An Bord Pleanála

Board Order
ABP-313904-22

Planning and Development Acts 2000 to 2022

Planning Authority: South Dublin County Council

Planning Register Reference Number: ED22/0008

WHEREAS a question has arisen as to whether the commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, Dublin is or is not development or is or is not exempted development:

AND WHEREAS John Hanlon care of Kiaran O'Malley and Company Limited Town Planning Consultants of Saint Heliers, Saint Heliers Copse, Stillorgan Park, Blackrock, County Dublin requested a declaration on the said question from South Dublin Council and the said Council issued a declaration on the 1st day of June 2022, stating that the said matter was development and was not exempted development:

AND WHEREAS the said John Hanlon referred the declaration for review to An Bord Pleanála on the 24th day of June 2022:

AND WHEREAS An Bord Pleanála reformulated the question as follows –

"whether the restoration of land to a pre-1963 use for open storage for commercial use at Clonacoole, Naas Road, Clondalkin, Dublin is or is not development or is or is not exempted development":

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

(a) Section 2(1) of the Planning and Development Act, 2000, as amended,

(b) Section 3(1) of the Planning and Development Act, 2000,

(c) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(d) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(e) the planning history of the site, and

(f) the location of the site.

AND WHEREAS An Bord Pleanála has concluded that:-

(a) there is a lack of evidence supporting the historic use of the land as open storage prior to the 1st of October 1964 and that, should the pre-'63 use be accepted, that it has not been abandoned,

(b) in the absence of this evidence, the Board cannot be satisfied that the use of the land for open storage is not bound by the provisions of the Planning and Development Act 2000, as amended,

(c) the proposed use of the land as open storage for commercial reasons constitutes development under Section 3(1) and Section 3(2)(b)(iii) of the Planning and Development Act 2000, as amended, as it constitutes works and whereby the storage of vehicles and materials on land constitutes a material change of use,

(d) the use of the land for open storage does not come within any class of exempted development which is set out in Part 1 of Schedule 2 to the Planning and Development Regulations 2001, as amended, and

(e) does not come within any of the other exempted development provisions of the Act or Regulations:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the restoration of land to a pre-1963 use for open storage for commercial use at Clonacoole, Naas Road, Clondalkin, Dublin is development and is not exempted development.

Liam Bergin
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 21st **day of** December **2023.**

An Bord Pleanála

Board Direction
BD-014839-22
ABP-313904-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 11/12/2023.

The Board decided, as set out in the following Order, that

Board Order as follows:-

WHEREAS a question has arisen as to whether the restoration of land to a pre-63 use for open storage for commercial use is or is not development or is or is not exempted development:

AND WHEREAS John Hanlon requested a declaration on this question from South Dublin Council and the Council issued a declaration on the 1st day of June 2022 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 24th day of June 2022:

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

(a) Section 2(1) of the Planning and Development Act, 2000, as amended,

(b) Section 3(1) of the Planning and Development Act, 2000,

(c) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(d) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(e) the planning history of the site,

(f) the location of the site.

AND WHEREAS An Bord Pleanála has concluded that:

(a) There is a lack of evidence supporting the historic use of the land as open storage prior to the 1st of October 1964 and that, should the pre-'63 use be accepted, that it has not been abandoned,

(b) In the absence of this evidence the Board cannot be satisfied that the use of the land for open storage is not bound by the provisions of the Planning and Development Act 2000 (as amended),

(c) The proposed use of the land as open storage for commercial reasons constitutes development under Section 3(1) and Section 3(2)(b)(iii) of the Planning and Development Act 2000 (as amended) as it constitutes works and whereby the storage of vehicles and materials on land constitutes a material change of use,

(d) The use of the land for open storage does not come within any class of development which is set out in Schedule 2, Part 1 of the Planning and Development Regulations 2001, (as amended), and

(e) does not come within any of the other exempted development provisions of the Act or Regulations.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, (as amended), hereby decides that the use of the land for open storage in association with commercial use is development and is not exempt development under the Planning and Development Act 2000 (as amended).

Board Member: _____ **Date:** 11/12/2023

Liam Bergin

An Bord Pleanála

Inspector's Report ABP-313904-22

Question	Whether the commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, Dublin 22 is or is not development and is or is not exempted development.
Location	Clonacoole, Naas Road, Clondalkin, Dublin 22
Declaration	
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	ED22/0008
Applicant for Declaration	John Hanlon.
Planning Authority Decision	Is not exempted development
Referral	
Referred by	John Hanlon.
Owner/ Occupier	John Hanlon.
Observer(s)	No Observers.
Date of Site Inspection	19th of October 2023.

Inspector	Elaine Sullivan

Contents

1.0 Site Location and Description

1.1. The appeal site comprises an irregular shaped site located to the rear of a residential property that fronts onto a slip or service road that runs to the side of the mainline N7, approximately 600 metres to the west of the Red Cow interchange on the M50. The slip or service road from which access to the site is available can be accessed from the junction with the Fonthill Road to the west of the site and access to the road is also available direct from the N7 a short distance to the west of the site. To the east of the site the slip / service road loops around to the northwest and connects with Monastery Road. Access onto the M50 is available from a roundabout close to this end of Monastery Road.

