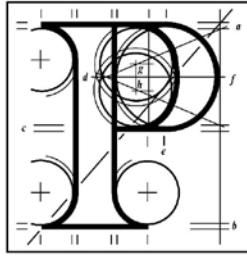


An Bord Pleanála



Inspector's Report

An Bord Pleanála Ref.: RL07.RL3441

Referral under Section 5 of the 2000 Act (as amended)

Question: Whether the use of lands for occasional provision of a mobile catering service (chipper van), is or is not development or is or is not exempt development.

Referrer: Mr Mark Furniss

Location: Clifden Mart, Clifden, Co. Galway.

Planning Authority: Galway County Council

Planning Authority Ref.: ED15/23

Date of Site Inspection: 9th pm and 10th am of March 2016

Inspector: Angela Brereton

Appendices: Photographs, maps, etc.

1.0 INTRODUCTION

A referral case has been received by An Bord Pleanála pursuant to Section 5 of the Planning and Development Act 2000 (as amended) whereby the referrer has sought a determination as to whether or not the use of lands for occasional provision of a mobile catering service (chipper van), at Clifden Mart, Clifden is or is not development or is or is not exempted development within the meaning of the Planning and Development Acts, 2000 (as amended) and Planning and Development Regulations, 2001 (as amended).

2.0 SITE LOCATION AND DESCRIPTION

The site of the Clifden Business Park/Mart carpark is located in the townland of Tullyvoheen within the town boundaries of Clifden. The Mart site is on the south side of the N59-377 approach road, National Secondary road (i.e. Galway Road) on the eastern approach to Clifden town within the town speed limits at Tullyvoheen, Clifden, North Connemara. The Business Park/Mart site appears as an entity i.e. the carparking area is not subdivided. There is a single access from the road and a number of different uses including the 'Connemara Pony Sales' building and Mart. There is freestanding sign advertising the various business uses close to the site frontage. There are a number of single storey units along the western side of the site. These include Clifden Tool and Plant Hire and Clifden Tyre Centre. The NCT unit is located in the south western part of the site. The Telecom Eireann site is to the west and there is a housing estate on the opposite side of the road.

3.0 PLANNING HISTORY AND BACKGROUND

A detailed planning history relative to the site has been included in the documentation submitted. This is summarised in the Planner's Report. Of note as referred to in the Referral is:

- Reg.Ref. PL7/5/75486 – Erection of a Livestock Sales Facility with services in the townland of Tullyvoheen – Connemara Livestock Sales Ltd – permission granted subject to conditions in 1988. ABP Ref. 55210 refers – This is referred to as the parent permission and a copy is included in the Appendix to this Report.

3.1 Enforcement History – File EN15/003

- A Warning Letter was issued by the PA to both the Landowner (Liam Keogh) and the operator of the mobile catering van (Mark Furniss) on the 20th of January 2015 in respect of unauthorised operation of the chipper at Tullyvoheen, Clifden.
- Unauthorised trading continues and Mr Furniss (the operator) via his solicitor contended that he has not carried out any unauthorised development within the meaning of the Planning Legislation.
- The PA informed the operator via his solicitor that he should 'cease to operate his mobile catering business from the mart grounds immediately (letter dated 25th of March 2015).
- Evidence of continued trading by Mr Furniss was submitted to the Enforcement Section, Galway Co. Council (8th and 24th of April 2015).
- A second Warning Letter in respect of 'unauthorised operation of a chipper at Clifden Mart' was issued to Mr Furniss (operator) and Mr Keogh (landowner) on the 12th of May 2015.

- Reports of continued trading were submitted to the Enforcement Section (received 28th May and 5th of June 2015).
- A Warning Letter was issued by the PA to 2no. landowners (Zaraligh Ltd and Connemara Livestock Sales Ltd) on the 22nd of June 2015 in respect of the unauthorised operation of a chipper at Tullyvoheen, Clifden.
- Letter received 6th of August reporting continued trading by Chipper at Clifden Mart.
- Letter issued by the PA to Connemara Livestock Sales Ltd, c/o James B. Joyce & Co. Solicitors, Clifden, Co. Galway informing them of Enforcement notice in respect of the unauthorised operation of a mobile catering unit at Clifden Livestock Mart.

