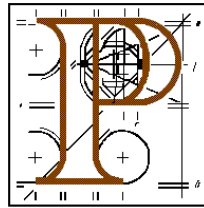


**An Bord Pleanála Ref. No.:**

**PL 91.RL3451**

**An Bord Pleanála**



**Inspector's Report**

**Development:** Whether the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick is or is not exempted development.

**Application:**

|                               |  |
|-------------------------------|--|
| Planning Authority:           | Limerick City & County Council                   |
| Planning Authority Reg. Ref.: | EC15/79  |
| Owner / Occupier:             | Patrick Broderick                                |
| Referrer:                     | Patrick Broderick                                |
| Type of Application:          | Section 5 Referral                               |
| Planning Authority Decision:  | Decided Development and Not Exempted Development |

**Planning Referral:**

|                     |                   |
|---------------------|-------------------|
| Referrer(s):        | Patrick Broderick |
| Observers:          | None              |
| Date of inspection: | 10/03/2016        |
| Inspector:          | A. Considine      |

## **1.0 BACKGROUND**

- 1.1 This is a referral by Mr. Patrick Broderick, under Section 5(2)(a) of the Planning & Development Act, 2000, as amended of the question as to whether the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick is or is not exempted development.
- 1.2 A declaration was initially requested from Limerick City & County Council who determined that the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick, is development and is not exempted development. The referrer, has now sought that said determination be overturned and that An Bord Pleanala make a decision overturning the Councils declaration on the matter.

## **2.0 THE SITE**

- 2.1 The site the subject of this referral, is located to the north west of Limerick City, and on the old Cratloe Road, in a semi rural area. The surrounding area although semi rural, is primarily residential in nature with significant numbers of individual houses in a ribbon along both sides of the road, particularly towards Limerick, as well as two small estate type developments to the south of the road. The site lies to the south of the public road at a distance of approximately 700m from the existing built up area of this side of the Limerick City / County area. There is a public footpath to the north side of the public road.
- 2.2 The subject site comprises part of a larger residential site with the house located to the west of the site. The area of the site to the east has been filled with hard core to the eastern half of the site and provides a large area of hard standing to the west, where the materials imported into the site are stored. There is a stone/block shed on the site which has a metal agricultural type roof and the roadside boundary comprises a low wall towards the west of the entrance and metal fencing and gates which rise to approximately 1.8m in height towards the east.
- 2.3 Mr. Broderick, through his agent, has advised that the site was formally an agricultural yard and building. It is further submitted that he has operated a

fuel business all his life and is his sole income. No sales are conducted at the site and no customers are accommodated there. The operation requires the delivery of firewood once or twice per week during the season, and once or twice a month in the off season. The fuel is loaded on a pickup truck and delivered to customers and no other fuels are stored on the site.

2.4 In terms of changes carried out on the site, I refer the Board to the attached 'Google Images', dated 06/2009. It is evident that a number of changes have occurred at the site since these images were taken. The changes include:

- The removal of a high evergreen boundary hedge between the subject site and the house on the overall landholding.
- The removal of a lean-to shed located along the roadside boundary to the east of the entrance.
- The widening of the access to the site and the erection of 1.8m high gates.
- The removal of a low rise wire fence and its replacement with a 1.8m high palisade fence along the eastern side of the enlarged gated entrance.
- The concreting of the western half of the site and the gravelling of the eastern half of the site providing hard standing across the site.
- The alteration and possible enlargement of the existing shed on the site.

### **3.0 SECTION 5 DECLARATION REQUEST:**

3.1 The question arising in relation to this Section 5 Declaration request is presented as follows:

Whether the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick is or is not exempted development.

3.2 In terms of the question posed, I suggest that it be reformulated in order to fully accord with the requirements of Section 5 of the Planning & Development Act, 2000 as amended as follows:

Whether the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick, is or is not development and is or is not exempted development.

In addition, the Board might consider the additional amendments / alterations to the site as described above as being material to the overall question of the use of the site. These issues will be addressed further as part of my assessment below.

- 3.3 The Referrer has not agreed with Limerick City & County Councils determination of the above question and requests that the Board overturn the decision and declare that the use of the yard is exempted development within Section 5(2)(a) of the Planning & Development Acts, 2000-2014.

#### **4.0 REPORTS ON PLANNING AUTHORITY FILE**

- 4.1 The Board will note that the Planning Authority made a determination in relation to this question.

- 4.2 In terms of internal reports from the Local Authority, none are noted.

