



An  
Bord  
Pleanála

## Inspector's Report 08.RL3804

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<b>Question</b>	Whether the relocation of an industrial building within the same industrial park is or is not development or is or is not exempted development.
<b>Location</b>	Killerisk Business Park, Tralee, Co. Kerry.
<b>Declaration</b>	
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	EX591
Applicant for Declaration	Bernadette Davis
Planning Authority Decision	Is not exempted development
<b>Referral</b>	
<b>Referred by</b>	Bernadette Davis
<b>Owner/Occupier</b>	Bernadette Davis/Dublin Coach
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> December 2017
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

- 1.1. The site is located within Killerisk Business Park (former engineering headquarters for Department of Posts & Telegraphs) within suburban Tralee, Co. Kerry – to the southeast of the town centre. Access to the business park is from Killerisk Road, which forms the southern boundary. The business park is abutted by Castlewood Park housing estate to the west, and Castlawn Drive housing estate to the east. To the north, the business park abuts disused land. The access to the business park is recessed and gated. The building (the subject of the referral) was locked on the date of site inspection, but a sign on the door indicated that it was used by Dublin Coach. It is constructed of steel frame, with pressed metal cladding panels on the roof and exterior walls. There are two roller-shutter vehicular doors to the building.
- 1.2. To the south of the site is a car-sales compound (Randle's Motors)– surrounded by palisade fencing. To the west and north of the building (on higher ground) is a repair garage (Mario's Garage) premises and hard-core external storage, upon which were parked two Dublin Coach vehicles. To the east of the building is access to the aforementioned garage and hard-standing used for parking of vehicles. Immediately to the east again is an area fenced off by palisade fencing. What appears to be the concrete base of the building (moved to the referral site), is located within this fenced compound.

## 2.0 The Question

- 2.1. Whether the relocation of an industrial building within the same industrial/business park is or is not development or is or is not exempted development.
- 2.2. Bernadette Davis (the owner of the building) sought a section 5 declaration from Kerry County Council on 19<sup>th</sup> July 2017, on the above question – following the institution of unauthorised development proceedings (Ref. EX591) against the occupants of the building – Dublin Coach.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

By Order dated 14<sup>th</sup> August 2017, Kerry County Council issued a declaration to the effect that the relocation of an industrial building within the same industrial park does not constitute exempted development.

### 3.2. Planning Authority Reports

The Kerry County Council Planner's Report of 11<sup>th</sup> August 2017, can be summarised in bullet point format as follows-

- The building at issue is a metal-clad structure used by Dublin Coach.
- No indication is given of the former location of the building (as claimed by the referrer).
- The building is located approximately 60m due north of a building occupied by the Irish Red Cross (permission ref. 16/699).
- The footprint of the building at issue is approximately 15 x 20m.
- The OS map for the year 2010 shows no building in this location. It is assumed, therefore, that it was erected sometime between 2010 and 2017. This OS map shows that there was a building of approximately the same dimensions located approximately 65m to the east of the current location. [These positions are indicated as A & B on an annotated map which accompanies the Report].
- The building at Location B was probably used as a store/shed by the Departments of Posts & Telegraphs.
- Permission granted by Tralee Town Council for a residential development on these lands (Ref.06/307155), included provision for demolition of sheds and store buildings. The building may have been demolished under this permission.
- The P&D Act and regulations makes no provision for the relocation of industrial buildings.

- Works carried out would come within the scope of section 2(1) of the P&D Act, 2000 (as amended).
- The works would constitute development as per section 3(1) of the aforementioned Act.

The Report is accompanied by three black & white photographs of the building on the site.

## 4.0 Planning History

**PDA 1893/197/79 & 1893A/197/79:** Refers to consultation with Tralee UDC to develop an HQ building for the Department of Posts & Telegraphs: permitted on 27<sup>th</sup> February 1980.

Reference is made in the Planner's Report to a series of planning applications within the same industrial/business park – none of which are strictly relevant to the current reference case.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant document is the Tralee Town Development Plan 2009-2015 (as extended). The site is zoned for medium-density housing.

### 5.2. Natural Heritage Designations

The site is located neither within nor immediately adjoining any European site. The closest such is the Ballyseedy Woods SAC (Site code 002112) – located some 1.3km due east-southeast of the business park. There is no watercourse connection between the two. The site is connected to the public sewerage network. Having regard to the nature of the case, the scale of the development concerned, and proximity to 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.

## 6.0 The Referral

### 6.1. Referrer's Case

The referral, from Bernadette Davis, 'Rockall', The Spa, Tralee, received by the Board on 7<sup>th</sup> September 2017, can be summarised in bullet point format as follows-

- The site has been subject to an Enforcement Notice (U198-15) – stating that the metal-clad building used by Dublin Coach is unauthorised.
- The buildings on site were permitted under PDA 1893/197/79 for the erection of a HQ building for the Departments of Posts & Telegraphs, on 27<sup>th</sup> February 1980.
- Condition 2 required that no building be located within 30 feet of the southern edge of the proposed dual carriageway which adjoins the site.
- The location of the buildings was not specified in the grant of permission.
- The building at Location B was taken down and re-erected at Location A. The building was repainted.
- The movement of the building involved works, and so constitutes development. The repainting of the building is exempted development.
- The question is whether an existing, authorised structure can be moved from one location to another without requiring planning permission.
- The planning unit is the business park, as this is in one ownership.