4.0 REFERRER'S CASE

In response to the Council's Warning Letter, Stephen Dowds Associates, Town Planning Consultants submitted an application to Galway County Council on behalf of Michael Furniss for a Declaration under Section 5 of the Planning and Development Act 2000(as amended). This included the following:

- The development involves occasional use of (no specific pitch) the mart carpark by Mr Furniss where he parks his van for the sale of hot food while other activities are underway at the premises. He has been doing this for the last 10 years.
- The accompanying plans outline the overall area where he operates but the application only concerns one vehicle. This encompasses the mart carpark area.
- The photographs show the 'chipper' van but the exact vehicle changes from time to time.
- The parent permission for this site is for use as a mart (Reg.Ref.55210) where permission was granted for a *Livestock Mart*. This implies a certain mix of uses with the actual sales.
- A range of trading has been associated with the mart for the last 20 years. On a large sale day there could be 10 casual traders in the Mart comprising of Saddleries, Feed Sellers, Live Poultry Sellers, Tool Sellers and Food Outlets. They contend that the 'chipper van' use can be seen as part of this trading.
- They refer to a legal case relative to multiple uses being permitted as part of a hotel complex and contend the subject case has similarities.
- They consider that there is therefore no change of use arising and no development has taken place and they seek a declaration to that effect.

5.0 PLANNER'S REPORT

This had regard to the site location and context, planning history including of enforcement action, and to the land use zoning. They provided an assessment of the relevant legislation. The PA had regard to the relevant legislation and to documents submitted from the Referrer in the Section 5 application. They concluded that the siting of the subject chipper van constituted development and did not comply with the conditions and limitations of and was not exempt under Schedule 2, Part 1, Class 37 of the Planning and Development Regulations 2001 as amended.

6.0 DECLARATION BY THE PLANNING AUTHORITY

The Planning Authority decided on the 11th of November on foot of a request by Mark Furniss (c/o Stephen Dowds Associates) for a declaration under Section 5 that the use of lands for occasional provision of a mobile catering service (chipper van) at Tullyvoheen (Galway Road), Clifden is development and is not exempted development by virtue of the provisions contained in Schedule 2, Part 1, Class 37 of the Planning and Development Regulations, 2001-2012 i.e. *The land shall not be used for any such purposes either continuously for a period exceeding 15 days or occasionally for period exceeding in aggregate 30 days in any year.*

7.0 THE QUESTION

Stephen Dowds Associates, on behalf of Mark Furniss submitted a referral against the declaration by the Council and seeks the Board's determination as to whether;

- The occasional parking of a 'Chipper Van' at Clifden Mart is exempted development relevant to:
 - a) Schedule 2, Part 1, Class 37 of the Planning and Development Regulations, 2001-2012.
 - b) Planning permission granted for the Mart i.e. for the 'Livestock Sales Facility' under Ref. 55210.

They request the Board to overturn the decision of Galway County Council and to determine that the use of the car park in Clifden Mart by a 'chipper van' is part of the planning permission for the site (Reg.Ref.55210) and therefore no development has taken place.

8.0 REFERRER'S SUBMISSION TO AN BORD PLEANALA

Stephen Dowds Associates, Town Planning Consultants has submitted a Referral to ABP on behalf of Mark Furniss. They have made two separate submissions (dated 4th of December 2015 and the 5th of February 2016) and the purpose of this request is for a declaration to confirm whether or not planning permission is required for occasional use of the 'chipper van' at Clifden Mart. They refer to the planning history of the site as noted above and their submission includes the following:

- They dispute the conclusions reached on this matter by Galway County Council and it is their contention that the activity concerned is covered by the existing planning permission for this site.
- They enclose the completed application form, letter, site location map (1:250) and site layout plan which they submitted to Galway Co.Co. on this matter.
- The development concerned here involves the occasional use of the mart car park by Mr Furniss where he parks a van for the sale of hot food while other activities are underway at the premises.
- He does not use any specific pitch in the car park so the accompanying plans simply outline the overall area within which he operates. The application only concerns a single vehicle. The photographs show the 'chipper van' concerned but the vehicle changes from time to time.
- The 'parent' planning permission for this site is for the use of mart (Reg.Ref.55210). Under this grant of permission the development was described as a 'Livestock Sales Facility'.

