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The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1

AN BORD PLEANÁLA

LDG- 056331-22

ASP- _____

18 AUG 2022

Fee: € 220 *cheepe*

Time: 12.21 By: hand

18 August 2022

RE: REFERRAL OF A DECLARATION UNDER SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS TO WHETHER THE USE OF BAUMANN'S YARD, OLD DUBLIN ROAD, STILLORGAN, CO. DUBLIN AS A CONSTRUCTION COMPOUND INCLUDING TEMPORARY STRUCTURES IS OR IS NOT DEVELOPMENT AND / OR IS OR IS NOT EXEMPTED DEVELOPMENT

Dún Laoghaire-Rathdown County Council Ref.: Ref7022

1.0 INTRODUCTION

- 1.1 On behalf of the applicant, KW Investments ICAV acting for and on behalf of its sub fund KW Investment Fund VIII, 94 St. Stephen's Green, Dublin 2, we hereby submit to An Bord Pleanála a referral of a Section 5 Declaration by Dún Laoghaire-Rathdown County Council on 22 July 2022, for review by An Bord Pleanála under Section 5 of the Planning and Development Act 2000 (as amended). The statutory referral fee of €220 is enclosed.
- 1.2 A copy of the decision by Dún Laoghaire-Rathdown County Council dated 22 July 2022 is attached at Appendix 1. A copy of the DLRCC Planner's Report is enclosed at Appendix 2. Appendix 3 contains a copy of the original Section 5 Declaration Request as submitted.
- 1.3 The following documentation is included with this Referral:
 - 1 no. copy of this Cover Letter;
 - 1 no. copy of plans and elevations of the temporary structures on site including drawing schedule;
 - 1 no. copy of a Site Location Map prepared by O'Mahoney Pike.
- 1.4 The Section 5 Declaration made by Dún Laoghaire-Rathdown County Council on 22 July 2022 under Ref7022 considered that the provision of the temporary structures constituted development and was not exempted development. It is respectfully requested that the Board provide clarity on this decision through the de novo determination of whether the provision of the structures is or is not exempted development.
- 1.5 In determining this referral, we request An Bord Pleanála to make a declaration on whether the use of Baumann's Yard as a temporary construction compound including temporary structures (i) is or is not development as defined by Section 3 of the Planning and Development Act 2000 (as amended), and (ii) in the case where the provision of

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these structures is considered to constitute development, whether or not the development is exempted development.

2.0 SITE LOCATION AND CONTEXT

- 2.1 Baumann's Yard is located close to the centre of Stillorgan village. Vehicular access to the yard is from a gate to the northeast of the site on to the Old Dublin Road. The site is bounded by retail units to the north, the Old Dublin Road to the east, an existing laneway to the west, and the Stillorgan Shopping Centre car park to the south.
- 2.2 The yard has no permanent structures or features of interest. The site can generally be considered to be unused, with ground cover of gravel and some vegetation.
- 2.3 Stillorgan Village Shopping Centre is located immediately to the south of the site.

