



An
Bord
Pleanála

Inspector's Report ABP-322099-25

Question

Whether the existing prefabricated storage structure at Ace Express Freight, M1 Business Park, Courtlough, Balbriggan, Co. Dublin is or is not development or is or is not exempted development.

Location

Ace Express Freight, M1 Business Park, Courtlough, Balbriggan, Co. Dublin.

Declaration

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

FS5/010/25

Applicant for Declaration

Ascot Freight Limited

Planning Authority Decision

Is not exempted development

Referral

Referred by

Ascot Freight Limited

Owner/ Occupier

[Click here to enter text.](#)

Observer(s)

None

Date of Site Inspection

19 June 2025

Inspector

Gillian Kane

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1.0 Site Location and Description

- 1.1.1. The subject site is located within the M1 Business Park, in north Co. Dublin. The business park is located to the east of the M1, just north of an interchange providing access to the R132 which in the immediate vicinity includes a fuel station, the business park and northwards to residential area known as Knock Cross.
- 1.1.2. The structure in question is a prefabricated double height unit lying between permanent structures associated with a freight company. Details on file state that the prefabricated structure has dimensions of 18.5m x 55m with a ridge height of 10.56 and an overall floor area of 1,1017.5sq.m. External finish is described as industrial grade PVC roofing and steel sheet walls on an aluminium frame.

2.0 The Question

- 2.1. Whether the existing prefabricated storage structure at Ace Express Freight, M1 Business Park, Courtlough, Co. Dublin is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. On the 3rd March 2025, the Planning Authority issued a declaration stating that the proposal is not exempted development under section 5(1) of the Planning and Development Act 2000, as amended as “the existing prefabricated structure does not comply with Class 21 due to its express purpose for storage, and not being in the nature of either plant or machinery, nor does it fall within any other class of exempted development. Therefore it is considered that the existing works comprise development and are not considered to be exempted development.”

3.2. Planning Authority Reports

- 3.2.1. **Planning Report:** Proposal constitutes works and thus development. Prefabricated storage structure may not be considered a structure of plant or machinery. It is considered an extension of the existing building on site and a further intensification of the existing use of the site.

4.0 Relevant Planning History

- 4.1.1. Planning Authority reg. ref. F18A/0733: Planning permission granted for single storey extension to south and west elevation.

5.0 Policy Context

5.1. Fingal Development Plan 2023-2029

- 5.1.1. Subject site is located on lands zoned 'GE General Employment' which has the stated objective to facilitate opportunities for general enterprise and employment.

5.2. Natural Heritage Designations

- 5.2.1. Bog of the Ring pNHA (001204) is located 0.4km to the north of the subject site. Knock Lake pNHA (001203) is located 0.9km to the north of the subject site. Rogerstown Estuary SPA (004015) and SAC (000208) are to the northwest. The North-west Irish Sea SPA (004236) is c.5km to the east.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. An agent for the first part has submitted an appeal of the declaration of Fingal County Council. The referral provides details of the site location and description, ownership, adjoining lands, built heritage, flood risk, details of the general area, planning history, legal context and planning context and an AA screening section. The case for exemption can be summarised as follows:
- The existing yard forms part of a long-established industrial premises where goods are packed and distributed
 - No dispute that works have taken place.
 - Under Class 21 development carried out by an industrial undertaker on land occupied and used by the undertaker for the carrying on, and for the purposes if, any industrial process, involving the installation or erection by way of addition of structures "of the nature of plant or machinery" is exempt development.
 - The agent submits that the reference to 'of the nature of plant or machinery' reflects the legislators efforts to be flexible in terms of the types of structures that

could be deemed exempt. It is clear that the development does not have to be plant or machinery but can be similar to such development.

- It is submitted that plant comes in many different forms and is often self-contained. It is submitted that the prefabricated storage structure is of a similar nature to plant and qualifies for an exemption.
- The development does not materially alter the external appearance of the premises of the undertaking, it has an industrial appearance in terms of its built form and materials.
- It is noted that the Fingal County Council declaration refers to a water storage tank and pump house, which has nothing to do with the subject application.
- No explanation is given for the Planning Authority stance that the structure is not of the nature of plant or machinery.
- It is submitted that the wording of the regulations allows for more than just plant and machinery to be considered under the exemption. It is submitted that the legislators have broadened out the works that can be included without being prescriptive.
- The conditions / limitations that include a 15m height suggests quite considerable structures can be allowed under the exemption.
- It is submitted that 'plant' is a broad term applying to a range of structures such as fixed structures located external to an industrial building that are used in connection with the industrial use.
- The structure is not an extension of the existing building as it is detached.
- Additional storage does not generate intensification from a planning perspective. There are no material planning implications arising, there are no additional traffic movements generated by the additional storage.

6.2. Planning Authority Response

- 6.2.1. An Bord Pleanála is asked to uphold the decision of the Planning Authority. Provision should be made for the imposition of financial contribution conditions should permission be granted.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. The following statutory provisions are relevant in this instance.

