



An
Bord
Pleanála

Inspector's Report ABP-321742-25

Question

Whether the operation of a service station shop at Burgess Service Station, Burgess Lower, Killeagh, Co. Cork is or is not development and is or is not exempted development: (a) Whether or not the operation of a shop within a former restaurant at Burgess Service Station, Burgess Lower, Killeagh, Co. Cork is or is not development and is or is not exempted development; (b) Whether or not the change of use of a former dwelling house and shop at Burgess Service Station, Burgess Lower, Killeagh, Co. Cork to a shop storage is or is not development and is or is not exempted development.

Location

Burgess Service Station, Burgess Lower, Killeagh, Co. Cork, P36 XP04

Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

REF001/2025

Cork County Council

No declaration

Referred by

Cork County Council

East Cork Oil Company

East Cork Oil Company

26th March 2025

Matthew McRedmond

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1.0 Site Location and Description

- 1.1. The subject site is located at Burghess Lower, a townland to the east of Killeagh Village on the north side of the N25 national route in County Cork. An existing derelict residential bungalow is located to the east of the site, with the site surrounded by agricultural fields to the north and west.
- 1.2. There is an existing petrol station located at the subject site, including a forecourt building, canopy over filling pumps, with a parking area to the rear.

2.0 The Question

- 2.1. The question before the Board is in separate parts but generally relates to the operations within the existing building. The question is as follows:

“Whether the operation of a service station shop at Burgess Service Station, Burgess Lower, Killeagh Co. Cork is or is not development, and is or is not exempted development.

 - (a) Whether or not the operation of a shop within a former restaurant at Burgess Service Station, Burgess Lower, Killeagh, Co. Cork is or is not development, and is or is not exempted development,
 - (b) Whether or not the change of use of a former dwelling house and shop at Burgess Service Station, Burgess Lower, Killeagh, Co. Cork to shop storage is or is not development, and is or is not exempted development.”

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. As Cork County Council have requested An Bord Pleanala to determine the question asked, there has been no declaration to date.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

Planning Report dated the 21st January 2025 outlines the question referred, provides details of the site and planning history, outlines the basis of the referral in relation to breaches of permitted development, and is seeking the Board to determine the referral question posed.

3.2.2. Other Technical Reports

None.

4.0 Planning History

Relevant Decisions

Ref. 24/4188: Retention application for change of use of dwelling house to storage facilities, internal modifications to shop/restaurant layout to include provision of a deli counter and revised convenience floor space, rear extension, construction of a front lobby, lighting and upgrade of waste water treatment facilities. Permission was refused by Cork County Council on the grounds of impact on N25 National Road, traffic hazard and scale of retail floor space.

Ref. 21/5079: Earlier application for retention permission that is almost identical to that subsequently applied for and refused under Ref. 24/4188. Refused permission for the same reasons as the later application.

D/211/17: A declaration regarding whether or not the proposed development of a disused service station is or is not development. Cork County Council declared that the resumption would not constitute 'development'.

Ref. 86/1362: Parent/original permission granted for petrol filling station to include a forecourt, canopy, signage, shop and restaurant.

Ref. 87/820: Permission granted to extend truck parking area and relocate diesel pumps.

Ref. 89/1182: Permission granted for an extension to the existing restaurant.

Enforcement

EF/20153: Enforcement notice issued to the owner in relation to unauthorised change of use of former restaurant and kitchen, former dwelling and former shop storage, to net retail floor space including a change of use to toilets, storage and

circulation space. Notice also related to unauthorised extensions to the existing building to the front and rear, unauthorised bollards and erection of lamp posts.

5.0 Policy Context

5.1. Development Plan

The subject site is not zoned under the Cork County Development Plan 2022-2028.

There are no specific policies in respect to motor fuel stations contained in the Development Plan. Paragraph 9.11.14: 'Other Categories of Retail Development' states the following:

"Guidance in relation to other specific categories of retail development e.g. factory shops, retailing in small towns, rural areas and motor fuel stations where not specifically dealt with in this Plan shall be as outlined in the Retail Planning Guidelines."

