



An
Bord
Pleanála

Inspector's Report RL3584.

Question	Whether the storage of raw material, by-products and waste is or is not development or is or is not exempted development.
Location	Deanhill, Haynestown, Navan, Co. Meath.
Declaration	
Planning Authority	Meath County Council.
Planning Authority Reg. Ref.	NA/551720.
Applicant for Declaration	John McGrane + Declan Barry.
Planning Authority Decision	Is exempt development.
Referral	
Referred by	John McGrane + Declan Barry.
Owner/ Occupier	Tarstone Tarmacadam Contractors Limited.
Observer(s)	None.
Date of Site Inspection	4 th October 2017.
Inspector	Karen Kenny.

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1.0 Site Location and Description

- 1.1.1. The site is located approximately 8 km to the east of Navan and 3 km west of the N2. The area is rural in character, with agricultural lands and a number of one off dwellings in the immediate vicinity of the site.
- 1.1.2. The site is occupied by 'Tarstone Tarmacadam Contractors Ltd' a company that provides road construction and maintenance services. The commercial property at Deanhill comprises an office building with visitor parking to the front close to the roadside boundary and a commercial yard to the rear. There is a controlled gated access to a yard area to the rear. The yard contains structures, machinery, vehicles, raw materials and waste products. The referral relates to the yard area only.
- 1.1.3. The northern boundary of the 'yard' is defined by a high palisade fence with gated access to lands to the north. The gates were closed at the time of inspection, however, it was possible to view this area from the yard area to south. The lands to the north of the palisade fence comprise of a hard standing area. There were old vehicles and construction / demolition type waste products stored on this area at time of inspection.

2.0 The Question

- 2.1. The referrers seek the Board's determination as to "*Whether the storage of raw material, by-products and waste is or is not development or is or is not exempted development.*"

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The planning authority decided on the 4th May 2017 on foot of a request from John McGrane & Declan Barry for a declaration under Section 5 that the "*storage of raw material, by-products and waste*" at Tarstone Road Maintenance LTD, Deanhill, Haynestown, Navan, Co. Meath "*is development and is exempted development*" in

the context of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Report of the Planning Authority reflects the decision to grant the declaration.

3.2.2. Other Technical Reports

None.

4.0 Planning History

4.1.1. The following planning history relates to the commercial premises:

Reg. Ref. NA/40011: Application for change of use of an existing farmyard and associated buildings to a road maintenance contractors yard to include provision of a recessed entrance, car and truck parking areas, office building (including canteen, toilets), mastic asphalt production and curing area, lorry wash, surface water and foul sewer, puraflo effluent treatment system, petrol interceptor, conversion of existing slurry tank to settlement tank, the demolition of some existing farm buildings and associated site works. Permission granted by Meath County Council. The following condition is of note:

Condition no. 6. All operations on site including vehicle washing, repair, parking shall be strictly limited to those vehicles owned/operated by Tarstone Limited, i.e. the applicant. The storage, parking, repair or washing of other vehicles on site shall not be permitted. Mastic asphalt production on site shall be restricted to that required by the operations of Tarstone Ltd, i.e. the applicant, any change of use or variation / intensification of the above shall require a further grant of planning permission whether or not such change of use constitutes exempted development.
Reason: In the interests of proper planning and development.

PL17.218071 / Reg. Ref. NA/50503: Application for the retention and completion of development approved under Reg. Ref. NA/40011 including revised site boundaries. Permission granted by Meath County Council. This decision was subject to a **third party appeal** to An Bord Pleanála. An Bord Pleanála upheld the decision of Meath County Council and granted planning permission.

Reg. Ref. NA70587 – Application for a temporary land recovery operation to receive waste material comprising soil and stones (Class 10 of the Forth Schedule of the Waste Management Act, 2006) on a site area of be 0.96 hectares. Permission Granted by Meath County Council. The following condition is of note:

Condition no. 13. This grant of permission shall expire after 3 years from the date of issue of final grant of permission in relation to the works pursuant to the waste permit. Reason: In the interest of development control and residential amenity.

