

Brady Hughes

CONSULTING

The Secretary
An Bord Pleanála
Marlborough Street
Dublin 1

AN BORD PLEANÁLA
LDG- 016215-19
ABP- _____
27 MAY 2019
Fee: € 220- Type: Cheque
Time: _____ By: _____

23rd May 2019.

RE: Referral of decision by Louth County Council on Section 5 Declaration application in relation to a change of use which has already occurred at premises owned by Kevin Wall, and operated by Swift Engineering Ltd. at Rathgory, Dunleer, Co. Louth.

Dear Sir/Madam,

On behalf of my clients Liam and Deirdre Ryan, I wish to formally refer to you the decision that Louth County Council have made in respect to an Application for Declaration on Development and Exempted Development Under Part 1, Section 5 of the Planning and Development Act 2000 (as amended).

Liam & Deirdre Ryan address is Castletown, Dunleer, Co. Louth. We, Brady Hughes Consulting, are the agent and our address is 26 Magdalene Street Drogheda, Co. Louth.

In this regard please find attached a copy of the Section 5 application which was submitted to Louth County Council on April 11th last and this comprises the following documents:

1. The Application Form
2. The Cover Letter which accompanied the declaration application setting out our client's views and position.
3. Drawing 047-02-001 Site Location Map
4. Site Layout Plan from planning file 051008
5. Drawings of the steel fabrication building from planning file 051008

Please also find attached a copy of the Decision issued by Louth County Council dated May 3rd and a copy of the planners report on the matter setting out how this decision was reached. I've also included a copy of the Planning Ref 051008

Please also find attached a cheque in the sum of €220 the prescribed fee in respect of an R1 referral whereby we wish to refer to An Bord Pleanála a declaration made by a planning authority on a question that was put to it.



REC-118-212-118

27 MAY 2019

REC-118-212-118

The

The Secretary
 An Bord Pleanála
 Marlborough Street
 Dublin 1
 23rd May 2019

RE: Referral of decision by Louth County Council on Section 5 Declaration application in relation to a change of use which has already occurred at premises owned by Kevin Wall, and operated by Swift Engineering Ltd. at Rathgory, Dunleer, Co. Louth.

Dear Sir Madam,

On behalf of my clients Liam and Deirdre Ryan, I wish to formally refer to you the decision that Louth County Council have made in respect to an Application for Declaration on Development and Exempted Development Under Part 4, Section 5 of the Planning and Development Act 2000 (as amended).

Liam & Deirdre Ryan address is: Castletown, Dunleer, Co. Louth. We, Brady Hughes Consulting, are the agent and our address is 26 Magdalene Street, Drogheda, Co. Louth.

In this regard please find attached a copy of the Section 5 application which was submitted to Louth County Council on April 11th last and this comprises the following documents:

1. The Application Form
2. The Cover Letter which accompanied the declaration application sent out our client's views and position.
3. Drawing 047-02-001 Site Location Map
4. Site Layout Plan from planning file 051008
5. Drawings of the steel fabrication building from planning file 051008

Please also find attached a copy of the Decision issued by Louth County Council dated May 3rd and a copy of the planners report on the matter sent out how this decision was reached. I've also included a copy of the Planning Act 2000.

Please also find attached a cheque in the sum of €250 the prescribed fee in respect of an RTI referral which we wish to refer to An Bord Pleanála a declaration made by a planning authority on a question that was put to it.

Background to the application.

My clients Liam and Deirdre Ryan, who together with their 4 young children, live adjacent to the subject site and premises. This building was used as a timber workshop by Kevin Wall (owner of the building) from 2006 to 2008 approx. During that time, my clients enjoyed a good relationship with Mr. Wall's business which operated in accordance with the provisions of the planning permission under which it operated (051008). Following the closure of Mr. Wall's timber workshop, the premises was occupied by Swift Engineering Ltd in or about 2013.

Swift Engineering Ltd make and erect steel framed buildings, and according to their website (www.swiftengineering.ie), provide engineering products and services to '*Ireland's most prolific marine, water treatments, structural and engineering projects*'. The effects of the change from Mr Wall's furniture business to Swift Engineering's heavy steel fabrication business on our client's residential amenity has been material with respect to noise, vibration, hours of operation, number of employees, number and nature of deliveries, and road safety (in particular, safety of pedestrians). It is certainly the case that the change in use and working practices which has occurred in the building adjacent to our client's home has had a detrimental effect on the value of their property.

We are of the view that changing the use from a timber workshop to a steel fabrication facility constitutes development and that it is development which requires a grant of planning permission. Our reasons for forming this view are set out in the documents submitted to Louth Co Co with our declaration application.

The main reason we feel that a development has occurred is that the planning permission (LCC Reg Ref 05/1008) under which Swift Engineering are currently operating has the following text as condition 1:

<u>L.C.P. 147/06</u>	<u>REFERENCE NO. 05/1008</u>
<p>1. The works shall be carried out in strict accordance with the lodged plans and specifications submitted to the Planning Authority, save for the conditions attached below. In any event the proposed building shall be used as a timber workshop with associated showroom / display area.</p>	
<p>Reason: In order to prevent unauthorised development.</p>	

This condition limits the use to timber workshop, and it limits its operation to accord with the details and information provided to the planning authority, on foot of which planning permission was granted.

We also believe that the business has intensified significantly, with increased staff, longer hours of work, works taking place outside etc. We believe that there are environmental risks, and traffic risks associated with the current operation, and these were not considered in 2005 when permission for a timber workshop was being considered.

When determining whether a material change of use has occurred, one must look at the character of the existing use of the land/premises before, and then, after the change. Part of this requires looking at the materiality of the external impact the change brings about on the land i.e. the effect of the change, and not just the use itself. This is a key consideration in this application. The effects of the change on my client's ability to enjoy living in their home have

been devastating due to the nature of the constant noise, disruption, weekend and late-night working, etc etc.

Louth County Council Decision

According to the decision issued by Louth County Council on May 3rd, they considered the following question:

WHEREAS a question as to whether the change of use of a building previously granted permission and used for the manufacturing of kitchen units to a use for steel fabrication is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.

This paraphrasing of the issue as outlined in the application form submitted to the planning authority does not properly reflect the question posed. The question was whether or not the change of use that has already occurred at this specific premises was or was not development, and whether it would require planning permission, given that there was a condition attached to the original planning permission specially limiting the use of the building to 'timber workshop'.

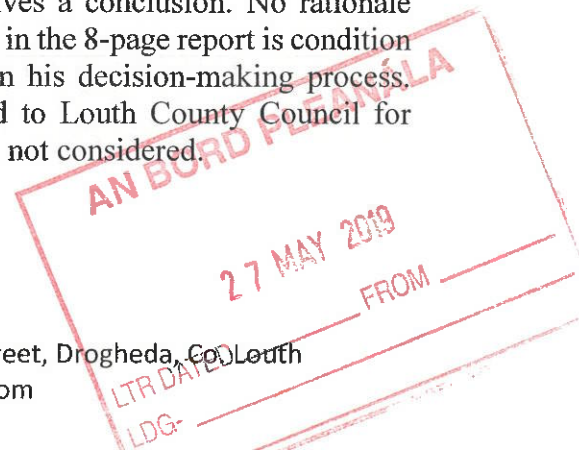
The decision issued by the planning authority is stated as follow:

AND WHEREAS Louth County Council concludes that the change of use of the property for steel fabrication is exempted from the requirement to obtain planning permission under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

NOW THEREFORE Louth County Council in exercise of the powers conferred on it by Section 5 (2) (a) of the Planning and Development Act, 2000, hereby decides that the use is exempt from the requirement to obtain planning permission.

It is interesting to note that the question they considered related to 'a building' but the decision issued related to 'the property'. A broad question of principle was considered and then applied to this specific property. I don't believe that this is the correct approach – the specific of this property are very relevant, but they were not considered in any meaningful way.

