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13/09/2019

AN BORD PLEANÁLA	
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ABP-	
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Re: Meath County Council Ref: RA/S51941

Section 5 Referral on whether or not the subdivision of the unit into two separate units is or is not development, or is or is not exempted development. Whether the use of part of the existing building for use for storage of material is or is not development or is or is not exempted development. Whether the use of the yard Area 3 for storage of materials is or is not exempted development at Jarretstown, Dunboyne, Co. Meath.

Dear Sir/Madam,

We have been requested by our clients Peter Cafferky, of Unit 8G Maynooth Business Campus, Maynooth, Co. Kildare, Derek Hynes, of Delcom, 29 Elmwood, Clonsilla, Dublin 15 and Tommy Gallagher, of Gilt Homes, 1 Castletown, Leixlip, Co. Kildare owners of the above property at Jarretstown, Dunboyne, Co. Meath to submit the following Section 5 Referral in respect of the Section 5 Declaration issued by Meath County Council by Order dated 22/8/19 in respect of the following:

Whether or not the subdivision of the unit into two separate units is or is not development, or is or is not exempted development?

Whether the use of the of part of the existing building for use for storage of materials is or is not development or is or is not exempted development?

Whether the use of Area 3 for the storage is or is not exempted development?

The above three questions are separate matters and should be addressed separately in the determination of this referral as the first element relates to the physical alteration to the structure to facilitate its subdivision, the second relates to the question of the use of the building and this requires an examination of the planning history of the building and the implications of Condition No. 3 of the original permission in 1975 Ref: 751168. The third relates to whether the use of Area 3 could be used for storage purposes and this also requires an examination of Condition No. 3 of that permission Ref: 751168.

For the purposes of this Referral we have inspected the site, reviewed the planning history of the site, examined the relevant planning legislation and had regard to the proper planning and sustainable development of the area

Site Description/Location

The subject site which measures 0.5 hectares is located in the townland of Jarretstown, Dunboyne, Co. Meath approximately 3.2km to the south of Dunboyne and comprises an existing warehouse type structure and associated yard areas. The unit has been subdivided into 2 no. units. Unit 1 has

a stated floor area of 323.5sq.m (incorrectly stated on the original drawing as 137.08sq.m) and unit 2 has a stated floor area of 535sq.m. Unit 1 and the adjacent yard area is in use as a storage depot for telecoms equipment and cabling etc.

Planning History

DA50418 Michael Gallagher, Permission for a bungalow style private dwelling with effluent treatment unit and associated works. Permission was refused on 2/11/2005, for 4 reasons.

DA4037

Michael Gallagher, Permission for a bungalow style private dwelling with effluent treatment unit and associated works. Permission was refused on 15/12/2004 for 4 no. reasons.

001675 Michael Gallagher, Permission to construct a dormer bungalow with septic tank and puraflo effluent treatment unit and associated works. Permission was refused for on 16/10/2000 for 4 no reasons.

001259 Mr. Thomas Gallagher, Permission to make alterations to front facade of existing warehouse building and to provide office accommodation within. This application involves the sub-division of a structure previously within. This application involves the subdivision of a structure previously approved under planning ref 75/1169/ Permission was refused by An Bord Pleanala on 19/6/2002 for 2 no. reasons.

001258 Mr. Tony Cafferkey, Permission to demolish part of an existing warehouse and to construct a replacement warehouse with office accommodation application to include septic tank and puraflo effluent treatment system. This application involves the subdivision of a structure previously approved under Ref: 75/1168. A notification of decision to grant permission was issued by Meath County Council on 21/9/2001 subject to 12 no. conditions. This notification of decision to Grant permission was appealed to An Bord Pleanala who decided to refuse permission.

982094 Michael Gallagher, Permission to construct a dormer bungalow with septic tank and puraflo treatment system. Permission was refused on 14/1/1999 for 4 no. reasons.

781501 Mr. J Crowley, Permission for extension to store at Jarretstown, Meath County Council decided to refuse permission on 21/6/1997. This decision was appealed to An Bord Pleanala who decided to Grant permission subject to 4 conditions.

751168 Quality Feeds Ltd. Retention of existing use and buildings was granted by Meath County Council subject to 3 conditions.

Legislation

This section sets out the relevant planning legislation in respect of this matter. It should be noted that in or around 1999 Quality Feeds Limited sold the property and since that time it has been used for storage purposes. For this reason, we have included the relevant legislation prior to the adoption

of the Planning and Development Act 2000 and Planning and Development Regulations 2001 (as amended).

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1963 (EXEMPTED DEVELOPMENT) REGULATIONS, 1964

An examination of the Planning and Development Regulations in place in at the time of the making of the decision Ref: 751168 will show that S.I. No. 236 of 1964, LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACT, 1963 (EXEMPTED DEVELOPMENT) REGULATIONS, 1964 were the Regulations in force.

