



An
Bord
Pleanála

Inspector's Report RL3590

Question

Whether an existing steel structure included during the construction of an existing hangar building to support the sliding doors to the front of the building is or is not development and is or is not exempted development.

Location

Kilkenny Airport, Holdensrath, Co. Kilkenny.

Declaration

Planning Authority

Kilkenny Co. Council

Planning Authority Reg. Ref.

Dec. 436.

Applicant for Declaration

Eoin Nevin

Planning Authority Decision

Is development and is not exempted development.

Referral

Referred by

Eoin Nevin.

Owner/ Occupier

Eoin Nevin.

Date of Site Inspection

5th, June 2019

Inspector

Paddy Keogh

1.0 Site Location and Description

- 1.1. The subject site is located in the rural townland of Holdensrath, Co. Kilkenny. The site is accessed from the bottom of a narrow rural cul-de-sac (LR 10073-9) that terminates at the entrance to the site. The site is c. 2.5 km to the west of Kilkenny City.
- 1.2. Documents received from the planning authority (undated) indicate the area of the site as being .80 acres (Drg. No. S101)
- 1.3. The site forms part of a much larger site comprising an Airport (airstrip/aerodrome, control tower, club house and other hangar/maintenance/storage buildings).
- 1.4. Documentation on a separate concurrent referral (RL3331) states that the Airport occupies a site of c. 65 acres.
- 1.5. There is a gravelled car parking area immediately inside the entrance. The control tower/club house is located to the east of the car parking area. The grass landing strip is located to the south of the control tower and runs in a roughly east/west direction.
- 1.6. I was granted access to the site for the purposes of my site Inspection by Mr Eoin Nevin (the referrer).

2.0 The Question

- 2.1. On 23rd, March 2017, Kilkenny Co. Council received a referral from Mr. Eoin Nevin. The referrer asked the following question:

Is the existing steel structure (hatched in red on Drgs) required to support the existing sliding doors of the front elevation of the building exempt?

- 2.2. Following a determination by the planning authority, dated 4th, May 2017 that the structure is development which does not constitute exempted development, the referrer referred the matter to the Board for review pursuant to the provisions of Section 5(3)(a) of the *Planning and Development Act, 2000*, as amended. (the "Act").

- 2.3. In referring the matter to the Board the referrer states:

In 2006 planning permission was granted for the erection of a hangar for the storage of an aircraft at Kilkenny Aerodrome and extended under P11/520. During construction, an existing steel structure (hatched in red on

Drgs.) was required to support the existing sliding doors on the front elevation.

The referrer asks:

Is this supporting structure exempt development or does it require planning permission as determined by Kilkenny Co. Council?

- 2.4. Having considered the documentation of file, I consider that the question being asked can reasonably be reformulated in the following terms:

Whether an existing steel structure included during the construction of an existing hangar building to support the sliding doors to the front of the building is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.2. The planning authority issued a decision dated 4th, May 2017, as follows:

The existing steel structure (hatched in red on drawings) required to support the existing sliding doors of the front elevation of the building at Kilkenny Aerodrome drawings of which were submitted to the planning authority on 23rd, March 2017 and further information response submitted on 19th, April 2017 relating to the existing steel structure (hatched in red on drawings) required to support the existing sliding doors on the front elevation of the building at Kilkenny Aerodrome would constitute development which is not exempt and therefore, would require planning permission.

3.3. Planning Authority Reports

Planning Reports

- 3.3.1. A report from the planning Authority Senior Planner dated 4th, May 2017, following the receipt of further information, includes the following:

- Planning history of the site noted – permission for the aircraft hangar the subject matter of the current referral was granted by the planning authority under Reg. Ref. P06/1286.
- Provisions of Section 4(1)(h) of the Act in relation to exempted development noted.
- At the time of an inspection at the site carried out by the planning authority on 4th, November 2016 works on the construction of the development [*of an aircraft hangar*] were underway and what appeared to be supporting steel structures [*for the front sliding door*] were in place at the time.
- The referrer (in his response to a request for further information issued by the planning authority) re-confirmed that the erection of the steel supporting structure was included during the construction phase of the hangar and not after the hangar was completed.
- A developer is required to adhere to the plans submitted with the planning application even where the proposed departure from the plans would constitute exempted development (*Horne v Feeney, Murphy, J. unreported High Court 7th, July 1982* cited).
- During the construction phase the developer carried out an [*unauthorised*] amendment to the permitted development by erecting the steel supporting structures and, therefore, did not complete the structure in strict accordance with the terms of the planning permission under Reg. Ref. P06/1206. Furthermore, the constructed development deviates from the permitted development insofar as the permitted development allowed for a sectional hangar door and not a sliding door with sliding mechanism at ground level.
- The provisions of Section 4(1)(h) of the Act do not apply in this instance as the structure was not completed in strict accordance with the terms of the aforementioned planning permission.