The planners report sets out matters considered and then gives a conclusion. No rationale whatsoever is provided for the conclusion reached. At no point in the 8-page report is condition 1 of 05/1008 referred to, or how that condition impacted on his decision-making process. Condition 1 is material to the question which we submitted to Louth County Council for consideration. It seems that Condition 1 of 05/1008 and it was not considered.



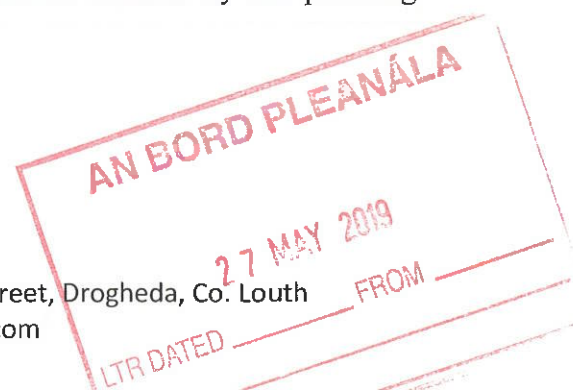
I note on page 6 of the planners report that under a heading 'Scope of permission granted under PA Ref. 05/1008', a screen grab of the e-plan summary is provided. It seems as if the planner believes that the scope is defined by the description of the development. This is not so -that scope is limited significantly by the conditions attached to the permission and these are not considered at all.

Scope of Permission granted under PA Ref. 05/1008				
051008	APPLICATION FINALISED	C	21/07/2005 Thursday	Kevin Wall
			Former Transport Museum Rathgory Dunleer	(P) Change of use of existing outbuildings from storage use to timber workshop and showroom, this to include reclad of existing building with metal cladding, new septic tank, car parking and all associated works

I would respectfully suggest that the Bord examine the case law referred to in the planner's report. Various cases are listed, and it appears that they justify the decision reached. I believe that the judgements issued in every one of these cases supports my clients position i.e.

- Material alterations have occurred in the activities carried out on the lands in question and this constitutes a change of use. (Ref O'Sullivan and Shepherd)
- We have pointed out matters that affect the proper planning and development of the area (impact on residential amenity, road capacity, road safety, environmental considerations etc) (ref Galway V Lackagh Rock)
- The effects of the change of use on the proper planning and development of the area are to be considered. This includes effects on residential amenity, noise and disturbance being different from one use to another. Effects on residential amenity of the steel works are different to those of the former timber workshop (Ref Mahon V IRFU)
- There is no implicit right in the Planning Acts to breach specific conditions (Ref Dublin Corp V Moore). The purpose of conditions is clear in the Act.
- An increase in the number of large vehicles serving the development is accepted as an indication of intensification. Impact in intensification of heavy vehicles (associated with the steel fabrication) is more significant in planning terms than the impact of smaller private vehicles (like those associated with the former workshop making kitchens and wardrobes). (Ref Molomby V Kearns)

In my opinion, none of the cases quoted support the conclusion reached by the planning authority in any way.



Conclusion

We trust that you will take the foregoing and the details and information that we supplied to Louth County council with our application into consideration and that when determining this Section 5 declaration decision referral.

We hope that you will find that the development (change from timber work shop to steel fabrication facility, despite condition 1 of 05/1008) as outlined in the application form is in fact 'Development' as defined by the Planning And Development Act 2000 (as amended) and that it does require planning permission.

Your Faithfully



Brian Hughes
BA BAI CEng MIEI
Chartered Engineer



Louth County Council

Town Hall, Crowe Street, Dundalk, County Louth

Application For Declaration on Development and Exempted Development Under Part 1, Section 5 of the Planning and Development Act 2000 (as amended)

1. Name and address of Applicant:

Liam Ryan

Phone Number _____ Fax No: _____ E-Mail _____

2. Name and address of Agent (if any)

Brian Hughes, Brady Hughes Consulting, 26 Magdalene Street, Droghed, Co. Louth

Phone Number 041 9839379 Fax No: _____ E-Mail brian@bradyhughes.com

**3. Name and address for all correspondence (if not completed, correspondence will
be sent to applicant)**

As per number 2 – to Agent

4. Applicant's interest in site:

Neighbouring Resident

(if applicant is not freehold owner of the property in question, please provide name &
address of owner)

The owner of the site is Kevin Wall, Rathgory, Dunleer, Co Louth

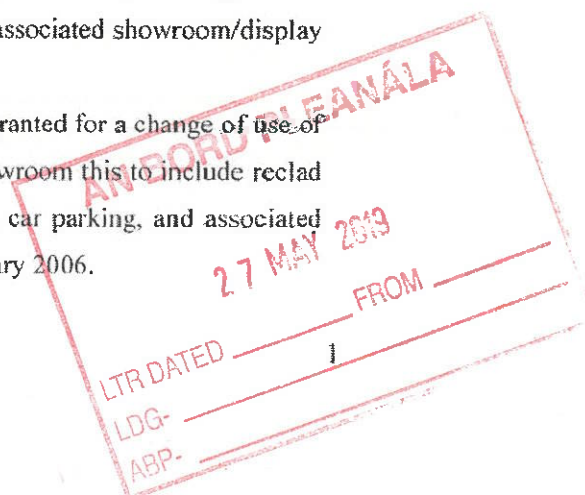
**5. Location of proposed development (specify house no. and street name, where
applicable)****

Rathgory, Dunleer, Co. Louth

6. Description of proposed development:

The use of a premises has changed from use as a timber workshop and showroom specifically for the manufacture and display of kitchen and wardrobe units to use as a steel fabrication workshop for the machining and assembly of heavy steel sections for use in the construction of agricultural and industrial buildings. It should be noted that there is a specific condition attached to the planning permission pertaining to the premises that the use shall be as 'a timber workshop with associated showroom/display area'.

The relevant planning permission (Ref. No. 05/1008) was granted for a change of use of the premises from storage use to timber workshop and showroom this to include reclad of existing building with metal cladding, new septic tank, car parking, and associated site works. Permission for the development issued in February 2006.



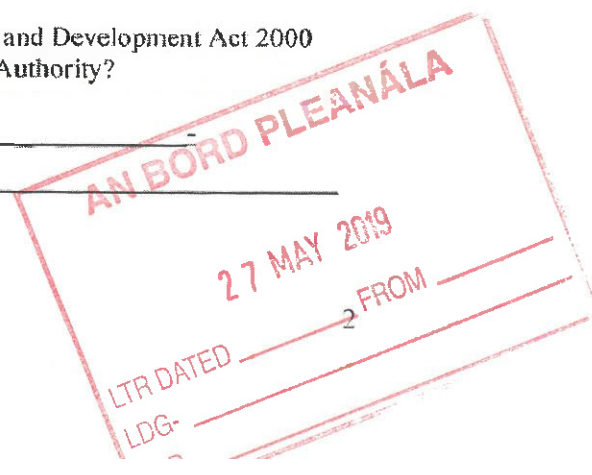
Condition number 1 of that permission states that the development will be carried out in accordance with the plans and specification submitted with the application and it goes on to specifically require that 'the proposed building shall be used as a timber workshop with associated showroom / display area'. It is important to note that the reason given for the application of this condition is 'In order to prevent unauthorised development'. It would seem that the specificity of the condition was designed to ensure that the use remained consistent with the details provided in the planning application. The wording of the reason for the condition implies that any change to the specifics provided for in the condition without a prior grant of permission would be unauthorised development.

When determining whether or not the change of use outlined above (i.e. from use as a timber workshop and showroom to use as an industrial scale steel fabrication facility) is or is not development and if it is development whether or not it requires permission, it should be noted that the permission was granted on the basis of the further information request and submission dated Jan 11th 2006 which detailed the use of the building as being for 'production and assembly of kitchen and wardrobe units and the display of these products.' The Further information submission included noise reports for the specific machinery to be used. The application form for permission 05/1008 included details that there would be 4 employees and that operating hours would be 8 – 5.30 with 10 deliveries per week. The change of use which has occurred means that there is no showroom to act as a buffer to noise generated (as outlined in the noise report submitted with the planning application). The machinery assessed at the time was for what was being used to make kitchen units and wardrobes. The machinery now is completely different, and the noise profile associated with the delivery, loading and unloading, machining and handling of steel cannot be provided to or assessed by the local authority unless a planning application is made. The number of deliveries has increased and the size of the delivery vehicles has also increased, as has the number of employees and the operating hours are increased significantly. All of these issues are regulated by condition 1 of the permission.

