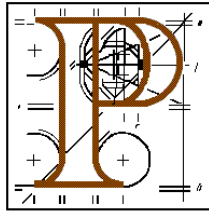


# An Bord Pleanála



## Inspector's Report

<b>Referral No:</b>	PL21.RL.3429
<b>Details of Reference:</b>	Whether the trading in perishable goods for at least one day per week is or is not development or is or is not exempted development.
<b>Location:</b>	Kinard, Enniscrone, Co. Sligo
<b>Referred By:</b>	Sligo County Council
<b>Owner/ occupier:</b>	Eamonn Doherty & Dominic Lynott
<b>Planning Authority:</b>	Sligo County Council
<b>Planning Authority Reference:</b>	ENF 2103
<b>Inspector:</b>	Donal Donnelly
<b>Date of Site Inspection:</b>	22 <sup>nd</sup> January 2016
<b>Appendices:</b>	Photos, maps, etc.

## **1.0 INTRODUCTION**

- 1.1 This referral is a referral by the Planning Authority, under Section 5(4) of the 2000 Act, for a determination by the Board on whether or not the subject development is development and whether or not it is exempted development.

## **2.0 DEVELOPMENT PLAN**

- 2.1 It is stated under Section 12.6.11 of the Sligo County Development Plan, 2011-2017 that *“the unauthorised parking of vehicles and trailers on national, regional and local roads for the purpose of commercial activity is considered to constitute a hazard to road users and not in compliance with Health, Safety and Welfare at Work Regulations.”*

## **3.0 SITE LOCATION AND DESCRIPTION**

- 3.1 The subject site is located in the townland of Kinard to the north-east of the village of Enniscrone in north-western Co. Sligo. The village is situated at the eastern end of Enniscrone beach and its main street forms part of the R297 Regional Route. The R297 continues north-east and the appeal site is located approximately 2km from the village centre at the crossroads of this road, the R298 and a local road.
- 3.2 There is a cluster of buildings located around the staggered crossroads including Scott's bar, which sits to the south of the junction. The subject activity is alleged to take place within a gravel car park serving the pub along the roadside. This car park is open to the front and there is a wooden fence continuing along its eastern boundary. The area of the car park is approximately 900 sq.m. and the road frontage measures c. 65m.

## **4.0 PLANNING HISTORY AND PRECEDENT**

### *Sligo County Council Reg. Ref: 08/693*

- 4.1 Permission granted at location of Scott's Pub for retention of existing extension (46.0 sq.m.) to dwelling house and to construct further extension (21.85 sq.m.) to rear of dwelling house.

### *Sligo County Council Reg. Ref: 10/379*

- 4.2 An application for the retention of a mobile home and storage container and connection to existing services was withdrawn on 1<sup>st</sup> December 2010.

### *An Bord Pleanála Ref: RL2813*

- 4.3 The Board decided that the holding of a county market at Sandyford Industrial Estate, Dublin comes within the meaning of “fair” for the purposes of Class 37,

and is development that is exempted development when it operates occasionally for periods not exceeding 30 days in any year.

*An Bord Pleanála Ref: RL3171*

- 4.4 A similar conclusion was reached by the Board in this case which related to the operation of a public market for a period not exceeding 30 days per year at the northern and southern banks of The Grand Canal, Dublin.

*An Bord Pleanála Ref: RL3107*

- 4.5 In this case the Board decided that the occasional weekly use as a public market at Chute's Lane, Tralee, Co. Kerry is development and is not exempted development, as the said use would come within the scope of exempted development as defined in Class 37, Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, but from the information on file, would exceed the conditions and limitations of same, being held on more than 30 days per year.

*An Bord Pleanála Ref: RL2822*

- 4.6 The Board decided in this case that the establishment of a farmers' market in Manor West Retail Park, Tralee, Co. Kerry would generally come within the scope of exempted development as defined in Class 37 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, but would exceed the conditions and limitations of same, being held on more than 30 days a year, and would also contravene a condition of a previous planning permission on site.

*An Bord Pleanála Ref: RL2874*

- 4.7 In this case it was decided that the parking of a temporary mobile vehicle on private land on Main Street, Skibbereen, Co. Cork, and its use for sale of hot food for consumption off the premises, does not come within the scope of Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as it is parked continuously at the same location and therefore exceeds the conditions and limitations of that class, where such vehicles may only be parked for on the land for 15 days continuously.