- 4.3 The Planning Report provides a description of the subject site, as well as advising that an enforcement notice was issued on 24<sup>th</sup> March 2015 to cease the use of the residential property for the storage and sale of fuel products, ie coal, timber etc. The terms of the enforcement notice were not complied with and the matter was referred for prosecution to the District Court on the 4<sup>th</sup> December. An adjournment was sought to facilitate the lodging a Section 5 declaration. The report notes that the yard area to the east of the dwelling house is used for the storage of timber. The operation comprises the importation of loose timber blocks, which are then bagged on the site and stored there to be sold from house to house. It is noted that no sales or cutting of the timber takes place on the site.

- 4.4 The Planning Report considers that the use of the residential property for the uses described, could not be described as being incidental to the enjoyment

of the dwelling house and therefore doesn't come within the scope of Section 4(1)(j) of the Planning & Development Act, 2000 as amended. It is concluded that the activity being carried out on the residential property is a commercial activity and therefore constitutes a material change of use of the property. It is therefore recommended that the use comprising the intake and storage in open yard of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick is development and is not exempted development.

## 5.0 DECISION OF THE PLANNING AUTHORITY

The Planning Authority determined that the development as described as "the intake and storage in an open yard of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick" **is development** and is **not exempted development**.

## 6.0 RELEVANT PLANNING HISTORY

There is no recent or relevant planning history associated with the subject site.

In terms of similar / relevant referrals, the Board is referred to the following:

**RL3119:** Question arose, in County Limerick, as to whether the use of a yard previously used as a builders' compound to use for the storage and retail sale of coal and fuel is or is not development or is or is not exempted development. The Board decided that the said use is development which is not exempted development for a number of reasons, including that 'the implementation of the grants of permission issued in respect of PA Ref. No. 97/431 & 99/1122 / ABP Ref. No. PL13.113031 established a residential use on site which supersedes the previous use of the property as a creamery....'

**RL3367:** Question arose, in Limerick City & County, as to whether the use of an existing warehouse as a solid fuel depot and whether small scale signage located at a boundary fence is or is not development or exempted development. The Board decided that the said use of an existing warehouse as a solid fuel depot at Dock Road, Limerick has resulted in a material change of use which is development and is not exempted development. The Board concluded that the subdivision of the warehouse unit and use of the subject premises for solid fuel storage with ancillary retail use and promotion of such

use constitutes development, which use is considered to be a material change of use, having regard to its character and its material external impacts (such as its possible impacts on traffic or parking), and that such use has significant implications in terms of the proper planning and sustainable development of the area.

## 7.0 LEGISLATIVE CONTEXT:

I consider the following to be the statutory provisions relevant to this referral case:

### Planning & Development Act, 2000 - 2012

#### 7.1 Section 2(1) of the 2000 Planning and Development Act states as follows:-

*“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”*

In Section 2(1) of the Act “works” are interpreted as including *“any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”*.

#### 7.2 Given the nature of the subject issue, as presented, the question relates more to ‘use’ rather than ‘works’. Section 2 of the Planning and Development Act, 2000, as amended, states as follows: *“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than –*

*(a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or*

*(b) development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any conditions to which that permission is subject’*

#### 7.3 Section 3(1) of the 2000 Planning and Development Act states as follows:-

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

- 7.4 Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act. Section 4(1)(a) states ‘development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used’ while S4(1)(j) states ‘development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;’
- 7.5 Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

#### Planning & Development Regulations, 2001-2013

- 7.6 Article 10(1) of the Planning and Development Regulations, 2001, as amended, states the following:

*‘Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –*

*(a) involve the carrying out of any works, other than works which are exempted development;*

*(b) contravene a condition attached to a permission under the Act,*

*(c) be inconsistent with any use specified or included in such a permission, or*

*(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned’.*

- 7.7 The use of the site principally for the intake and storage of timber firing for sale off premises, which appears to include the use of the existing structure

on the site, might reasonably be comparable to a Class 5, of Part 4 of Schedule 2 of the Planning and Development Regulations, 20001, as amended, being a 'repository' which is defined in the Regulations as follows:

*"repository" means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage.*

- 7.8 The Board will note that the applicant has advised that the previous use of the site was agricultural, while the Planning Authority has considered the site as lands incidental to the residential use to the east. In the interests of completeness, the Board will note that the only reference to the 'storage of fuel' in the Regulations is noted in Schedule 2, Part 1, *Exempted Development — General, Development for industrial purposes:*

#### 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.

Conditions & Limitations: 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.