Other Technical Reports

3.3.2. None

4.0 Planning History

Subject Site:

Reg. Ref. 06/1286 – Planning permission granted by the planning authority to Kilkenny Airport Limited per Order dated 20th, September 2006 for the erection of a hangar for the storage of an aircraft.

Appeal No.10.LV.2590 - The Board refused Reichard Cass of Holdenrath, Co. Kilkenny leave to appeal the planning authority decision under Reg. Ref. 06/1286.

Reg. Ref. 11/520 – Planning permission granted by the planning authority for an extension of the duration of the planning permission granted under Reg. Ref. 06/1286.

Adjoining Site:

Referral No. 10.RL.3331 – This is a current referral before the Board concerning a question as to whether the use of lands at Kilkenny Airport, Holdenrath, Co. Kilkenny for Airport and Aviation use is or is not development and is or is not exempted development.

Referral No. 10.RL.3240 – The Board determined per Order dated 14th, January 2015 that the intensification of use of Kilkenny Airfield for sponsored parachute jumping is development and is not exempted development.

Reg. Ref. 11/179 - Planning permission refused by the planning authority for the retention for a period of 10 years of a metal storage container used as a club room for the Recreational Flying Club. The structure which was located to the north of the control tower on site was subsequently removed. Two reasons for refusal were stated by the planning authority, Briefly, these reasons related to (1) consolidation and intensification of existing unauthorised development and (2) wastewater treatment and disposal.

Reg. Ref. 11/180 - Planning permission refused by the planning authority for the retention for a period of 10 years of a portacabin used as a club room for the Recreational Flying Club. The structure which was located to the north of the control tower on site was subsequently removed. Two reasons for refusal were stated by the planning authority, Briefly, these reasons related to (1) consolidation and intensification of existing unauthorised development and (2) wastewater treatment and disposal.

Reg. Ref. 05/753: - Planning permission granted by the planning authority to M Breen, D. Bowe, D. Carr and T. Toner for a single storey light-weight structure for the storage of aircraft. Condition No. 3 attached to this grant of planning permission limited the period of the permission to 7 years. The structure was then to be removed unless a subsequent grant of planning permission had been obtained. [It appears that this structure remains on site]

Reg. Ref. 04/241 – Outline planning permission granted by the planning authority to Kilkenny Airport Limited for a single storey extension to the existing club house/control tower building. [It appears that this development did not proceed]

Appeal No. 10.LV.2276 – The Board refused Richard Cass, Holdenrath, Co. Kilkenny leave to appeal the planning authority decision under Reg. Ref. 04/241.

Reg. Ref. 1/1/5312 – Planning permission was granted by the planning authority per Order dated 20th, May 1976 for the construction of a reception area and lookout tower at Holdenrath, Co. Kilkenny.

Enforcement:

ENF 10135: An Enforcement Notice (dated 9th, March 2012) was issued relating to an unauthorised portacabin style structure and timber decking in the confines of Kilkenny Airport. It was served on Tandem Skydive Club. The planning authority subsequently determined that the Notice had been complied with.

ENF 12051: An Enforcement Notice (dated 22nd, May 2012) was issued seeking the cessation of the unauthorised commercial skydiving activity related to Freefall Ireland

Skydive Centre Limited T/A Tandem Skydive Kilkenny. The planning authority subsequently determined that the Notice had been complied with.

ENF 14036: - Enforcement case concerning a number of complaints received by the planning authority in May 2014 relating to the use of the airfield for intensive commercial skydiving.

5.0 Policy Context

5.1. Natural Heritage Designations

The subject site is located c. 3km from the River Barrow and River Nore Special Area of Conservation (SAC) (Site Code 002162).