7. Does the development consist of works to be carried out to an existing or proposed protected structure? Yes No

If Yes, has a Declaration under Section 57 of the Planning and Development Act 2000 been requested or issued for the property by the Planning Authority?

Not Applicable



- Floor area of Proposed Extension _____ N/A _____ sq.m
- Floor area of Existing Dwelling _____ N/A _____ sq.m
- Area of Rear Private Open Space _____ N/A _____ sq.m
- Overall Height of Structure _____ N/A _____ metres

(b) Have any previous extensions been carried out? Yes No

If Yes, please specify:

_____ N/A _____

9. (a) If the development is for the erection of a garage/shed/store etc. please include the following

- Proposed garage/shed/store _____ n/a _____ sq.m
- Floor area of Existing Structure(s) _____ n/a _____ sq.m
- Area of Rear Private Open Space _____ n/a _____ sq.m
- Overall Height of Structure _____ n/a _____ metres

(b) Has any previous garage/shed/store been constructed? Yes No

If Yes, please specify:

_____ n/a _____

10. For any building to be retained on site, or for a change of use of the property please indicate:

- Existing Use: Timber Workshop and Showroom as per 051008 – was the approved use, a change to steel fabrication has occurred as outlined above.
- Proposed Use – Steel fabrication (change of use has already occurred).

11. Please state, where applicable, materials to be used in the construction of any boundary wall or fence:

_____ n/a _____

I certify that the aforementioned is correct.

Signature of Applicant: _____

Date 11-4-19

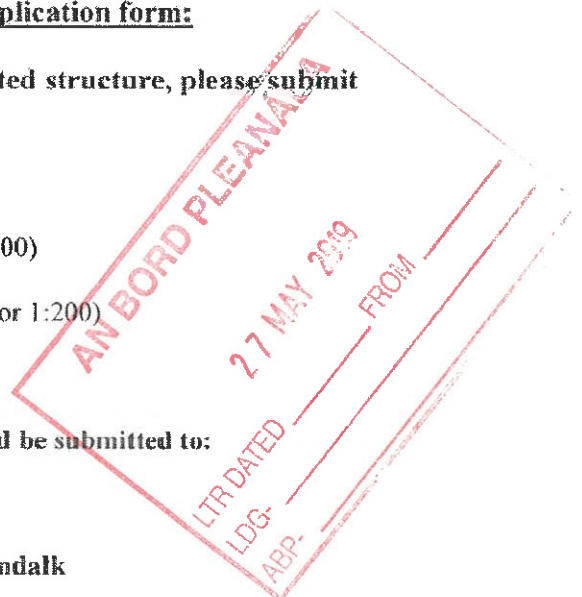
Please include the following documents with this application form:

**** If the property outlined in Question 5 is a protected structure, please submit two copies of all documentation listed below.**

- Site Location Map: (Scale 1:1000)
- Site Layout Map: (Scale 1:200 or 1:500)
- Floor Plans & Elevations: (Scale 1:50, 1:100 or 1:200)
- Application fee: (€80)

Completed Application Form & Fee should be submitted to:

Planning Office
Louth County Council
Town Hall, Crowe Street, Dundalk
County Louth



Planning Department
Louth County Council
Town Hall
Crowe Street
Dundalk
Co. Louth

11th April 2019

RE: Application for Section 5 Declaration in relation to a change of use which has already occurred at premises owned by Kevin Wall, and operated by Swift Engineering Ltd. at Rathgory, Dunleer, Co. Louth.

Dear Sir/Madam,

Please find attached a completed application form for a declaration under Section 5 of the Planning and Development Act 2000 (as amended). In support of this application, please find attached a cheque in the sum of €80, the prescribed fee and the following drawings:

1. 047-02-001 Site Location Map
2. Site Layout Plan from planning file 051008
3. Drawings of the steel fabrication building from planning file 051008

It should be noted that I have been engaged by Liam and Deirdre Ryan, who together with their 4 young children, live adjacent to and adjoining the steel works facility.

Background to the application.

We understand that the subject premises were used as a timber workshop by Kevin Wall (owner of the building) from 2006 to 2008 approx. During that time, my clients enjoyed a good relationship with Mr. Walls business which operated in accordance with the provisions of the planning permission under which it operated (051008). Following the closure of Mr. Wall's timber workshop, we understand that the premises was occupied by Swift Engineering Ltd in or about 2013.

Swift Engineering Ltd make and erect steel framed buildings, and according to their website (www.swiftengineering.ie), provide engineering products and services to *Ireland's most prolific marine, water treatments, structural and engineering projects*. The website includes a photograph of a steel frame building, consistent with what my clients have witnessed being delivered, collected, and worked on beside their house.

Since 2013, Swift Engineering's business appears to have grown in line with recent growth experienced by the construction industry. The effect of the change from Mr Wall's furniture business to Swift Engineering's heavy steel fabrication business on our client's residential

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27 MAY 2019
FROM
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ABP-
AN BORD PLEANÁLA

amenity has been material with respect to noise, vibration, hours of operation, number of employees, number and nature of deliveries, and road safety (in particular, safety of pedestrians).

Analysis

In my opinion, the change of use from Timber Workshop and Showroom specified in Condition 1 of Planning permission 05/1008 to machining and fabrication of heavy steel sections for the construction industry is development as defined in the Planning and Development Act 2000 (as amended) and is such that it requires planning permission.

L.C.P. 147/06

REFERENCE NO. 05/1008

1. The works shall be carried out in strict accordance with the lodged plans and specifications submitted to the Planning Authority, save for the conditions attached below. In any event the proposed building shall be used as a timber workshop with associated showroom / display area.

Reason: In order to prevent unauthorised development.

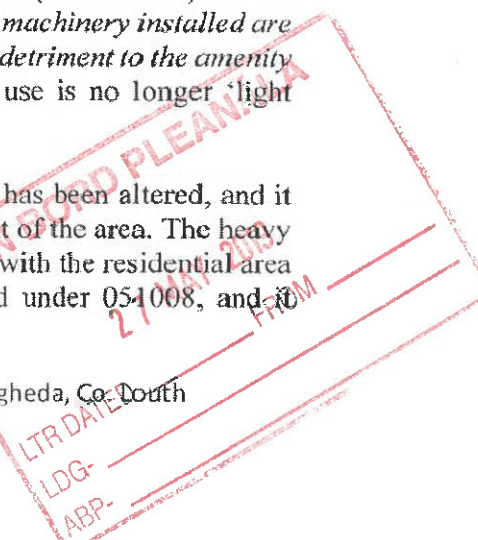
Condition No. 1 from 05/1008

When determining whether a material change of use has occurred, case law tells us that one must look at the character of the existing use of the land/premises before, and then, after the change. Part of this requires looking at the materiality of the external impact the change brings about on the land i.e. the effect of the change, and not just the use itself.

In relation to change of use, intensification is also a factor as it has an effect on the materiality of the impact on the proper planning and development of the area within which the intensification takes place.

In my opinion, a change of use, such as to amount to 'development', has occurred and that it requires planning permission because it satisfies the 2 necessary conditions. Firstly, there has been an actual change in how the property is used since permission was granted under 05/1008. Different materials, different machinery, different products, different type and frequency of deliveries, no showroom, change from light to heavy industry. The intensity of the use has increased significantly since the time of operation, in line with growth in the construction sector nationally. Given the proximity to residential developments adjoining it, the workshop envisaged and operated under 05/1008 appears to have been assessed a 'light industrial' building as defined by the Planning and Development Regulations 2001 (as amended) i.e. *'an industrial building in which the processes carried on, or the plant and machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell etc'*. The current use is no longer 'light industrial'.