1.2. The slip or service road serves a number of commercial sites including 'Joel's' Restaurant, the Louis Fitzgerald Hotel, a number of vacant commercial properties and a short cul-de-sac of cottages (St. Brigid's' Cottages) the entrance to which is approximately 80 metres to the west of the subject site. The site is located to the rear of 2 no. two-storey dwellings which access onto the slip or service road. The house closest to the site entrance is called 'Clonacoole'. The site slopes upwards to the north away from the road and is currently laid out as a storage area with approximately 40 no. 20 foot shipping containers laid out around the perimeter of the site. (I did not gain access to the site during the site visit, but the containers are clearly visible from the entrance and planning history for the site references the number of containers. The containers are also clearly visible from aerial images on Google Maps).

1.3. Signage on the site refer to 'Red Cow Self Storage'. Access to this area is available via a recessed sliding gate on the western side of the houses fronting the site and the junction between this access and the service or slip road comprises a recessed entrance with gate piers aligned with the inside edge of the footpath.

2.0 The Question

2.1. Is the restoration to pre-63 commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, Dublin 22 development, and if so, is it exempt development?

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. The declaration of exempt development was not approved by the Planning Authority, (PA).

3.2. Planning Authority Reports

3.2.1. Planning Reports

The declaration of exempt development was not approved for the following reasons:

- The commercial use of lands as open storage is considered a material change of use of the land. The proposal is therefore considered to be 'development'.
- Having regard to the proposed commercial use of the lands for open storage, the Planning Authority is satisfied that the proposal is not exempted development under Section 4 of the Planning and Development Act 2000 (as amended).
- The commercial use of lands for open storage does not fit the description of any of the uses listed under Schedule 2 of the Planning and Development Regulations 2001 (as amended) and cannot be considered to be exempt development under this schedule.
- Article 9 (1)(iii) of the Planning and Development Regulations 2001 (as amended) states that, *'Development to which Article 6 relates shall not be exempted development for the purposes of the Act, (a) if the carrying out of works would – (iii) endanger public safety by reason of traffic hazard or obstruction of road users.'.*
- The issue of traffic hazard has been raised as an issue on the site in previous planning refusals on the site. Insufficient information has been submitted by the applicant to demonstrate that the traffic generation resulting from the operation of the commercial storage business on the subject site.

3.2.2. Other Technical Reports

- No other reports on file.

4.0 Planning History

SDCC Enf. Ref. 7798 – Planning Enforcement file open regarding the operation of a commercial storage facility to the rear of the property without the benefit of appropriate planning permission. This report of the Planning Officer notes that this file is currently open.

ABP-309950-21, (SD21B/0008) – Planning permission refused in November 2021 for the erection of a steel perimeter fence of 2.5m to match the existing fence on the neighbouring property and to install a new electronically controlled entrance gate, which would be set back by c. 13m from the roadside. Permission was refused for the following reason:

> *It is considered that the proposed development would facilitate the consolidation and continuance of development for which there is no authorisation and for which the Board has previously refused retention permission.*

ABP-305392-19, (SD19A/0202) – Planning permission refused in January 2020 for the retention of change of use of premises to self-storage facility, comprising 40 shipping containers used as storage units, 10 metre length of 2.6-metre-high palisade fencing in west boundary, sign on Unit 40, sign at roadside entrance and 2.2-metre-high security gate and fence at entrance. Permission was refused for the following two reasons:

> *1. The development proposed for retention would lead to an increase in traffic turning movements onto and off a busy slip road linking with the National Primary Road (N7) along which traffic travels at up to the maximum speed limit. The access to the site via this slipway is substandard in that it lacks adequate vision splays in each direction. The proposed development would, thereby, endanger public safety by reason of traffic hazard and would be contrary to the proper planning and sustainable development of the area.*
>
> *2. The development proposed for retention consisting of the location of shipping containers for use for storage purposes on a visually prominent and*

poorly landscaped site which is clearly visible from the adjacent National Primary Route (N7) would constitute haphazard development and would seriously injure the visual amenities of the area by reason of visual dominance at this location. Furthermore, the development proposed for retention would contravene Objective ET3, Objective 5 of the South Dublin County Development Plan 2016-2022 which seeks to ensure that all business parks and industrial areas are designed to the highest architectural and landscaping standards and would set an undesirable precedent for similar development in the area. The development proposed for retention would, therefore, be contrary to the proper planning and sustainable development of the area.

4.1. **Relevant Board Decisions**

4.1.1. I have searched and examined the Board's database for referrals of a similar nature. There is an extensive list of Section 5 Referrals on the Board's database that relate to similar issues. Whilst the circumstances of each case differ, I consider the following and most recent referrals, to be of some relevance to the subject referral,

ABP-308807-21 – The Board generally found that the restoration of a derelict structure to restore it to its pre-63 residential use is development and is not exempted development. The works required to restore the derelict building would constitute a material change of use, in terms of servicing the site, impact on visual amenity in a sensitive area, which are development and not exempted development. The external works to the appearance to reconstruct and restore the structure would not come within the scope of Section 4(1)(h) of the Act as they would materially alter the appearance of the structure.

ABP-301780-18 – The Board generally found that the use of land for open storage of building materials was development as it resulted in the material change of use of the land within the curtilage of a house and that exemptions set out in Section 4(1)(h) and/or 4(1)(j) of the Planning Act or Class 16 of Schedule 2, Part 1 of the Regulations could not be relied on. Therefore the use of the land for open storage constituted development and was not exempt development.

5.0 Policy Context

5.1. Development Plan

The subject site is zoned objective *'EE' – 'To provide for enterprise and employment related uses'*, in the South Dublin County Development Plan 2022-2028.

5.2. Natural Heritage Designations

No designations apply to the subject site.

