



An
Bord
Pleanála

Inspector's Report
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Question

Whether change of use from the production of grain and maize products to a whiskey distillery is or is not development or is or is not exempted development

Declaration

No declaration

Planning Authority

Roscommon County Council

Planning Authority Reg. Ref.

DED223

Applicant for Declaration

Roscommon County Council

Planning Authority Decision

No decision

Referral

Referred by

Roscommon County Council

Owner/ Occupier

Stewarts Mill

Date of Site Inspection

27th August 2016

Inspector

Dolores McCague

1.0 Site Location and Description

- 1.1. The site is located in the centre of the town of Boyle on the banks of the Boyle River which flows in an easterly direction from Lough Gara to Lough Key. The site is located to the south of the R 294 (Chapel Lane) at the end of Mill Road. The site is occupied by a building of up to 5 storeys which is partly stone built and partly metal clad and which includes a passage under part of the building to a somewhat disused bridge crossing the River Boyle. On the opposite side of the River Boyle there is a green area of riverbank and a residential area at Termon. Alongside the subject building there is a concrete platform along the River's edge and a mill race.
- 1.2. The building has the appearance of an historic mill and the historic mapping shows a corn mill at this location.
- 1.3. Mill Lane extends some 150m from Chapel Lane and appears to be largely bounded by property in the mill complex. To the west there is a fuel depot and to the east a historic building: a dwelling and its attendant grounds.

2.0 The Question

- 2.1. The request for a declaration was submitted to the planning authority on the 18th April 2016 concerning the installation of distillery equipment at the existing mill building at Stewarts Mill, Boyle.
- 2.2. The request included a completed Irish Water enquiry form and a copy letter to Irish Water, referring to proposed development at Boyle Mill of a Craft Irish Whiskey Distillery and Visitor's Centre to be situated within the Mill complex with production somewhere in the region of one million litres of whiskey (600,000 LPA) per annum. The mill complex already has an existing mains water supply and is also connected to the town sewers.

Water requirements entail production / process water and domestic water. It is proposed that all water for staff and visitor's centre will come from the existing mains

water supply: estimated requirement approx. 1.6m³/day. All cooling water and water used for cleaning to be abstracted from the Boyle River via the Mill Race: estimate requirement approximately 1400m³/day. All waters to be used for the production of the final whiskey product to be abstracted from an existing well: estimated requirement approx. 23m³/day.

Effluent disposal – it is proposed that all effluent from staff, visitor's centre and cleaning waters from the distilling process be discharged to the mains sewer; estimated 6m³/day, spent lees and pot ale (20m³/day) are excluded from the calculation. Details of the characteristics of the effluent are contained in the enquiry form. The rate of release of effluent will be agreed with Irish Water before commencement of discharge. It is proposed that all cooling waters will be discharged back from the Boyle River after a cool down period, and this rate will be agreed with Roscommon County Council prior to commencement of discharge. In the event of a fire it is intended to use the Mill Head Race and a sprinkler system already in place at the mill complex. Figures are subject to further detailed calculations and discussions.

- 2.3. Attached to the request is a diagrammatic representation of the process by Archer Consulting Engineers – which includes well water 23m³/day, water from mains 6m³/day discharged to sewer. Cooling water closed system from mill race at 1400m³/process bottling 600,000 LPA/year = 90,000 cases after maturation of 3 years+.
- 2.4. Attached to the request is a Conservation Assessment Report for Phase 1 prepared by Hamilton Young Architects, Conservation Grade 1 Architects, which includes a description of the mill built in 1810. The mill is a protected structure of regional importance for architectural, historical and technical reasons. The abandonment of milling and the sale of mill equipment and silos in 2014 left the building without a specific purpose.

2.5. The proposed works comprises two distinct phases of works that are required to restore part of the existing mill buildings for use as a whiskey distillery. Phase one requires setting up the initial distillation process in order to begin production. Due to the long lead-in time between beginning distillation and the final production of whiskey, 2-4 years, it is proposed that the existing facilities at the mill will be utilised to establish production. The works as part of this phase will have minimal impact on the protected structure. Phase two will follow initial production. This phase calls for the restoration and renovation works to the protected structure as well as for fire safety etc. Processes are identified on drawings as process 1 - silo storage, 2 - milling, 3 - Lauter Tun, 4 - Washback, 5 - stills (3 stills – 7,000l, 8,000l, and 11,000 l). No change to the existing silos is proposed for process 1. A new grain mill will be placed in the existing building for process 2, to be powered by the existing turbine on site. For process 3 ground barley is put into a Lauter Tun where hot water is added. Rakes inside turn to extract the starch/sugar. This liquid is referred to as wort. The lauter tun will be free standing and will not require changes to the existing structure. For process 4 the liquid is pumped into fermenter where yeast is added. This liquid is referred to as wash. This process creates carbon dioxide and alcohol. The proposed location of the washback fermenter will require the removal of some of the existing ceiling/floor joists in the rear of the mill, most of the timbers to be removed are of relatively recent construction and not part of the original structure. For process 5 the liquid from the fermenters is passed through the 3 stills. These will be located on the first floor, on an existing steel deck which is accessible from the outside of the building. The installation of these stills will not require modification of the protected structure. For phase one there are no proposals which would alter, modify or permanently affect the existing protected structure. Hamilton Long consider that the phase one works do not materially affect the protected structure and can be considered exempted development.