Secondly, the change is material as the character of the previous use has been altered, and it has had an impact on the proper planning and sustainable development of the area. The heavy industrial process now occurring on the subject site is not compatible with the residential area within which it operates. It is not consistent with the use approved under 05/1008, and it contravenes a specific condition attached to it i.e. Condition 1



In my opinion, the content of Article 9(1)(a) Subsections (i), (iii) and (xi) of the Planning and Development Regulation 2001 (as amended) disapply any exemption that may have been considered to apply.

Article 10 of the Regulations is also relevant, Subsection 1, references changes of use within use classes specified in Part 4 of the Second Schedule. Arguably, the permitted use class in this case is Class 4: Use as a Light Industrial building. Various changes of use within that use class would therefor be exempt provided it stayed 'light industrial'. If one were to form the view that fabrication of steel for construction purposes is a use which could be located without causing nuisance in any residential area and is therefore consistent with the Planning Regulations definition of light industrial, then one could assume that change from Timber Workshop and Showroom to Steel fabrication is exempt, being within the same use class. However, even in that unlikely scenario whereby an objective review concludes that the steel fabrication is a suitable use in a residential area, the exemption is disappplied in accordance with Article 10(1)(b) which refers to condition 1 of the planning permission pertaining to the premises.

Conclusion

We trust that you will take the foregoing into consideration and that when determining this Section 5 declaration application. We hope that you will find that the previous use operated by Kevin Wall was a use which could be located in an residential area (our clients can attest to this). We hope you will agree that the current heavy industrial steel fabrication and assembly business is not such a use. Accordingly, we trust that you will agree with us and determine that the development as outlined in the application form (and as evidenced in the attached photographs) is in fact 'Development' as defined by the Planning And Development Act 2000 (as amended) and that it does require planning permission.

Your Faithfully

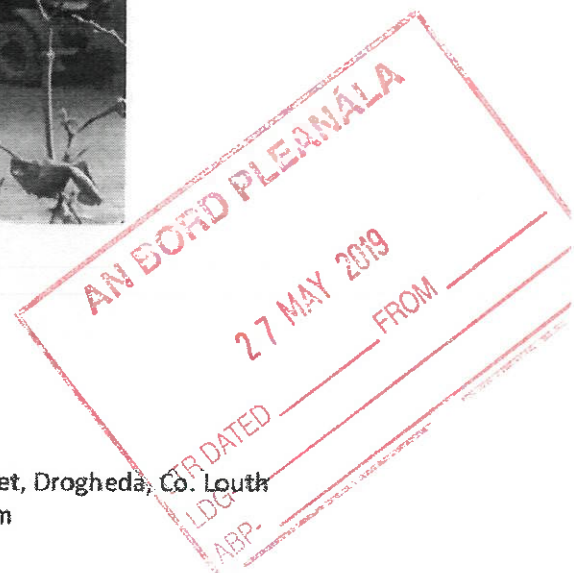
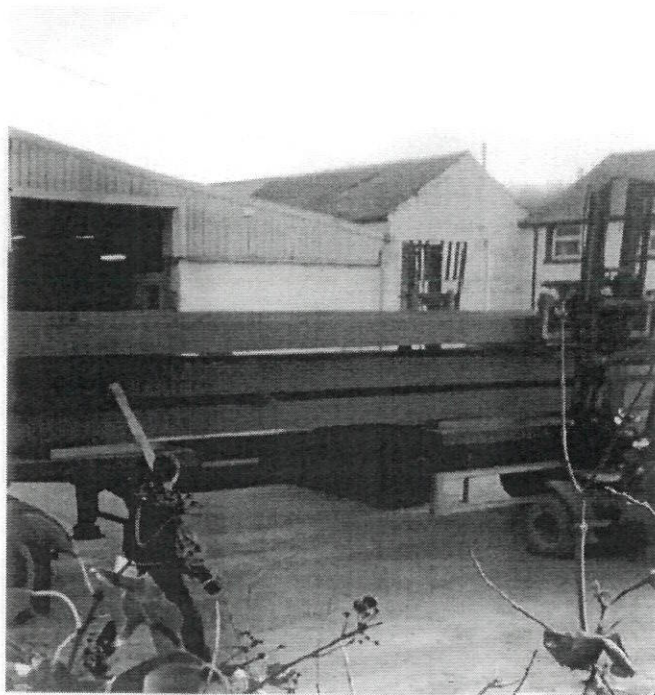


Brian Hughes
BA BAI CEng MIEI
Chartered Engineer





Photo above and below shows the size and length of steel sections being delivered by 40ft articulated trailer to Swift Engineering Past our client home.



Selection of Photos supplied by our clients showing the size and scale of the steel sections being processed by Swift Engineering adjacent to their home.



Materials stored beside Ryan's Home



Fabrication of parts of a building occurring in an area shown in 05/1008 as a car park and percolation area for a waste water treatment system.

Brady Hughes Consulting Engineers Ltd, 26 Magdalene Street, Drogheda, Co. Louth
041 9839379, info@bradyhughes.com

AINSBORD PLEENALA
27 MAY 2019
LTD-
LDG-
FROM



Comhairle Contae Lú
Louth County Council

Mr. Liam Ryan,
c/o Brian Hughes,
Brady Hughes Consulting,
26 Magdalene Street,
Drogheda,
Co. Louth.

3rd May, 2019.

RE: Ref. S5 2019/16

***Re: Application for Declaration of "Exempted Development"
Part 1, Section 5, Planning & Development Act 2000 (as amended)
whether the change of use of a building previously granted
permission for the manufacturing of kitchen units to a use for
steel fabrication is not 'Development' within the meaning of the
Planning and Development Act 2000 (as amended)***

Dear Sir/Madam,

I wish to acknowledge receipt of your application received on 11th April, 2019 in relation to the above. Having assessed all information and enclosures received with the application the Planning Authority wishes to advise as follows:-

WHEREAS a question as to whether the change of use of a building previously granted permission and used for the manufacturing of kitchen units to a use for steel fabrication is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.

AND WHEREAS the said question was referred to Louth County Council by the applicant

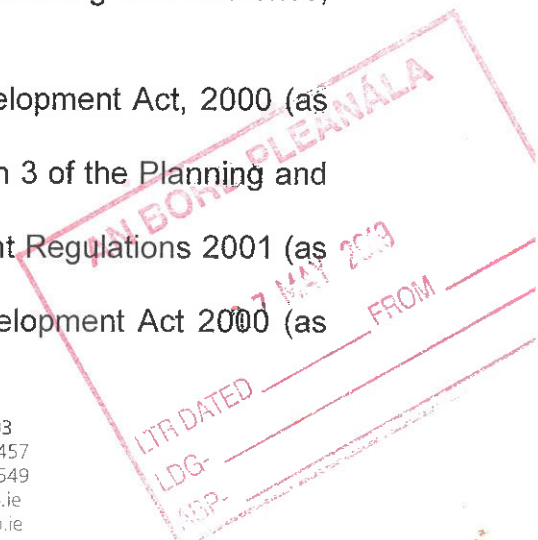
AND WHEREAS Louth County Council in considering this reference, had regard reference particularly to -

- (a) Section 2, 3, 4 of the Planning and Development Act, 2000 (as amended)
- (b) The definition of "development" in Section 3 of the Planning and Development Act 2000 (as amended)
- (c) Article 9 of the Planning and Development Regulations 2001 (as amended)
- (d) Section 4 (1) (h) of the Planning & Development Act 2000 (as amended)

Comhairle Contae Lú
Halla an Bhaile
Sráid Crowe
Dún Dealgan
Contae Lú
A91 W20C

Louth County Council
Town Hall
Crowe Street
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A91 W20C

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www.louthcoco.ie



- (e) Exempted Development- Classes of use, Part 4 of the Planning and Development Regulations 2001 (as amended)
- (f) Irish Planning Law and Practice (O'Sullivan and Shepherd) Material change of use of a structure or land

AND WHEREAS Louth County Council concludes that the change of use of the property for steel fabrication is exempted from the requirement to obtain planning permission under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

NOW THEREFORE Louth County Council in exercise of the powers conferred on it by Section 5 (2) (a) of the Planning and Development Act, 2000, hereby decides that the use is exempt from the requirement to obtain planning permission.