6.0 The Referral

6.1. Referrer's Case

The referrer's case is outlined as follows:

- The assessment of the PA does not consider the pre-63 established storage use of the lands that were detailed in the declaration.
- The referrer states that the lands have been in use since c. 1943 for truck parking and storage associated with Hanlon Lime Quarries, Druim Aoibhinn, Monastery Road, Clondalkin, which was his grandfather's business.
- The referrer also lists several businesses that he claims have used the site for storage since the 1970's to the present date.
- The PA does not identify what they consider to be the current authorised use of the lands from which a material change of use would arise.
- The Board may wish to consider a slight re-wording of the question referred to the PA with the relevant question to consider as –

  Is the restoration to pre-63 commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, Dublin 22, development, and if so, is it exempt development?
- The question before the Board, and as previously before the PA, is on the basis that the storage containers are not on the site.

- The adjoining dwelling is in the ownership of the referrer, but that land is not relevant to the Section 5 question.
- The issue of a potential traffic hazard (Article 9(1)(iii) of the Regs.) does not arise as the referrer is not reliant on an exempt development provision.

6.2. Planning Authority Response

- No additional comments received from the PA.

6.3. Further Responses

- A letter from Eamon O'Kane of Tank Engineering was received on the 22nd of August 2022. The letter confirms that Tank Engineering has used the subject land since the 1990's for temporary storage and continue to do so as part of the Red Cow Storage facility on the site.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2(1) includes the following definitions:

The definition of works *"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."*

The definition of unauthorised use means – 'in relation to land, use commenced on or after 1 October 1964, being use which is a material change in use of any structure or other land and being development under that –

(a) exempted development (within the meaning of Section 4 of the Act of 1963 or Section 4 of the 2000 Act), and

(b) development which is subject of a permission granted under Part IV of the Act of 1963 or under Section 34, 37G or 37N of the 2000 Act, being a permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject.

The definition of 'use' – *in relation to land, does not include the use of the land by the carrying out of any works thereon.*

7.1.2. Section 3 (1), 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."

7.1.3. Section 4 (1) (a)- (i) set out what is exempted development for the purpose of the Act.

Section 4 (2) (a) states-

"The Minister may by regulations provide for any class of development to be exempted development for the purpose of the Act".

7.1.4. Section 5 (1) states –

If any question arises as to what, in any 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 a 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.

7.2. Planning and Development Regulations, 2001

Article 6(1) -

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9(1) -

Sets out the circumstances whereby development to which article 6 relates shall not be exempted development for the purposes of the Act.

Schedule 2, Part 1.

Part 2 – Exempted Development –

This section contains no exemptions which relate to the use of land for commercial storage.

7.3. Other Considerations

7.3.1. The term 'pre-63' is used to describe development that was carried out prior to the enactment of the Local Government (Planning and Development) Act 1963. This Act came into force on 1 October 1964 and contained a requirement to obtain planning permission for development to be carried out after this date.

7.3.2. This requirement was not retrospective and development that commenced prior to 1 October 1964 did not require planning permission. This principle is recognised under the Planning and Development Act 2000 whereby the definitions of unauthorised structure, use and works all exclude development prior to 1 October 1964.

8.0 Assessment

8.1. The question –

8.1.1. The original referral invited the Planning Authority, (PA), to consider whether, *'the commercial use as open storage of lands at Clonacool, Naas Road, Dublin 22 is development and, if so, is it exempt development?'.*

8.1.2. The PA decided that the use of the lands as open storage represented a material change of use and as such constituted development and was not exempt development under Article 9(1)(iii) of the Planning and Development Regulations 2001 (as amended), hereinafter referred to as 'the Regulations', as the *'carrying out of such development would create a traffic hazard or obstruction of road users.'.*

8.1.3. In their appeal to the Board, the applicant is of the opinion that the PA did not consider the historic use of the site for open storage, which they claim is a pre-63 use. The applicant proposed that a more relevant question for the Board to consider is whether, *'the restoration to pre-63 commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, Dublin 22 development, and if so, is it exempt development?'.*

8.2. **Existing Use**

8.2.1. The site currently has up to 40 shipping containers in place around the perimeter of the site which were in use as Self-Storage facilities. Planning permission to retain for the Self-Storage use and associated structures was sought in 2019 under PA Ref. SD19A/0202. This application was refused by the PA and was subsequently refused on appeal to the Board under ABP-305392-19. Therefore, the current use on the site is unauthorised. The applicant has requested that the Board consider the use of the land without the structures in place.

8.3. **Pre '63 Use**

8.3.1. The applicant contends that the existing use of the land for commercial open storage was established pre-1963 and that no change of use has occurred. In considering the question asked in the referral, it is appropriate to first determine whether the use has been in place prior to the 1963 Planning and Development Act

8.3.2. The case put forward by the applicant states that,

- The applicant's grandfather used the site for storage and parking associated with his business, since the 1940's.
- Between the 1940's to the 1970's the site was used for truck and car parking for various companies such as Holman Engineering, Tom O'Hanlon – Ford Dealer and Contractors Plant Ltd.
- In the 1970's it was used by Marlon Motors for storage and to service cars, (copies of receipts supplied from 1975 and 1976).
- In the 1980's it was used by an architectural service company called Design Experts and by Farrell's Mobile Homes for the storage of mobile homes.
- Irish Towing Services used the site between 2000 to 2010, (copy of letter supplied stating that the company have used the site periodically since approximately 2008).
- From the mid 1990's to the current date it was used by Tank Engineering Ltd. (letter supplied from this company stating that they have used the site for storage since the mid 1990's).