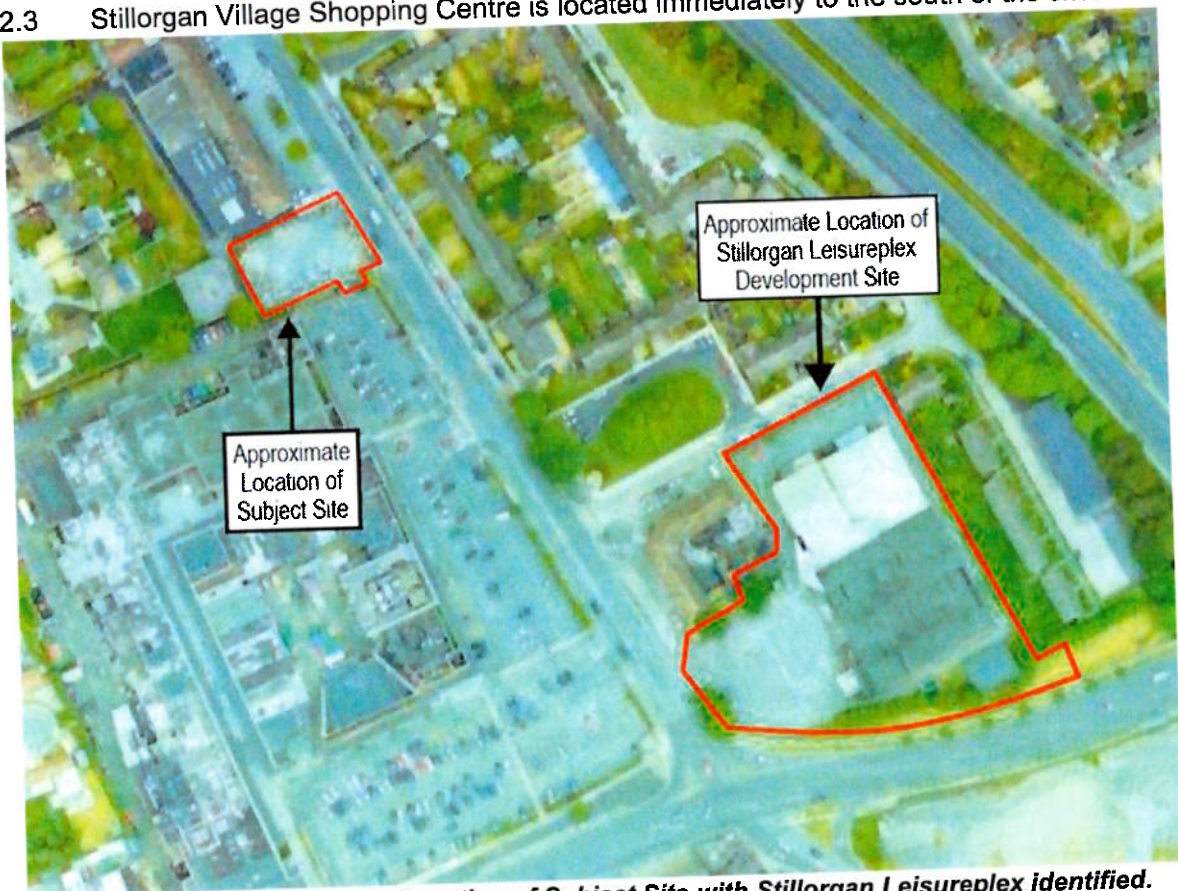


Figure 1: Approximate Location of Subject Site with Stillorgan Leisureplex identified.



Figure 2: Site Location Map with lands in control of the applicant in blue.

3.0 PLANNING HISTORY

Reg. Ref. D13A/0088

- 3.1 Planning permission was sought by Myrmidon Propco Limited on 22 February 2013 for development consisting of:

"the provision of a garden centre for a temporary period of five years. The proposed development includes the provision of a single storey structure of 126.29 sqm gross floor space to accommodate a retail area, a display entrance area, a glazed canopy over part of the site, new timber fence boundary treatment ranging in height from 2.3 metres to 2 metres, 2 no. illuminated signage panels and 1 no. non-illuminated signage panel and all associated and ancillary works. The development also includes pedestrian access to the site from Old Dublin Road and pedestrian access to the site from Stillorgan Shopping Centre via a new ramp."

- 3.2 Permission was granted on 23 May 2013 for the development.

Reg. Ref. D06A/1757

- 3.3 Planning permission was sought by Myrmidon Limited on 1 December 2006 for development consisting of:

"temporary planning permission for the period of four years (unless subsequent permission for its permanent use is secured) for the provision of some 35 no. car parking spaces on a site area of 992 sq.m at the existing, unused enclosed yard space (known as Baumanns Yard) to use as additional car-parking for Stillorgan Shopping Centre."

- 3.4 The application was subject to a further information request, and permission for the development was granted on 3 October 2007.