In Summary

A Declaration of Exemption is Granted for the following proposed works as detailed on plans and particulars submitted on 11th April, 2019.

Yours faithfully,



Celine Breen
Planning Section.



PLANNING REPORT

To: Celine Breen
From: Brian Brooks
Exe Planner

Declaration: Request for a determination under Section 5 of the Planning and Development Act, 2000 (as amended) as to whether the use of a building previously granted permission for the manufacturing of kitchen units to a use for steel fabrication is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.

Date: 1st May 2019

Introduction

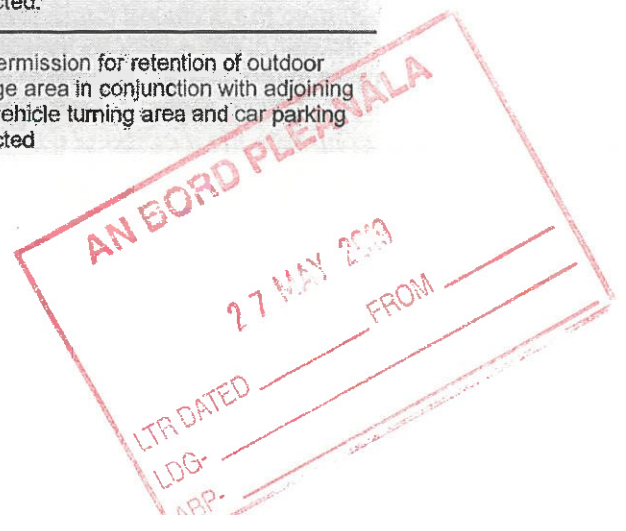
An determination of exemption has been submitted with a prescribed fee of €80.

Site location and Description

The existing operation is located at the end of a laneway in the townland of Rathgory outside Dunleer. The site comprises of 1no. building (floor area 858sqm) on a concreted and gravelled yard area of .27 hectares. The north section of the site had been used for the storage and racking of steel girders along with manufactured products. This has now ceased (See enforcement file)

Planning History

<u>05779</u>	INCOMPLETED APPLICATION	09/06/2005 Thursday	Kevin Wall	Rathgory Dunleer Co Louth	(P) Change of use from storage use to timber workshop and showroom this is to include reclad of existing building with metal cladding, new septic tank, carparking and all associated site works at the former transport museum building
<u>051008</u>	APPLICATION FINALISED	21/07/2005 Thursday	Kevin Wall	Former Transport Museum Rathgory Dunleer	(P) Change of use of existing outbuildings from storage use to timber workshop and showroom, this to include reclad of existing building with metal cladding, new septic tank, car parking and all associated works
<u>18630</u>	INCOMPLETED APPLICATION	08/08/2018 Wednesday	Kevin Wall	Rathgory Dunleer Co.Louth	Planning permission for retention of outdoor steel storage area in conjunction with adjoining business, vehicle turning area and car parking as constructed.
<u>18711</u>	APPLICATION FINALISED	06/09/2018 Thursday	Kevin Wall	Rathgory Dunleer Co.Louth	Planning permission for retention of outdoor steel storage area in conjunction with adjoining business, vehicle turning area and car parking as constructed



Assessment:

A determination under Section 5 of the Planning and Development Act, 2000 as to whether the use of a building previously granted permission for the manufacturing of kitchen units to a use for steel fabrication is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.

LEGISLATIVE CONTEXT

The Planning and Development Act

Section 5 of the Planning and Development Act 2000 states that any person may request a declaration from the planning authority on any question of whether any particular case is or is not development or is not exempted development under the Act. Under section 5(3) (A) any person issued with a declaration can refer same to the Board.

Under Section 3 (1) of the Act development is defined as:

(i) 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.

Under section 4 (2) (a) the Act provides that the Minister may make regulations to provide any class of development to be exempted development for the purposes of the Act where he or she is of the opinion that by reason of the size, nature or limited effects on its surroundings, of development belonging to that class, the carrying out of such development would not offend against the principle of proper planning and development.

Planning and Development Regulations, 2001

Article 9(1) provides detailing on restrictions on exemption as follows:

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

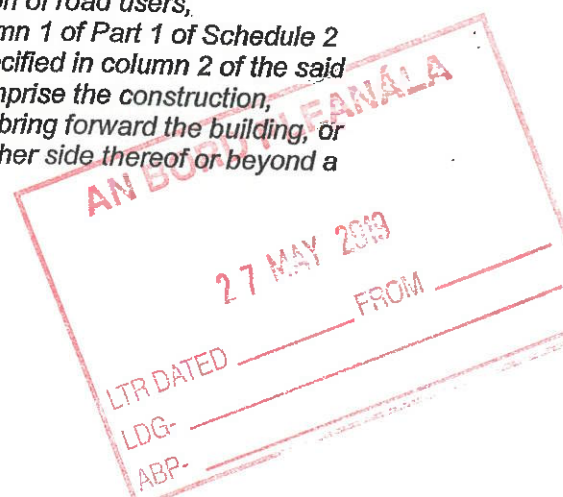
(a) if the carrying out of such development would—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) 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,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a



line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or

13 other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National

Monuments Act, 1930 (No. 2 of 1930),

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

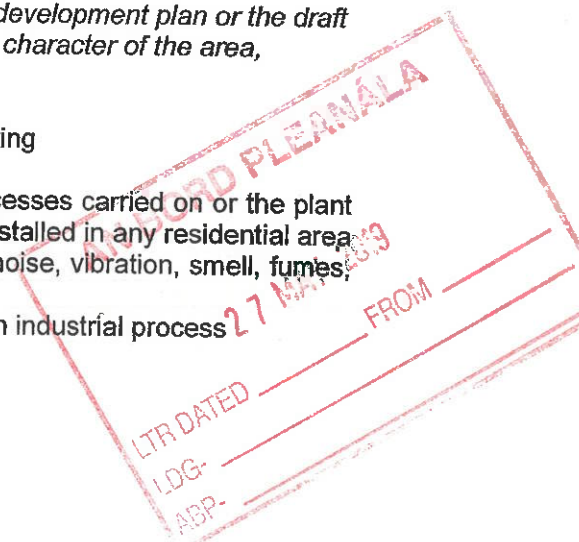
(xii) further to the provisions of section 82 of the

Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the

14 making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

The Planning and Development Regulations 2001 define the following

- Light industrial building- an industrial building in which processes carried on or the plant or machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit
- Industrial building- a structure used for the carrying out of an industrial process



- Industrial process – any process which is carried on in the course of trade or business, other than agriculture, 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.

- Industrial undertaker- a person by whom an industrial process is carried on and industrial undertaking shall be construed accordingly.

The term engineering is not defined under the Planning Act or Regulations.

The PDA 2000, s 3(2) and (3) specify a number of changes which will always amount to a material change in the use of a structure or land:

For the purposes of *subsection (1)* and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

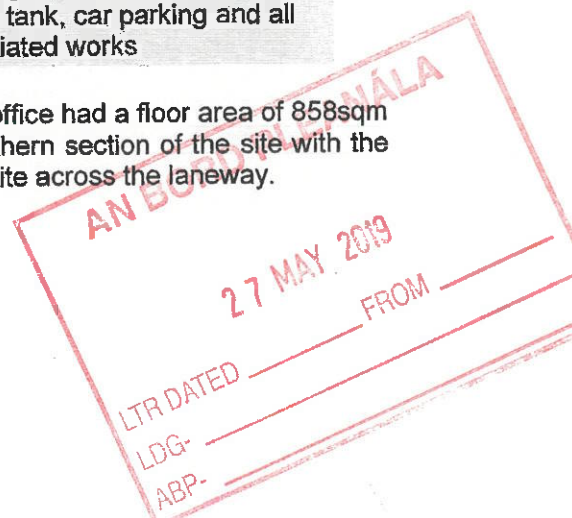
(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris, the use of the land shall be taken as having materially changed.

