
An Bord Pleanála



Inspector's Report

Ref.: RL04. RL3470

Development: Whether the development and operation of a car repair workshop is or is not development or is or is not exempted development.

Referred By: Seamus O'Ceallaigh

Other Parties: Cork Motor Centre

Planning Authority: Cork County Council

Location: 11 Airport East Business and Technology Park,
Farmer's Cross, Co. Cork.

INSPECTOR: Robert Speer

Date of Site Inspection: 29th June, 2016

1.0 SITE LOCATION AND DESCRIPTION

1.1 The site in question is located in the townland of Rathmacullig West at Farmer's Cross, Co. Cork, to the east of the N27 / R600 Kinsale Road and within the Airport East Business and Technology Park, approximately 1.5km east of Cork Airport and 5.8km south of Cork City Centre. The wider business park is typical of conventional commercial / industrial estate development and is characterised by double-height units set within a series of blocks which are occupied by a variety of commercial / industrial / business uses including electrical and heating contractors, offices, freight services, construction firms and computer software / hardware design. The subject site consists of a single unit within the business park and is presently occupied by a car repair workshop which trades as the 'Cork Motor Centre'. In this regard the ground floor of the premises comprises 2 No. offices, toilets and a workshop area used for the servicing of vehicles as evidenced by the presence of assorted car repair tools and equipment in addition to parts storage, shelving and sealed containers for the storage of waste oils, coolants, and lubricants etc. The property also includes a small mezzanine floor located to the front of the building which accommodates a further office area and additional space for the storage of various motor parts and tyres.

2.0 THE QUESTION BEFORE THE BOARD

2.1 On 3rd February, 2016 Ms. Mary Doran, Planning Consultant and Architect, submitted a request to Cork County Council for a declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, to determine whether or not the development and operation of a car repair workshop at Unit 11, Airways East Business Park, Farmer's Cross, Co. Cork, would constitute exempted development. Subsequently, on 1st March, 2016 the Planning Authority issued a declaration which determined that *'the development and operation of a car repair workshop . . . at Unit 11, Airways East Business Park, Farmer's Cross, Co. Cork'* was not development. This declaration further stated that *'the sale of vehicles at Unit 11, Airways East Business Park, Farmer's Cross, Co. Cork'* was considered to constitute development which was not exempted development. Accordingly, pursuant to Section 5(3)(a) of the Planning and Development Act, 2000, as amended, Ms. Mary Doran, on behalf of Seamus O'Ceallaigh, Director of Skyways Technology Park Management Company Ltd., c/o Unit 14, Airport East Business and Technology Park, Farmer's Cross, Co. Cork (i.e. the site owner), has now sought to refer this declaration to the Board for a determination.

2.2 Having conducted a site inspection, and following a review of the submitted information, in my opinion, the question before the Board can be reformulated as follows:

'Whether the operation of a car repair workshop at Unit 11, Airport East Business and Technology Park, Farmer's Cross, Co. Cork, is or is not development and is or is not exempted development'.

N.B. The Board is advised that although the Section 5 declaration issued by the Planning Authority includes a determination that *'the sale of vehicles at Unit 11, Airways East Business Park, Farmer's Cross, Co. Cork'* constitutes development which is not exempted development, neither the original Section 5 application nor its subsequent referral to the Board specifically sought a determination on said matter.

3.0 RELEVANT PLANNING HISTORY

3.1 On Site:

PA Ref. No. 99/3065 / ABP Ref. No. PL04.112834. Was granted on appeal on 27th March, 2000 permitting John Barry Murphy and Mai O'Regan outline permission for a development comprising the construction of 22 No. starter industrial units and site development works.

Condition No. 1 of this grant of outline permission states the following:-

'The proposed development shall be confined to light industrial use and to the carrying on of such processes and the installation of such plant or machinery as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot or ash.'

Reason: In the interest of clarifying the nature of the use permitted'.

PA Ref. No. 003635. Was granted on 14th June, 2001 permitting JBMOR approval for the construction of 16 No. warehouse/starter industrial units & ancillary site works.

3.2 On Adjacent Sites:

PA Ref. No. 065818. Application by Adrian & Simon Stokes for permission for 2 No. industrial warehousing units at Airport East Ind. Pk., Rathmacullig West, Farmers Cross, Cork. This application was withdrawn.

3.3 On Sites in the Immediate Vicinity:

PA Ref. No. 15/4910. Was granted on 24th September, 2015 permitting James Gleeson permission for the retention of first floor, changes to front and rear elevations and change of use from industrial unit to offices at Unit No.6, Airport East Business & Technology Park, Rathmacullig West, Farmer's Cross, Co. Cork.