- It is contended that 'Livestock Sales Facility' implies a certain mix of uses associated with actual sales. There is a sales ring, facilities for animal storage (pens etc), office facilities are provided. The facility has always included a range of trading associated with mart events and they provide photos to illustrate such.
- A saddlery has been trading in the Mart for over 20 years and Mr Furniss has been trading at the Mart for 10 years. On a large sale day there could be 10 casual traders comprising of Saddleries, Feed Sellers, Live Poultry Sellers, Tool Sellers and Food Outlets.
- They refer to a previous legal decision concerning multiple elements/uses eg. a hotel can include bedrooms, bar, restaurant, sports complex and functions rooms and yet they comprise and be recognised as a single use.
- They contend that similarly in the current case the permission for the Mart and its ancillary uses constitutes a single planning unit. They consider that the Council has not addressed this issue.
- In their decision the Council have referred specifically to Schedule 2, Part 1, Class 37 of the Planning & Development Regulations 2001-2012, and they have not referred to extant permissions on this site. If it is accepted that a certain amount of casual trading is part of the Mart permission, then no development has taken place.
- They ask the Board to overturn the Council's decision and to accept their contention that the use of the car park of Clifden Mart by a 'chipper van' is part of the planning permission of this site (Reg.Ref.55210) and that therefore no development has taken place.

9.0 THIRD PARTY RESPONSE TO REFERRAL

Connellan & Associates, Architectural Planning & Energy Rating Consultants act for and on behalf the complainants Ms O'Toole and Mr Edward Byrne. Their Submission includes the following:

- The *site* is within Clifden Business Park, land originally developed by the IDA for commercial/industrial use but subsequently privately purchased.
- The overall Business Park is occupied by many developments and uses and they provide a list of such.

9.1 The nature and scale of the development involved:

- The Referrer has given little or no information on the nature and scale of what is involved in the operation of the mobile catering service (chipper van) at this location. Based on what has been lodged it is claimed that all that is involved is:
 - The occasional use of a pitch in the mart car park,
 - The use of the van for the sale of hot food occurs in the mart carpark *while other activities are underway at the premises,*
 - Movement around the site with no specific pitch in use.
- They are very familiar with this site and with the nature and scale of the mobile catering operation carried out by Mr. Furniss over the past 18 months (they note he stopped a short time ago when the Council started Enforcement proceedings).

- They understand that the cattle mart operates on site every Friday except for pony sale days. The latter occur approx. 4 times a year for 2/3 days at a time.
- While the Referrer does attend the Mart he also parks his mobile chipper van in the empty carpark each week from Thursday to Sunday from approx 5-9pm.
- This operation is carried out when the Business Park is closed for other business, therefore it is not correct to say that the van only operates when other activities are underway.
- Details are given as to where the van parks at the north western end of the Business Park close to the public road.
- The catering is carried out in the evenings and is mainly for residents of the extensive housing estates across the road and some passing trade on the national route.
- There is no public lighting in the carpark and the van operates on its own lights outside summer time.
- They note and enclose an article from The Sunday Times (3/1/2016) where Mr Furniss gave an interview and is quoted as saying he operated the van on *four evenings a week for the past 18 months*.
- They also enclose an article in *Connaught Tribune* dated (8/1/2016) relating to the business being carried out in the evenings at the Mart.
- Most publicity for the mobile catering is done through social media and they note entries on his Facebook page relating to the business.

9.2 Parent Permission/mix of uses

- No information has been lodged by the Referrer except for the reference no. of the parent permission. No evidence has been given that this permission allows for such things as a mobile chip van.
- A restaurant is included as part of the parent permission.
- They question the issue of the mart as a 'sales facility'.
- They consider that while the facility might always have included a small number of traders (e.g. saddlery) in association with the mart, no evidence has been lodged by the referrer that such uses are/have been authorised or exempt.

9.3 Planning unit

- They query the issue of what constitutes the *planning unit* and refer to the mart and its associated uses.
- The site map submitted shows the carpark area and is a not a copy of the original map lodged showing the mart site. They include an extract from the original file showing the site boundaries. The site equates to the entire Business Park.
- They provide details relative to the parent permission for the Mart granted by ABP Ref. 7/5/75486 refers (Galway County Council File Ref. 55210). Permission was granted on 30/5/1988 based on lodged plans (including a restaurant facility in the Mart building) subject to 8no. conditions. This did not imply that a mix and match of areas in the carpark would be allowed.
- They also refer to later submissions on this history file dated 5/2/1993 (included) and note further details of the relevant history of the site.

