



An
Bord
Pleanála

Inspector's Report

Development

Whether the provision of catering services by IRD Duhallow is or is not development or is or is not exempted development. James O'Keefe
Memorial Centre, Newmarket, Co.
Cork

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

D/227/16

Owner/Occupier

IRD Duhallow

Planning Authority Decision

Is development and is not exempted development

Referrer

IRD Duhallow

Type of Case

Section 5(3) Referral

Observer(s)

None

Date of Site Inspection

01/09/16

Inspector

Pauline Fitzpatrick

1.0 Site Location and Description

- 1.1. The Board is advised that this is the 2nd reference case before the Board pertaining to the above site. Case 04.RL3474 also refers. The site is as described in same.
- 1.2. The subject site consists of a period building and attendant outbuildings and grounds accessed via a driveway to the south-east of Newmarket town centre in north County Council.
- 1.3. The main house, original outbuildings and ancillary buildings of more recent construction are occupied by IRD Duhallow, a rural development agency and is in operation as the James O’Keeffe Memorial Centre. There are a wide range of activities on site including adult education, furniture repair, administration, meal preparation and delivery, café, gardening, laundry etc. A number of subsidiary or related entities appear to be housed within the complex such as Warmer Home Scheme and Raptor Life and which could reasonably be considered as falling within the broad remit of community development and education.
- 1.4. The subject of the referral is located in the single storey building of recent construction located to the south-west of the Main House and associated outbuildings. The bulk of the building comprises of kitchens and associated services used by Duhallow Community Food Services including bakery, store, cold rooms and staff facilities. A portion of the building is used as a restaurant with seating for approx. 20-25 persons with a small serving area. The restaurant is accessible by a separate entrance in the front elevation.

2.0 Background to the Reference

- 2.1. On foot of warning letters issued by Cork County Council a Section 5 reference was made to the Planning Authority as to whether the provision of catering services as part of the established range of integrated services offered on site by IRD Duhallow is or is not development as defined by Section 3 of the Planning and Development

Act, 2000 (as amended) and, if so, whether the provision of those services is exempted development.

2.2. The Planning Authority considered that the provision of catering facilities which includes the preparation of 150 meals daily and a bakery constitutes development which comes within the scope of the governing permission 13/4860 and that the change of use from staff canteen to use as a restaurant within the overall premises is development and is not exempted development. It concluded that:

- (a) The permitted use of the premises is as a food preparation facility and the current use and scale of operations at the existing ready meals cooking area and the bakery come within the scope of the governing permission 13/4860,
- (b) The current use of the structure permitted under 13/4860 includes an area indicated as a 'staff canteen' which operates as a restaurant which is not provided for by the permission and which is not incidental to the main use as a food preparation facility,
- (c) The said use of the staff canteen area as a restaurant constitutes a material change of use which has material consequences in terms of the proper planning and sustainable development of the area,
- (d) This change of use does not come within the scope of the legislative provisions for exemption from the requirement for planning permission,
- (e) A material change of use has been undertaken in respect of which no planning permission subsists.

Note: The Board is advised that this constitutes the 2nd referral on the issue. The 1st under ref. RL3475 was deemed to be invalid. The documentation on the latter file is relevant in the assessment of the current case.

3.0 Referral

3.1. The submission by McCutcheon Halley Walsh on behalf of IRD Duhallow can be summarised as follows:

- The use of the floorspace described as ‘staff canteen’ is to provide restaurant facilities for staff of the IRD Duhallow campus and not just the staff of the facility permitted under Planning Reg. 13/4860. It was also intended to be used by people who attend courses and events organised on the campus. The canteen area is also used to by clients of the catering service who chose to have their meal on the campus rather than in their home or in a community hall.
- There may be occasions where meals are served to persons who have no connection to IRD Duhallow or no involvement with events taking place on site. Such cases would be a small percentage of the meals served in the canteen and would not, therefore, have any planning consequences or any impact on the essential nature of the established and permitted use.
- The use of the ‘multipurpose/training room’ within the building for meal breaks by food preparation staff is consistent with the permission. They are precluded by health regulations from using the canteen in their working clothes.
- The food preparation facility is integrated with the educational and training programmes on the IRD Campus.
- The Declaration relies on the fact that the current use was not explicitly provided for in the permission. There is no condition attached to the grant of permission under ref. 13/4860 which restricts the use of the subject floorspace to use as a staff canteen. Compliance with condition 1 does not preclude subsequent change from the permitted plans and particulars provided the changes do not involve works which require permission or material change of use.