This class of development is clearly not relevant or applicable in this instance.

#### Limerick City & County Council Development Plan 2015-2021

- 7.9 The subject site is located to the West of Limerick City Centre in an area zoned 2A Residential, where the zoning objective afforded to the site states as follows:

'To provide for residential development and associated uses.'

## 8.0 REFERRAL

### Grounds of Reference:

- 8.1 The Referrer in this case is the landowner and the referral has been submitted by his agent on his behalf. Mr. Broderick has not agreed with Limerick City &



County Councils determination of the stated question and advises that the site was formally an agricultural yard and building. It is further submitted that the referrer has operated a fuel business all his life and this business is his livelihood. No sales or customers are facilitated at the site and the site is used for the bagging and storing of timber for sale door to door. It is requested that the Board declare the use of the yard as exempted development within Section 5(2) A of the Planning & Development Acts 2000-2014.

## **9.0 RESPONSES**

- 9.1 There has been one response to this referral from the Planning Authority advising that there are no previous decisions affecting the site. The Board will note the PAs planning report has been referred to above and where the conclusion of the PA is that the use of the site is considered a commercial activity which constitutes a material change of use of the property.

## **10.0 OBSERVERS TO APPEAL**

None.

## **11.0 ASSESSMENT**

- 11.1 The question has been posed as to whether the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick is or is not exempted development. In terms of the question posed, the Board will note that I consider it appropriate that the question be reformulated in order to fully accord with the requirements of Section 5 of the Planning & Development Act, 2000 as amended as follows:

Whether the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick, is or is not development and is or is not exempted development.

In addition, the Board will note my inclusion of a number of additional amendments as described above as being material to the overall question of

the use of the site. In terms of the question posed, I consider it reasonable to address both issues separately.

### Is or Is Not Development?

- 11.2 Section 2 (1) of the Act defines “works” as including “*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure*”.

I am satisfied that, in accordance with the above definition, the subject referral does not relate to ‘works’. Given the nature of the subject issue, the question relates more to ‘use’ rather than ‘works’. That said, I refer the Board to those alterations which have occurred on the site and in particular, the enlargement of both the access to the site and the height of the existing structure on the site, as well as the alterations to the boundaries and conclude that these elements can be considered as comprising ‘works’ constituting development.

- 11.3 Section 2 of the Planning and Development Act, 2000, as amended, states as follows: “*unauthorised use*” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than –

(a) *exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or*

(b) *development which is the subject of a permission granted under Part IV of the Act of 1963 or under section 34 of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any conditions to which that permission is subject*

The use of the site as a storage area for fuel did not commence pre 1<sup>st</sup> October, 1964, and there is no evidence of planning permission for such a use on the site.

- 11.4 In terms of Section 3(1) of the Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.” In terms of ‘change of use’, the following two questions must be considered:

1. Is there an actual / factual change of use? And
2. Is the change of use material?

In seeking to consider these questions, the Board is not concerned with the planning merits of the case, but rather with establishing the facts and applying the law and precedent in order to answer the particular question posed. Whether something accords with the proper planning and sustainable development of the area is an entirely separate matter.

- 11.5 In terms of the question 'has there been an actual change of use on the site?', I consider that given the evidence available in relation to the site in terms of google images dated June 2009, together with the works carried out at the site, it is clear, in my opinion, that there has been an actual change in the use of the site from agricultural, as suggested by the referrer, or indeed, residential, as suggested by the Planning Authority. In either case, I am satisfied that the current 'use' of the subject site has changed from either agricultural or residential and therefore, a 'change of use' comprising 'development', has occurred.
- 11.6 The Dictionary defines a 'warehouse' as *a large building where raw materials or manufactured goods may be stored prior to their distribution for sale. A repository in terms of the Planning & Development Regulations means 'a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage.'* In terms of case law in this regard, I refer the Board to Galway County Council versus Lackagh Rock Limited [1985] I.R.120, where Barron J. held that in order "*to test whether or not the uses are materially different, it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made, either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different*".
- 11.7 With regard to the second question, is the change of use 'material'?, it is necessary to consider whether the changes to the use of the site might give rise to material planning considerations. Due to the 'works' carried out at the site including the widening of the access to the site, alterations to the overall height of the structure on the site and the provision of palisade fencing to part of the overall site, as well as the changes to the land surface through poured concrete and gravel, there has been a material change of use of the site from

agriculture to storage of a commercial nature. No planning permission exists for the subject site or current use and therefore, the previous use is determined to have been agricultural up to at least, June 2009. It is clear that yes the change of use is material in my opinion.