- They refer to later permissions (Reg.Refs.99/4745 Commercial unit/MOT centre and 00/3697 construct an oil service depot) and include site layout maps.
- They reiterate that the original 'site' of the mart is now in fact the 'site' of the overall Business Park.
- They refer to case law and consider that there is no comparison between the internal changes to a hotel and the operation of a mobile chip van in the car park of a Business Park.

9.4 Regard to Legislation

- They consider that the Council only had regard to Class 37 and provide a discussion of the operation having regard to the relevant sections of the Planning Acts and Planning Legislation.
- They note in a Table fundamental differences between a Mart and a Fair and have regard to the context of Class 37.
- They provide that the Referrer breaches the time restrictions set out in class 37 and that the development is a traffic hazard and precluded from exemption by virtue of the provisions of article 9.
- They conclude that the use of land for occasional provision of catering service as it was carried out by the Referrer is *development* and is not *exempted development*.

10.0 REFERRER'S RESPONSE

Stephen Dowd's Associates has submitted a response on behalf of Mr Furniss. This includes the following:

- Their submission was and is based on the contention that the use of the site for a certain amount of casual trading is covered by the fact that this is part and parcel of a mart in the same way that a mix of uses (bar, sports, facilities, restaurant etc.) are part and parcel of a hotel.
- Mr Furniss does/did operate 4 evenings a week, however some of the premises in the Mart such as the NCT centre and Frank Acton Motors remain open later into the evening. Livestock Marts are held on a Friday.
- The only reliance they placed on planning permission (55210) was the fact that it was for a Mart. They acknowledge that this application did not include reference to casual trading, 'chippers' etc.
- Later permissions did not infringe on the 'planning unit' the original mart. They were additions rather than replacements for the mart. The mart lived on and was part of this site.
- Therefore they contend that the trading use is part of the overall mart use and still holds true.
- It is agreed that the plans did not show a *specific mart site*. The mart remains part of the overall site.
- They refer to legal precedent relative to a case concerning a change of use on a hotel site where it was held that such did not occur and that *no planning implications occurred*.
- The issue of *planning implications* only arises if there has been development and if there is no development as has been their contention, then the question does not arise.

- The limited casual trading that takes place on this site, and includes traders other than ‘the chipper; is part and parcel of the existing permitted Mart use; a use that remained throughout all subsequent additional planning permission on this site.

11.0 PLANNING POLICY

Galway County Development Plan 2015-2021

Section 2.6 refers to the Settlement Strategy Clifden is referred to as a ‘Key Town’. It is provided that the Clifden LAP 2009-2015 has been extended until 2020.

Chapter 13 provides for Development Management Standards and Guidelines and this supports the principle of universal access DM Standard 1(d) refers. DM Standard 9 provides Guidelines for Employment uses, including Commercial. This includes: *Care should be taken in the laying out of parking areas to avoid conflict between the movements of customer’s vehicles, goods vehicles and pedestrians.* This also refers to operating times for permitted take aways.

Clifden Local Area Plan 2009-2020 (extended 2014)

This LAP had been made in accordance with the objectives of the GCDP 2009-2015 as varied and has been extended in 2014. Section 2.8 refers to Retail and Town Centre Uses having regard to the town’s character as a planned town.

Section 3.2.2 refers to Land use Management Policies and Objective D8 seeks to promote the development of the town centre.

Section 3.6 refers to Transportation Infrastructure and 3.6.2 provides: *It is the policy of Galway County Council to ensure that the road and street network is safe and convenient.*

As shown on the Land-use Zoning Map the site is zoned for ‘BE’ i.e. Business and Enterprise purposes Section 2.10 refers. Objective D10 provides:

Business and Enterprise (BE) (Refer to Maps 1A/1B) - Promote the development of business and enterprise uses, light industry/warehousing and the facilitation of enterprise park/office park type uses, incubation/start-up units and Small, Medium Enterprises, on suitable lands with adequate services and facilities and with a high level of access to the major road networks and to public transport facilities.

Objectives TC13 and E1T2 seek to encourage high quality environments within the ‘BE’ areas.

Policy 3.13.1 seeks to promote Economic Development.

DM Guideline 5.2.2 refers to the Land Use Zoning Matrix – Appendix 1 refers. It is noted that a ‘Take-away use’ is *open to consideration* in the BE zoning.