2.6. Attached to the request is a report titled Specification of Development Proposed Section 5 prepared by Archer Consulting Engineers, which includes – reference to

the existing development started by Hugh Stewart a businessman and miller who moved to Boyle in 1880 and developed a grain drying and maize drop meal business. Following generations developed the milling operations and by the 1980s the mill had become one of the foremost animal feed compounders in the country. The initial throughput will be 2000 tonnes of malted barley. There will be no requirement for any major alteration to the main mill structures as the bulk of the distillation equipment will be housed outside the existing stone buildings which are also ideally suited for the purposes of bonding. The requirements for suitable water can be adequately provided for by the existing well from the river for cooling purposes. By products including draff, pot ale and spent lees will be disposed of to an approved animal feed producer thus reducing BOD demand of the effluent to the mains sewer. Stewarts also intend to create a museum/interpretative centre at a later time.

2.7. Examples of similar developments in other counties are cited:

Dingle – change of use permission not required.

Leitrim - no application for change of use from light industrial.

Mayo - Nephin - planning permission granted.

Mayo - Connacht – no planning permission required for change of use from bakery.

Waterford - Blackwater – in an existing industrial enterprise park, no separate application for change of use.

Westmeath - Kilbeggan – no application.

Louth - Cooley – planning permission.

Carlow - Walsh – no separate application.

2.8. The following equipment / plant is intended to be installed as part of phase 1 – free standing grain mill, lauter ton, fermenters, pot stills and condensers, whiskey safe, hot water tank.

3.0 Planning Authority Declaration

3.1. The planning report includes: it is considered that the nature and scale of the raw material inputs, the processes undertaken, the resources required to undertake the processes, the potential discharges and the end product are significantly different than the current use, and a recommendation is made that the application be referred to the Board.

4.0 Planning History

4.1. No planning history is given and no relevant recent planning history is shown on the map register.

4.2. RL 3137 which made a proposal for 3000 tonnes output is referred to in the planning report and in the response to the referral. Details on that file included that ready-made malt would be brought in, yeast would be added, the fermented mixture would be distilled and the raw spirit transported off site to a bonded warehouse.

5.0 Policy Context

5.1. Of the site outlined in red submitted with the declaration request, in the Boyle Local Area Plan, the major part is zoned industrial use, a portion is zoned greenbelt and a portion is unzoned. The building the subject of the referral is zoned industrial use. The Mill Race (00600348) and Mill (00600349) are protected structures.

6.0 The Referral

6.1. The referral has been made by Roscommon County Council and includes the documentation submitted to the planning authority and the planning report.

6.2. **Owner's Response**

A response to the referral has been submitted on behalf of the owner which includes: Part 2 of Schedule 5 to the Planning and Development Regulations 2001 -2015 relates to installations of commercial brewing and distillation installations for malting where production capacity would exceed 100,000 tonnes per annum. The initial throughput of the proposed distillery will be 2000 tonnes of malted barley per annum a fraction of the figure in (7) (d) and therefore this should not apply.

A conservation architect reports that phase one works do not materially affect the protected structure.

Re RL 3137 which made a proposal for 3000 tonnes output. Any potential impacts would be small scale and local and not of a significant intensity that would require the submission of an EIS.

In that case the inspector considered that the proposed change from furniture manufacturer would constitute a material change of use as the nature and scale of the raw material inputs, the processes undertaken, the resources required to undertake the processes, the potential discharges and the end product are significantly different. This together with the fact that the site did not have the benefit of an authorisation for industrial use appear to be the primary reasons for making an order that the change of use from furniture manufacturing to that of a whiskey distillery is development and is not exempted development.

The subject application is on lands currently zoned for industrial use. The milling process and distilling process are similar.