5.2. Natural Heritage Designations

5.2.1. The nearest Natura 2000 sites are located approximately 3.2-3.6km southeast of the subject site:

- Ballymacoda (Clonpriest and Pillmore) SAC 3.6km (Site Code 000077)
- Ballymacoda Bay SPA 3.2km (Site code 004023)

5.3. EIA Screening

5.3.1. The proposed development does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. Refer to Form 1 in Appendix 1 of this report.

6.0 The Referral

6.1. Referrer's Case

- Cork County Council note the Section 5 referral under reference D/211/17 as to whether or not the proposed resumption of a disused service station is or is

not exempted development, was declared 'not development'. The Planning Authority submit that the development that has taken place at the site since has far exceeded what was considered under this section 5.

- Retention application Ref. 24/4188 was for a range of works that were refused permission. Some works have been carried out in compliance with an Enforcement Notice, however not all necessary works to comply with the notice have been completed.
- The existing shop continues to operate within the forecourt building, and it is within this context that the referral is made.
- Case law file 'Molloy & Others – v – The Minister for Justice, 2004' is noted whereby a permission may be retained where no material structural alteration to the property may occur until a subsequent permission is obtained. The subject site contravenes this principle through structural changes since 2020, including extensions and amalgamations of units.
- The referral makes reference to Article 9(1)(a)(viii) which refers to a development not being exempted if the development consists of or comprises the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is unauthorised.
- The referral concludes by stating the question is whether or not the operation of a service station shop at Burgess Service Station, Burgess Lower, Killeagh, Co. Cork is or is not development, and is or is not exempted development.

6.2. Planning Authority Response

As the Planning Authority (PA) were the referrer in this case, there was no PA response.

6.3. Owner/ occupier's response

The owners have responded to the referral with the following comments:

- There is already a permitted shop use within the service station and there is no change of use of the former dwelling house/shop to shop storage use.

- Council previously granted permission for a shop and issued a declaration in 2017 confirming that the continued use of the service station with a shop and restaurant did not constitute development.
- In accordance with *Narconon Trust v An Bord Pleanala* [2021] IECA 307 the Board should exercise discretion under Section 138 of the PDA Act 2000 and dismiss the referral as the use and operation is already permitted and subject to a Section 5 declaration.
- There have been no material changes of use or structural alterations to the permitted service station.
- The internal works (including the reconfiguration of the previously permitted shop) is exempted development.
- References to enforcement proceedings and alleged unauthorised development is irrelevant to this referral.

6.4. Further Responses

None.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Planning and Development Act, 2000, as amended.

- Section 3 – Development.
- Section 4 – Exempted development, in particular sub-section (2).
- Section 5 – Declaration and referral on development and exempted development, in particular sub-section (4).

7.2. Planning and Development Regulations, 2001

- Part 2. Exempted development. Article 5(1)
‘Shop’ is defined as a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting

members of the public '(a) for the retail sale of goods. (f) for the display of goods for sale'.

- Article 6 – Exempted Development, in particular sub-section (1) and Class 14(c) of Schedule 2, Part 1 (Change of use).
- Article 9 – Restrictions on exemption, in particular sub-section (1)(i), (iii) and (viii).
- Article 10 – Changes of Use, in particular sub section (1) and 2(b)(ix).

8.0 Assessment

8.1. Introduction

8.1.1. It is noted at the outset that the purpose of this referral is not to determine the acceptability of perceived or otherwise unauthorised development but rather whether or not the matter in question constitutes development, and if so whether it falls within the scope of exempted development.