- The site was used by Eurobins Ltd. t/a Red Cow 20 Self Storage from 2015 to the current date.

8.3.3. Planning history file, ABP-305392-19, also sets out the history of the site from 1948, which includes commercial uses. The applicant states that, during the widening of the Naas Road, the Local Authority acknowledged that the yard was used for plant storage and other uses. The timeline of commercial uses associated with site since the 1940's is presented as a statement of fact. Documentary evidence supporting commercial uses on the site from 1975 has been provided in the form of copies of receipts and invoices. A letter from Tank Engineering was also submitted confirming their use of the site for storage since the 1990's. Apart from the applicant's statement, no documentary evidence has been submitted to support the establishment of the use of the land for open storage prior to the 1st of October 1964.

8.3.4. A limited number of historic aerial photographs and maps are available to the public on the National Geospatial Data Hub, (formerly GeoHive) at www.geohive.ie. Aerial photographs for the site for the years of 1995,1996,2001, 2006 and 2013 are publicly available online but there are no photographs that date back to 1963. I have reviewed the photographs and extracts are appended to this report. The photographs from 1996, 2001 and 2006 show the site in a similar physical state, which appears to be a green or grassed area which is relatively empty. There is no indication that the site is in use for open storage on the dates the images were taken. The photograph from 2013 shows the shipping containers in place on the land. Whilst I acknowledge that the photographs relate to a specific moment in time, the site appears to be in the same physical condition in all photos which may indicate that the site was not in continuous use as open storage and if it was used for storage, this use may have been intermittent.

8.3.5. The applicant has not submitted any documentary evidence that supports the claim that the site has been in use for open commercial storage since the 1st of October 1964. Aerial photographs for the site dating from 1996, 2001 and 2006 show no indication of commercial use for storage. In the absence of substantiating documentation I cannot be satisfied that the use of the lands for open storage in association with commercial uses was established prior to the 1st of October 1964 and therefore, I cannot answer the question at hand which is specific to the date the proposed use commenced.

8.4. **Abandonment of Use**

8.4.1. The referral question relates to the 'restoration of a pre-'63 use'. Should be Board be of the opinion that the use as stated has been in place prior to the 1st of October 1964, the consideration as to whether or not the use has been abandoned is relevant. If the use has been abandoned, then planning permission may be required to restore the use. The legally accepted tests for abandonment include the following considerations.

- The intention of the owner and/or occupier to abandon or not abandon.
- The period during which the use was discontinued. (The longer the period the more likely the use is to be abandoned).
- Whether or not there have been any intervening issues.
- The physical condition of the land or structure.

8.4.2. The historic intention of the owner and/or occupier is not known. The applicant has submitted documentation to support the claim of open storage use which date from 1975, 1976 and 1977. A letter was also submitted from Irish Towing Services dated the 20th of August 2018, stating that they had used the lands periodically over the previous 10 years for the storage of goods, vehicles, and animals. A second letter from Tank Engineering states that they have used the site for storage since the mid-1990's. This leaves a significant gap in the supporting evidence. Aerial photographs from 1996, 2001 and 2006 do not indicate that the land is in use for storage, which could represent an extended period where the use is not in place.

8.4.3. Planning history for the site, (ABP305392-19, PA Ref. SD19A/0202), includes an application for a change of use of premises to 'Self-Storage facility'. The application did not state what the original use was on the site, but the application documents contained a history for the site and stated that the site had been used for commercial storage since the 1940's. I note to the Board that the use of the land for Self-Storage does not form part of the relevant referral question and is only considered in the examination as to whether the stated original use as open storage was abandoned.

8.4.4. In lodging the planning application, the applicant had a clear intention to change the use of the land to Self-Storage. I have no information at hand as to when the Self-Storage use commenced but aerial photographs show the structures in place since 2013 and the planning history indicates that it is in place since 2019. The applicant has stated that the structures were placed on the land in 2015. Although the existing use was never authorised, it has been in place for up to 10 years. Therefore, I conclude that, by virtue of the intent, length of time in use as self-storage and lack of evidence to support the use of the land as open storage during long periods of time, that the pre-'63 use has been abandoned.

8.5. **Is it development -**

8.5.1. As the stated pre-'63 use has been abandoned, it must be determined whether or not the restoration of the use of the land for open storage is development and if it is exempt development. The applicant has set out the historic uses for the site which include the storage of vehicles on the site among other items related to commercial use. On review of Section 3(1) of the Planning Act, I am satisfied that the use of the land for open storage, as sated, which includes the placing of structures or materials on the land constitutes 'works' as the act of storage represents an alteration in the appearance and character of the land.

8.5.2. Section 3(2)(b)(iii) of the Act is also relevant in this instance and states that,

3(2)(b) where land becomes used for any of the following purposes –

> *(iii) the deposit of vehicles whether or not usable for the purposes of 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 being materially changed.

8.5.3. The use of the land for open storage is development under Sections 3(1) and 3(2)(b)(iii) of the Planning and Development Act 2000 (as amended).

8.6. **Is or is not exempted development,**

8.6.1. Section 4(1) of the Act sets out provisions in relation to exempted development. The use of the land as open storage for commercial uses does not comply with any of these provisions.

8.6.2. Section 4(2) of the Act provides that the Regulations can make provision in respect of exempted development. This is done by Article 6, which provides that development of a class specified in Schedule 2 of the Regulations shall be exempted provided that the conditions and limitations attached to those various classes are met. None of the classes listed in Schedule 2 relate to the use of the land for open storage. The closest comparison would be Class 16 and Class 17 of Schedule 2, Part 1 of the Planning Regulations.