The use of the structure would fall within the definition of a repository under Article 2 of the aforementioned Regulations:

" repository " means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;

Article 3(5) of the aforementioned Regs states as follows:

(5) Development to which sub-article (1), (2), (3) or (4) of this article 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 metalled part of which is more than 12 feet in width,

(iii) endanger public safety by reason of traffic hazard or any obstruction to the view of persons using any public road at or near any bend, corner, junction or intersection,

(iv) contravene any building regulation made under section 86 of the Act or any byelaw in force under section 41 of the Public Health (Ireland) Act, 1878, in the area in which the land to which the development relates is situated,

(v) comprise the erection, construction, 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 by a resolution of the planning authority for the area,

(vi) consist of or comprise the carrying out under a public road of works other than a connection to a sewer or watermain,

(vii) restrict 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 which the development is proposed or, during the period prior to the making of a development plan for the said area, is declared by resolution of the planning authority for that area to be an objective which they propose to include in a development plan, or

(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, or

(b) in an area to which a special amenity area order relates by reference to that area being an area of special amenity by reason of its natural beauty, if such development would be development—

(i) of class 1, 2, 12, 16 or 17 specified in column 1 of Part I of the Schedule to these Regulations,

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 4, 5, 8, 9, 13, 14 or 17 specified in column 1 of Part II of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or

(iii) of class 1, 4 or 5 specified in column 1 of Part III of the said Schedule.

Article 4 of the aforementioned Regulations stated as follows:

“4.—(1) Development which consists of a change of use within any one of the classes of use specified in Part IV of the Schedule to these Regulations and which does not require the carrying out of any works, other than works which are exempted development, shall be exempted development for the purposes of the Act provided that the development, if carried out, would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission”.

PART IV of the aforementioned regulations set out the Classes of Use for the purposes of Article 4.

CLASSES OF USE

Class 1—Use as a shop for any purpose except as—

(a) a fried fish shop,

(b) a shop for the sale of pet animals or birds,

(c) a shop for the sale or display for sale of motor vehicles other than bicycles

Class 2—Use as an office for any purpose.

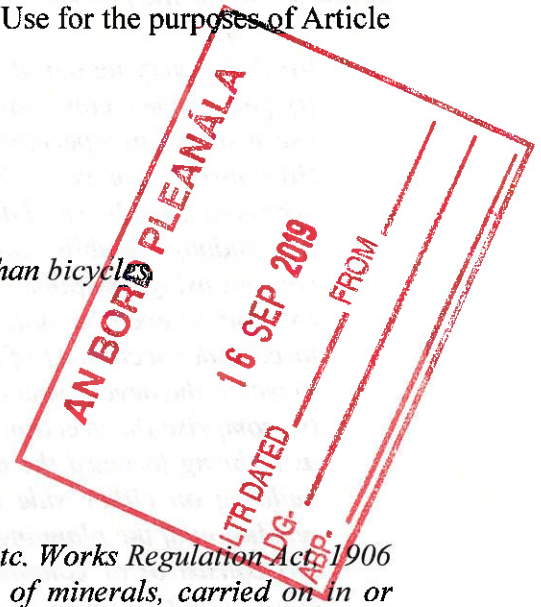
Class 3—Use as a light industrial building for any purpose.

Class 4—Use as a general industrial building for any purpose.

Class 5—Use for any work which is registrable under the Alkali, etc. Works Regulation Act 1906 except a process ancillary to the getting, dressing or treatment of minerals, carried on in or adjacent to a quarry or mine; use for any of the following processes, except as aforesaid, so far as not registrable under the above Act:—

(a) smelting, calcining, sintering or reduction of ores, minerals, concentrates or matter,

(b) converting, reheating, annealing, hardening, melting, carburising, forging or casting of iron or other metals or alloys,



- (c) recovering of metal from scrap or drosses or ashes,
- (d) galvanising,
- (e) pickling or treatment of metal in acid,
- (f) chromium plating.

Class 6—Use for any of the following processes so far as not included in class 5 of this Part of this Schedule and except a process ancillary to the getting, dressing or treatment of minerals, carried on in or adjacent to a quarry or mine—

- (a) burning of building bricks,
- (b) lime burning,
- (c) production of calcium carbide or zinc oxide,
- (d) foaming, crushing or screening of stone or slag.