Section 5.4.6 provides the following:

A proliferation of hot food take-aways will not be permitted in any area. Regard will be had to the impact of hot-food take-aways on the amenities in the area, including noise, odour and litter. The Planning Authority may impose restrictions on opening hours of hot food take-aways as a condition of planning permission.

Section 5.8.1 refers to the Car Parking Standards and 5.8.3 to Design and Layout of Parking areas.

12.0 RELEVANT LEGISLATION

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:

12.1 Planning and Development Act, 2000

Under Section 2(1), the following is the interpretation of 'works':

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

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."

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.

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)."*

Section 4 (2) provides for the making of Regulations. The main Regulations are the Planning and Development Regulations, 2001.

12.2 Planning and Development Regulations, 2001

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."

Article 9(1) refers to development to which article 6 relates not being exempted if the carrying out of such development and includes would:

(a) (i) *Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act and..*

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

Schedule 2, Part 1 of these Regulations provides for *Exempted Development –General*. This includes under the category *Development for amenity or recreational purposes*:

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.*

13.0 ASSESSMENT

13.1 Is it or is it not development

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.

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.

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.

13.2 Whether the development is exempted under the primary legislation

No exemption is afforded by the primary legislation for use for the sale of hot food for consumption off the premises, or for placement of a mobile structure.

13.3 Whether the subject development is exempted under secondary legislation

No exemption is afforded by the Planning and Development Regulations, 2001-2015 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 relative to the latter within the curtilage of dwelling house).

I note provisions of Class 37 Schedule 2 Part 1 apply only to 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 having regard to the conditions and limitations as noted above the siting of the mobile 'chipper van' for on average, as provided in the information submitted four evenings a week in the Mart carpark area does not meet this criteria. The Third Party also provides a table to show fundamental differences between a Mart and a Fair.

Accordingly, I conclude that the placement of a mobile (movable) structure on this land for use for the sale of hot food for consumption off the premises is development and is not exempted development.

13.4 The Planning Unit

The Referrer has regard to the parent permission granted for 'the erection of a livestock facility with services' – ABP Ref.no.55210 refers. They contend that the Mart and its constituent elements, including the normal range of casual trading associated with it, constitute a single planning unit and that such casual trading has been envisaged in the context of that permission. Therefore they consider that there is no change of use arising and no development has taken place.

The issue of *planning unit* is not covered in planning legislation but comes up from time to time in planning reference and case law. The main case made in the reference is that the site and mart premises are one single planning unit and that the mart and its associated uses include a normal range of casual trading. For this reason they contend that there has been no material change of uses and no *development* as a result of the casual trading of the mobile catering unit.

In this respect they have regard to the legal case of Carroll and Colley (t/a Roger Green & Sons) v Brushfield Ltd. This concerns the multiple uses that can be incorporated in the overall context of use as a hotel. They also refer to the Irish Planning Law and Practice, Digest of Cases (page DC/24, Para 82) i.e. *The conversion of a hotel garage to use as a public bar did not constitute a material change of use as the entire hotel constituted the planning unit and it was permissible to reallocate separate uses within the overall building. Uses like bars, restaurants, bedrooms, storerooms and garage were all ancillary to the overall use which was that of a hotel. The conversion therefore of the garage to use as a bar was acceptable within the overall context of the hotel.*

Similarly they contend that the mart and its constituent elements, including the normal range of casual trading associated with it, constitute a single planning

unit. It is noted that the site map lodged by the Referrer only shows the car park area of the Mart/Business Park. On the site visit it was noted that the site encompasses the whole of the Business Park area. The Third Party provide that there is no indication in the letter or map that the paved site outside the mart/other buildings is to be used for any purpose other than circulation and parking. There is no specific pitch area marked out for the mobile catering unit or for any other such unit. There is a sign located at the site frontage which includes Clifden Mart and the names of a number of businesses in the park set up in the different units. The area shown on the plan submitted only relates to the carpark area where the mobile 'chipper van' locates/trades for a number of evenings (approx. 4) each week.

The information submitted notes that since the Council's most recent enforcement action and pending the Section 5 Declaration the chipper van has not been seen trading on site. My site visit was at approx. 18.45pm on the 9th of March and there was no chipper or any fast food van or separate stall area on site. I also visited the site later at approx.20.00 and at 9am on the 10th of March and did not note any such vehicle or indeed any other casual trader on site. I appreciate it was not a mart day. On both occasions the NCT unit was closed and the only unit open and operating on site at that time of the evening was Frank Action Motors garage. The other units including the Mart area were all closed.