PL17.237901 / Reg. Ref. NA100801 – Application for construction of a recycling and storage shed (433 sq. m), 4 no. external storage bays, 7 no. stables (inc. saddle room, storage area), dungstead and sealed effluent storage tank and paddock area. Permission granted by the Planning Authority. This decision was subject to a **third party appeal** to An Bord Pleanála. An Bord Pleanála overturned the decision of Meath County Council and refused planning permission for one reason relating to the following:

Reason no. 1. Development would constitute disorderly and incremental development of the site, with a significant increase in activity and traffic movements near a residential property and would seriously injure the residential amenity of adjacent property and contravene policies ED POL 19 and ED POL 20 of the Development Plan.

Reg. Ref. NA/101179 – Application for retention permission for the change of use of land to a commercial yard. Permission Refused by the Planning Authority.

Reg. Ref. NA/110867 – Application for retention for change of use of land to a commercial yard for parking and storage (inc. external lighting), permission to extend commercial yard for storage and recycling and for the construction of a recycling and storage shed (433 sq. m). Permission refused by the Planning Authority.

PL17.242496 / Reg. Ref. NA130290 – Application to retain change of use of to a commercial yard for the purposes for vehicular parking, temporary storage area and retention of security fencing. The details submitted with the applicant and as further information included a proposal to reinstate lands to the north and south of the extended yard area to agricultural use. Permission granted by the Planning Authority. This decision was subject to a **third party appeal** to An Bord Pleanála. An Bord Pleanála upheld the decision of Meath County Council and granted planning permission. The following conditions are of note:

Condition no. 2. The additional hardcored area hereby permitted shall be used solely for the parking of vehicles associated with the previously permitted business on the site, as well as the storage of loose chippings, asphalt and base strictly in accordance with the details submitted in support of the application on the 22nd day of July, 2013. No other use is permitted unless authorised by a prior grant of planning permission. This area shall not be separately let, sold or otherwise disposed of, save as part of the overall site. Reason. In the interest of clarity, amenity and orderly development.

Condition no. 3. The proposed reinstatement shall be carried out as detailed in the further information response submitted to the planning authority on the 22nd day of July, 2013. A detailed landscaping scheme for the reinstated areas shall be submitted for the written agreement of the planning authority within one month of the date of this Order. The reinstatement, including planting/rolling/seeding, shall be carried out to the satisfaction of the planning authority during the first planting season following the date of the Order. Reason: In the interest of residential amenity.

PL17.243044 / Reg. Ref. NA130633 – Application for temporary land recovery operation for the deposition of soil and stone to improve agricultural lands.

Permission granted by the Planning Authority. This decision was subject to a **third party appeal** to An Bord Pleanála. An Bord Pleanála overturned the decision of Meath County Council and refused planning permission for one reason relating to the following:

Reason no. 1. Development would represent the inappropriate use of productive land in contravention of Objective RUR DEV S07 of the Development Plan, would seriously injure the visual amenities of the area and would set an undesirable precedent for haphazard and piecemeal development. Furthermore, having regard to the location of a stream running through the subject site, and notwithstanding the previous culverting of that stream, it is considered that the proposed development would give rise to an unacceptable risk of water pollution.

PL17.244389 / Reg. Ref. AA140808 – Application for a waste recovery facility for a Class 7 activity – namely recovery of inert waste arising from construction and demolition activity, including concrete, bricks, tiles, or other such similar material where the annual intake shall not exceed 10,000 tones and the maximum quantity of residual waste consigned from the facility for submission to disposal at an authorised facility shall not exceed 15% of the annual intake. Permission granted by the Planning Authority. This decision was subject to a **third party appeal** to An Bord Pleanála. An Bord Pleanála overturned the decision of Meath County Council and refused planning permission for two reasons relating to the following:

Reason no. 1. Board not satisfied on the basis of the information provided that development would not have significant adverse impacts on the environment and on the residential amenity of adjoining dwellings.

Reason no. 2. Undesirable incremental intensification of the use of the site, impact on residential amenity of adjacent property and

contravention of policies ED POL 17 and ED POL 18 of the Development Plan.

5.0 Policy Context

5.1. Development Plan

The Meath County Development Plan 2013-2019 is the relevant statutory plan for the area. The site is located in a rural area outside of a designated settlement and is not subject to any land use zoning objective.

5.2. Natural Heritage Designations

None.