## **5.0 BACKGROUND**

- 5.1 This referral relates to a request by Sligo County Council as to whether or not trading in perishable goods for at least one day per week at Kinard, Enniscrone, Co. Sligo is or is not development or is or is not exempted development.
- 5.2 The referral follows a complaint that "casual trading" is ongoing on private land at Scott's Pub by the trader, Mr. Eamon Doherty, c/o Ms O'Brien, Rathlee, Co. Sligo. No notices under the Planning and Development Acts have been served on either the trader or the owner of the lands.

## 6.0 REFERER'S SUBMISSION

- 6.1 The Planning Authority, as per its letter of 2<sup>nd</sup> November 2015, refers the question to the Board in accordance with Part 1 of Section 5(4) of the Planning and Development Act, 2000.
- 6.2 The complaint was received from an elected member of the Council that the trader was using an open sided lorry to sell mainly fresh fruit and vegetables on at least one day a week. It is noted that there are no bye-laws for casual trading in this area of Enniscrone.
- 6.3 Roadside trading of goods and services is not permitted in the County Development Plan where such trading might be considered a traffic hazard. However, it is considered that the location at Scott's Pub is not a traffic hazard.

## 7.0 RESPONSES

- 7.1 No responses.

## 9.0 RELEVANT LEGISLATION

- 8.1 In order to assess whether or not the activity constitutes development that is exempted development, regard must be had to the following items of legislation:

*Planning and Development Act, 2000*

- 8.2 Under Section 2, the following is the interpretation of 'works':

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

- 8.3 Section 3 (1) states as follows:

*"In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."*

- 8.4 Under Section 3(2)(b)(i), it is stated, *inter alia*, that for the purposes of subsection (1) and without prejudice to the generality of that subsection where land becomes used for *"...the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods..."* the use of the land shall be taken as having materially changed.

- 8.5 Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes (k) “*development consisting of the use of land for the purposes of a casual trading area (within the meaning of the Casual Trading Act, 1995).*”
- 8.6 Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001.

*Planning and Development Regulations, 2001*

- 8.7 Article 6 (1) states as follows:

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

- 8.8 Under Class 37, “*development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use*” is exempted development subject to the following conditions and limitations:

1. *The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.*
2. *On the discontinuance of such use the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.*

- 8.9 Article 9 (1) (a) sets out the instances where development, to which Article 6 relates, shall not be exempted development for the purposes of the Act if the carrying out of such development would -

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users,*

## **10.0 ASSESSMENT**

- 9.1 Sligo County Council has referred this case to the Board for review as to whether the trading of perishable goods at Scott’s bar car park, Kinard, Co. Sligo is or is not development or is or is not exempted development.
- 9.2 A compliant was made to the Council that “casual trading” is ongoing on private land at this location where a trader is using an open sided lorry to sell mainly fresh fruit and vegetables on at least one day per week. There is no bye law for casual trading in this area of Enniscrone and the roadside trading

of goods and services is not permitted in the County Development Plan where such trading might be considered a traffic hazard.

- 9.3 The first part of the question to be examined in this case is whether or not 'development' has taken place within the meaning of the Act. If no development has occurred, no further question arises but if on the other hand the "casual trading" is considered to be development, the second part of the question arises as to whether or not it is exempted development by reference to the Act and Regulations.

*The question of whether or not development has occurred*

- 9.4 Section 3 (1) of the Act states that *"in this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."* The activity in question relates to the use of the land rather than any act or operation that would be deemed as works.
- 9.5 In determining whether a material change of use has occurred, I refer to Section 3(2)(b)(i), where it is stated that when land becomes used for *"...the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods..."* the use of the land shall be taken as having materially changed.
- 9.6 Development has therefore taken place in this instance in the form of a material change of use of lands through the placement of a movable van or other object for the sale of goods thereon and the activity this generates.

*The question of whether or not the development is exempt*

- 9.7 Under Article 6(1) of the Planning and Development Regulations, 2001 (as amended), and subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.
- 9.8 Under Class 37 (development for amenity or recreational purposes), development described as *"...consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use"* is exempted development subject to the conditions and limitations specified in Column 2 of said Class.
- 9.9 There are a number of precedent cases where the Board has ruled that the holding of a farmers'/ country market or a public market comes within the meaning of "fair" for the purposes of Class 37 (Refs: RL2813, RL3171, RL3107 & RL2822). These cases would appear to relate to trading on a

larger scale to the activity on the subject site, which comprises of just a single van/ lorry. However, there is also the case (Ref: RL2874) relating to the the parking of a temporary mobile vehicle for use for the sale of hot food for consumption off the premises on private land at The Bridge, Main Street, Skibbereen, County Cork.