Class 7—Use for any of the following purposes so far as not included in class 5 of this Part of this Schedule—

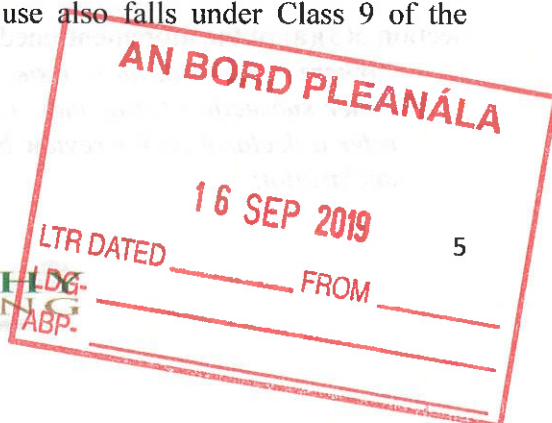
- (a) the production or employment of cyanogen or its compounds,
- (b) the manufacture of glass, where the sodium sulphate used exceeds 1.5 per cent of the total weight of the melt,
- (c) the production of zinc chloride.

Class 8—Use for any of the following purposes so far as not included in class 5 of this Part of this Schedule—

The distilling, refining or blending of oils, the production or employment of cellulose lacquers (except their employment in garages in connection with minor repairs), hot pitch or bitumen or pyridine; the stoving of enamelled ware; the production of amyl acetate, aromatic esters, butyric acid, caramel, hexamine, iodoform, B-naphthol, resin products (except synthetic resins, plastic moulding or extrusion compositions and plastic sheet, rods, tubes, filaments, fibres or optical components produced by casting, calendering, moulding, shaping or extrusion), salicylic acid or suphonated organic compounds; paint and varnish manufacture (excluding mixing, milling and grinding); the production of rubber from scarp; or the manufacture of acetylene from calcium carbide for sale or for use in a further chemical process.

Class 9—Use as a wholesale warehouse or enclosed repository building for any purpose.”

We consider that the permitted use under Ref: 751168 would fall under Class 9 of the foregoing use classes. We are also of the opinion that the current use also falls under Class 9 of the aforementioned Regulations.



PLANNING AND DEVELOPMENT ACT 2000-2019 AND PLANNING AND DEVELOPMENT REGULATIONS 2001-2019.

This section sets out the relevant legislation currently in force in respect of this matter:

Planning and Development Act 2000-2019

Section 2(1) of the Planning and Development Act, 2000 – 2014, states the following:

“alteration” includes – (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, That materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

“exempted development” has the meaning specified in section 4;

“land” includes any structure and any land covered with water (whether inland or coastal);

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

Section 3(1) of the aforementioned Act states the following:

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

Section 4(1) of the aforementioned Act states the following:

The following shall be exempted developments 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 of neighbouring structures;

Section 5(1) of the aforementioned Act, states the following:

If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter”.

Section 5(3)(a) of the aforementioned Act, states the following:

“Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Section 127(1) of the aforementioned Act states the following:

An appeal or referral shall –

(d) state in full the grounds of appeal or referral and the reasons, considerations and arguments on which they are based,

Planning and Development Regulations 2001 – 2019

The following sets out the relevant sections of the Planning and Development Regulations as amended:

PART 2, Article 5(1) of the aforementioned Regulations states as follows:

Exempted Development

Interpretation for this Part.

5.(1) In this Part—

“business premises” means—

(a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons,

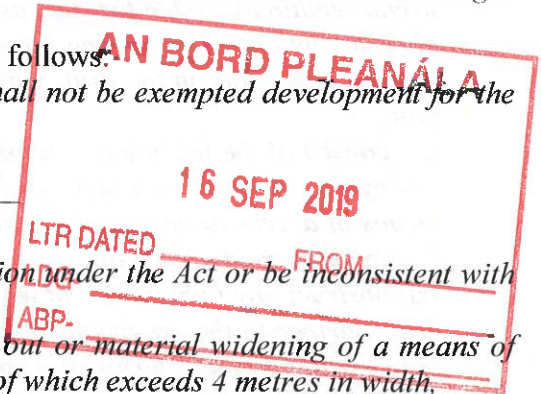
“repository” means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;

Article 9 (1) of the aforementioned Regulations states 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 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 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,

(b) in an area to which a special amenity area order relates, if such development would be development:—

(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the

use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or

(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or

(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

(2) Sub-article (1)(a)(vi) shall not apply where the development consists of the construction by any electricity undertaking of an overhead line or cable not exceeding 100 metres in length for the purpose of conducting electricity from a distribution or transmission line to any premises.

Changes of use.