6.0 The Referral

6.1. Referrer's Case

The grounds of referral are summarised as follows:

- Contrary to the provisions of the Planning and Development Act (Section 5) no reasons or considerations were issued with the declaration.
- The storage of raw materials, by-products and waste constitutes development being the carrying out of works on in or under the land.
- Having regard to the provisions of Article 9 of the Regulations development shall not be exempted development if it contravenes a condition attached to a permission under the Act or be inconsistent with any use specified in a permission. The carrying out of such development would contravene condition no. 2 of ABP Ref. PL17.242496.
- The use of the site has materially changed. The development on the landholding involves the deposition of vehicles whether or not useable for the purpose for which they were constructed or last used, old metal, mining or

industrial waste, builders' waste and rubbish or debris which constitutes development under Section 3 of the Act.

- The storage of raw materials, by-products and waste is only exempted development under Class 22 within the curtilage of an industrial building. The said works are not within the curtilage of the industrial building such works are outside of the curtilage of the building.
- The reuse of road plainings and recycles stone in the manufacture of a road surface product is a new industrial process. The fact that the facility now requires a permit as a Waste Management Facility would suggest that this is an intensification of use and a material change of use.

6.2. **Planning Authority Response**

Planning Authority considered that the proposed development is exempted development within the meaning of the Planning and Development Act 2000-2016. The development is considered to comply with Class 22 of Schedule 2, Part 1, Exempted Development – General of the Regulations.

6.3. **Owner/ occupier's response**

No response received.

6.4. **Further Responses**

None.

7.0 **Statutory Provisions**

7.1. **Planning and Development Act, 2000**

Section 2 (1): "structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or 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.

Section 2 (1): “works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 (1): In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in or over or under land or the making of any material change in the use of any structures or other land.

Section 4 (1): The following shall be exempted developments for the purposes of the 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”.

Section 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.

7.2. **Planning and Development Regulations, 2001**

Article 5(1): “industrial building” means a structures (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.

“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 treating of minerals

and for the purposes of this paragraph, “article” includes-

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

- (ii) a sounding recording, film, broadcast, cable programme, publication and computer program or other original database

Article 6 (1): 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.

Class 22 of Schedule 2, Part 1 Exempted Development – General

Storage within the curtilage of an industrial building, in connection with the industrial process carried on in the building, or raw materials, products, packing materials or fuel, or the deposit of waste arising from the industrial process

Conditions and Limitations

The raw materials, products, packing materials, fuel or waste stored shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building.

Article 9 (1) of the Planning and Development Regulations 2001 provides for restrictions on exemption:

9(1) 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.

Schedule 5, Development for the Purpose of Part 10, Part 2, Section 11(b)

Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

Schedule 7

Criteria for determining whether a development would or would not be likely to have significant effects on the environment.

8.0 Precedent Cases

RL3348: Whether the external storage of waste material in non-designated areas within the site boundary is or is not development or is or is not exempted development, and is or is not a material change of use or is or is not unauthorised

development. The Board decided that the development was not exempted development, as the external storage of waste material was in areas on site that were not designated for such in an extant permission, and constituted a material change of use; evidence was not provided to demonstrate that the subject development was in breach of any threshold or sub-threshold requirement for an EIA; the areas of storage were visible from the public road, and therefore the exemption under Class 22 of PDR, 2001 did not apply.

9.0 Assessment

- 9.1.1. The question under consideration in this referral is “*whether the storage of raw material, by-products and waste is or is not development or is or is not exempted development*” on a site, Tarstone Road Maintenance Ltd, Deanhill, Hayestown, Navan, Co. Meath.
- 9.1.2. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the storage of raw material, by-products and waste in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