- The permitted drawings show provision for direct access to the canteen area from outside the building.
- The hours of operation being different to those of the food preparation area could be explained by the fact that food may have been prepared in advance.
- Food which is consumed in the canteen area is prepared within the food preparation area. The consumption of the food is ancillary, or incidental to the preparation of the food.
- In view of paragraph 3.4 of the Development Management Guidelines and given the need for brevity it is unreasonable to argue that the use of a premises should be permanently restricted to the specific uses which were explicitly mentioned in the description of the planning application. This interpretation is supported by previous decisions of the Board (RL2558, RL3155 and RL3332).
- No evidence has been provided in the reasons and considerations or in the planning reports to substantiate the conclusion that the use of the staff canteen area constitutes a material change of use which has material consequences in terms of proper planning and sustainable development of the area.
- There would be no planning consequences if the canteen was being operated as alleged with due regard had to:
 - The declaration acknowledges that there has been no intensification of use as the food preparation area is being operated within the scope of permission 13/4860.
 - No works have been carried out to facilitate the alleged change of use,
 - Any additional traffic generated by 'external customers' would be small.
- The prices charged are not a valid planning consideration.

4.0 **Planning Authority's Response to Referral**

No response received.

5.0 **Relevant Planning History**

- 5.1. 13/4860 – permission granted subject to 32 conditions for a single storey ready meal cooking facility to cater for the preparation of 150 meals daily, to include a baking area with staff canteen, plus ancillary service areas.
- 5.2. 04.RL3474 – the Board decided that extractor plant and ducting is development and exempted development and that the provision of community laundry services as a minor part of the integrated services offered on the site is not development.
- 5.3. 04.RL3475 – section 5 referral on the question posed which is the subject of this file was deemed invalid.

6.0 **Legislative Context and Relevant Legal Cases**

6.1. **Planning and Development Act, 2000 as amended**

Section 3(1) - 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.

6.2. **Relevant Legal Cases**

Galway County Council v. Lackagh Rock. Justice Barron held:

that it was not sufficient for the council to establish an intensification of use had taken place. It had to prove that the intensification of activity amounted to a change of use which was material i.e. had given rise to fresh planning considerations.

To test whether or not the uses are materially different 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 they are materially different, then the nature of use must be equally materially different.

McMahon v. Dublin Corporation, Justice Barron investigated the question of whether the “essential character” of the use had changed, and the court concluded that a house that is occupied by the same family for several years has a different “essential character” to a house that is rented out to rugby fans for an international weekend.

7.0 **Assessment**

- 7.1. The subject case is the 2nd referral pertaining to the catering services building. The referrer lodged a section 5 referral to the Board on the previous planning authority’s declaration under ref. 04.8475 but was deemed invalid. It lodged a subsequent declaration request with the planning authority to which the same declaration was issued on foot of which this referral was lodged. Thus I would advise the Board that the supporting documentation relevant to this case is attached to 04.RL3475.
- 7.2. At the outset I note that the referral to the Board effectively pertains to one section of the Planning Authority’s declaration. Notwithstanding the question as originally proposed, I recommend that the question be reformulated as follows:
- 7.3. **“Whether**

The provision of catering facilities that come within the scope of the governing permission 13/4860

The change of use from staff canteen within the facility permitted under 13/4860 to use as a restaurant

at James O'Keeffe Memorial Centre, Newmarket, Co. Cork is or is not development: and is or is not exempted development.”

7.4. I propose to address each issue in turn.

Whether the provision of catering services is development or exempted development

7.5. Permission was granted under ref. 13/4860 for the construction of a building to provide for a ready meal cooking facility to cater for the preparation of 150 meals daily. In addition to food preparation and storage areas a bakery is provided. From the details provided the facility as constructed operates 6 days a week and provides for c. 900 meals per week. The Duhallow Community Food Services also provides a training function.

7.6. I would therefore concur with the planning authority's assessment and I submit that the provision of catering services is in accordance with the development as permitted.

Whether the change of use of the canteen to use as a restaurant is development and is or is not exempted development.

7.7. I consider that this constitutes the substantive issue arising. The planning authority is of the view that as the area which was labelled as 'staff canteen' on the permitted plans is being used by persons other than staff of the catering building, a material change of use has arisen.

7.8. The said canteen comprises approximately 10% of the overall floorspace of the building as constructed. In space terms alone it could be considered ancillary and does not compromise the main purpose of the building, namely catering services. In addition to internal access a separate entrance from the front elevation is developed in accordance with the permitted plans. The space is laid out attractively with space for in the region of 20-25 people with service via two counter areas with overhead menu boards and prices.

7.9. A sign erected within the space states that:

The canteen welcomes Duhallow Community Food Service, IRD Duhallow & James O’Keefe Institute Members, Board, Commitees, Staff, Participants, Trainees, Volunteers and Guests as well as members of our SAOI network & guests.

7.10. Quite clearly the ‘canteen’ is being used by more than the staff of the catering facility. From the details provided with the referral the facility serves other staff and participants in courses etc. within the wider IRD Duhallow campus. In addition persons who avail of the meal service can have their meal on site rather than in their home or in a community centre. Walk - ins from members of the public who have no connection with the activities on the site as a whole are facilitated but are stated to represent a very small percentage.