4.0 GROUNDS OF REFERENCE

4.1 The grounds of reference have been examined and may be summarised as follows:

- The use of the premises in question as a car repair workshop has given rise to the generation of noise and fumes for which adequate methods of attenuation have not been provided and thus causes offence and nuisance to the occupants of adjoining units.
- By way of background, the Board is advised that outline permission was originally granted on site under ABP Ref. No. PL04.112834 for the construction of 22 No. starter industrial units and that the subject premises forms part of a block of 4 No. units which was subsequently granted permission under PA Ref. No. 00/3535 as part of a larger development that comprised the construction of 16 No. warehouse / starter industrial units and ancillary site works. Having regard to the foregoing, it is notable that permission was recently granted under PA Ref. No. 15/4910 for the retention of a first floor, changes to the front and rear elevations, and a change of use from industrial to offices at Unit No. 6, Airport East Business & Technology Park, and that in their assessment of said application the case planner referenced ABP Ref. No. PL04.112834 which specified a light industrial use. The schedule attached to that grant of permission identified the nature of the use permitted and the processes associated with said use as follows:

'The proposed development shall be confined to light industrial use and to the carrying on of such processes and the installation of such plant or machinery as could be carried on or installed in any residential area

without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot or ash’.

This accords with the definition of *‘light industrial building’* as set out in Section 5 of Part 2 of the Planning and Development Regulations, as amended.

- The definition of an *‘industrial building’* as set out in Section 5 of Part 2 includes use for *‘car repair’* purposes as it refers to a building used *‘for the carrying on of any industrial process’*.

‘Industrial process is defined and includes (b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, vanning, adapting for sale, breaking up of any article . . .

For the purpose of this paragraph, “article” includes

(i) a vehicle, aircraft, ship or vessel . . .’

- The site location is described as the Airport East Business & Technology Park and has been marketed as such. Accordingly, the units in the park have been purchased on the understanding that it operates as a business and technology park and not as an industrial estate. Whilst there is no clear definition of this specific use in the Cork County Development Plan, it is apparent that the current use of Unit 11 does not fall within the permitted use categories.
- The recent grant of permission issued in respect of PA Ref. No. 15/4910 included for a change of use from industrial to offices and suggests a changing pattern of business and technology.
- Unit 11 was previously occupied by a company which was engaged in energy conservation and the installation of low power items in homes and businesses. That use did not give rise to any noise or fumes which would have conflicted with adjoining uses.
- The existing car repair workshop gives rise to noise and fumes that are of nuisance to adjoining tenants whilst concerns have also been raised as regards the storage of fuel, oils and paint.
- Some of the work associated with the existing use takes place outside of the premises, including the washing of cars that have been repaired.
- The existing block of units does not have the capacity to deal with the migration of fumes (including paint fumes) from one unit to the next. In

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- addition, it does not appear that any mitigation works have been carried out to accommodate the current use.
- Whilst it is accepted that historical uses are often accommodated within industrial estates which are gradually changing to cater for increasingly business / enterprise orientated uses, it is nevertheless necessary to protect the latter business / enterprise uses from the negative impact of any non-conforming use. In this respect it is submitted that the subject premises does not involve a historically established use given that it only commenced operation approximately 18 months ago.
 - It is considered that the change of use, and any alterations that have been carried out to facilitate same, is of a material nature and does not constitute exempted development.

5.0 RESPONSES TO REFERRAL

5.1 Response of the Occupier (Cork Motor Centre):

None received.

5.2 Response of the Planning Authority:

- Following clarification by the referrer that the correct address for the premises in question is Unit 11, Airport East Business and Technology Park, Farmer's Cross, Co Cork, it can be confirmed that the assessment of the subject referral undertaken by the Planning Authority related to the correct unit.

6.0 RELEVANT LEGISLATION

The Board received this reference on 29th March, 2016 and therefore the Planning and Development Act, 2000, as amended, and the Regulations made thereto apply.

6.1 Planning and Development Act, 2000, as amended:

Section 3(1) of the Planning and Development Act, 2000, as amended, states the following:

“Development” in this Act 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 use of any structures or other land.

Section 4(2) of the Act states that the ‘Minister’ may by Regulation provide for any class of development to be exempted development for the purposes of the Act.

6.2 Planning and Development Regulations, 2001, as amended:

Article 5 of the Regulations includes the following definitions:

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

“light industrial building” means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;

"industrial process" means any process which is carried on in the course of trade or business, other than agriculture, and which is-

- a) for or incidental to the making of any article or part of an article, or*
- b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals,*

and for the purposes of this paragraph, "article" includes-

- (i) a vehicle, aircraft, ship or vessel, or*
- (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database;*

Article 6(1) of the Regulations states the following:

‘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) of the Regulations states as follows:

‘Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) If the carrying out of such development would –

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

- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.*

Article 10(1) 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’.*

Article 10(2) states:

- a) ‘A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.*

- b) Nothing in any class in Part 4 of the Schedule 2 shall include any use-*

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- (ii) as a motor service station,
(iii) for the sale or leasing, or display for sale or leasing, of motor vehicles’.

