



An  
Bord  
Pleanála

## Inspector's Report

26. RL 3607

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<b>Question</b>	Whether the use of lands at Belvedere Road as a construction compound to facilitate development on a site at Belvedere Road is development and if so is it or is it not exempted development.
<b>Location</b>	Belvedere Road, County Wexford
<b>Declaration</b>	
Planning Authority	Wexford County Council
Planning Authority Reg. Ref.	N/A
Applicant for Declaration	Wexford County Council
Planning Authority Decision	N/A
<b>Referral</b>	
<b>Referred by</b>	Wexford County Council
<b>Occupier</b>	BAM Building Ltd.
<b>Observer(s)</b>	Bernie Lloyd, Davitt Road North/Windmill Hill Residents Group
<b>Date of Site Inspection</b>	27/09/2017
<b>Inspector</b>	Erika Casey

## 1.0 **Site Location and Description**

- 1.1. The subject site is located to the west of Wexford Town centre. It has frontage to both Belvedere Road and Saint John's Drive. To the north of the site, is an area of open space. To the south of the site, are a number of large detached dwellings. The site itself is currently occupied by a construction compound. It accommodates a number of containers, skips, construction equipment, materials and machinery. It is bound by a low stone wall. There is mature vegetation along the southern boundary. The general character of the area is residential.
- 1.2. The site to which the construction compound relates is located to the north. A courthouse is under construction on this site and works are at an advanced stage. It is physically separated from the compound by a large area of open space and road. It is located c. 78 metres from the compound site.

## 2.0 **The Question**

- 2.1 The question that has arisen is whether the use as a compound of land, as outlined in red on the attached map and facilitating the development on the site marked A again on the attached map development and if so is it or is it not exempted development.
- 2.2 For clarity, it is recommended that this wording be amended as follows:

*“Whether the use of lands at Belvedere Road as a construction compound to facilitate development on a site at Belvedere Road is development and if so is it or is it not exempted development.”*

## 3.0 **Planning Authority Declaration**

### 3.1. **Declaration**

- 3.1.1 None in this case – the Planning Authority (Wexford County Council) is the referrer – see section 6.1 below.

## 4.0 **Planning History**

- 4.1 There have been no previous planning applications on the subject site.

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1 The operative Development Plan is the Wexford Town and Environs Plan 2009, extended to 2019. The subject site is zoned Residential - Medium and it is identified as a Gateway Site within zone 7: Carricklawn to Summerhill.

### 5.2. Natural Heritage Designations

5.2.1 None applicable.

## 6.0 The Referral

### 6.1. Referrer's Case

#### **Wexford County Council (27/07/2017)**

- The subject construction compound is to serve an Office of Public Works development site which is being developed for a courthouse.
- The open space area located between the proposed compound site and the courthouse site is the historic fairgreen, reputedly the site of one of the rebel camps of 1798.
- The council have advised residents that it is considered that the use of the land as a compound is exempt under Class 16 of the Planning and Development Regulations 2001. This states:

*“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Acts or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.*

*Such structure, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.”*

It is in this context, that the referral is sought.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

**Section 3(1)** of the Act states the following in respect of ‘development’:

*“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.”*

**Section 2 (1)** of the Act provides the following definitions:

*“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 land, or any part of a structure so defined.”*

**Section 4 (1)** sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

**Section 4 (2)(a)** of the Act enables certain classes of development to be deemed exempted development by way of regulation.

### 7.2. Planning and Development Regulations, 2001

**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 certain conditions and limitations.

**Article 9 (1)** of PDR sets out various restrictions on works that would otherwise be exempted development under Article 6.

**Part 1 of Schedule 2** of the Planning and Development Regulations refers to the following classes of development –

#### Column 1

#### Description of development

#### CLASS 16

*“The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted*

*development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.”*

## **Column 2**

### **Conditions and Limitations**

*“Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.”*

## **8.0 Assessment**

### **8.1 Preliminary Matters**

8.1.1 It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the construction compound, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

8.1.3 In carrying out this assessment, the planning referrals data base was consulted. The following referral of relevance was found.