Milling Process

Raw materials grain wheat barley molasses are charged into silos

Grain is crushed by primary crusher and grinder

Crushed /grinded materials are separated by means of sieve and stored in tanks according to material

Raw materials are then mixed by means of a feed mixer and fatty materials may also be added to raise nutritional value of the feeds.

The feed from the mixer is blended with molasses

Assorted feeds that are crushed into fine particles are further formed into pellets using steam and heat by use of a feed pellet mill

Finished materials are stored in bins or bagged and stored on pallets ready for delivery

Distilling Process

Raw materials malt and barley are charged into silos

Malt and barley are ground into a rough flour called grist

The grist is mixed with hot water into a mash tun. The resulting liquor called worts is drained from the vessel, this process is repeated two more times.

The worts is cooled and put into fermenting vessels and yeast is added. This is left for between 48 and 55 hours.

The remaining mash is classified as by-product and is used in animal feed.

The liquid is then distilled in three pots stills and finally through a column still
The resulting liquor, whiskey is stored in casks then blended and bottled

Both processes are very similar in nature with regard to raw materials input, the processes undertaken, the potential discharge and the resources required to undertake the process. The overall inputs and outputs would be significantly less in the distillation process. Examples of planning history of other distilleries are cited. The owner considers that planning permission is not required for phase 1. The site is ideally suited to the distilling process and is in keeping with the existing industrial use of the site.

7.0 Statutory Provisions

Planning and Development Act, 2000

The referral is made under Section 5(4) of the 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, or under land or the making of any material change in the use of any such structures or other land.

Section 4 sets out exempted developments and includes those which arise by regulations (4 (2))

Section 4 (4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Section 57 (1) Notwithstanding section 4(1)(a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

A referral in relation to a protected structure can be made under Section 57 Planning and Development Act 2000.

Planning and Development Regulations 2001

Article 5 Interpretation for this part

“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;

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempt 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)

Restrictions on exemption.

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

if the carrying out of such development would –

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

Article 10(1)

Exempted development – Change of use

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...

Schedule 2, Part 1 - Exempted Development — General

Description of Development	Conditions & Limitations
CLASS 21	
<p>(a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking—</p> <p>(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,</p> <p>(ii) the provision, rearrangement,</p>	<p>1. Any such development shall not materially alter the external appearance of the premises of the undertaking.</p> <p>2. The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.</p>

<p>replacement or maintenance of sewers, mains, pipes, cables or other apparatus,</p> <p>(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.</p> <p>(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.</p>	
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Schedule 2, Part 4 - Exempted Development — Classes of Use

Class 4 Use as a light industrial building.

8.0 Assessment

8.1. Is or is not development?

The first matter relates to whether or not the change of use from the production of grain and maize products to a whiskey distillery comprises development.

The proposal involves a change of use and the carrying out of works to facilitate the change of use.

In relation to the use, the Board is required to consider whether the change of use is material. The change of use is from provender milling to whiskey distilling. The change of use involves plant and machinery which would not have been used in the previous use; which ceased in 2014 with the sale of mill equipment and silos, according to information provided by the first party. The change of use involves different processes and products.

The inputs are different: malted barley is used, that is, barley which has germinated; other inputs are yeast and water. This is in contrast to the fresh, dry grain which is used in milling.

The processes include additional processes to that of milling: mixing with hot water and distillation; in addition to the milling or grinding of grain which is the main process of previous use. The output is different. There is a residual grain which is a by-product of the distillation process and is used as an animal feed, in the former use as a mill dry ground grain was the main output. The product of the proposed change of use is a liquor for human consumption in the former use it was dry animal feed. River water will continue to be used for power as it has been. The change of use will also involve water abstraction and the return of water to the river following use for cooling. There is no reference to water abstraction in connection with the previous/existing use.

I consider the change of use to be material. The proposal also involves the carrying out of works.

Having regard to sections 2 and 3 of the Planning and Development Act 2000, I consider that the proposal constitutes development, being the carrying out of works on land and the material change of use of structures and land.

8.2. Is or is not exempted development

Development can be exempted from the requirement for planning permission by either (a) section 4 of the Planning and Development Act, 2000, or (b) article 6 of the Planning and Development Regulations 2001.

8.3. Are the works to be carried out exempted development?

Section 4 - the proposed development does not fall within the list of exempted developments listed in section 4.

Article 6 provides exemptions for specified development within classes set out in Schedule 3 of the Planning and Development Regulations (2001-2015).