Article 10 of Part 4 of the Planning and Development Regulations 2001-2018 states as follows:

10. (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

(b) Nothing in any class in Part 4 of the Schedule 2 shall include any use—

(i) as an amusement arcade,



- (ii) as a motor service station,
- (iii) for the sale or leasing, or display for sale or leasing, of motor vehicles,
- (iv) for a taxi or hackney business or for the hire of motor vehicles,
- (v) as a scrap yard, or a yard for the breaking of motor vehicles,
- (vi) for the storage or distribution of minerals,
- (vii) as a supermarket, the total net retail sales space of which exceeds 3,500 square metres in the greater Dublin Area and 3,000 square metres in the remainder of the State,
- (vii) as a retail warehouse, the total gross retail sales space of which exceeds 6,000 square metres (including any ancillary garden centre), or
- (viii) as a shop, associated with a petrol station, the total net retail sales space of which exceeds 100 square metres.

(3) Development consisting of the provision within a building occupied by, or under the control of, a State authority of a shop or restaurant for visiting members of the public shall be exempted development for the purposes of the Act.

(4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(5) Development consisting of the use of a house for child minding shall be exempted development for the purposes of the Act.

Article 11 states as follows:

"Saver for certain development.

Development commenced prior to the coming into operation of this Part and which was exempted development for the purposes of the Act of 1963 or the 1994 Regulations, shall notwithstanding the repeal of that Act and the revocation of those Regulations, continue to be exempted development for the purposes of the Act".

Part 4 of Schedule 2 of the Planning and Development Regulations, to which Article 10 applies states inter alia as follows:

"Exempted development- Classes of Use

CLASS 1

Use as a shop.

CLASS 2

Use for the provision of—

(a) financial services,



- (b) professional services (other than health or medical services),
 - (c) any other services (including use as a betting office),
- where the services are provided principally to visiting members of the public.

CLASS 3

Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

CLASS 4

Use as a light industrial building.

CLASS 5

Use as a wholesale warehouse or as a repository.

CLASS 6

Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

CLASS 7

Use—

- (a) for public worship or religious instruction,
- (b) for the social or recreational activities of a religious body,
- (c) as a monastery or convent.

CLASS 8

Use—

- (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose),
- (b) as a crèche,
- (c) as a day nursery,
- (d) as a day centre.

CLASS 9

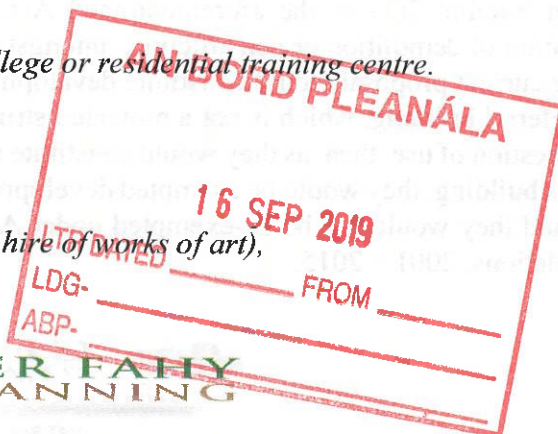
Use—

- (a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),
- (b) as a hospital or nursing home,
- (c) as a residential school, residential college or residential training centre.

CLASS 10

Use as—

- (a) an art gallery (but not for the sale or hire of works of art),
- (b) a museum,



- (c) a public library or public reading room,
- (d) a public hall,
- (e) an exhibition hall,
- (f) a social centre, community centre or non-residential club, but not as a dance hall or concert hall.

CLASS 11

Use as—

- (a) a theatre,
- (b) a cinema,
- (c) a concert hall,
- (d) a bingo hall,
- (e) a skating rink or gymnasium or for other indoor sports or recreation not involving the use of motor vehicles or firearms”.

Grounds of Referral:

The decision of the Planning Authority is unreasonable having regard to the provisions of the Planning and Development Act and the Planning and Development Regulations in respect of exempted development. No reasons for the decision are given which is unusual however the planner's report expands on the decision of the Planning Authority.

1. The subdivision of the warehouse into two separate units would constitute exempted development under Section 4(1)(h) of the Planning and Development Act 2000(as amended).
 2. The use of part of the existing building for the storage of materials is exempted development.
 3. The use of yard Area 3 for the storage of materials is exempted development having regard to the permitted warehouse use.
1. The subdivision of the warehouse into two separate units would constitute exempted development under Section 4(1)(h) of the Planning and Development Act 2000(as amended).

Having inspected the site we are satisfied that the subdivision of the premises into two separate units constitutes “works” as defined under Section 2(1) of the Planning and Development Act. Under Section 2(1) of the aforementioned Act, “works” are defined as including any act or operation of demolition or construction, amongst other things. Accordingly, the works comprised in the current proposal would constitute development. These have been undertaken wholly within the referral building, which is not a protected structure. If these works are taken in isolation from the question of use, then, as they would constitute an alteration which would affect only the interior of this building, they would be exempted development under Section 4(1)(h) of the aforementioned Act and they would not be de-exempted under Article 9(1)(a) of the Planning and Development Regulations, 2001 – 2015.