7.1.2. Section 2(1): In this Act, except where the context otherwise requires

"**works**" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...;

"**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 this context so admits, includes the land on, in or under which the structure is situated".

7.1.3. **Section 3(1):** in this Act, "**development**" means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land.

7.1.4. **Section 4(1):** sets out developments that shall be exempted development for the purposes of this Act.

Section 4(1)(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures

7.1.5. **Section 5(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.

7.1.6. **Section 5(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. (b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who

made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

- 7.1.7. **Section 5(4):** Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

7.2. Planning and Development Regulations, 2001

- 7.2.1. Part 2 of the Planning and Development Regulations, 2001 refers to Exempted Development.

- 7.2.2. “Subject to Article 9 development of a class specified in Column 1 and Part 1 of Schedule 2 shall be exempted development for the purposes of the Act”.

CLASS 21

(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.

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.

2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

(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.

CLASS 22

Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, of raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process.	The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.
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7.2.3. Article 5 of the Regulations includes the following definitions:

“industrial building” means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

“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

(b) 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;

8.0 EIA Screening

- 8.1.1. 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 report.

9.0 AA Screening

- 9.1.1. Having regard to the nature and scale of the subject referral, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/ or a hydrological connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

10.0 Assessment

- 10.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the above proposal in terms of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

10.2. Is or is not development

- 10.2.1. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. The placing of a prefabricated structure on land is works and is therefore "development" as per section 3(1) of the Planning and Development Act 2000, as amended development.

10.3. Is or is not exempted development

- 10.3.1. The referrer submits that the subject structure is exempt under class 21 of Part 1 of schedule 2 of the Regulations. Class 21 refers to development carried out by an industrial undertaker for the purposes of any industrial undertaking. Section 21(a)(iii) refers to the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

- 10.3.2. As noted in section 7 above, article 5 of the includes the following definitions:

“industrial building” means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

“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 (b) 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;

10.3.3. For the subject prefabricated structure to qualify for an exemption under Class 21, it must be carried out by an industrial undertaker for the purposes of an industrial process or an industrial undertaking. It is my understanding that the company on site is a freight / logistics business. While this is a trade or business as stated in the definition of an industrial process, it is not for or incidental to the making of any article or part of an article, or (b) 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. I note that the referrer has highlighted the words ‘packing’ and article’ in the submission, however no further information is given as to how this refers to the subject operation on site. The referrer is clear that the subject prefabricated structure is used for storage. I am satisfied that the applicant is not an industrial undertaker, is not undertaking an industrial process and the structures on site are not industrial buildings. I note that the planning history on the subject site refers to business park, warehousing, distribution and office facilities. I am satisfied that Class 21 does not apply to the subject development.

10.3.4. Notwithstanding the above, should it transpire that the operations on site qualify as an industrial process, the referrer submits that there is flexibility in Class 21 under what qualifies as 'plant or machinery, or structures in the nature of plant or machinery'. The Planning and Development Act 2000, as amended is silent on a definition of plant or machinery. I note and concur with the reasoning of the Planning Inspector under RL2385 wherein the inclusion of 'mechanical parts' was considered necessary for something to be considered plant or machinery. The subject prefabricated structure is not, by the ordinary understanding of the words, plant or machinery. Nor is it a structure 'in the nature of plant or machinery'. I have no evidence of the referrers submission that the legislation is flexible or that legislators have broadened out the works that can be included under the exemption. To that end, I note the declaration of the Board under RL2800 wherein it was declared that the exemption for industrial undertakers for the erection of structures of the nature of plant and machinery on land used for industrial purposes, does not provide for the construction of new buildings.

11.0 Recommendation

11.1. 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 existing prefabricated storage structure at Ace Express Freight, M1 Business Park, Courtlough, Co. Dublin is or is not development and is or is not exempted development

AND WHEREAS Ascot Freight Limited requested a declaration on this question from Fingal County Council and the Council issued a declaration on the 3rd day of March, 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Ascot Freight Limited referred this declaration for review to An Bord Pleanála on the 19th day of March, 2025:

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) Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that

- (a) The construction of the prefabricated structure in question involves works and constitutes development, as defined,
- (b) The operations on site are not an industrial process undertaken by an industrial undertaker to which Class 21 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended
- (c) The exemption for industrial undertakers for the erection of structures of the nature of plant and machinery on land used for industrial purposes, does not provide for the construction of new buildings

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 existing prefabricated storage structure at Ace Express Freight, M1 Business Park, Courtlough, Co. Dublin 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.



Gillian Kane
Senior Planning Inspector
23 June 2025

Form 1 - EIA Pre-Screening

Case Reference	
Proposed Development Summary	Whether the existing prefabricated storage structure is or is not development and is or is not exempted development
Development Address	Ace Express Freight, M1 Business Park, Courtlough, Co. Dublin
	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 checked="checked" type="checkbox"/> No, No further action required.

Inspector:  Date: 23/06/2025