- 9.10 The Inspector in this case considered that no exemption is afforded by the Planning and Development Regulations, 2001-2010 for use of land by placement of a movable structure for the sale of hot food for consumption off the premises, or for placement of a mobile (movable) structure, (other than within the curtilage of dwelling house). The provisions of Class 37 were noted as applying only to the use of land for a local event (fair, bazaar, religious, educational, sporting etc.) and placement of tents, vans, temporary movable structures on the land in connection with the local event. As such, the Inspector considered the site of the development in question (land) does not meet this criteria.
- 9.11 The Board, however, concluded that, *inter alia*, the said parking of a temporary mobile vehicle on private land and its use for sale of hot food for consumption off the premises does not come within the scope of Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as it is parked continuously at the same location and therefore exceeds the conditions and limitations of that class, where such vehicles may only be parked on the land for 15 days continuously. It would appear, therefore, that the Board was satisfied that the parking of the temporary mobile vehicle for the stated purposes would have fallen within Class 37 but for the permanency of the placement of the vehicle exceeding the conditions and limitations of said Class.
- 9.12 Having regard to the above, I would also be of the view that the parking of a single van or more than one van and other moveable structures for the sale of goods could be considered as part of a “fair” or “bazaar” or a local cultural or social event. There may be an argument that a single vehicle cannot constitute an event. However, I have witnessed “apple fairs” during October in towns in Ulster and these long-standing events can be small scale comprising of no more than a single vehicle selling apples.
- 9.13 I would therefore be satisfied that the activity consisting of the sale of fresh fruit and vegetables from an open sided lorry falls within the meaning of Class 37 as *“development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use”*.
- 9.14 It deciding whether or not the activity complies with the Conditions and Limitations of Class 37, I note from the Council’s submission that the casual trading in perishable goods takes place “on at least one day per week”. This would exceed Condition and Limitation 1 of Class 37 which states that *“the land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30*

*days in any year.*” Accordingly, I conclude that the placement of an open sided lorry to sell perishable goods on at least one day a week is development and is not exempted development.

- 9.15 Finally, it should be noted that the Council considered that the location of the activity does not give rise to a traffic hazard and therefore if the activity was considered to be exempted development, the provisions of Article 9 (1) relating to endangerment of public safety by reason of traffic hazard or obstruction of road users would not apply. Furthermore, an exemption under the provisions of the Casual Trading Act would not arise, as this area is not designated for such purposes by the Council.

### RECOMMENDATION

Having regard to the above, I would consider that the siting of the lorry for the sale of fresh fruit and vegetables on private land at Scott’s Pub, Kinard, Enniscrone would fall within the meaning of exempted development Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) as *“development consisting of the use of land for any fair, funfair, bazaar or circus or any local event of a religious, cultural, educational, political, social, recreational or sporting character and the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use”*. However, the activity in question fails to comply with Condition and Limitation 1 of said Class which states that *“the land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for periods exceeding in aggregate 30 days in any year.”* Accordingly, I recommend an Order in the following terms:

**WHEREAS** a question has arisen as to whether or not the trading in perishable goods for at least one day per week at Kinard, Enniscrone, Co. Sligo is or is not development or is or is not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Sligo County Council under Section 5(4) of the Planning and Development Act, 2000 (as amended) on the 3<sup>rd</sup> day of November 2015:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended);
- (b) Article 6 and 9 of the Planning and Development Regulations, 2001 (as amended);
- (c) Class 37 of Part 1 of Schedule 2 to the said Regulations;



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

- (a) Class 37 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended), provides, subject to compliance with the Conditions and Limitations set out in Column 2 attached to the said Class 37, for the exemption from the need to obtain planning permission for certain developments, including those constituting the use of land for a “fair”;
- (b) The trading of perishable goods, namely the use of an open sided lorry to sell mainly fresh fruit and vegetables on private land, would generally come within the scope of Class 37 as a “fair”;
- (c) The sale of fresh fruit and vegetables at this location takes place at least one per week and therefore this exceeds the conditions and limitations of said Class, where the placing or maintenance of tents, vans or other temporary or movable structures or objects on the land in connection with such use may only occur for 15 days continuously or in aggregate 30 days in any year;
- (d) There are no bye-laws for casual trading in this area of Enniscrone and therefore the exempted development provisions of Section 4(1)(a)(k) of the Planning and Development Act, 2000 (as amended), i.e. development consisting of the use of land for the purposes of a casual trading area (within the meaning of the Casual Trading Act, 1995), do not apply in this case.

**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 trading in perishable goods for at least one day per week on private land is development and is not exempted development.

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**Donal Donnelly**  
**Inspector**

5<sup>th</sup> February 2016