9.2. Nature and Extent of Operations and Planning History

- 9.2.1. There is a detailed planning history attached to the site, as set out in Section 4 above. Permission was granted in 2004 for change of use from farmyard to a road maintenance contractors yard (PA Ref. NA/40011). Condition no. 6 of this permission states inter alia that “*any change of use or variation / intensification of the above shall require a further grant of planning permission whether or not such change of use constitutes exempted development*”. Permission was granted in 2006 for retention of alterations to the development (ABP Ref. PL17.218071 / PA Ref. NA/50503). In 2008, temporary permission was granted for a period of 3 years for a land recovery operation to receive waste material comprising soil and stones (PA Ref. NA/70587). Permission was granted in 2014, to retain an extended commercial yard area for the propose of vehicular parking and temporary storage (ABP Ref. PL17.242496 / PA Ref. 130290). The details submitted with the applicant and as

further information included a proposal to reinstate lands to the north and south of the extended yard area to agricultural use. Condition no. 2 of the permission states inter alia that *“the additional hardcored area hereby permitted shall be used solely for the parking of vehicles associated with the previously permitted business on the site, as well as the storage of loose chippings, asphalt and base strictly in accordance with the details submitted”*. Condition no. 3 states that *“the proposed reinstatement shall be carried out as detailed in the further information response submitted to the planning authority on the 22nd day of July, 2013. A detailed landscaping scheme for the reinstated areas shall be submitted for the written agreement of the planning authority within one month of the date of this Order. The reinstatement, including planting/rolling/seeding, shall be carried out to the satisfaction of the planning authority during the first planting season following the date of the Order”*.

9.2.2. Prior to the grant of permission in 2014, permission had been refused in 2010 and 2011, for extension of the commercial yard area (PA Ref. NA/100801 and NA/110867). Permission was refused in 2014 for a temporary land recovery operation for the deposition of soil and stone (ABP Ref. PL17.243044 / PA Ref. 130633). Permission was refused in 2015 for a waste recovery facility for the recovery of inert waste arising from construction and demolition activity (ABP Ref. PL17.244389 and PA Ref. AA/140808).

9.3. **Does the storage of raw material, by – products and waste constitute ‘works’ or ‘development’?**

9.3.1. In the first instance the question has been raised as to whether or not the storage of raw material, by – products and waste material is or is not development.

I note the definition of ‘works’ and ‘development’ outlined above, and having examined same, I am of the opinion that the said storage does not amount to ‘works’ within the meaning of Section 2-(1) of the Act. The storage of raw material, by – products and waste is however considered to be development within the meaning of Section 3 of the Planning and Development Act 2000, as amended.

9.4. **Does external storage of raw material, by – products and waste constitute exempted development?**

9.4.1. Development can be considered exempt under either Section 4 of the Planning and Development Act or Article 6 of the Planning and Development Regulations. Section

4 (1) of the Act sets out the provisions in relation to exempted development and is separate to, and has primacy over the exempted development provisions of the Regulations. As there are no applicable exemptions under the Act, the referral will be considered under Article 6 of the Planning and Development Regulations.

- 9.4.2. Article 6 states that development of a class specified in Column 1, Part 1, Schedule 2 of the Regulations 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 Part 1 and the restrictions on exemption set out in Article 9 of the Regulations.
- 9.4.3. Having regard to the definitions outlined in the legislation as outlined in Section 7 above, I would be of the opinion that the development approved under PA Ref. NA/40011 included industrial processes to include the production and curing of asphalt. The relevant class in the consideration of the referral is Class 22 of Part 1 of Schedule 2 of the Regulations, which allows for storage within the curtilage of an industrial building where the materials stored are in connection with the industrial process carried on in the building.
- 9.4.4. I would note that the storage of materials extends beyond the commercial yard approved under register references NA/40011, PL17.218071 and PL17.242496. I am therefore of the opinion that the storage use extends outside of the curtilage of the industrial buildings.
- 9.4.5. The third party referral does not seek to demonstrate that the materials are linked to industrial activities on the site. I did note at time of inspection that the materials stored on site consisted of old vehicles, chippings, concrete products, bricks and other construction / demolition type waste materials. I am of the opinion that the materials stored on the landholding could be used in association with the production of asphalt and other activities on the site, however no case has been made to this effect.
- 9.4.6. The conditions / limitations of Class 22 state that the materials or products shall not be visible from any public road contiguous or adjacent to the curtilage of the industrial building. Materials stored on the site are located to the rear of the site and are not visible from the public roadway.