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

Scope of Permission granted under PA Ref. 05/1008

051008	APPLICATION FINALISED	C	21/07/2005 Thursday	Kevin Wall	Former Transport Museum Rathgory Dunleer	(P) Change of use of existing outbuildings from storage use to timber workshop and showroom, this to include reclad of existing building with metal cladding, new septic tank, car parking and all associated works
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The proposed timber manufacturing workshop, showroom and office had a floor area of 858sqm and a ridge height of 6.5m. The building is located on the southern section of the site with the associated carparking and wwts on the northern section of the site across the laneway.



Commercial fees of €15,192 were levied

Current Use of Premises

- Steel fabrication business

Definitions

Workshop is not defined by the Planning and Development Act or Regulations. However, the definition of workshop by the Collins English Dictionary as:

- A room or building in which manufacturing or other forms of manual work are carried on.

The Oxford English Dictionary defines a workshop as:

- A room or building in which goods are manufactured or repaired.

Given this, I am satisfied that it has been established that permission for a manufacturing/industrial use on site for the following reasons:

- The permission granted for kitchen manufacturing workshop under ref no: 05/1008
- The accepted definition of workshop
- The definition of an industrial process under the P&D Regulations 2001.
- The commercial levies attached to permission 05/1008

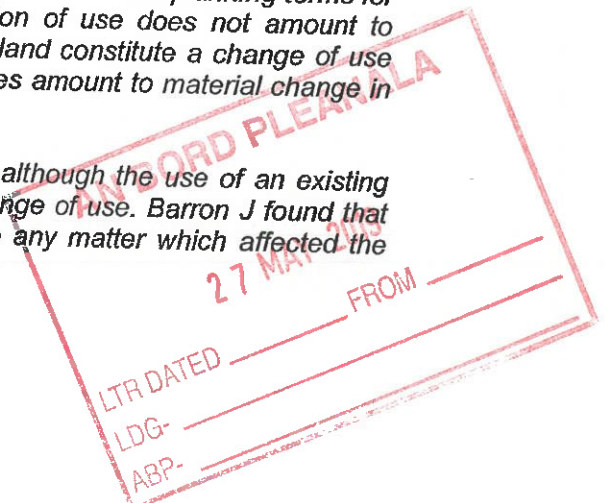
However, having established that the applicant has permission for a manufacturing/industrial use on site, the issue of change of use or the intensification of the permitted use given the existing use of the site will be explored using case law.

Case Law (Change of use)

Irish Planning Law and Practice (OSullivan and Shepherd) Material change of use of a structure or land states:

There must be a change in the use of a structure or land which is material in planning terms for development to be deemed to have taken place. Continuation of use does not amount to development. Many alterations in the activities carried out on land constitute a change of use but not all alterations will be material and whether such changes amount to material change in use is a question of fact.

Galway County Council v Lackagh Rock Ltd. It was held that although the use of an existing quarry had been intensified it did not amount to a material change of use. Barron J found that the applicant (Galway County Council) was unable to point to any matter which affected the proper planning of the area.



Mahon V Irish Rugby Football Union. Three local residents issued proceedings against the IRFU seeking, inter alia, an order under the LG (PD) A 1976 to injunct two proposed concerts at the IRFU sports ground at Lansdowne Road Dublin

The plaintiffs main argument was that as the principal use of the Lansdowne Road Stadium is for rugby and football matches the holding of pop concerts would amount to a material change of use and so constitute an unauthorised use. P Costello considered that when assessing whether a change is a material one the court should have regard to the effects of the change of use and consider in particular the effect of the change of use and consider in particular the effect of the change of use on the proper planning of the area in which the land is situated. Costello P, finding in favour of the plaintiffs, held that the effects on residential amenity, noise and disturbance caused by light spillage were all materially different in the case of pop concerts to those associated with rugby matches.

Dublin Corporation v Moore. Concerned whether the parking of a commercial vehicles with the driveway of a house constituted a material change of use . McCarthy J referred to the penal nature of the breaches of the statute and to the fact that they must be strictly construed. He was of the opinion that there was an implicit right within the Planning Acts to park such vehicles, so that there was no material change in use.

Intensification of Use

O'Sullivan & Shepherd states:

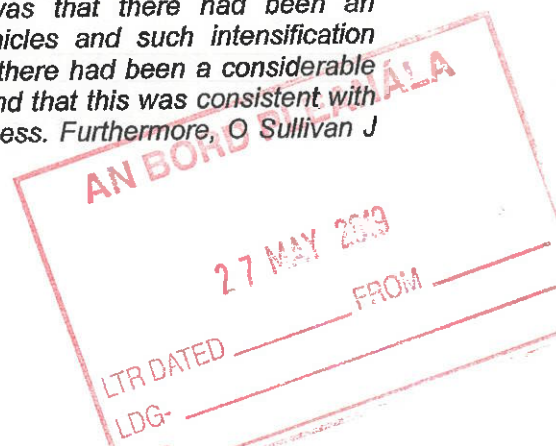
It is not necessary that the change of the use be in the type of use being made of a structure or land. An intensification of use may also amount to development. Whether an intensification of an existing use amounts to a material change in use depends on the degree of intensification.

Tullamaine Castle Stud V Michael Barry and Others and Tipperary County Council. Mr Justice Charleton in granting injunctive relief to restrain the use of a racing track, considered the test for intensification of use to be the "effect on the wider neighbourhood" to the degree that fresh planning permission is required.

Dublin County Council V Carty Builders. The fact that a use has been intensified by a more extensive use of land or because a business has become more successful does not necessarily result in a material change in use. In this case, an issue arose relating to an increase in the number of caravans on a site which had been in use as a caravan park prior to the appointed day, it was held not to constitute a material change of use under the Planning Acts. The question of whether an intensification in use of the land constitutes a material change of use is essentially a matter of degree. This case was applied by Mr Justice Finnegan in Wexford County Council v Daniel Hanley where it was determined that the increase in numbers from 35 caravans up to 64 was not a material development by way on intensification.

Molumby v Kearns

The case involved a nuisance action by residents living adjacent to an industrial estate owned by the defendant. One of the plaintiffs main arguments was that there had been an intensification of use of the estate by large commercial vehicles and such intensification constituted a material change of use. O'Sullivan JJ found that there had been a considerable increase in the number of larger vehicles servicing the estate and that this was consistent with the accountancy analysis of the growth in the defendants business. Furthermore, O'Sullivan J



accepted that an intensification of use can itself amount to a material change of use, even where there is no change in the use category. One must have regard to assess whether there has been a material change for planning purposes. OSullivan J considered that the impact of an intensification of the heavier commercial vehicles was likely to be more significant in planning terms than the impact of an intensification of smaller private vehicles.

Conclusion

I am satisfied that it has been established that permission for a manufacturing/industrial use (steel fabrication) exists on site for the following reasons:

- The permission granted for kitchen manufacturing workshop under ref no: 05/1008
- The accepted definition of workshop
- The definition of an industrial process under the P&D Regulations 2001.
- The commercial levies attached to permission 05/1008
- The existing use is not a material change of use from that previously permitted
- There has been no significant intensification of use from that previously permitted to the degree that fresh planning permission is required.
- There has been no significant change in the use of the structure or land which is material in planning terms for development to be deemed to have taken place. Continuation of use does not amount to development.

Request for a determination under Section 5 of the Planning and Development Act, 2000 as to whether the use of a building previously granted permission for the manufacturing of kitchen units to a use for steel fabrication is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.