8.6.3. Class 16 relates to - *The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.*

8.6.4. Class 17 relates to - *The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development (other than mining) is being, or is about to be carried out, pursuant to any permission, consent, approval or confirmation granted under the Act or any other enactment or as exempted development, of temporary on-site accommodation for persons employed, or otherwise engaged, in connection with the carrying out of the development, during the period in which it is being carried out.*

8.6.5. The proposed development is not in accordance with either Class 16 or Class 17 as the storage proposed would not be in connection with works which are being, or about to be carried out pursuant to a permission under the Act or as exempted development.

8.6.6. Therefore, the restoration of land for use as open storage is not exempt under any of the classes listed in Schedule 2, Part 1 of the Planning and Development Regulations.

8.7. Restrictions on exempted development

8.7.1. Should be Board disagree with the conclusion that, based on the information at hand, the site has been in use for commercial open storage prior to the 1st of October 1964, they may wish to consider the following restrictions on exemption given the commercial nature of the use and the location of the site on a busy slip road off the N7.

8.7.2. Article 9(1)(iii), which states that development to which Article 6 relates, shall not be exempted development for the purposes of the Act if the carrying out of development would – *endanger public safety by reason of a traffic hazard.*

8.7.3. Planning history for the site, (ABP-305392-19, PA Ref. SD19A/0202), includes a decision to refuse permission for the retention of change of use to self-storage facility. In the first reason for refusal the Board determined that the proposed development would endanger public safety by reason of a traffic hazard. It was considered that the development would lead to an increase in traffic movements on and off a busy slip road which links with the N7 National Primary Road and that the slipway lacks adequate vision splays in each direction.

8.7.4. The applicant has not submitted any information regarding the traffic movements associated with the use of the land for open storage. In the absence of this information the planning history for the site is considered and the use of the site for commercial storage could lead to an increase in vehicle movements to and from the site, including HGV's, which could lead to a traffic hazard.

8.8. Appropriate Assessment

8.8.1. Having regard to the nature and scale of the development which relates to the storage of vehicles and materials on lands which are adjacent to a house and which are not located in or adjacent to any European sites, I do not consider that any Appropriate Assessment issues arise and I do not consider that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the restoration of land to a pre-63 use for open storage for commercial use is or is not development or is or is not exempted development:

AND WHEREAS John Hanlon requested a declaration on this question from South Dublin Council and the Council issued a declaration on the 1st day of June 2022 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 24th day of June 2022:

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

(a) Section 2(1) of the Planning and Development Act, 2000, as amended,

(b) Section 3(1) of the Planning and Development Act, 2000,

(c) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(d) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(e) the planning history of the site,

(f) the location of the site.

AND WHEREAS An Bord Pleanála has concluded that:

(a) There is a lack of evidence supporting the historic use of the land as open storage prior to the 1st of October 1964 and that, should the pre-'63 use be accepted, that it has not been abandoned,

(b) In the absence of this evidence the Board cannot be satisfied that the use of the land for open storage is not bound by the provisions of the Planning and Development Act 2000 (as amended),

(c) The proposed use of the land as open storage for commercial reasons constitutes development under Section 3(1) and Section 3(2)(b)(iii) of the Planning and Development Act 2000 (as amended) as it constitutes works and whereby the storage of vehicles and materials on land constitutes a material change of use,

(d) The use of the land for open storage does not come within any class of development which is set out in Schedule 2, Part 1 of the Planning and Development Regulations 2001, (as amended), and

(e) does not come within any of the other exempted development provisions of the Act or Regulations.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, (as amended), hereby decides that the use of the land for open storage in association with commercial use is development and is not exempt development under the Planning and Development Act 2000 (as amended).

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Elaine Sullivan
Planning Inspector