Part 4, Schedule 2: Exempted Development – Classes of Use:

Class 4: Use as a light industrial building.

7.0 RELEVANT CASE HISTORY:

ABP Ref. No. PL06D.RL2382. Was determined on 28th February, 2007 wherein it was held that the use of units 10 and 11 Deansgrange Business Park, Deansgrange, Co. Dublin, for the repair and service of vehicles was exempted development.

ABP Ref. No. RL06F.RL2428. Was determined on 23rd January, 2008 wherein it was held that the use of two light industrial permitted units (D1 and D2 granted under planning register reference number F05A/1874) for commercial vehicle storage, display and maintenance at site 11, Area 3, Airside Enterprise Centre, Nevinstown, Swords, Co. Dublin, was not development, and that the use for ancillary commercial vehicle wholesale retail sale was development which was not exempted development.

ABP Ref. No. RL.30.RL2561. Was determined on 26th February, 2009 wherein it was held that the use of a building for a car/vehicle repair maintenance garage at Windmill Motors, Crossagalla Industrial Estate, Ballysimon, Limerick, was not development.

8.0 ISSUES AND ASSESSMENT

8.1 Having conducted a site inspection, and following a review of the available information, in my opinion, it is clear that there are a number of issues which must be taken into consideration in assessing the subject referral and in determining whether or not the use in question constitutes development which may or may not involve exempted development. In this respect I would suggest that it is necessary in the first instance to examine the planning history of the wider site area with a view to establishing the authorised use of the premises in question.

8.2 By way of background, I would advise the Board that the wider industrial / business / technology park within which the subject site is located was originally granted outline permission under PA Ref. No. 99/3065 / ABP Ref. No. PL04.112834 which approved the construction of 22 No. 'starter industrial units' and site development works. In this regard it is of particular relevance to note that Condition No. 1 of the grant of outline permission specifically sought to clarify the nature of the use permitted by stating the following:

'The proposed development shall be confined to light industrial use and to the carrying on of such processes and the installation of such plant or machinery as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot or ash'.

8.3 Subsequently, on 14th June, 2001 approval was granted for the construction of 16 No. 'warehouse / starter industrial units' on site under PA Ref. No. 003635 (N.B. In the interests of avoiding any ambiguity, it should be noted that Condition No. 2 of ABP Ref. No. PL04.112834 clarified that the grant of outline permission was only for the principle of the development of 'light industrial starter units' and that it was not to be construed as acceptance of any particular layout or number of units etc. In this regard, it should also be noted that whilst the original planning application lodged under PA Ref. No. 003635 sought approval for the development of 22 No. units, this was ultimately reduced to 16 No. units in response to a request for further information wherein the Planning Authority expressed reservations as regards the 'excessive' number of individual units proposed).

8.4 Whilst the description of the development approved under PA Ref. No. 003635 refers to 'warehouse / starter industrial units' and thus would appear to expand the range of permitted uses beyond the 'starter industrial units' originally authorised under the grant of outline permission issued for ABP Ref. No. PL04.112834, having considered the available information, I am inclined to concur with the conclusion drawn by the Planning Authority in its initial assessment of the subject Section 5 reference that the permitted use of the unit question is for 'light industrial purposes'. In this respect it is clear that an application for 'approval' (as opposed to full 'permission') is inherently linked to the original grant of outline permission and thus is bound by the terms and conditions of that outline permission i.e. the grant of 'approval' issued for PA Ref. No. 003635 cannot be severed from the grant of outline permission made under ABP Ref. No. PL04.112834 which established the 'principle' of the development

in question. There is no legislative provision whereby an application for 'approval' would be permitted to deviate materially from the terms and conditions of the original grant of outline permission. Accordingly, as Condition No. 1 of ABP Ref. No. PL04.112834 expressly limited the use of the proposed units to 'light industrial', it stands to reason that the units subsequently granted approval under PA Ref. No. 003635 must be held to have been authorised for light industrial use. In support of the foregoing, it is of further relevance to note that the proposed usage of the units, as indicated by the applicant in correspondence submitted to the Planning Authority on 14th September, 2000 in response to a request for further information issued in respect of PA Ref. No. 003635, was described as primarily including for the 'repair of computers', the 'repair of domestic appliances' and the 'servicing of bar equipment' which would accord with the definition of an "industrial process" as set out in Article 5 of the Planning and Development Regulations, 2001, as amended. Whilst I would concede that the description of the development approved under PA Ref. No. 003635 is perhaps somewhat regrettable and misleading, I am nevertheless satisfied that the permitted use of the subject premises and that of the wider 'business and technology park' (in the absence of any further grant of permission to the contrary) is as 'light industry'.