Under class 21 (iii) of Part 1 of Schedule 3 the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery for an industrial process, within land occupied by an industrial undertaker, is exempted development, provided that it does not materially alter the external appearance of the premises, does not exceed 15 metres above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

The proposed development involves the installation of a lauter tun, a washback fermenter and 3 stills, located on the first floor, on an existing steel deck which is accessible from outside the building. The works are both within the building and external to the building. No elevation drawings have been submitted but photographic examples of a Lauter Tun a washback fermenter and whiskey stills have been submitted. In my opinion it is likely that the installation of these additional items of plant or machinery would not materially alter the external appearance of the premises, and unless de-exempted for other reasons would be exempted under class 21.

8.4. Is the change of use exempted?

Change of use is exempted under Article 10 of the Planning and Development Regulations 2001-2015 and class 4 of Part 4 of Schedule 3 of the Regulations which includes change of use of a building within the use class light industrial as exempted development.

“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;

The Board is required to consider whether both the existing use and the proposed use 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. The subject buildings are not currently in use but when last used were used for provender milling. The site is in an area which is zoned 'industrial uses'. The site is relatively remote from any residential building except one within the same complex, and the use is long established. If a development involving the use carried out on the site, which it is stated on file was one of the foremost animal feed compounders in the country, were to be proposed within a residential area, the nature and scale of the use would present significant issues for a planning authority and there would be concern with regard to the amenities of the adjoining residential area. In my opinion the existing use is not a light industrial use and therefore, there can be no change of use within class 4.

In conclusion I consider that the proposed development is a material change of use which is not exempted development.

8.5. Restrictions on Exempted Development

Article 9 Planning and Development Regulations 2001-2015 lists restrictions on exemption, which include if Appropriate Assessment or Environmental Impact Assessment is required.

In relation to Appropriate Assessment, the nearest Natura site is Lough Gara SPA (site code 4048) which is located c6km distance, at the nearest point, from the site; and for which the conservation objectives relate to the features of interest: Whooper Swan and Greenland White-fronted Goose.

Having regard to the fact that the proposal is to change the use of an existing building and that the location is 6km downstream of the nearest European site, 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.

In relation to Environmental Impact Assessment, the proposed use is sub-threshold, being well below the level of 100,000 tonnes per annum, at which EIA is a mandatory requirement. In relation to sub-threshold development Schedule 7 of the Planning and Development Regulations 2001-2015 sets out criteria for determining whether a development would or would not be likely to have significant effects on the environment. These are listed under the headings of: characteristics of proposed development, location of proposed development and characteristics of potential impacts. There is little information on file which would inform the Board's assessment as to whether the proposed development would or would not be likely to have significant effects on the environment. Potential environmental impact impacts have not been detailed, in particular potential impacts on the river. The location of the site is on the bank of the River Boyle, from which it is stated, water, approx. 1400m³ /day, will be abstracted for cooling purposes and returned to the river after an unspecified cool down period. It is stated that in the event of a fire, water from the mill race will be used for fire fighting, the potential impact on the river from this abstraction has not been documented, neither has the potential impact of the discharge of fire water to the river. No proposals to contain and dispose of water, used for fire-fighting, have been made.

In my opinion the information provided is insufficient to enable the Board to determine that EIA is not required.

Under Section 57(1) of the Act — the carrying out of works to a protected structure, or a proposed protected structure, could be exempted development only if those works would not materially affect the character of the structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

The building the subject of this referral is a protected structure: number 00600349 of the list of protected structures, and no declaration has been sought or issued by the Planning Authority under Section 57 (3) of the Act. The proposed location of the washback fermenter will require the removal of some of the existing ceiling/floor joists in the rear of the mill. In the details provided it is stated that most of the timbers to be removed are of relatively recent construction and not part of the original structure. Further details would need to be provided before the Board could be satisfied that the proposed development would not materially affect the character of the structure, or elements of the structure which contribute to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest. In the absence of such details the Board is precluded from determining that the proposed development is exempted development.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order:

WHEREAS a question has arisen as to whether the change of use from the production of grain and maize products to a whiskey distillery at Stewarts Mill, Boyle is or is not development or is or is not exempted development:

AND WHEREAS Roscommon County Council has referred the question to An Bord Pleanála on the 27th day of May, 2016.

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1), article 9(1) and article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area;

AND WHEREAS An Bord Pleanála has concluded that-

- (a) the change of use is a material change of use which does not come within class 4 of Part 4 of Schedule 2;
- (b) the carrying out of works may materially affect the character of the protected structure, or elements of the structure which contribute to its special interest; and
- (c) the information available to the Board is insufficient to enable the Board to determine that Environmental Impact Assessment is not required.;

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 change of use from the production of grain and maize products to a whiskey distillery at Stewarts Mill, Boyle is development and is not exempted development.

Name

Planning Inspector

Date