Having inspected the site we are satisfied that the works carried out for the purposes of the subdivision of the property into two separate units were all carried out within the fabric of the subject building and therefore constitute exempted development under Section 4(1)(h) of the Planning and Development Act 2000 which states:

"The following shall be exempted developments 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 of neighbouring structures;

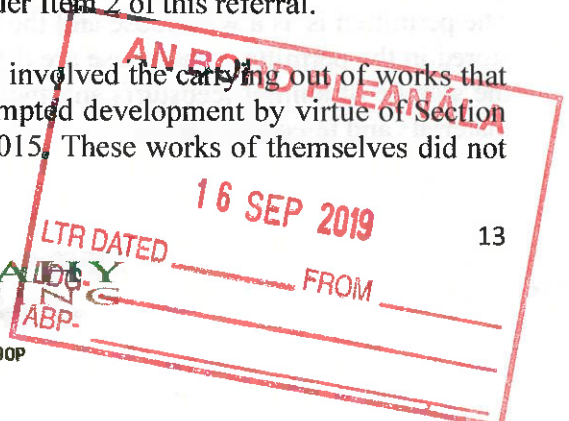
The works carried out relate to works to the interior of a structure which do not affect the exterior of the structure and are therefore exempted development under Section 4(1)(h) of the Planning and Development Act.

Having reviewed the planning history of the site we are satisfied that the permitted use of the site is as a repository/warehouse/store. The subdivision of the premises into two separate units does not have any impact on this permitted use which remains the storage of materials. There has been a continuity of the usage a prolonged period, namely the use for storage and this subdivision does not give rise to any impacts in terms of the use. This is a low intensity uses and there is no increase in traffic movements and no additional impacts in terms of noise or general disturbance arising from the subdivision.

Attention is drawn to other referral cases in which the Board declared that the sub-divisions in question would not lead to a material change of use and so planning permission was not required. These cases are RL2308, PL39/8/397, RL2464, and PL62.RF713, RL3367, RL3420.

The Lackagh Rock Ltd judgement is relevant in this instance. In the case of Galway County Council versus Lackagh Rock Limited [1985] I.R.120, Barron J. held that in order "to test whether or not the uses are materially different, it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made, either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different". We would submit that the subdivision and use as a warehouse for the storage of materials would not be materially different from the previously permitted warehouse for the storage of animal feedstuffs. The matter of the use of the building shall be discussed in further detail under Item 2 of this referral.

In the light of the foregoing whereas the subdivision has involved the carrying out of works that would be development, such development would be exempted development by virtue of Section 4(1)(h) of the Planning and Development Act, 2000 – 2015. These works of themselves did not



entail a material change of use and would not constitute development having regard to the Lackagh Rock case.

The Planner's report completely ignores the provisions of Section (4)(1)(h) of the Planning and Development Act and instead attempts to address all three of the queries as the one question rather than dealing with each question on its merits.

There is no basis for the Planner's report's suggestion that the subdivision of the unit into two separate units contravenes Condition No. 1 as this ignores one of the basic tenets of planning that permission in respect of structures and permission in respect of use are two separate matters which are considered independently.

Under Section 4(1)(h) of the aforementioned Act, works for the alteration of a structure, which affect only the interior, are exempted development. From our observations of the said site, we consider that the subdivision represents such works and so it is exempted development, which is not de-exempted under Article 9(1)(a) of the Planning and Development Regulations, 2001 – 2015. The sub-division per se has not led to a change of use. This Unit was previously in use as a warehouse and it continues to be used as a warehouse/repository as defined in the Planning and Development Regulations.

2. The use of part of the existing building for the storage of materials is exempted development.

The question as to whether the aforementioned changes of use would constitute material changes of use now arises. Guidance in seeking to answer this question comes from planning legislation and case law.

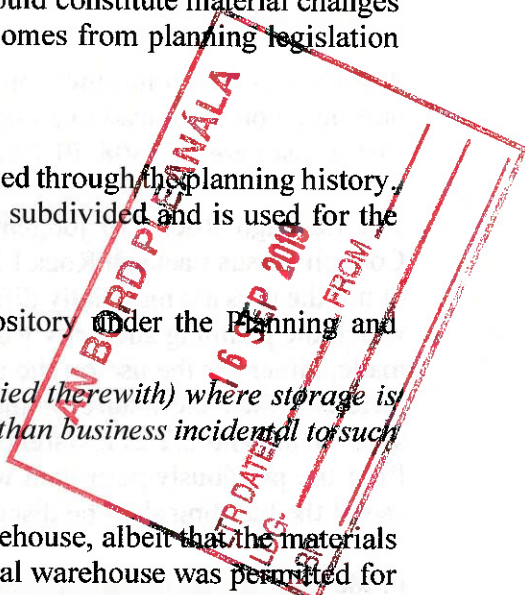
With respect to the former, the following points arise:

The permitted use of the building is as a warehouse this is established through the planning history. There is no material change of use whereby the building is now subdivided and is used for the storage of building materials.