This determined, consideration is required as to whether the 'change of use' would constitute "*exempted development*".

### Is or Is Not Exempted Development?

#### *Is the Development Exempt under the Act?*

- 11.8 Having established that the 'change of use' undertaken amounts to 'development', the issue to be considered is whether the development is exempted development or not. Section 4(1) of the Act defines certain types of development as being '*exempted development*'. Of potential relevance are the following:

Section 4(1) which provides as follows:

*(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;*

*(j) 'development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;'*

It is clear that neither of the above types of development are applicable in this instance. In this regard, I consider that the change of use of the site cannot be considered as comprising exempted development under the Planning & Development Act, 2000 as amended.

#### *Is the Development Exempt under the Regulations?*

- 11.9 Article 10(1) of the Planning and Development Regulations, 2001, as amended, states the following:

*'Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not –*

*(a) involve the carrying out of any works, other than works which are exempted development;*

*(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned’.*

I am satisfied that the development does not consist of a change of use within any one of the classes of use as specified in Part 4 of Schedule 2, and does not consist of a resumption of a use which is not unauthorised and which has not been abandoned. In addition, parts (b) and (c) of Article 10(1) relate to conditions of planning permission and specified uses in such permissions. These are not relevant in this case.

11.10 The historical use of the site is indicated by the referrer as having been for agricultural purposes. The current use of the site is principally for the intake and storage of timber firing for sale off premises, and which appears to include the use of the existing structure on the site. The use of the site might be comparable to a Class 5, of Part 4 of Schedule 2 of the Planning and Development Regulations, 20001, as amended, being a ‘repository’ which is defined in the Regulations as follows:

*“repository” means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage.*

However, given that the timber is indicated as being stored outside, this class of development is not fully applicable. I have also referred to ‘warehouse’ above in my assessment. As such, I consider that the change of use of the site cannot be considered as comprising exempted development under the Planning & Development Regulations, 2001 as amended.

11.11 In light of the above, and having had due regard to the provisions of the Planning & Development Act, 2000 as amended and the Planning & Development Regulations, 2001 as amended, the change of use of the subject site is considered to constitute development which is not exempted development.

## **12.0 APPROPRIATE ASSESSMENT - SCREENING**

Having regard to the nature and scale of the development within Limerick City, no Appropriate Assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### 13.0 CONCLUSION & RECOMMENDATION

#### Conclusion:

- 13.1 Having regard to the question presented to the Board for determination, I am satisfied that the intake and storage in an open yard, of wood block firing, only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick comprises a material change of use of the site, which is not exempted development.

#### Recommendation:

- 12.3 I recommend therefore that the Board find as follows:

**WHEREAS** a question has arisen as to whether the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick, is or is not development and is or is not exempted development.;

**AND WHEREAS** Shaws Consulting Engineers Ltd of 1 Lower Mallow Street Limerick, on behalf of client Mr. Patrick Broderick, requested a declaration on this question from Limerick City & County Council and the Council issued a declaration on the 21<sup>st</sup> day of December, 2015 stating that the matter constituted a material change of use of the property, was development and was not exempted development:

**AND WHEREAS** Shaws Consulting Engineers Ltd of 1 Lower Mallow Street Limerick, on behalf of client Mr. Patrick Broderick referred the declaration for review to An Bord Pleanála on the 14<sup>th</sup> day of January, 2016:

**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, 2000-2013,
- (b) Articles 5, 6 and 10 of the Planning and Development Regulations, 2001, and
- (c) The extent of the works that have been carried out to date, based on the evidence provided and the inspection carried out by the Board's Inspector:

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

- (a) The use of the site for the intake storage in an open yard of wood block firing only for sale off the premises, constitutes development, which use is considered to be a material change of use from the previous use of the site for agricultural purposes, having regard to its character and its material external impacts and that the use has potentially significant implications in terms of the proper planning and sustainable development of the area.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)(a) of the Planning and Development Act, 2000, as amended hereby decides that the said use of the site for the intake and storage in an open yard, of wood block firing only for sale off the premises at Cloncanane, Old Cratloe Road, Limerick, has resulted in a material change of use which is development and is not exempted development.

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A. Considine  
Planning Inspector,  
14<sup>th</sup> April, 2016