structure of the nature of plant or machinery", as it would neither merger with any plant and machinery that it supports or be integral to the support afforded to any plant and machinery.
- (d) Consequently, the subject structure, as a building, is development, which is not exempted development under Class 21 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the erection of a plant structure for an industrial purpose is 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.

Hugh D. Morrison
Planning Inspector

15th April 2024