



An
Bord
Pleanála

Inspector's Report 08.RL3805

Question

Whether the change of use of a building within the former Department of Posts & Telegraphs HQ to use as a bus maintenance depot is or is not development or is or is not exempted development.

Location

Killerisk Business Park, Tralee, co. Kerry.

Declaration

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

EX592

Applicant for Declaration

Bernadette Davis

Planning Authority Decision

Is not exempted development

Referral

Referred by

Bernadette Davis

Owner/Occupier

Bernadette Davis/Dublin Coach

Observer(s)

None

Date of Site Inspection

4th December 2017

Inspector

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 change of use of a building within the former Department of Posts & Telegraphs Area Engineering HQ to use as a bus maintenance depot is or is not development and is or is not exempted development.
- 2.2. Bernadette Davis sought a section 5 declaration from Kerry County Council on 19th July 2017, on the above question – following the institution of unauthorised development proceedings (Ref. EX592) against the occupants of the building – Dublin Coach.

3.0 Planning Authority Declaration

3.1. Declaration

By Order dated 14th August 2017, Kerry County Council issued a declaration to the effect that the change of use was not exempted development.

3.2. Planning Authority Reports

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

- The building at issue is a metal-clad structure used by Dublin Coach as a maintenance building.
- 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 – without planning permission. [The position is indicated as 'A' on an annotated map which accompanies the Report].
- The use of the building as a bus maintenance depot constitutes unauthorised development.

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 27th 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 7th 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 use as a bus depot is unauthorised.
- The buildings on site were permitted under PDA 1893/197/79 for the erection of a HQ building for the Department of Posts & Telegraphs, on 27th February 1980. Crews and their associated vehicles, machinery and equipment were based here to repair the phone network on a 24-hour basis. Trucks were stored, cleaned, refuelled and maintained on the site.
- In 2007, the site was sold to Osprey Ltd, who used it as a truck garage until 2013, when the referrer purchased the site. Murphy International used it as a

garage between 2013 and 2015. Since then Dublin Bus [sic] has used the garage.

- A planning application was made in September 2011 to extend the permission on the site to construct 40 houses and 12 apartments (ref. PDA 7155/7/06). This permission has not been implemented, and the depot use has continued: it has not been abandoned.
- The change in industrial use is not considered material. Section 3(1) of the Act recognises this.
- Where a material change of use occurs, section 4 provides for exempted development.
- The Regulations define “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”.
- The 2001 Regulations state- “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 treatment of minerals, and for the purposes of this paragraph, “article” includes- (i) a vehicle, aircraft, ship or vessel, or (ii) a sound recording, film, broadcast, cable programme, publication and computer program [sic] or other original database;”
- The nature of the authorised use was for an engineering use. The current use involves the cleaning, washing and maintenance of buses.
- The planning unit is the business park, as this is in one ownership.
- An unauthorised structure does not mean that the use of the overall site is unauthorised. It is believed that the use of the overall site is authorised as per permission granted in 1980.
- The Board has found in the past that development referred may be determined not to be development at all.

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.2(1) Defines, amongst other things, “unauthorised development” – means, in relation to land, the carrying out of any unauthorised works (including the construction, erection or making of any unauthorised structure or the making of any unauthorised change of use;

S.2(1) Defines, amongst other things, “unauthorised structure” – means a structure other than-

- (a) a structure which was in existence on 1 October 1964, or
- (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or *section 4* of this Act);

S.2(1) Defines, amongst other things, “unauthorised use” – means, in relation to land, use commenced on or after 1 October 1964, being development other than-

- (a) exempted development (within the meaning of section 4 of the Act of 1963 or *section 4* of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963, or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

S.2(1) Defines, amongst other things, “unauthorised works” – means any works on, in, over or under land commenced on or after 1 October 1964, being development other than-

(a) exempted development (within the meaning of section 4 of the Act of 1963 or *section* 4 of this Act), or

(b) development which is the subject of a permission granted under Part IV of the Act of 1963, or under section 34, 37G or 37N of this Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

S.2(1) Defines, amongst other things, “use” – in relation to land, does not include the use of the land by the carrying out of any works thereon;

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.

7.2. Planning and Development Regulations, 2001

A.5(1) states, in relation to ‘exempted development’, in the 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;

“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 treatment of minerals,

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

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

(ii) a sound recording, film, broadcast, cable programme, publication and computer program [sic] or other original database;

Classes 21 & 22 of Part 1, Schedule 2, deal with ‘Development for industrial purposes’. There is no reference to buildings or uses within these two classes.

8.0 Assessment

8.1. Is or is not development

8.1.1. Section 3(1) provides that “development” includes the making of any material change in the use of any structure or other land. There is an associated referral case (08.RL3804) with this referral, which deals with the status of the building on this site – from which Dublin Coach operates. The conclusion in that referral case, in relation to the planning status of the building, was that the demolition/dismantling of an industrial building, and its relocation elsewhere within an industrial/business park, constituted development and was not exempted development. Therefore, the building from which Dublin Coach is operating is an unauthorised structure. Having regard to the fact that the structure is unauthorised, no use operating from it can be considered an authorised use. Section 2(1) of the Act defines both “unauthorised structure” and “unauthorised use”. Having regard to these definitions, I would consider that the building itself is an unauthorised structure and that the use could not, therefore, be authorised. Therefore, the question put to the Board is not one of change-of-use, but rather of permission for the existing structure. I would consider it fruitless to speculate on whether the use would or would not constitute exempted

development, had the building itself, from which Dublin Coach is operating, constituted an authorised structure.

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 of a building within the former Department of Posts & Telegraphs HQ to use as a bus maintenance depot, 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 14th day of August, 2017, stating that the change of use was not exempted development:

AND WHEREAS Bernadette Davis referred this declaration for review to An Bord Pleanála on the 7th day of September, 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 (as amended),
- (c) Articles 6(1) and 9(1) of the Planning and Development Regulations, 2001 (as amended),
- (d) Part 1 of Schedule 2 (Classes 21 & 22) to the Planning and Development Regulations, 2001 (as amended),

- (e) the planning history of the site,
- (f) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that the building from which Dublin Coach is operating, and which forms the location within which the purported change of use has taken place, is an unauthorised structure. Therefore, the use of the building is consequently, unauthorised, and does not constitute exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the of the Planning and Development Act, 2000 (as amended), hereby decides that the building, the subject of this referral, is an unauthorised structure, and the purported change of use cannot, therefore, be considered to be exempted development.

**Michael Dillon,
Planning Inspectorate.**

14th December 2017.