The site of the proposed development is located c. 3km from the River Nore Special Protection Area (SAC) (Site Code 004233).

6.0 Referral

6.1. Referrer's Case

- 6.1.1. The referrer in a submission received by the planning authority on 23rd, March 2017 asked the planning authority the question as set out at paragraph 2.1 above. No submission was received from the referrer making a case for or against the works constituting development or for or against the works constituting exempted development.
- 6.1.2. On 29th, May 2017 the referrer referred the planning authority decision (that the works constituted development which was not exempted) to the Board for review pursuant to the provisions of Section 5(3)(a) of the Act.
- 6.1.3. The referrers submission to the Board states that the steel structure to support the sliding door to the front of the hangar building was added during the construction of the hangar building permitted under Reg. Ref. 06/1286.

6.2. Planning Authority Response

- 6.2.1. Based on an inspection of the site carried out by the planning authority on 4th, November 2016 and the referrer's response to a request for further information issued by the planning authority issued in the course of its determination of the referral, the planning authority have concluded that the steel structure to support the sliding door to the front of the hangar building was constructed as part of the development of the hangar building.
- 6.2.2. The planning authority note that the exempted development provision provided under S4(1)(h) of the Act, but consider that this exemption only applies in the case of development carried out to any existing structure and does not apply in relation to modifications to a permitted development made in the course of the construction of the development.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended.

- 7.1.1. Section 2(1) (Interpretation) states:

*'In this Act, except where the context otherwise requires-
'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....'*

"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

- 7.1.2. 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.'

- 7.1.3. Section 4 (1) (h) states:

'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.'

7.1.4. Section 4(4) states:

Notwithstanding.....any regulations under subsection 2, development shall not be exempted development if an environmental impact assessment or appropriate assessment of the development is required.

7.2. **Planning and Development Regulations, 2001, as amended.** (the "Regulations").

None applicable

8.0 **Assessment**

8.1. **Is or is not development**

- 8.1.1. It is common case between the referrer and the planning authority (based on observations at the time of a site inspection undertaken by the planning authority on 4th, November 2016) that the steel structure to support the front sliding door to the hangar was included as part of the construction of the hangar building development. Accordingly, I consider that the question as to whether or not the steel support structure constitutes development must be answered in the context of whether or not the entire hangar building constitutes development or not.
- 8.1.2. I consider that the construction of the hangar building (incorporating the steel support structure) comes within the definition of works provided under Section 2(1) of the Act. Even if one were to allow for the severance of the steel support structure from the balance of the hangar building project and consider the question of whether or not it constitutes works as a stand-alone entity, I consider that by virtue of its nature and scale the steel structure comes within the statutory definition of works.
- 8.1.3. Accordingly, I consider that the steel support structure, considered either as part of the hangar building project or as a stand-alone entity, constitutes development as defined for the purposes of Section 3(1) of the Act.

8.2. Is or is not exempted development

- 8.2.1. Pursuant to the provisions of Section 4(1)(h) of the Act 'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works 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.' are deemed to be exempted development.
- 8.2.2. The steel structure to support the front sliding door of the hangar building is of significant scale relative to the size of the hangar building and is clearly visible from within the subject site and from a number of vantage points within the context of the wider airport site. Nonetheless, having regard to the nature, character and design of the hangar building I consider that, on balance, the steel support structure as a stand-alone entity does not materially affect the external appearance of the hangar structure so as to render it inconsistent with the character of the structure itself. The hangar building is well separated from other buildings within the airport and, given its context and setting, the building does not directly relate to any buildings (including houses) outside the airport site. The entire site is well screened from buildings outside the site by mature boundary hedgerows. Given this context, I consider that the steel support structure does not materially affect the external appearance of the hangar structure so as to render it inconsistent with the character of neighbouring structures. (A second hangar building within the Airport has a similar steel support structure to accommodate a sliding door).
- 8.2.3. However, as has been pointed out by the planning authority, the steel support structure was included as an integral part of the project in the construction of the hangar building (this has been acknowledged by the referrer in correspondence with the planning authority). A person is entitled to avail of the exempted development provision under Section 4(1)(h) in relation to modifications to any existing structure only. A person is not entitled to make material alterations in the course of the construction of a permitted development on the basis that the alterations would otherwise be exempted pursuant to the operation of Section 4(1)(h). The planning authority point out that a developer is required to adhere to the plans submitted with the planning application even where the proposed departure from the plans would constitute exempted development (*Horne v Feeney, Murphy, J. unreported High Court 7th, July 1982* cited).