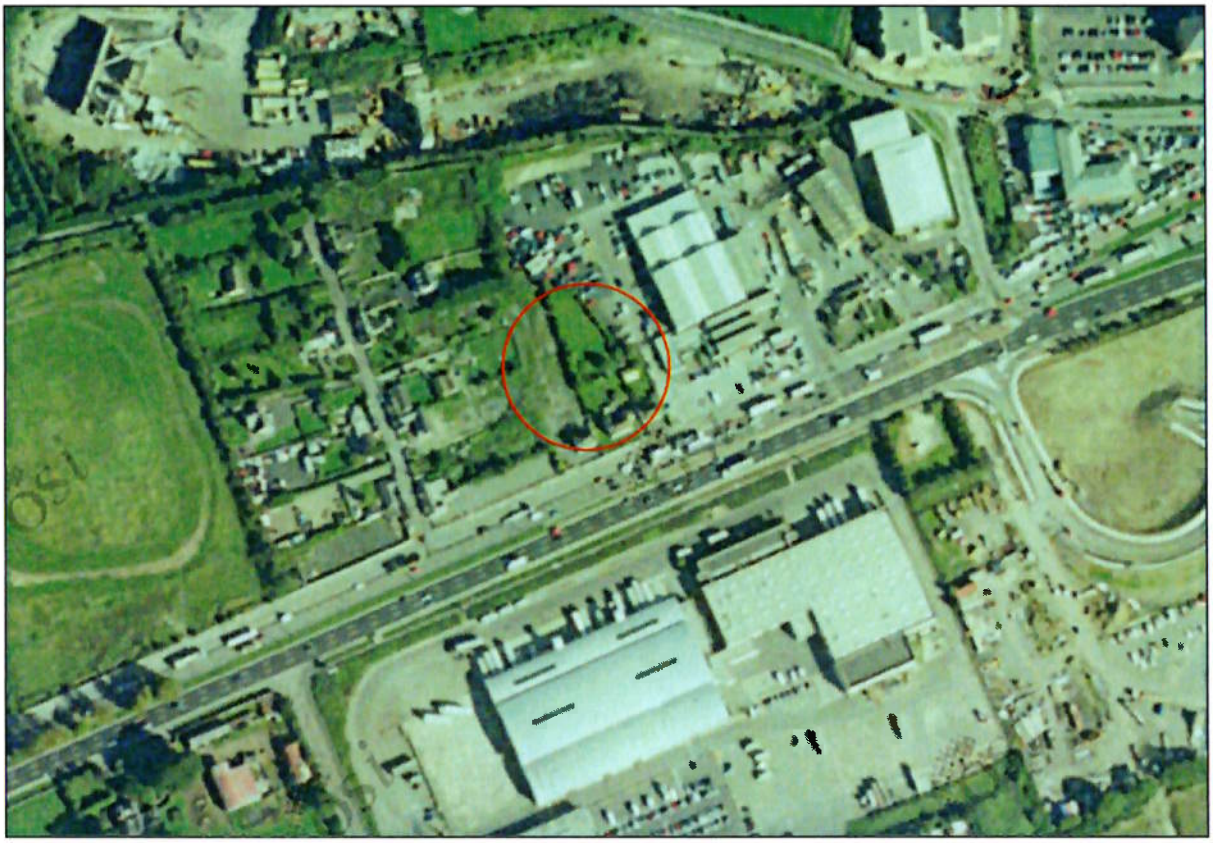
17th of November 2023

Appendix 1 – Aerial Views of the Site (https://webapps.geohive.ie).

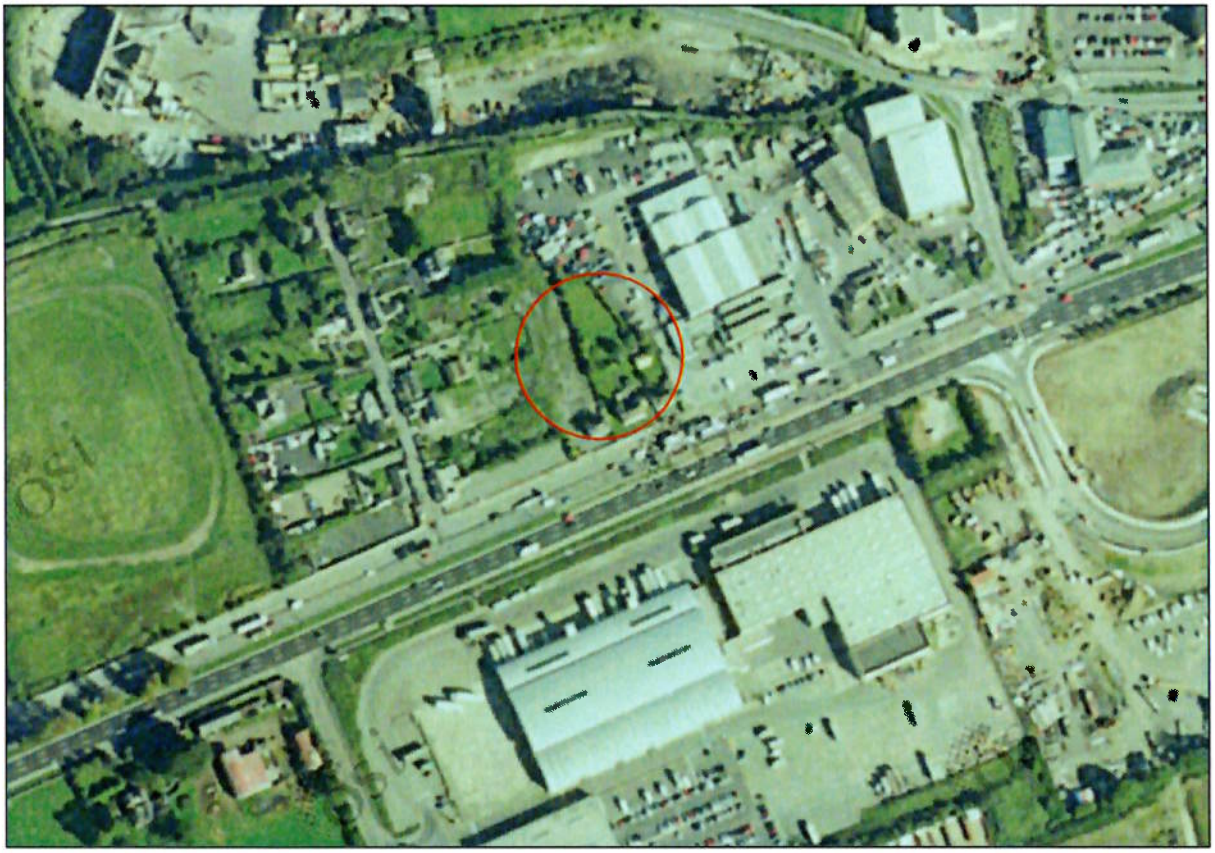
Aerial View of the Site – 1995.