#### **Reference 04.RL.2629 (Decided January 2010):**

8.1.4 The question arose as to whether temporary works, including the construction compound, hard standing areas, ancillary car parking and associated signage on lands at Douglas Woollen Mills, in relation to the redevelopment of Douglas Village Shopping Centre at Douglas Village Shopping Centre, Douglas, County Cork are or are not exempted development. The Board concluded that:

*(a) the land at Douglas Woollen Mills, on which the works have been carried out, does not constitute land adjoining the land on which the authorised development of the Douglas Village Shopping Centre is being carried out, but in terms of planning and sustainable development is distant and separated from that land,*

*(b) accordingly, the works do not come within the exempted development provisions of either class 16 or class 17 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001, because the land on which the works have been carried out does not constitute land adjoining the land on which the authorised development of the Douglas Village Shopping Centre is being carried out.*

### 8.1.1 Is or is not development

8.1.2 The subject development comprises a construction compound. It currently accommodates numerous shipping containers as well as large quantities of construction machinery, materials and equipment. A new site entrance from the Belvedere Road has been created. At the time the site visit was undertaken, the compound was in active use.

8.1.3 I am satisfied that the change of use of the subject site from undeveloped greenfield lands to that of an extensive construction compound would constitute a material change of use as it gives rise to a significant intensification of activities from a planning perspective. I am also satisfied that 'works' have been undertaken due to the creation of a new vehicular entrance to the site. The construction compound would therefore, be considered to constitute development.

### 8.2 Is or is not exempted development

8.2.1 Section 4(1) of the Act sets out provisions in relation to exempted development. It is not considered that the construction compound complies with any of these provisions.

8.2.2 Section 4(2) of the Act provides that the Regulations can make provision in respect of exempted development. This is done by Article 6, which provides that development of a class specified in Schedule 2 of the Regulations shall be exempted provided that the conditions and limitations attached to those various classes are met.

8.2.2 It is set out by the applicant that the subject compound is considered exempt by virtue of Class 16 which states:

*"The erection, construction or placing on land on, in, over or under which, **or on land adjoining** which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out."*  
(my emphasis)

8.2.3 In this instance, it is considered that the subject construction compound relates to structures, works, plant or machinery that are needed temporarily in connection with

the construction of the courthouse on Belvedere Road. Class 16, however, is specific in that such development must be carried **on the land or adjoining the land** where the works are being or about to be carried out.

8.2.4 The subject referral site is in fact physically separated from the construction site by a distance of approximately 78 metres. It is located to the north of the construction site and is physically separated from it by a large area of open space and two roads.

8.2.5 “*Adjoining*” is not defined in the Planning and Development Regulations. According to the Oxford English Dictionary, “*adjoining*” is defined as “*next to or joined to something*”. It is considered, therefore, that the lands on which the construction compound is located does not constitute lands adjoining the site on which the development of the courthouse is being carried out.

8.2.6 Accordingly, the development does not come within the exempted development provisions of Class 16 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001.

### 8.3.1 **Restrictions on exempted development**

8.3.1 Article 9 of the Regulations sets out a number of restrictions on exempted development. 9 (1) (a) (ii) states:

*“consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.”*

8.3.2 A new access point onto the Belvedere Road to facilitate access to the construction compound has been formed. Belvedere Road is a public road, the surface carriageway of which would exceed 4 metres. In this regard, should the Board be minded to consider that the development was exempted under Class 16, cognisance of this restriction should be had.

### **Appropriate Assessment**

8.3.2 Having regard to the nature and extent of the development within an established urban area, and that the distance of the site to nearest European site, 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.

## 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 use of lands at Belvedere Road as a construction compound to facilitate development on a site at Belvedere Road is development and if so is it or is it not exempted development.

**AND WHEREAS** Wexford County Council requested a decision on this question from An Bord Pleanála on the 28<sup>th</sup> July 2017.

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

- (a) Sections 2(1), 3(1), 4(1) and 4(2) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6(1) Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 16, Schedule 2, Part 1 to the Planning and Development Regulations, 2001, as amended,

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The development comprising the change of use of the site to a construction compound would constitute a material change of use that is development under section 3 of the Planning and Development Act 2000 (as amended).
- (b) The works comprising the construction of a new vehicular entrance to the site from Belvedere Road would constitute works that are development under section 3 of the Planning and Development Act 2000 (as amended).
- (c) the land at Belvedere Road, on which the construction compound is



located, does not constitute land adjoining the land on which the development is being carried out, but is physically separated from that land.

- (d) accordingly, the construction compound does not come within the exempted development provisions of Class 16, Schedule 2, Part 1 to the Planning and Development Regulations 2001 and
- (e) does not come within any of the other exempted development provisions of the Act or Regulations.

**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 construction compound is development and is not exempted development.

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**Erika Casey**

**Planning Inspector**

**18th October 2017**