- 8.2.4. On balance, I share the conclusion of the planning authority that the steel support structure in this instance does not constitute exempted development by virtue of the operation of Section 4(1)(h).
- 8.2.5. Notwithstanding the fact that I consider that the steel support structure (considered as an independent entity separate to the hangar building) would not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure (hangar) or of neighbouring structures, I consider that the steel structure is significant in scale relative to the permitted hangar building and the modifications made to the permitted development are not de minimus.
- 8.2.6. There are no other exemptions under the Act or Regulations that the referrer can avail of in relation to the development.
- 8.2.7. In conclusion, therefore, on the basis of the documentation available on file, I consider that the development is not exempted development.

8.3. Restrictions on exempted development

- 8.3.1. The only restrictions on the exemption provided under Section 4(1)(h) of the Act, that might apply in the current instance, is the restriction contained in Sections 4(4) of the Act.
- 8.3.2. Section 4(4) provides that certain developments requiring Environmental Impact Assessment and Appropriate Assessment cannot avail of certain exemptions otherwise provided for under the Act. The nature of the development in this instance would not require Environmental Impact Assessment or Appropriate Assessment or an application for substitute consent.

8.4. Appropriate Assessment

- 8.4.1. Having regard to the nature and limited scale of the development, to the distance between the subject site and the nearest designated European site and to the nature of the receiving environment, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.5. Environmental Impact Assessment

- 8.5.1. Having regard to the nature and scale of the development and the nature of the receiving environment there is no real likelihood of significant effects on the environment arising from the development. Any potential requirement for environmental impact assessment can, therefore be excluded at preliminary examination and a screening determination is not required.

9.0 RECOMMENDATION

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

WHEREAS a question has arisen as to whether an existing steel structure included during the construction of an existing hangar building to support the sliding doors to the front of the building at Kilkenny Airport, Holdensrath, Co. Kilkenny is or is not development or is or is not exempted development:

AND WHEREAS Eoin Nevin. Iris Skydiving Club, Kilkenny Aerodrome, Holdensrath, Co. Kilkenny requested a declaration on this question from Kilkenny Council and the Council issued a declaration on the 4th day of May, 2017 stating that the matter was development and was not exempted development:

WHEREAS Eoin Nevin referred this declaration for review to An Bord Pleanála on the 29th day of May 2017:

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)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(4) of the Planning and Development Act, 2000, as amended,
- (e) the documentation on file,
- (f) the planning history of the site and
- (g) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The existing steel structure to support the sliding doors to the front of the existing hangar building at Kilkenny Airport was included as part of the construction of the hangar building permitted under Reg. Ref. P06/1206.
- (b) These works constitute development as defined for the purposes of Section 3(1) of the *Planning and Development Act, 2000*, as amended. The inclusion of a steel structure to support the sliding doors to the front of the hangar building constitute development not strictly in accordance with the conditions of development permitted under Reg. Ref. P06/1206. Having regard to the nature and character of the permitted development and the character of the steel support structure, the modifications to the permitted development are not de minimus alterations to the permitted development.
- (c) The steel structure to support the sliding doors to the front of the existing hangar building were included as part of the construction of the hangar building. Therefore, they cannot be classified as

'development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure'. Accordingly, any exemption that might otherwise apply by reason of the operation of Section 4(1)(h) of the *Planning and Development Act, 2000*, as amended, cannot be availed of in this instance.

- (d) There are no other exemptions that apply to the development pursuant to the *Planning and Development Act, 2000*, as amended or under the *Planning and Development Regulations, 2001*, as amended.

THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) of the 2000 Act, hereby decides that the existing steel structure included during the construction of an existing hangar building to support the sliding doors to the front of the building at Kilkenny Airport, Holdensrath, Co. Kilkenny is development and is not exempted development.

Paddy Keogh
Planning Inspector

7th, October 2019