Aerial View of the Site – 1996

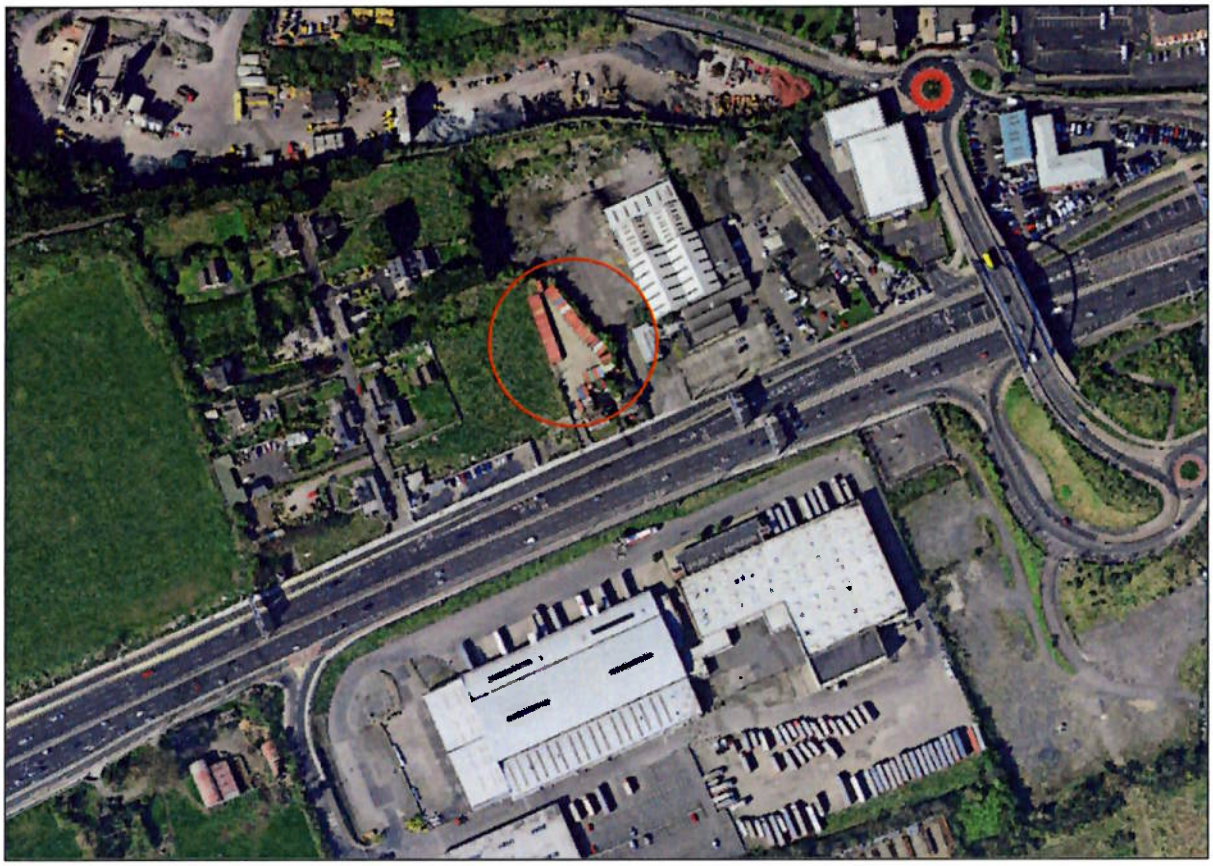
Aerial View of the Site – 2001.



Aerial View of the Site – 2006.



Aerial View of the Site – 2013.



TANK
ENGINEERING LTD

OUR REF:

DATE;
18th August 2022

An Bord Pleanala
64 Marlborough Street
Dublin 1
D01V902

ABP Ref. 313904-22

Dear Sirs,

Your letter dated 10 August 2022 refers.

We confirm the information stated on our of 15-August 2018 submitted with the referral is accurate in that our company has used the said land since the 1990's for temporary storage and continue to do so as part of the Red Cow Storage facility on this site.

Should you require any further information or details please revert.

Thank you.

Eamon O Kane
Project Manager

AN BORD PLEANÁLA
LDG-
ABP-
22 AUG 2022
Fee: € Type:
Time: By: post

TANK
ENGINEERING LTD
Tank Engineering Limited
Blessington Industrial Estate
Blessington
Co Wicklow.
Telephone 045-865044

Kiaran O'Malley+Co.Ltd.

Kiaran O'Malley and Co. Ltd.,
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24th June 2022

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

Reg. Ref.:	**ED22/0008**
Location:	**Clonacoole, Naas Road, Clondalkin, Dublin 22**
Question:	**Is the commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, Dublin 22 development, and if so, is it exempt development?**
Decision Date:	**31st May 2022**
Refer By:	**27th June 2022**

SECTION 5 REFERRAL

Dear Sir or Madam,

This is a section 5 referral by our client ***John Hanlon, Sturdy Products, Blessington Industrial Estate, Blessington, Co. Wicklow*** against the decision of South Dublin County Council in respect of the above section 5 declaration. Attached is a copy of the Council's decision (received by e-mail) and a cheque for € 220 in respect of the prescribed fee.