Having regard to the above it is not considered that the siting of a 'chipper van' on the carparking area of Clifden Mart/Business park can be seen as similar to the legal case regarding hotel uses within the hotel complex as referred to above. The 'chipper van' use of lands is unauthorised and cannot be considered as ancillary to the overall mart/business use of the site.

13.5 Range of uses

It is of note that the original permission Ref.55210 did not include any reference to an allowance made for such casual trading. It refers to the erection of a 'Livestock sales facility' with services'. This permission does not refer to or allow for casual trading or a 'chipper van' use other than in the context of exempted development as provided for in Class 37. As noted above the extent of the 'chipper van' use does not comply with the conditions and limitations of this exempted development class.

Reference is also made to subsequent permissions in the Business Park e.g. Reg.Ref.99/4745 – new commercial unit/mot centre – Zaralight Ltd and Reg.Ref.00/3697 – oil service depot. It is not considered that these are relevant to the current Referral. However it is noted that no specific mart premises 'site' was part of the planning record as shown on the site layout plans in these later applications nor any linkage of premises/site.

I would also note that an issue of a possible exemption under the provisions of the Casual Trading Act (Section 4(1)(k) of the Planning and Development Act 2000 as amended refers) would not arise as the mobile vehicle is not located on public land. It is noted that no documentary evidence has been provided that this is an area designated for such purposes. Indeed it is clearly privately owned and not public land.

14.0 PLANNING PRECEDENT CASES

An Bord Pleanála Ref: RL3429

In this case it was decided that the trading in perishable goods for at least one day per week at Kinard, Enniscrone, County Sligo, is development and is not exempted development. It was decided that the use of the car park for the stated purpose of trading in perishable goods is a material change of use – Section 3(2)(b)(i) of the Planning and Development Act 2000 (as amended) and the trading period exceeds the Conditions and Limitations of Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 and that the exempted development provisions of Section 4(1)(k) of the Planning and Development Act, 2000 as amended do not apply.

An Bord Pleanála Ref: RL2874

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.

An Bord Pleanála Ref: RL2813

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

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

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

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.

15.0 CONCLUSION AND RECOMMENDATION

Having regard to the foregoing, it is my view that the use of lands for occasional provision of a mobile catering service (chipper van) at Tullyvoheen (Galway Road), Clifden is development and is not exempted development by virtue of the provisions contained in, Class 37 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001-2015.

Accordingly I recommend the Order in the following terms:

16.0 DRAFT ORDER

WHEREAS a question has arisen as to whether the use of lands for the occasional provision of a mobile catering service (chipper van) at Tullyvoheen (Galway Road), Clifden, Co. Galway, is or is not development or is or is not exempted development.

AND WHEREAS the said question was referred to An Bord Pleanála by Stephen Dowds Associates on behalf of Mark Furniss under the provisions of Section 5(3)(a) of the Planning and Development Act, 2000 on the 4th of December 2015.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended),
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001,
- (c) Class 37, Part 1, Schedule 2 to the Planning and Development Regulations 2001 (as amended),
- (d) The planning history of the site having regard to the parent permission for the Livestock sales facility with services, An Bord Pleanála Ref.no.55210 refers,
- (e) The use of the site in the carpark for Clifden Mart, and Business Park.

AND WHEREAS An Bord Pleanála concluded that –

- (a) The works constitute development, being works which come within the scope of section 3(2)(b)(i) of the Planning and Development Act 2000(as amended), a material change of use and is therefore development.
- (b) The land where the said vehicle is parked, which is used for the sale of hot food for consumption off the premises, has not been designated for the purposes of a casual trading area, under section 4(1)(k) of the Planning and Development Act 2000 as amended.

- (c) The said parking of a temporary mobile 'chipper van' on private land and its use for sale and consumption of hot food 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 amended, as it is parked for a number of evenings a week in the carpark area and therefore exceeds the conditions and limitations of that class, where such vehicles may only be parked for on the land for 15days continuously or in aggregate 30 days in any year.
- (d) The said use does not come within the context of the parent permission for the Livestock Sales Facility with services i.e. Clifden Mart and Business Park area.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(4) of the 2000 Act, hereby decides that the said use of these lands is development and is not exempted development.

Angela Brereton,
Inspector,
16th of March 2016