8.5 With regard to the referrer's reference to the previous use of the subject premises and the evolving / changing pattern of usage within the wider business park, in my opinion, these issues are not of immediate relevance to the subject matter of the referral and thus I do not propose to comment further on same.

8.6 Having established that the permitted use of the unit in question is for 'light industrial' purposes pursuant to the requirements of Condition No. 1 of ABP Ref. No. PL04.112834, it is necessary to consider whether or not the existing use as a car repair workshop would accord with same. In this regard I would refer the Board at the outset to the definition of "industrial process" as set out in Article 5 of the Regulations which states that it includes any process which is carried on in the course of a trade or business (other than agriculture) and which is *'for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals'* and where for the purposes of this paragraph, "article" includes a 'vehicle'. Accordingly, considering that the existing use involves the repair of cars etc. (as was apparent during the course of my site inspection) and that this could more commonly be described as involving the 'servicing' of motor vehicles (e.g. maintenance works / checks, pre-

NCT testing, general repair work), it is clear that it concerns an ‘industrial process’ as per the Regulations.

8.7 In terms of defining a ‘light industrial’ use, it is apparent that the wording of Condition No. 1 of ABP Ref. No. PL04.112834 which serves to clarify the nature of the use permitted is comparable to the definition of a ‘light industrial building’ provided in Article 5 of the Regulations which states the following:

“light industrial building” means an industrial building in which the processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit.

8.8 In this regard whilst I note the concerns raised in the grounds of referral that the existing use has purportedly given rise to complaints from the occupants of adjacent units, I would draw the Board’s attention to its previous determinations of ABP Ref. Nos. PL06D.RL2382, RL06F.RL2428 & RL.30.RL2561 wherein it was held that the comparable use of certain premises in similar circumstances for car / vehicle repair amounted to a light industrial use. Accordingly, having reviewed the aforementioned precedents, and in view of the scale and nature of the activities being conducted on site, in addition to the site context, including its location within an industrial / business park and the permitted and prevailing pattern of development in the surrounding area, in my opinion, the use of the premises as a car repair workshop falls within the definition of ‘light industrial’ as set out in Article 5 of the Regulations.

8.9 Therefore, on the basis of the foregoing, it can be concluded that the use of the subject premises as a car repair workshop falls within the definition of ‘light industrial’ and that it accords with the development permitted under ABP Ref. No. PL04.112834 & PA Ref. No. 003635 which provides for ‘starter industrial units’ and the use of the premises for ‘light industrial’ purposes. Consequently, it is my opinion that there has been no material change of use of the unit from that permitted under ABP Ref. No. PL04.112834 & PA Ref. No. 003635 and thus the use as a car repair workshop does not constitute development.

8.10 Appropriate Assessment:

8.10.1 Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no

appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

9.0 RECOMMENDATION

It can be concluded, given the foregoing, that the operation of a car repair workshop at Unit 11, Airport East Business and Technology Park, Farmer's Cross, Co. Cork, is not development. A draft order is set out as follows.

ORDER

WHEREAS a question has arisen as to whether the operation of a car repair workshop at Unit 11, Airport East Business and Technology Park, Farmer's Cross, Co. Cork, is or is not development and is or is not exempted development:

AND WHEREAS Mary Doran, Planning Consultant & Architect, of The Lodge, Proby's Quay, Cork, requested a declaration on the said question from Cork County Council and the said Council issued a declaration on the 1st day of March, 2016 stating that the said use was not development:

AND WHEREAS the said question was referred to An Bord Pleanála by Seamus O'Ceallaigh c/o Mary Doran, Planning Consultant & Architect, of The Lodge, Proby's Quay, Cork, on the 29th day of March, 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, as amended,
- b) Articles 5(1) 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- c) Part 4 of Schedule 2 to the said Regulations,
- d) The planning history of the site, in particular, planning register reference number 99/3065 as subsequently determined on appeal under An Bord Pleanála Ref. No. PL04.112834 and condition numbers 1 and 2 of that permission, and planning register reference number 00/3635,

AND WHEREAS An Bord Pleanála has concluded that –

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- a) the use of Unit 11, Airport East Business and Technology Park, Farmer's Cross, Co. Cork, falls under the definition of an industrial process within a light industrial premises under Article 5 of the Planning and Development Regulations 2001, as amended,
 - b) the development permitted, under planning register reference number 99/3065 as subsequently determined on appeal under An Bord Pleanála Ref. No. PL04.112834, and planning register reference number 00/3635, under the terms and conditions of the permissions granted includes use of the premises for light industrial purposes, and
 - c) the use of the premises as a car repair workshop falls within the above permitted uses and, therefore, is not a material change of use and is not development.

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 said use of permitted Unit 11, Airport East Business and Technology Park, Farmer's Cross, Co. Cork, as a car repair workshop is not development.

Signed: _____

Robert Speer
Inspectorate

Date: _____