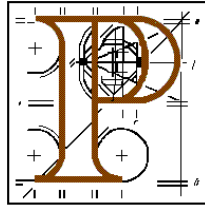


# An Bord Pleanála



## Inspector's Report

**05. RL3489**

<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>	Installation of 2 fuel storage tanks at a filling station and the decommissioning of the existing tank there
<b>LOCATION:</b>	Ballyraine, Letterkenny, Co. Donegal
<b>REQUESTER &amp; REFERRER:</b>	Emo Oil Ltd.
<b>OCCUPIER:</b>	Emo Oil Ltd.
<b>PLANNING AUTHORITY:</b>	Donegal County Council
<b>PLANNING REGISTER REF:</b>	S5 16/17
<b>DATE OF SITE INSPECTION:</b>	16 <sup>th</sup> August 2016
<b>INSPECTOR:</b>	Stephen J. O'Sullivan

## 1.0 INTRODUCTION

- 1.1 This report deals with a referral by the operator of a filling station of a question as to whether the installation of two underground tanks at the station is or is not development, and whether it is or is not exempted development.

## 2.0 SITE

- 2.1 The site is in a suburban location in Letterkenny at the junction of two main roads – the N56 and the R245. It is occupied by a petrol station whose canopy, pumps and storage tanks are adjacent to the R245, but which also has access from the N56. The latter access is via a right of way across the curtilage of a repair garage on the adjoining land to the west. At the time of inspection fuel was not being sold, although the ancillary shop was open.

## 3.0 LEGISLATION

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

.....

*“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—*

- (a) *where the context so admits, includes the land on, in or under which the structure is situate,*

.....

*“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.*

Section 4(1) states –

*The following shall be exempted developments for the purposes of this Act—*

.....

- (h) *development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures*

.....

#### **4.0 HISTORY**

##### *On this site*

- 4.1 Reg. Ref. 00/6094 – The planning authority granted permission in May 2000 for the redevelopment of the service station on the site, including the installation of 3 fuel underground storage tanks in the north-eastern corner of the site near the fuel pumps. This permission was not implemented.

##### *Cited as precedent*

- 4.2 35. RL2850 – the board made a declaration on 7<sup>th</sup> July, 2011 that the renovation of a service station at Athy, Co. Kildare that included the removal of 2 underground tanks of 20,000l and the installation of 2 underground tanks of 30,000l was development and was exempted development, with that particular element of the proposed works coming within section 4(1)(h) of the planning act.
- 4.3 13. RL3233, Reg. Ref. EC14/13 – the board made a declaration on 17<sup>th</sup> November 2014 that the replacement of four underground storage tanks at a service station in Limerick with four larger underground storage tanks came within the scope of section 4(1)(h) of the planning act and was exempted development.

#### **5.0 THE PROPOSED WORKS**

- 5.1 The proposed works described in the application to the planning authority for a declaration were the decommissioning of the existing underground tank of 28,000l, leaving it in situ but filling it with concrete slurry, and the installation of 2 new tanks of 40,000l under the existing canopy. A site location map was submitted by the requester, but not drawings of the proposed works.

#### **6.0 THE DECLARATION**

- 6.1 The planning authority declared that the proposed works were development but were not exempted development because they would not constitute the maintenance, improvement or other alteration of a structure within section 4(1)(h) of the planning act, and would not be exempted under any of the provisions of the planning regulations.

#### **7.0 THE REFERRAL**

- 7.1 The occupier of the site referred the planning authority's declaration to the board. It argues that the proposed works would be exempted development by virtue of section 4(1)(h) of the act. The works will not lead to any intensification in the established use of the site. The tankers that deliver fuel to the site have a capacity of 43,000l, so those coming to the site have to deliver reduced loads on occasion. With the proposed larger tanks all tankers can make full deliveries and there will therefore be a somewhat reduced frequency of deliveries. The existing tank is 30 years old. The new tanks would be less

likely to leak and cause environmental damage. They would be a major improvement in the fuel storage system on the site and would comply with best practice guidance from the Health and Safety Authority. They would not materially affect the external appearance of the structure. The board's previous declarations under 13. RL 3233 and 35. RL 2850 are cited as precedent for this case.

## **8.0 RESPONSES**

8.1 The planning authority's response states that section 4(1)(h) of the planning act and the cited precedents cannot apply in this case because it is proposed to build new tanks in a different location from the existing tanks which are to be left in situ. Therefore it involves the provision of new structures, while section 4(1)(h) refers to existing structures. The board's declarations that are cited as precedents refer to the replacement of existing tanks that would be within the scope of existing structures.

## **9.0 ASSESSMENT**

9.1 The proposed works would occur within the serviced urban area of the town of Letterkenny and would not result in a material intensification in the use of the site. Therefore there would be no potential for the works to have any effect on the achievement of the conservation objectives of any Natura 2000 site.

9.2 This case turns on the interpretation of the word 'structure'. The declarations cited by the referrer appear *prima facie* to support its position that the proposed works would be exempted development. However the inspector's report on 13.RL3233 stated that there could be no doubt that the proposed storage tanks in that case would be new structures, which would tend to support the planning authority's position in this case.

9.3 I would advise the board that section 2 of the planning act provides a rather expansive definition of the word 'structure' that could encompass the existing pumps, pipes and tanks at the filling station as a structure with a single function which could only be served if all elements remained physically connected. The proposal to provide two new tanks to serve this function would therefore constitute the carrying out of works to an existing structure that would improve it, rather than the construction of new structures. The proposed tanks would be underground and would not materially affect the external appearance of the structure. The new tanks would be somewhat larger than the current one, but not to an extent that would cause a material intensification in the use of the site as explained in the covering letter from the occupier of the site that accompanied the referral. The proposed works would therefore constitute development within the section 4(1)(h) of the act, and would be exempted development.

## **10.0 CONCLUSION AND RECOMMENDATION**

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

**WHEREAS** a question has arisen as to whether the installation of 2 underground fuel storage tanks of 40,000l capacity each and the decommissioning of an existing 28,000l tank at an existing filling station at Ballyraine, Letterkenny, County Donegal is or is not development or is or is not exempted development:

**AND WHEREAS** Emo Oil Ltd. requested a declaration on the said question from Donegal County Council and the said Council issued a declaration on the 31<sup>st</sup> day of May, 2016 stating that the said matter is development and is not exempted development:

**AND WHEREAS** the Emo Oil Ltd. referred the declaration for review to An Bord Pleanála on the 17<sup>th</sup> day of June, 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, and
- (b) previous determinations under An Bord Pleanála referrals 13.RL3233 and 35.RL2850:

**AND WHEREAS** the Board has concluded that the installation of 2 underground fuel storage tanks of 40,000l capacity each and the decommissioning of an existing 28,000l tank,

- (a) comprise works to an existing structure as defined in section 2 of the act,
- (b) would not result in an intensification of use, and
- (c) would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure

or of neighbouring structures and, therefore, comes within the scope of section 4(1)(h) of the Planning and Development Act 2000:

**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 installation of 2 underground fuel storage tanks of 40,000l capacity each and the decommissioning of an existing 28,000l tank at an existing filling station at Ballyraine, Letterkenny, County Donegal is development and is exempted development.

### **MATTERS CONSIDERED**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

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Stephen J. O'Sullivan,  
23<sup>rd</sup> August 2016