9.4.7. Article 9 (1) of the Regulations states that 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 contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. I would draw the Boards attention to condition six of the parent permission on the site (Reg. Ref. NA/40011), which states that any change of use or variation / intensification shall require a further grant of planning permission whether or not such change of use constitutes exempted development. I consider that the storage of raw material, by – products and waste on lands that are outside of the approved commercial yard contravenes this condition. I would also draw the Boards attention to the details of the permission granted by An Board Pleanála under Reg. Ref. PL17.242496, for the retention of an extended commercial yard. Condition no. 2 of this permission restricts the use of the extended yard to the parking of vehicles and storage of loose chippings, asphalt and base. I did not observe any items in this area at the time of inspection that would contravene this condition. The Planning Authority in its consideration of this application specifically sought to limit the extent of the commercial yard area. Submitted details proposed to reinstate lands to the north and south of the yard to agricultural use and condition no. 3 of the permission specifically required the reinstatement works to be carried out during the first planting season following the grant of permission. I noted during site inspection that the proposed reinstatement works to the north of the commercial yard have not been carried out / completed and that old vehicles and other waste materials are stored in this area. I consider that the storage of raw materials, by products and waste in an area that was to be reinstated to agricultural use is inconsistent with the use specified in a permission under the Act and contravenes condition no. 3 of the permission.

9.4.8. On the basis of the foregoing and having examined all of the information contained within the file and having conducted a visit of the site and its environs I consider that the storage of raw material, by – products and waste on lands on the subject landholding is not exempted development under the provisions of the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2011, as amended.

9.5. **Is the external storage of waste considered to be unauthorised development?**

9.5.1. The referral raises issues in relation to unauthorised development and compliance with conditions of previous permissions. The consideration of these matters is outside the remit of An Bord Pleanála and are instead considered to be a matter for the enforcement section of the planning authority.

9.6. **EIA and Appropriate Assessment issues**

9.6.1. Having regard to the nature of the materials stored on site, which I would describe as being inert waste arising from construction and demolition, it is my opinion that the development would fall under Category 11 (b) of Part 2 of Schedule 5 of the Regulations which sets out development for the purposes of Part 10. Category 11 (b) relates to “*installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule*”. It would appear, on the basis of the extent of material observed on site at time of inspection that the development is sub-threshold for EIA. However, no evidence has been provided to demonstrate that the subject development is not in breach of any threshold or sub-threshold requirements for Environmental Impact Assessment.

9.6.2. Having regard to the nature and scale of the materials stored, to the nature of the receiving environment and the separation distance from European Sites, no appropriate assessment issues arise.

10.0 **RECOMMENDATION**

Having regard to the above, I would consider that the proposed works are not exempted development. Accordingly, I recommend an Order on the following terms:

WHEREAS a question has arisen as to whether the storage of raw material, by – products and waste at Tarstone Road Maintenance Ltd, Deanhill, Hayestown, Navan is or is not development and is or is not exempted development.

AND WHEREAS John McGrane and Declan Barry requested a declaration on the said question from Meath County Council and the said Council issued a declaration on the 10th day of April 2017, stating that the said development was exempted development and did not require planning permission:

AND WHEREAS the said John McGrane and Declan Barry referred the declaration for review to An Bord Pleanála on the 18th day of May 2017:

AND WHEREAS An Bord Pleanála, in considering this reference, had regard particularly to:

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- b) Class 22, Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,
- c) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended, and
- d) The permission granted by the planning authority under register reference NA/40011 and by An Board Pleanála under register reference PL17.218071 and PL17.242496.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The storage of raw material, by – products and waste is development under Section 3(1) of the Act.
- (b) The exemption under Class 22 of the Planning and Development Regulations, 2001 as amended, does not apply in this instance, as the development extends outside of the curtilage of the industrial buildings on site; the development contravenes condition six of the planning permission granted by the planning authority under register reference NA/40011; and the development is inconsistent with the uses specified in the permission granted under register reference PL17.242496 and contravenes condition no. 3 of the permission.
- (c) On the basis of the documentation on file, evidence has not been provided to demonstrate that the subject development is not in breach of any threshold or sub-threshold requirement for an Environmental Impact Assessment.

(d) There are no other applicable exemptions under either the Planning and Development Act, 2000, as amended, or the Planning and Development Regulations 2001, as amended,

NOW THEREFORE the Board, in exercise of the powers conferred on it by Section 5 of the Planning and Development Act 2000, has decided that the said storage of raw material, by – products and waste constitutes development and is not exempted development.

Karen Kenny
Senior Planning Inspector

21st December 2017