The use of the permitted building can be categorised as a repository under the Planning and Development Regulations 2001-2019 (as amended)

“repository” means a structure (excluding any land occupied therewith) where storage is the principal use and where no business is transacted other than business incidental to such storage;

The permitted is as a warehouse and the continued use is as a warehouse, albeit that the materials stored in the permitted warehouse are different, namely the original warehouse was permitted for the storage of animal feedstuffs and the current use of the building is for the storage of building materials and telecoms cables.



In the case of Galway County Council versus Lackagh Rock Limited [1985] I.R.120, Barron J. held that in order *"to test whether or not the uses are materially different, it seems to me that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made, either for the use on the appointed day or for the present use. If the matters are materially different, then the nature of the use must be materially different"*.

Having regard to the Lackagh Rock case in which it was held that if, in assessing a proposed use, then matters considered are materially different from the original use, then a material change of use would occur. If this test is applied to this unit then if one compares the matters that would have been taken into account in assessing the original feedstuff warehouse proposal and those that would be taken into account in assessing the proposed building materials warehouse proposal, it is argued that there would be no material difference in terms of the impacts arising from the two uses which are the fundamentally the same as they are both warehousing.

In terms of traffic generation, the use of the building for the storage of building materials and cables would not give rise to any additional traffic over and above that which already permitted by the previous permission. There would be no visiting members of the public. Accordingly, the matter of traffic generation would not be materially different and would therefore not constitute a material change of use and would not constitute development.

Articles 9(1) and 10(1) are relevant in this instance as they state inter alia 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".

Article 10(1) states: Changes of use.

"10. (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

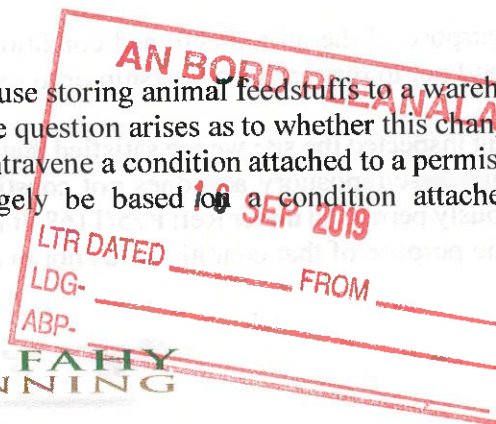
(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned".

Being satisfied that the change of use from a warehouse storing animal feedstuffs to a warehouse storing building materials and cables has occurred the question arises as to whether this change of use (which is not a material change of use) would contravene a condition attached to a permission. The Planning Authority's decision appears to largely be based on a condition attached to permission Ref: 75/1168 which stated as follows:



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"That the use of the building shall be restricted to redistribution of animal feed-stuffs and activities incidental thereto, and that in particular, processing of feedstuff and other manufacturing activities shall not be carried on.

Reason: To confine uses to those acceptable in the area- in accordance with proposals in architect's letter of 7/1/76"

An examination of that condition and the reason attached thereto will show that the intention of that condition was to ensure that only storage and redistribution activities associated with the permitted animal feed business were carried out in the permitted building and that no manufacturing or processing was carried out. The purpose of this condition was to confirm that the permitted use of the building was only as a storage/warehouse associated with the redistribution and that no manufacturing or processing could be carried out. The use of the premises for the storage of building materials and telecoms cables would not contravene that condition of that permission (if that condition is still applied, below we would argue that that condition is no longer applicable as the permission was superseded by Permission Ref: 78/1501).

Condition No. 1 of that Planning Permission Ref: P75/1168 does not remove the normal exempted development rights which would be explicitly stated if they were to be removed.

In 1978 planning permission was granted under Ref: 781501 to Mr. J Crowley for extension to store at Jarretstown. Meath County Council decided to refuse permission on 21/6/1997. This decision was appealed to An Bord Pleanala who decided to Grant permission subject to 4 conditions. It is noted that Condition No. 1 of the previous permission Ref: 75/1168 was not attached to the permission Ref: 781501. There was no reference to animal feedstuffs in that application or decision.

In all subsequent applications the building was described by the applicant, the planning authority and An Bord Pleanala as a "warehouse".

Having regard to the foregoing we would submit that the use as an animal feeds storage area was superseded by the 1978 application for a store which is the same as a warehouse or repository. Therefore Condition No. 1 of Permission Ref: 75/1168 is no longer applicable to this structure.