### 6.2. Planning Authority Response

None received.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

S.2(1) Defines, amongst other things, "works" – as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

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

S.4(1) The following shall be exempted development for the purposes of this 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;

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

A.6(1) Provides that, 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 opposite the mention of that class in the said column 1.

A.9(1) Places a number of restrictions on the exempted development classes referred to in article 6 – none of which are of relevance to this referral.

Classes 21 & 22 relate to “Development for industrial purposes”.

### Class 21

- (a) Development of the following descriptions, carried out by an industrial undertaker on land occupied and used by such an 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-
- (i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,
  - (ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,

(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

- (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.

*Conditions & Limitations-*

1. Any such development shall not materially alter the external appearance of the premises of the undertaking.
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.

Class 22

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

*Conditions & Limitations-*

1. 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.

## 8.0 **Assessment**

### 8.1. **Is or is not development**

- 8.1.1. The referrer has argued that the overall industrial/business park is the planning unit, notwithstanding that it seems to have been split into a number of different businesses – many of which are located within separated compounds. I would not consider that the issue of a ‘planning unit’ has any relevance to this appeal. Section 2 of the Planning & Development Act, 2000 (as amended) defines “works”, *inter alia*, as any act of demolition or construction. A shed on this site (clearly indicated on OS maps as being approximately 60m to the east of the current location) was taken down and re-erected. The taking down of a structure is akin to the demolition of it –

albeit that the demolished materials were salvaged for reuse. The erection of the shed on a site to the west, comprised construction – again, albeit with salvaged materials.

- 8.1.2. Section 3 of the Act defines “development” as the carrying out of any works. I would be satisfied that there has been development on this site – the relocation of the shed. Such relocation can have ramifications for drainage, visual amenity, residential amenity, traffic safety etc. The referrer makes reference to a 1980 permission, with condition 2 being quoted as allowing for the location of any buildings on the site – provided they are not within 30 feet of a proposed dual carriageway. It is not reasonable to rely on a 1980 planning permission to provide for erection of industrial buildings on a site. The Planner’s Report from KCC refers to permission for erection of housing on the original site of the shed the subject of this referral – ref. 06/307155, which included provision for demolition of sheds. The building may have been demolished under this permission. However, no permission exists for its re-erection elsewhere within the industrial/business park.

## 8.2. **Is or is not exempted development**

- 8.2.1. Section 4(1)(h) of the Act provides that maintenance, improvement or other alteration of any structure would be exempted development. There is no mention made of relocation. The relocation of a building would render the appearance inconsistent with the character of the structure, given that the setting has been altered. I would be satisfied that this section of the Act does not apply in this instance.
- 8.2.2. Article 6(1) of the Regulations provides that certain classes of development can be considered to be exempted development. Classes 21 & 22 of Part 1 of Schedule 2, relate to development for industrial purposes. Neither of the two Classes makes any reference to relocation of an industrial building. Therefore, with no specific reference, the development cannot be considered to be 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 relocation of an industrial building within the same industrial/business park is or is not development or is or is not exempted development:

**AND WHEREAS** Bernadette Davis requested a declaration on this question from Kerry County Council, and the Council issued a declaration on the 14<sup>th</sup> day of August, 2017, stating that the matter was development and was not exempted development:

**AND WHEREAS** Bernadette Davis referred this declaration for review to An Bord Pleanála on the 7<sup>th</sup> day of September, 2017:

**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 (as amended),
- (c) Section 4(1)(h) of the Planning and Development Act, 2000 (as amended),
- (d) Articles 6(1) and 9(1) of the Planning and Development Regulations, 2001 (as amended),
- (e) Part 1 of Schedule 2 (Classes 21 & 22) 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 demolition, construction, alteration, repair and renewal

act/operation at this site constituted “works”;

- (b) arising from the “works” carried out, development has taken place on the site;
- (c) the works carried out included the demolition/dismantling of a shed and its re-erection approximately 60m to the west of the original location, which materially affected the external appearance of the structure, so as to render the appearance inconsistent with the character of the structure. Therefore, the provisions of section 4(1)(h) of the Planning and Development Act, 2000 (as amended) do not apply;
- (d) the exempted development provisions set down at Classes 21 & 22 or Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended), do not apply in relation to works which have been carried out at this site:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act, 2000 (as amended), hereby decides that the relocation of an industrial building within the same industrial/business park is development and is not exempted development.

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**Michael Dillon,  
Planning Inspectorate.**

**15<sup>th</sup> December 2017.**