

# An Bord Pleanála



## Inspector's Report

16. RL3461

<b>CASE TYPE</b>	Referral under section 5 of the planning act of a question as to whether a matter is development, and if so whether it is exempted development
<b>MATTER:</b>	Placing of planting boxes on private land alongside the public road
<b>LOCATION:</b>	Circular Road and Main Street, Cong, Mayo
<b>REQUESTER &amp; REFERRER:</b>	Mayo County Council
<b>OWNER &amp; OCCUPIER:</b>	James Connolly
<b>PLANNING AUTHORITY:</b>	Mayo County Council
<b>PLANNING REGISTER REF:</b>	0269/14
<b>DATE OF SITE INSPECTION:</b>	6 <sup>th</sup> May 2016
<b>INSPECTOR:</b>	Stephen J. O'Sullivan

## **1.0 INTRODUCTION**

- 1.1 This report deals with a referral by the planning authority of a question as to whether the placing of certain planting boxes on private land along the street in a village is or is not development, and whether it is or is not exempted development.

## **2.0 SITE**

- 2.1 The site is in the historic and commercial core of the village of Cong, Mayo, at the corner of Main Street and Circular Road. It consists of an area on the north side of the Circular Road between the carriageway and a quay wall. The site runs from the curtilage of a dwellinghouse up to the bridge at the junction with Main Street. 14 concrete box planters with shrubs have been placed in a line to define the edge of the carriageway, restricting vehicular access to the area between it and the quay wall. There are no footpaths along Circular road in the vicinity of the site. The southern side of the carriageway across the road from the site has also been defined by planters, but not of the same type, leaving an area of tarmac associated with the supermarket upon which vehicles cannot park.

## **3.0 LEGISLATION**

- 3.1 Section 2 of the Planning and Development Act 2000-2015 states –

.....

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

.....

Section 3(1) states –

*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.*

## **4.0 HISTORY**

*On this site*

- 4.1 Reg. Ref. 04/2997 – On the 3<sup>rd</sup> May 2005 the planning authority granted permission to retain the change of use of a dancehall across the road from the current site to a supermarket and coffee shop. The authorised development included 2 commercial units, the change of use of part of a first floor apartment to a preparation area for the coffee shop, alterations to the southern and western elevation of the building; and a new car parking layout and associated services including parking on the site of the present referral. Condition no. 6 of that permission required car parking spaces to be outlined on the site of this referral in durable white material in accordance with a layout plan submitted to

the planning authority on 12<sup>th</sup> October 2004. Condition no. 1 of the permission also specified compliance with the plans submitted on 12<sup>th</sup> October 2004, as well as those submitted on 7<sup>th</sup> January 2005.

*Cited as precedent*

- 4.2 16. RL3153, Reg. Ref. 13/401 – the board made a declaration on 18<sup>th</sup> February 2014 that the placing of boulders to form a barrier on a beach at Louisburgh, Mayo was development and was not exempted development.

## **5.0 THE REFERRAL**

- 5.1 The planning authority referred a question to the board as to whether the placing of planting boxes along the road at this location was or was not development or was or was not exempted development. A map was submitted with the referral marking the location of the planting boxes along the northern side of the Circular Road. The planning authority stated its opinion that these planting boxes are a traffic hazard. It also submitted a copy of the permission granted under P04/2997 and the site layout plan referred to in condition on. 6 of that permission.

- 5.2 The planning authority referred to the board's declaration under 16RL. 3153 as authority that the placing of the planting boxes in this case constituted works, as the board has previously declared that the placing of a line of boulders to create a vehicular barrier in the prior case had constituted works and so was development under section 3 of the act, for which no exemption was available. The placing of planting boxes in a line with gaps in this case is virtually the same operation as that which was carried out in the previous case. It has altered the nature of the ground and no class of exemption applies to it. The placing of the planting boxes cannot be exempted because it would contravene a condition of an existing permission and represents a traffic hazard under article 9(i)(a)(i) & (iii) of the planning regulations. The planning authority considers that the placing of the planting boxes was development and was not exempted development, but seeks a definitive declaration from the board on the matter.

## **6.0 RESPONSES**

- 6.1 The owner of the site responded that the planning authority had made no provision for pedestrians along this part of the Circular Road which carries a significant volume of traffic through the village. The previous situation with parked cars having to reverse into the busy carriageway was a serious hazard. The council's engineer agreed with the temporary proposal to block the area using the planters that are in place. There was no intention to breach planning controls. A site visit would support the owner's observations regarding traffic safety. It was a questionable decision to have parking on both sides of the road. The owner would discuss the taking in charge of the area by the council as this would reduce his liability in this situation

## **7.0 OBSERVATION**

7.1 An observation from a local resident stated that the public road is not free flowing and the planters cause major congestion and hinder access to the post office. They are unsightly and do not enhance the character of the village. Cong is a tourist village that needs ample parking. The situation is unsafe for pedestrians

## **8.0 ASSESSMENT**

8.1 The planters in question are heavy, immobile objects made of concrete. They have altered the use of the land behind them by preventing access to it by vehicles. It is therefore considered that the placing of those planters on the site was an act or operation of construction and so was “works” as defined in section 2 of the planning act. The placing of the planters on the site therefore constituted works on land, and so was development as defined in section 3(1) of the planning act. This conclusion rests on a question of degree, and upon the observations made during the site inspection. If I had observed flower pots on the site that were lighter and more easily moved, then I may not have reached the same conclusion. However in the planters that I did observe in this case were in the nature of permanent structures affixed to the land, even if only by their heavy weight. The precedent of 16. RL3153 is therefore apt.

8.2 There is no exemption set out in section 4 of the planning act or the schedules to the regulations that would apply to the placing of planters on the site. The development would not, therefore, be exempted development. It would be straining the scope of class 11 of part 1 of schedule 2 to the regulations to consider the as a line of planters as a wall or a fence. However even if the development were deemed functionally equivalent to a fence, the exemption in that class would not be available in this case because the development would have materially contravened conditions numbers 2 and 6 of the permission granted under Reg. Ref. 04/2997.

8.3 The owner of the site has argued that the placing of the planters remedied a traffic hazard. The planning authority and the observer have argued that it caused a traffic hazard. Both arguments are plausible. However declarations under section 5 of the act are not based on the planning merits of any particular act. It may very well be that the placing of the planters along the edge of the carriageway at Circular Road was necessary to address a chaotic and confused roads layout that led to dangerous conflicts between manoeuvring cars, through traffic and pedestrians that arose from a previous questionable planning decision. However this would not alter its status as development that was not exempted.

## **8.0 CONCLUSION AND RECOMMENDATION**

8.1 I recommend that the board make a declaration as follows -

**WHEREAS** a question has arisen as to whether the placing of concrete planters beside the carriageway at Circular Road, Cong, Mayo was or was not development, or was or was not exempted development:

**AND WHEREAS** the said question was referred to An Bord Pleanála by Mayo County Council on the 15<sup>th</sup> day of February, 2016:

**AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to sections 2 and 3 of the Planning and Development Act 2000, as amended, and to article 6 and schedule 2 to the Planning and Development Regulations 2001, as amended,

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

- the planters in question are in the nature of permanent structures affixed to the land because of their mass and immobility,
- the placing of the planters materially altered the use of the land behind them by preventing vehicular access to that land,
- the placing of the planters was therefore an act of construction that constituted works under section 2 of the act, and that those works were carried out on land and so constituted development under section 3 of the act, and
- neither the act nor the regulations provide an exemption for that development.

**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 works in question were development and were not exempted development

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Stephen J. O'Sullivan,  
11<sup>th</sup> May 2016