8.1.2. The initial part of the question is provided in general terms and does not provide specific details in relation to what element of the operation of a service station shop at Burgess Service Station is in question. Parts (a) and (b) provide the details of the question posed, and I propose to address each of these in turn. The two questions are as follows:

- a) Whether or not the operation of a shop within a former restaurant at Burgess Service Station, Burgess Lower, Killeagh, Co. Cork is or is not development, and is or is not exempted development.
- b) Whether or not the change of use of a former dwelling house and shop Burgess Service Station, Burgess Lower, Killeagh, Co. Cork to shop storage is or is not development, and is or is not exempted development.

8.2. Question (a) - Is or is not development.

8.2.1. The site as currently configured provides for a fuel filling station to the front of the site served by a forecourt building that includes a shop and canopy over pumps, with parking for cars and trucks to the rear. As per the details provided by the referrer, the

site has permission for filling station, shop and restaurant uses since 1986. I note the referral from 2017 under ref. 211/17 that declared the resumption of this use would not constitute 'development'. The layout of the building originally comprised a dwelling within the western section of the forecourt building, the shop element within the central portion of the building and the restaurant located within the eastern portion of the building. The current layout of the forecourt building, on the date of my site visit, included the service station shop located within the eastern portion of the building, with the central and western part of the building both being largely vacant with some informal storage and office type equipment in the central portion of the building. Part (a) of the question referred relates to the use of the shop, so I will limit my assessment to that element of the building in this section of my report.

- 8.2.2. I have given consideration to the landowner's response that sought to have the referral dismissed on the grounds that a similar referral has already been considered and a declaration provided. I note the grounds of the 2017 referral are related to the resumption of a previous use, while the subject referral, while similar, is sufficiently different as it relates to the configuration of uses within the existing building and the inclusion of additional storage in place of the permitted dwelling. I have therefore decided not to seek dismissal of the referral and address each question as they have arisen.
- 8.2.3. Article 5(1) of the Planning and Development Regulations, 2001, (as amended), defines the term 'shop' as use of a structure for the retail sale of goods and for the display of goods, where the sale, display or service is to visiting members of the public. It is expressly noted that a restaurant is not included in the definition of a shop.
- 8.2.4. In Section 3(1)(a) of the Act, "development" means *"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"*. The existing scenario provides the shop unit within the eastern portion of the building, which was originally permitted as the restaurant element of the structure, as shown on the application drawings. The permitted restaurant and shop are both contained within the same structure but the area permitted as the restaurant has now been amended to provide a shop.

8.2.5. I therefore submit that a material change of use has taken place in terms of the conversion of a restaurant to shop use and therefore comprises development under section 3(1) of the Act.

8.3. Question (a) - Is or is not exempted development.

8.3.1. I note the planning precedent for internal alterations being exempted development as provided in the response on behalf of the landowner. ABP Ref. RL2827 is particularly relevant in relation to a change of use from a restaurant to a retail shop at the Regency Airport Hotel, Swords Road, Dublin. In that case, The Board concluded the said change of use comes within the scope of Class 14 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, in accordance with Article 6 of the said Regulations relating to exempted development, and the development is not restricted by Article 10 of the 2001 Regulations. Therefore, they decided that in this case the said change of use from a restaurant to a retail shop is exempted development.

8.3.2. In Class 14 (c) in Part 1, Schedule 2 of the Act, change of use as a restaurant to use as a shop is exempted development.

8.3.3. Article 6(1) provides that subject to Article 9 development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development provided it complies with the conditions and limitations specified in column 2. No conditions or limitations are set out in column 2 of the Class (in respect of this change of use).

8.3.4. Restrictions on exempted development

8.3.5. Article 9 sets out a number of instances under which development in Part 1 is not exempted development. Insofar as the alterations that have been undertaken to the physical fabric of the forecourt building are exempted development, such exemption is not restricted by any of the provisions of Article 9(1) of the Regulations. The proposal does not:

- (i) Contravene a condition.
- (ii) Consist of or comprise the formation, layout out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

- (iii) Endanger public safety by reason of traffic hazard or obstruction of road users.
- (iiia) Endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft.
- (iv) Interfere with the character of a landscape, or a view or prospect of special amenity value or special interest.
- (v) 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,
- (vi) 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.
- (vii) 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, as previous permissions have been established for the forecourt building and associated uses of shop and restaurant.