7.11. As would be expected canteen is not defined in the Planning Acts. As per the concise Oxford English Dictionary it is defined as ‘restaurant in a workplace or educational establishment’.

7.12. I would accept that canteen’s use by those either employed or attending courses/training on the campus could be seen to come within the above definition. The fact that the service is availed of by others which have no connection to the campus would be seen to fall outside the stated parameters.

7.13. Thus the fact that the public can avail of the service could amount to a change of use but the substantive issue is whether the change of use is material. Having regard to above cited case law I would acknowledge that there are generally two tests to establish whether a material change of use has occurred.

7.14. The first test to consider, in accordance with case law including Galway County Council v. Lackagh Rock, is the external effects of the change of use on the amenities of the area. Effectively do fresh planning considerations arise with the

change. For example, if the change would result in an increase in noise, traffic or odours, the change could be seen to be material.

- 7.15. In this regard I cannot identify any additional material planning issues that arise from the potential for persons not connected to other uses on the campus availing of the service. The range of planning issues and environmental impacts would be the same as those arising from the existing diversity of uses and range of users on the overall campus.
- 7.16. The second aspect of the test is that even in the absence of external effects arising from the change, there may nevertheless be development. This test requires a consideration of the character of the antecedent and subsequent uses of the land. In this regard I note *McMahon v. Dublin Corporation*.
- 7.17. I do not consider that the essential character of the facility is altered by the fact that the public is accommodated. I did not see any signage either on approach to, or within the campus, or indeed on the building itself advertising the restaurant. I submit that it is ancillary both to the main purpose of the building within which it is housed (catering services) and to the wide range and diversity of uses evident on site. The food sold in the restaurant is prepared on site. In my opinion the design of the space or the prices charged have no bearing on the matter.

Appropriate Assessment

- 7.18. Having regard to the nature and scale of the development subject of the referral within a larger complex no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination, with other plans or projects on a European site.

8.0 Conclusions and Recommendation

I consider that the use of the building for the provision of catering services is in accordance with the permission granted under planning permission reference number 13/4860

I consider that whilst the use of the permitted staff canteen by persons other than staff employed in the catering services use constitutes a change of use I do not consider the change of use to be material.

Draft order

WHEREAS questions have arisen as to whether:

Whether the provision of catering services by IRD Dunhallow at James O'Keefe Memorial Centre, Newmarket, Co. Cork is or is not development or is or is not exempted development

AND WHEREAS IRD Duhallow care of McCutcheon Halley Walsh of 6 Joyce house, Barrack Street, Ballincollig, Co. Cork requested a declaration on the said question from Cork County Council and the said Council issued a declaration on the 6th day of July, 2016 stating that (a) the provision of catering facilities which include the preparation of 150 meals daily and a bakery, from a facility permitted under 13/4860 constitutes development which comes within the scope of the governing permission 13/4860 and (b) the change of use from staff canteen within a single storey ready meal cooking facility to cater for the preparation of 150 meals daily to include a baking area to use as a restaurant within the overall premises is development and is not exempted development

AND WHEREAS the said IRD Duhallow care of McCutcheon Halley Walsh of 6 Joyce house, Barrack Street, Ballincollig, Co. Cork referred the declaration for review to An Bord Pleanála on the 12th day of July, 2016.

AND WHEREAS An Bord Pleanála in considering this referral, reformulated the question as follows:

“Whether

- i. The provision of catering facilities that come within the scope of the governing permission 13/4860
- ii. The change of use from staff canteen within the facility permitted under 13/4860 to use as a restaurant

at James O’Keeffe Memorial Centre, Newmarket, Co. Cork is or is not development: and is or is not exempted development.”

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

- (a) section 2 of the Planning and Development Act, 2000, as amended,
- (b) the submissions on file,
- (c) the planning history of the subject site, including the layout approved under file reference 13/4860.
- (d) the nature, extent and diversity of uses in the James O’Keeffe Memorial centre.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) The permitted use of the premises is as a food preparation facility and the current use of and scale of operations at the existing ready meals cooking area and bakery come within the scope of the governing permission 13/4860
- (b) The use of the canteen as a restaurant open to persons other than those employed in the catering facilities building of which it forms part together with its limited extent in the context of the overall land use in the James O’Keeffe Memorial Centre, is not a material change of use.
- (c) The impact on local amenities from the restaurant is not materially different from the permitted use

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:

- a) The provision of catering facilities, in a facility permitted under 13/4860 constitutes development which comes within the scope of the governing permission 13/4860.
- b) The change of use from staff canteen within the facility permitted under 13/4860, to use as a restaurant is not considered to be development.

at the James O’Keeffe Memorial Centre, Newmarket, County Cork.

Pauline Fitzpatrick
Inspectorate

October, 2016