Does the proposal constitute development?

The Planning and Development Act 2000 defines development to mean:

-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.

Given this definition, the authorised planning history of the property as a manufacturing workshop and based on the information available to the planning authority, I consider that the existing use (steel fabrication) falls under the scope of the existing permission on site and there is not a change of use and as such does not constitute development.

Does the proposal constitute exempted development?

Based on the plans and information submitted to the Planning Authority, I consider that the proposed development does fall under the scope of the Exempted Development- Classes of use, Part 4 of the Planning and Development Regulations 2001-2012 (as amended)

Accordingly, I consider that the use is exempted development.

Conclusion

WHEREAS a question to whether the use of a building previously granted permission and used for the manufacturing of kitchen units to a use for steel fabrication is or is not exempt from the requirement to obtain planning permission under the exempted development regulations.




AND WHEREAS the said question was referred to Louth County Council by the applicant


AND WHEREAS Louth County Council in considering this reference, had regard reference particularly to -

- (a) Section 2, 3, 4 of the Planning and Development Act, 2000-2013
- (b) The definition of "development" in Section 3 of the Planning and Development Act 2000-2013
- (c) Article 9 of the Planning and Development Regulations 2001-2013
- (d) Section 4 (1) (h) of the Planning & Development Act 2000-2013
- (e) Exempted Development- Classes of use, Part 4 of the Planning and Development Regulations 2001-2012 (as amended)
- (f) Irish Planning Law and Practice (OSullivan and Shepherd) Material change of use of a structure or land

AND WHEREAS Louth County Council concludes the use of the property for steel fabrication is exempted from the requirement to obtain planning permission under the Planning and Development Act 2000-2013 and the Planning and Development Regulations 2001-2012 (as amended)

NOW THEREFORE Louth County Council in exercise of the powers conferred on it by Section 5 (2) (a) of the Planning and Development Act, 2000, that the use is exempt from requirement to obtain planning permission


Brian Brooks
Exe Planner.
Date 2/5/19.


~~Frank Pentony~~ *C. Moss*
A/ Director of Service
Date

LOUTH COUNTY COUNCIL

LOUTH COUNTY MANAGERS ORDER REGISTER

PLANNING AND DEVELOPMENT ACT, 2000

Manager's Order No: 147/06

Register Reference Number: 051008

Date Application Received: 21/07/2005

Type of Application: PERMISSION

Description of Development: (P) Change of use of existing outbuildings from storage use to timber workshop and showroom, this to include reclad of existing building with metal cladding, new septic tank, car parking and all associated works

Name of Applicant: Kevin Wall
Address: c/o Paul Faulkner
14 Halpin Terrace
Drogheda

Location of Development: Former Transport Museum Rathgory Dunleer

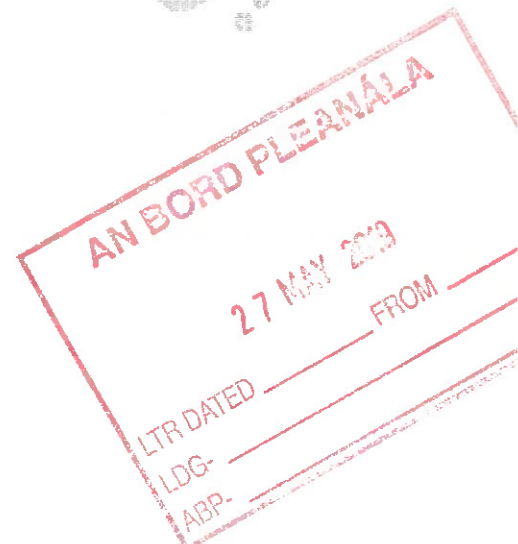
ORDER: In pursuance of the powers conferred upon the Council of the County of Louth by the above acts, I hereby decide to grant PERMISSION for the development described above, subject to the 8 conditions set out hereunder.

In case no appeal is taken against the decision contained herein, or in case any and every appeal taken is either withdrawn or dismissed, or in case a direction is given by An Bord Pleanála in relation to an appeal, I hereby further order that PERMISSION be granted to the applicant in accordance with this decision or the direction as may be appropriate.

SIGNED:


LOUTH COUNTY MANAGER

DATE: 09/02/2006



LOUTH COUNTY COUNCIL

L.C.P. 147/06

REFERENCE NO. 05/1008

1. The works shall be carried out in strict accordance with the lodged plans and specifications submitted to the Planning Authority, save for the conditions attached below. In any event the proposed building shall be used as a timber workshop with associated showroom / display area.

Reason: In order to prevent unauthorised development.

2. All external finishes including colours of roofing material of the industrial unit shall be as agreed with the Planning Authority prior to the construction of any external finishes.

Reason: In the interests of visual amenities.

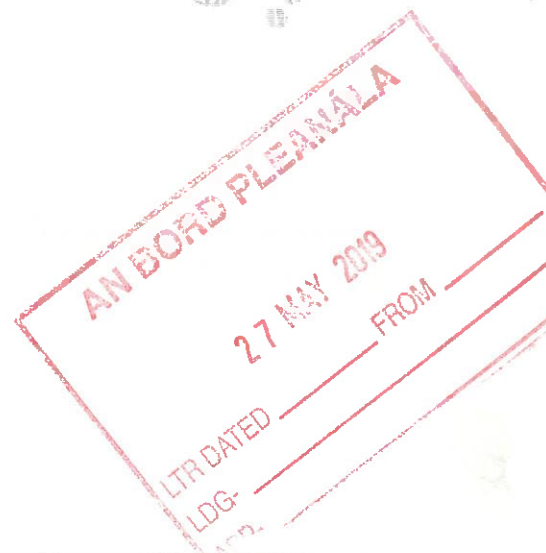
3. No sign, flag, logos or other advertising material (other than the advertisement hereby approved) or illumination shall be erected or displayed on or adjacent to the premises without the prior grant of planning permission from the Planning Authority.

Reason: In the interest of the proper planning and development of the area.

4. In accordance with the Council's Development Contribution Scheme 2004 made under the provisions of section 48 of the Planning and Development Act 2000 the developer shall pay a contribution to the Planning Authority, in the amount specified below (or such increased amount in accordance with the changes on an annual basis to the Wholesale Price Index for building and construction published by the Central Statistics Office) towards the costs already incurred or to be incurred by the Planning Authority on the provision of each of the public facilities listed below, which will benefit development in the area of the Planning Authority. Unless otherwise agreed with the Planning Authority before development is commenced the said contribution shall be paid in full before such commencement.-

a) Road improvements	23.20 @ 50 % of 858.11 sqm =	€9954.08
a) Water	15.51 @ 50 % of 858.11 sqm =	€6654.64
b) Community, Rec and amenity	12.21 @ 50 % of 858.11 sqm =	€5238.76

Reason: The provision of these facilities in the area will facilitate the proposed development and it is considered reasonable that the developer should contribute towards their cost.