The point of dispute between the referrer and the planning authority is whether or not a material change of use would arise and thus whether or not the proposal is development. In the assessment section of the planning officer's report it is concluded that:

> *"The commercial use of lands as open storage is considered a material change of use of the land. The proposal is therefore considered 'development'."*

That assessment and conclusion appears to ignore or set aside the pre-63 established storage use of the lands that were detailed in the declaration and supported with various letters, receipts and other documentation (see copy attached). As set out in the declaration, the following is a summary of some of the businesses that used the property:

- Hanlon Lime Quarries at "Druim Aoibhinn", Monastery Road, Clondalkin – our client confirms this was his grandfather's business from c. 1943 and it used the site for truck parking and storage
- Truck parking for various local businesses including:-
  (i) Holman Engineering, Naas Road;

Registered in
The Republic of Ireland
No. 120555
VAT No. IE4813574T

(ii) Tom O Hanlon Ford Dealer Inchicore as overflow parking. He was also the main supplier of Ford cars for An Garda

(iii) Contractors Plant Ltd., Naas Road, Clondalkin [our client informs us that this was a Tracey family business]

- Morlon Motors (in 1970s) – used for storage of cars, service cars and vans [see various receipts attached]
- Design Experts (in early 1980s) – this was an architectural service [see copy of business card attached confirming the site address]
- Farrell's Mobile Homes (in mid 1980s) – used for storage of mobile homes including storage of third party owned mobile homes. [This company is now based at Rathcoole]
- Irish Towing Services (2000s – 2010's) – various storage [see letter dated 20th August 2018 attached]
- Tank Engineering Ltd. (mid 1990s to date) – storage [see letter dated 15th August 2018 attached]
- Eurobins Ltd. t/a Red Cow 20' Self Storage (2015 to date) – storage for companies and private individuals

There is no apparent consideration of that information by the Council, which is not even referenced in the assessment section of the planner's report. Further, the Council does not identify what it considers to be the current authorised use of the lands from which a supposed material change of use would arise.

It is not clear why the Council did not consider the pre-63 use and the information within the declaration, which is repeated above demonstrating such use. Accordingly, the Board may choose to consider a slight re-wording of the question put to the planning authority with a clear reference to pre-63 suggested as follows:

> *Is the **restoration to pre-63** commercial use as open storage of lands at Clonacoole, Naas Road, Clondalkin, Dublin 22 development, and if so, is it exempt development?*

Whichever version of the question that the Board elects to assess, our client's position is the same i.e. the site enjoys pre-63 commercial use for open storage. On that basis, the (restoration of) commercial use as open storage of these lands is not development; neither a change of use nor material change of use would arise. The question is it or is it not exempt development therefore does arise. The Board is therefore requested to review this referral and confirm that the proposed does not constitute development.

In addition to the above, it is considered necessary to clarify the following matters that were also raised in the planning officer's report:

(i) The question before the Council and now before the Board is on the basis that the storage containers are not on the site. There seemed to be some misunderstanding about this matter in the Council's report.

(ii) The adjoining dwelling is within the ownership of the referrer but that land is not relevant to the section 5 question.

(iii) The issue of potential traffic hazard (Article 9(1)(iii) of the Regs) does not arise because the referrer is not reliant on an exempt development provision. Further, the fact that the Council designed and built the entrance/exit to this yard appears to have been completely ignored by the Council.

Please acknowledge receipt of this referral and direct all future correspondence in this matter to our office.

Regards,

Raymond O'Malley
Kiaran O'Malley & Co. Ltd.
ROM: rom

Enclosures

1. A copy of Local Authority decision
2. A cheque for € 220 payable to An Bord Pleanála
3. A copy of:
   - Morton Motors receipts
   - Design Experts business card
   - Irish Towing Services letter dated 20th August 2018
   - Tank Engineering Ltd. letter dated 15th August 2018

TANK
ENGINEERING LTD

OUR REF:

DATE

15-August 2018

To, Eurobin Ltd
Red Cow Self Storage
Naas Road
Clondalkin
Co Dublin.

Dear Sir,

Further to our conversation this morning, in relation to the Storage facility which we use at Naas Road Clondalkin on the lands adjacent to the house "Clonacool" near Red Cow Roundabout, We are happy to confirm the following:-

Since the mid 1990's we have used this land and the temporary storage facilities on it, for the storage of Plant ; Equipment and Vehicles. We also used it for the temporary storage of Mobile Homes which were used for onsite accommodation for our workers on projects around the country.

We in the past have made payments to Mrs Hanlon for this facility.

We continue to use some storage containers on site since, Eurobin Ltd T/A Red Cow Storage improved facilities on site.

Should you require any further information or details please revert

Thank you

Eamon O Kane
Project Manager

For and on behalf of Tank Engineering Ltd

TANK ENGINEERING LTD., BLESSINGTON INDUSTRIAL ESTATE, BLESSINGTON, CO. WICKOW, IRELAND.
TELEPHONE +353 (0)45 865944. FACSIMILE +353 (0)45 865721 E-mail:accounts@sturdyproducts.com
REGISTERED OFFICE: BLESSINGTON INDUSTRIAL ESTATE, BLESSINGTON, CO. WICKLOW. REG NO. 187693. V.A.T. NO. IE 6537693 P.

EIA Pre-screening – EIAR Not Submitted

An Bord Pleanála Case Reference	313904-22
Development Summary	whether the commercial use as open storage at site is or is no development and is or is not exempted development.
Development Address	lands at Clonacoole, Naas Road, Clondalkin, D.22

1. Does the proposed development constitute an EIA project? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	
	No	✓

2. If YES, does the proposed development, or any part of it, fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations?

	Tick	Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes		If **YES**, tick one of the following:		
		Exceeds / Is equal to / No Threshold		EIAR required
		Sub threshold		Preliminary Examination required (Issue letter to EPA if IED/ IPC/ Waste licence)

3. If Preliminary Examination is required, has Schedule 7A information been submitted?	Yes No N/A

EO/ SEO _____ **Date:** 25-07-22