8.3.1. Therefore, the development complies with Article 9 of the Planning and Development Regulations 2001 as amended.

8.3.2. On this basis I consider that the use of the eastern portion of the existing building for a shop use is exempted development.

8.4. **Question (b) - Is or is not development.**

8.4.1. As referenced earlier in my report, the layout of the building originally comprised a dwelling within the western section of the forecourt building, the shop element within the central portion of the building and the restaurant located within the eastern portion of the building. The current layout of the forecourt building on the date of my site visit included the central and western part of the building both being largely vacant with some informal storage and office equipment in the central part of the building. Part (b) of the question referred relates to the change of use of the former

dwelling and shop to shop storage, so I will limit my assessment to that element of the building in this section of my report.

8.4.2. Article 5(1) of the Planning and Development Regulations, 2001, (as amended), defines the term 'shop' as use of a structure for the retail sale of goods and for the display of goods, where the sale, display or service is to visiting members of the public.

8.4.3. The Cork County Development Plan states that retail not defined in the plan shall be as outlined in the Retail Planning Guidelines. Under the revised Retail Planning Guidelines (2012), net retail floorspace is defined as follows:

'The area within the shop or store which is visible to the public and to which the public has access including fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaries, customer service areas, and internal lobbies in which goods are displayed, but excluding storage areas, circulation space to which the public does not have access to, cafes, and customer toilets.'

8.4.4. The shop could then conceivably include other areas within the permitted building that are used for storage but do not contribute to net retail floorspace.

8.4.5. As I set out earlier in my assessment, in Section 3(1)(a) of the Act, "development" means *"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"*. The existing scenario provides the central and western portion of the building as vacant, which was originally permitted as a shop and dwelling respectively, as shown on the application drawings. The referral question relates to the use of the former dwelling and shop as shop storage so I will consider the question in these terms.

8.4.6. Internal alterations have occurred to amend the layout of the central and western sections of the building. The dwelling was amended to provide toilets which are now closed to the public and the central section of the building has been cleared off all partitions and internal walls.

8.4.7. Although the operational shop could have ancillary storage space attached within the permitted 'shop' area (the central part of the building) without constituting a material

change of use, the change of use from dwelling to shop storage would constitute a material change of use.

- 8.4.8. I therefore submit that a material change of use is required to change the dwelling use to shop storage comprises development under section 3(1) of the Act. Change of use from shop, to shop storage does not constitute a change of use, however as internal alterations have occurred, it and therefore comprises development under Section 3(1) of the Act.

8.5. Question (b) - Is or is not exempted development.

- 8.5.1. The response on behalf of the landowner draws attention to the provisions of Section 4(1)(h) of the Act. It contends that the alterations in question “affect only the interior of the structure”.
- 8.5.2. I note that the landowner in the conclusion of their submission explicitly states that the development permitted under Ref. 86/1362 was carried out and completed in accordance with the permission granted.
- 8.5.3. The use of the permitted shop area within the central portion of the building as ‘shop storage’ is consistent with the permitted development and the definition of net retail floorspace as defined in the Retail Planning Guidelines, whereby it does not bring the overall retail floorspace above 100sqm, which would remove the exemption. As I consider the change of use from restaurant to shop as exempted development, and the alterations of the shop to ‘shop storage’ comprises internal alterations to layout only, I consider the change of use to be exempted development under Section 4(1)(h) of the Act.
- 8.5.4. Although on my visit to the site the former dwelling could be more accurately described as a vacant dwelling with additional toilet facilities than shop storage, this is not the question that has been asked. I consider the provisions of Class 14 in Part 1, Schedule 2 of the Act, whereby the change of use as a dwelling to use as shop storage is not provided for and is therefore not exempted development.
- 8.5.5. **Restrictions on exempted development**
- 8.5.6. As with the first part of the question, Article 9 sets out a number of instances under which development in Part 1 is not exempted development. Insofar as the alterations

that have been undertaken to the internal fabric of the building are exempted development, such exemption is not restricted by any of the provisions of Article 9(1) of the Regulations. The proposal does not:

- (viii) Contravene a condition.
- (ix) Consist of or comprise the formation, layout or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.
- (x) Endanger public safety by reason of traffic hazard or obstruction of road users.
 - (iiia) Endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft.
- (xi) Interfere with the character of a landscape, or a view or prospect of special amenity value or special interest.
- (xii) 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,
- (xiii) 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.
- (xiv) 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,

8.5.7. Therefore, the development complies with Article 9 of the Planning and Development Regulations 2001 as amended.

8.5.8. On this basis I consider that the use of the central portion of the existing building for a shop storage with internal alterations is exempted development.

8.5.9. Article 10 sets out a number of instances under which a change of use is not exempted development. Insofar as the question in relation to the change of use from

shop to shop storage, I have had regard to Article 10(2)(ix) that states a shop, associated with a petrol station, shall not exceed 100 square meters and the definition of net retail area as provided in the Retail Planning Guidelines. The proposal would not exceed 100 square meters as a result of a change of use of the former shop to shop storage as storage areas are excluded from the calculation of net retail floor space.

8.5.10. Therefore, the change of use development complies with Article 10 of the Planning and Development Regulations 2001 as amended.

8.5.11. On this basis I consider that the use of the central portion of the existing building for shop storage purposes is exempted development.

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:

- (a) The operation of a shop within a former restaurant, and
- (b) The change of use of:
 - i. a former dwelling house to shop storage, and
 - ii. a shop, to shop storage.

is or is not development or is or is not exempted development:

AND WHEREAS Cork County Council requested a declaration on this question from An Bord Pleanála on the 21st day of January, 2025:

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

- (a) Sections 3, 4 and 5 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the site that includes permission for the development of a filling station with dwelling, restaurant and shop,
- (e) The pattern of development in the area,
- (f) Access arrangements to and within the site,
- (g) The submissions on file, and
- (h) The Inspector's report.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the operation of a shop within a former restaurant would generally come within the scope of the exemption provided in Class 14 (c) of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended, and
- (b) the change of use to a shop is not subject to any of the restrictions on exemption set out in Article 9 of the Planning and Development Regulations, 2001, as amended.
- (c) The change of use of:
 - a. a former dwelling house to shop storage does not come within the scope of exemptions provided in the Planning and Development Regulations, as amended, and
 - b. a shop, to shop storage would generally come within the scope of the exemption provided in Class 4(1)(h) of the Planning and Development Act, as amended as it relates to the internal configuration of the permitted building. This

change of use to shop storage is not subject to any of the restrictions on exemption set out in Article 9 of the Planning and Development Regulations, as amended.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, as amended, hereby decides that the

(a) The operation of a shop within a former restaurant is development and is exempted development, and

(b) The change of use of:

- a. a former dwelling house to shop storage is development and is not exempted development, and
- b. a shop, to shop storage is development and is exempted development.

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

Matthew McRedmond
Senior Planning Inspector

06th May 2025

Appendix 1:

Form 1 - EIA Pre-Screening

Case Reference	ABP – 321742-25
Proposed Development Summary	Whether the operation of a service station is or is not development, and is or is not exempted development.
Development Address	Burgess Service Station, Burgess Lower, Killeagh, Co. Cork, P36 XP04
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a ‘project’ for the purposes of EIA? (For the purposes of the Directive, “Project” means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input type="checkbox"/> Yes, it is a ‘Project’. Proceed to Q2.
	<input checked="" type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	State the Class here
<input type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	

<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	State the Class and state the relevant threshold
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	State the Class and state the relevant threshold

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)