LOUTH COUNTY COUNCIL

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5. The following requirements of the Environment Section shall be complied with:-
1. Save in so far as the below stated might require otherwise, the development shall be carried out strictly in accordance with plans and specifications submitted.
 2. No trade/industrial effluent resulting from any operation associated with the development shall be discharged to surface or ground waters or sewer unless licenced under and in accordance with the provisions of the Local Government (Water Pollution) Acts 1977 and 1990.
 3. The developer shall, within three months of the date of permission, submit to the Waste Authority (Louth County Council) for its approval, a Waste Management Plan detailing facilities for the storage / collection / segregation of recyclable materials arising on the development.
 4. Prior to development works commencing on site, the developer shall submit a Waste Management Plan for removal, disposal and management of all waste arising from the demolition/construction of the development for the written approval of the Planning Authority. Such plan shall include, inter alia;
 - List of wastes and quantities likely to arise as a result of the construction of development, into the following categories:
 - a) Non-hazardous, non reusable wastes.
 - b) Hazardous wastes, including asbestos.
 - c) Non-hazardous, recyclable/reusable waste.
 - Details (name, address) of all proposed waste removal contractors including a copy of each contractors waste collection permit.
 - Details (address) of disposal/recovery locations, authorised in accordance with Waste Management Act, 1996.
 - A Method Statement for the removal and disposal of asbestos containing materials, if any.
 5. Demolition of the existing structure(s) shall be carried out in accordance with B.S. 6187. All reasonable measures shall be undertaken to minimise the impact of demolition.
 6. Demolition works shall be confined to 08.00 hours to 20.00 hours, Monday to Friday and 08.00 hours to 16.00 hours on Saturday.
 7. (a) The equivalent continuous sound level (Leq) attributable to all on-site operations associated with the development, outside of any inhabited house or building used for public assembly, in the vicinity of the site, shall not exceed 55dB(A) Leq (30 minutes) over the period 08:00 hours to 20:00 hours, Monday to Friday and 08:00 hours to 16:00 hours on Saturday; and shall not exceed 40dB(A) Leq (30 minutes) at all other times.
(b) No pure tones or impulsive characteristics shall be audible outside of any inhabited house in the vicinity of the development.

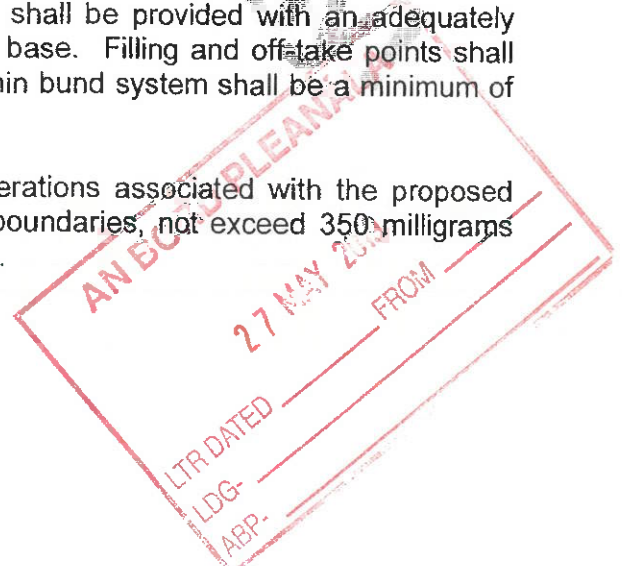
APPROVED
LTD 15/05/2019
FROM

LOUTH COUNTY COUNCIL

L.C.P. 147/06

REFERENCE NO. 05/1008

8. The transmitted ground vibration arising from any piling carried out on the site, when measured on the foundations of the house nearest the location of the piling and not owned by the developer or on a part of the house in close contact with the foundations, shall not exceed a peak particle velocity of 12 millimetres per second in any one of three mutually orthogonal planes.
9. The development shall be operated such that there will be no emissions of malodours, fumes, gases, dust or other deleterious materials such as would give reasonable cause for annoyance to any person in any residence in the vicinity of the development.
10. Exhaust gases from any fuel oil and/or solid fuel burning appliance shall be discharged to the atmosphere via a stack extending at least 3m above the building apex.
11. Uncontaminated surface waters from roof of development shall be piped separately in a sealed system to soakaway(s) or waters.
12. The developers and/or any person given control or custody of the developments shall ensure that surface and ground waters are adequately protected from contamination by stored materials and/or waste temporarily stored on Development prior to disposal.
13. Packaging waste shall be managed in accordance with the Waste Management (Packaging) Regulations, 2003.
14. Waste shall not be disposed of by open burning.
15. Non hazardous, non re-usable wastes shall be disposed of to a landfill site managed licensed in accordance with the Waste Management Act, 1996, as amended. Waste shall only be conveyed by a permitted waste contractor in accordance with the appropriate National and European Legislation and Protocols.
16. Hazardous Waste arising on the development including waste oils arising on the development shall not be disposed of to waters or drainage system or to soil, but shall be disposed of in accordance with the Waste Management (Hazardous Waste) Regulations 1998 and to a facility licensed under Waste Management Act, 1996, as amended.
17. All oil storage tanks located above ground level shall be provided with an adequately designed bund system complete with impervious base. Filling and off-take points shall be located within the bund. Storage capacity within bund system shall be a minimum of 110% of storage tank(s) capacity.
18. The total dust emission arising from on-site operations associated with the proposed development shall, when measured at the site boundaries, not exceed 350 milligrams per square metre per day, averaged over 30 days.



LOUTH COUNTY COUNCIL

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19. The sound levels attributable to all on site operations associated with the development outside of the nearest noise sensitive location(s) to the development shall not exceed the following levels:-

- (i) Leq (30 mins.) of 55 dB(A) between the hours of 08.00 and 20.00, Monday to Friday
- (ii) Leq (30 mins.) of 55 dB(A) between the hours of 08.00 and 16.00, Saturday
- (iii) Leq (30 mins.) of 40 dB(A) at all other times.

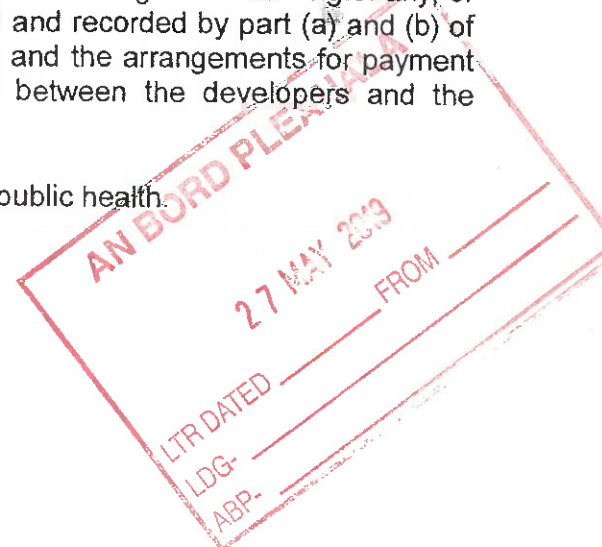
No pure tones or impulsive characteristics shall be audible outside of any noise sensitive location(s) in the vicinity of the development.

20. (a) The developers shall, if directed by the Planning Authority, monitor and record noise levels – Leq's and any other levels which may be requested by the Planning Authority (L max etc).
- (b) The developer shall if directed by the Planning Authority, monitor and record the total dust emissions arising from all on site operations associated with the proposed development.
- (c) The number and locations of the monitoring and recording stations for sound and dust deposition necessary to comply with the requirements of

Part (a) and (b) of this condition shall be in accordance with the requirements of the Planning Authority for such monitoring of sound and dust deposition.

- (d) The Planning Authority shall be afforded access at all reasonable times in order to inspect, examine and check or to have inspected, examined and checked, all apparatus and equipment used or required to carry out monitoring of noise.
- (e) The developers shall pay a sum of money to Louth County Council, if demanded, as a contribution towards the costs incurred by the said Council in carrying out, or in having carried out, check monitoring and recording of any, or all, of the matters required to be monitored and recorded by part (a) and (b) of this condition. The amount of contribution and the arrangements for payment of such contribution shall be as agreed between the developers and the Planning Authority.

Reason: To prevent pollution and in the interests of public health.



LOUTH COUNTY COUNCIL

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6. The site layout plan shall be in accordance with Drawing No. 05A submitted on 13th January, 2006 with the exception of the size of the disabled person's parking bay. The bay should be a minimum of 3.5 metres wide and two such spaces should be provided in accordance with Section 8.9 'Louth County Development Plan 2003-2009'.

Reason: In the interest of orderly development.

7. The developer shall apply for a Road Opening License in respect of all openings in public areas and shall pay Road Opening License Fees and road restoration costs.

Reason: In the interest of orderly development.

8. Prior to the commencement of development the developer shall apply for permission to connect to the public watermain to the Sanitary Services Section and the terms of such permission shall be complied with.

Reason: In the interests of orderly development.