We would argue that as permission Ref: 75/1168 is superseded by 781501 Condition 1 of that former permission is no longer applied to this building. It is normal practice for a Planning Authority or An Bord Pleanala in any subsequent planning permissions granted to specifically state that the previous conditions of an earlier quoted permission shall be applied in this instance. This did not happen in this case.

The purpose of the aforementioned condition was to confine the uses to those acceptable to the area and not to restrict the ownership or to remove the normal exempted development provisions.

Having inspected the site we are satisfied that the use being carried out on site falls within the class of warehouse/repository and does not constitute a material change of use from that which was previously permitted under Ref: P75/1168. It is clear from the condition attached to that permission that the purpose of that condition was not to remove any exempted development rights but rather



to prevent any manufacturing or processing being carried out on site. We can confirm that there is no manufacturing on site or processing and therefore no material change of use has taken place. Therefore, even if that condition was still applicable, we consider that the use of the site for the purposes of storage does not contravene the condition attached to that permission.

Having regard to the foregoing we are satisfied that the use of the building for the storage of building materials, cables and telecoms materials would not constitute a material change of use from the original permitted use as a warehouse/repository and is not development and is exempted development under Class 5 of the Planning and Development Regulations 2001(as amended).

The Planner's report in failing to deal with the question of the subdivision separately from the question of the use then wrongfully assumes that as the Planning Authority have concluded that the subdivision constitutes development then the use for the storage of building materials and cables also constitutes development. This is not the case and it is incumbent on the Planning Authority to examine the two questions under the appropriate sections of the relevant legislation which are set separately. They must deal with the question of works to a structure which are works which only affect the interior of a structure and constitute works under Section 4(1)(h) and they must then separately address the question of whether a material change of use has taken place.

Having regard to the fact that the permission is superseded by Permission 781501 then it is reasonable to state that no change of use has occurred and the use of the warehouse for the storage of materials does not contravene any condition of the most recent permission granted Ref: 781501.

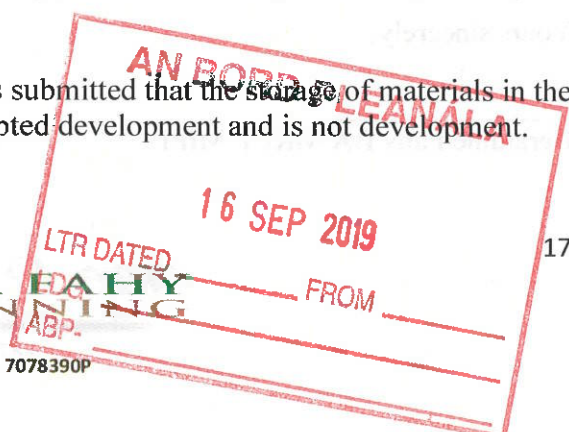
Having regard to the Lackagh Rock case discussed previously in this report we are satisfied that the proposed development does not constitute a material change of use and is therefore exempted development and is not development.

3. The use of yard Area 3 for the storage of materials is exempted development having regard to the permitted warehouse use.

The decision of the Planning Authority in respect of this matter is unreasonable having regard to the permitted use of the building as a warehouse. The use of the yard area for the storage of building materials would not result in a material change of use of the building and would not give rise to any increase in traffic arising from the development. This yard area is intended to simply be a secure storage area associated with the permitted warehouse use.

Condition No. 1 of 75/1168 related only to the building and not to the yard areas, and as outlined above we consider that said Condition is no longer applicable as it is superseded by subsequent planning permissions.

Having regard to the nature of the permitted use it is submitted that the storage of materials in the yard associated with that business premises is exempted development and is not development.



Conclusion

Having inspected the site, reviewed the planning history of the site and the relevant planning legislation we would submit that the subdivision of the unit into two separate units does not constitute development and would constitute exempted development under Section 4(1)(h) of the Planning and Development Act 2000(As amended) being works only to the interior of the structure which do not affect the exterior of the structure rendering it inconsistent with neighbouring structures.

We also consider that the permitted use was as a warehouse/repository owned and was originally operated by Quality Feeds. The use of the site was restricted by Condition No.1 the purpose of which was to ensure that no processing or manufacturing would take place on site and not to prevent the future sale of the property or to remove the normal exempted development rights. Having regard to the fact that no processing or manufacturing is or is intended to be carried out on site and having regard to the fact that the only use as for storage of materials this would not contravene the condition of Permission Ref: P75/1168. We would also submit that said condition is superseded by subsequent permissions, and does constitute a material change of use and would constitute exempted development under Article 10(1) of the Planning and Development Regulations 2001(As amended).

Having regard to the nature of the permitted use it is submitted that the storage of materials in the yard associated with that business premises is exempted development and is not development.

WHEREAS a question has arisen as to whether:

The sub-division of the unit into two separate units is or is not development, or is or is not exempted. Whether the use of the building for storage is or is not development or exempted development. Whether the use of the yard Area 3 for the storage of materials is or is not exempted development.

Having regard to

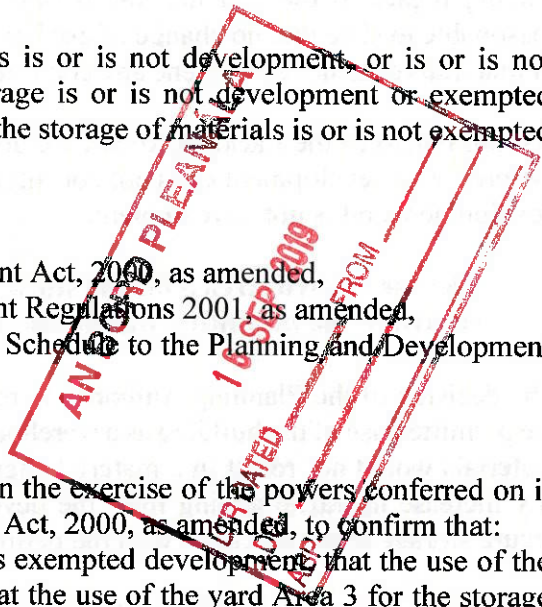
- a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5 and 10 of the Planning and Development Regulations 2001, as amended,
- (c) the Classes of Use set out in Part 4 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site.

NOW THEREFORE we request An Bord Pleanála, in the exercise of the powers conferred on it by section 5 (3) (a) of the Planning and Development Act, 2000, as amended, to confirm that:

The sub-division of the unit into two separate units is exempted development, that the use of the building for storage is exempted development and that the use of the yard Area 3 for the storage of materials is exempted development.

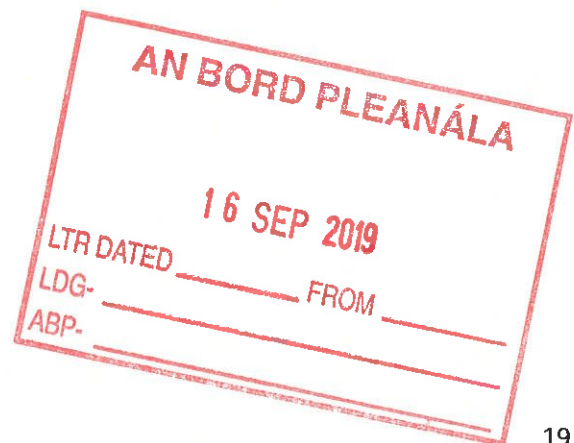
Yours sincerely,

Geraldine Fahy BA MRUP MIPI



Attachments:

1. Copy of Planning Authority Decision
2. Cheque for €220 being the fee for a referral.
3. Amended plans to show corrected floor area.



MEATH COUNTY COUNCIL

Planning Department

Buvinda House

Dublin Road

Navan

Co Meath

046 - 9097500

Planning & Development Act 2000- 2018

DECLARATION

To: Peter Cafferky, Derek Hynes and Tommy Gallagher
c/o Ger Fahy Planning
Mulhussey
Maynooth
Co Kildare

**PLANNING REFERENCE
NUMBER:**

RA/S51941

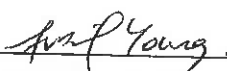
APPLICATION RECEIPT DATE:

29/07/2019

FURTHER INFORMATION DATE: N/A

In pursuance of the powers conferred upon them by the Planning and Development Act 2000-2018, Meath County Council has by order dated 22-08-19 decided to Declare the proposed development is **development requiring planning permission**, in accordance with the documents submitted namely: **Whether or not the subdivision of the unit into two separate units is or is not development, or is or is not exempted development. Whether the use of part of the existing building for use for storage of materials is or is not development or is or is not exempted development. Whether the use of the yard Area 3 for the storage of materials is or is not exempted development at Jarretstown, Dunboyne, Co Meath**

Date: 22-08-19


On Behalf of Meath County Council

NOTE:

1. Any appeal against a Declaration of a Planning Authority under Section 5, sub-section 3(a) of the Planning and Development Act 2000 may be made to An Bord Pleanála by the applicant **WITHIN FOUR WEEKS** beginning on the date of issue of the Declaration.
2. Appeals should be addressed to An Bord Pleanála, 64 Marlborough Street, Dublin 1. An appeal by the applicant should be accompanied by this form. The fee for an appeal against a Declaration of the Planning Authority is € 220.

For more information on Appeals you can contact An Bord Pleanála at:

Tel: 01 - 8588100 or LoCall: 1890 275 175

Fax: 01 - 8722684

E-mail: bord@pleanala.ie

Web: www.pleanala.ie