Reg. Ref. D04A/0826

- 3.5 Planning permission was sought by Myrmidon (Propco) Limited on 23 July 2004 for development consisting of:

"a mixed use residential and retail scheme with a gross floor space of 1548 sq.m. comprising the erection of 4 no. 2 bed and 3 no. 3 bed two storey mews houses each with a provision for one off-street car space and a three storey structure with retail ground floor (326.6 sq.m. including ancillary storage) with 4 no. 2 bed apartments and 1 no. 1 bed apartment over, six car spaces, all apartments having balconies associated site works including the widening of the lanes and boundary treatments and hard and soft landscaping. (Site known locally as Hamilton's Garage Lane)."

- 3.6 A Notification of Decision to Grant Permission was issued by Dún Laoghaire-Rathdown County Council on 16 September 2004. An appeal to An Bord Pleanála was submitted, and permission was granted by the Board for the development on 24 February 2005.

4.0 SECTION 5 DECLARATION FROM DÚN LAOGHAIRE-RATHDOWN COUNTY COUNCIL

- 4.1 The original Section 5 Application requested a Declaration on the following from Dún Laoghaire-Rathdown County Council:

"whether the use of Baumann's Yard as a construction compound including temporary structures (i) is or is not development as defined by Section 3 of the Planning and Development Act 2000 and (ii) in the case where the provision of these structures is considered to constitute development, whether or not the development is exempted development."

5.0 RELEVANT BOARD DECISIONS

- 5.1 3 no. similar cases have been decided by An Bord Pleanála in recent years. A summary of these cases is provided as follows:

Ref. ABP-301780-18

- 5.2 Determination of *"[w]hether the temporary open storage of scaffolding and miscellaneous building materials is or is not development or is or is not exempted development."*

- 5.3 It was decided by the Board on 28 December 2018 that this constituted development and did not constitute exempted development.

Ref. RL3607

- 5.4 Determination of *"[w]hether the use of lands at Belvedere Road as a construction compound to facilitate development on a site at Belvedere Road is development and if so is it or is it not exempted development."*

- 5.5 It was decided by the Board on 18 July 2018 that this constituted development and did not constitute exempted development.

Ref. RL29N.RL3063

5.6 Determination of "[w]hether perimeter timber hoarding, portacabins, fuel tanks, skips, security barriers and the deposit of other construction materials deposited on lands at Pelletstown subject to permission ref no. 1366/06 is exempted development."

5.7 It was decided by the Board on 16 April 2013 that this constituted development and did not constitute exempted development.

6.0 GROUNDS OF REFERRAL

6.1 A copy of DLRCC's Section 5 Declaration is included in Appendix 1. The Declaration sets out the approach of the Council in determining the current proposal. The main elements of the Declaration are summarised below.

DLRCC Declaration

6.2 The Declaration of Dún Laoghaire-Rathdown County Council on 22 July 2022 states that:

"The Applicant has sought to highlight a lack of certainty in the definition of the term 'adjoining with regard to physical sites to support their argument that the subject site should be considered as being adjoining to the Cornerstone site, some 180m to the south-east.

The Planning Authority notes the accepted Oxford English Dictionary definition of the word 'adjoining' as being 'next to or joined with'. It is the opinion of the Planning Authority that the subject site cannot be considered to be 'next to or joined with' the Cornerstone site, by virtue of the significant distance between the two locations, and the lack of a shared boundary.

The Merriam Webster Dictionary defines adjoining as 'touching or bounding at a point or line' It is clear that the subject site and the Cornerstone do not fulfil that criteria either.

It is considered that the reasonable and ordinary definition of 'adjoining' with regard to two sites requires a shared physical boundary. To use a non-planning example, if an individual were to request two adjoining rooms in a hotel, they would not be satisfied to be provided with rooms at opposite ends of the same corridor, separated by the rooms of other guests located between them.

As such, it is considered that the subject referral does not meet the exempted development requirements set out in Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended)."

6.3 The Declaration concludes that:

"It is considered that:

The provision of temporary on-site structures at Baumann's Yard, Old Dublin Road, Stillorgan, Co. Dublin, to be used as a site office and associated compound during the construction of the 'Cornerstone' development (ABP Ref. 305176-19), as proposed, would constitute 'development' and would constitute 'not exempted development', pursuant to the provisions of Section 3 of the

Planning & Development Act 2000, (as amended), and Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended)."

Grounds of Referral and Response to DLRCC's Planner's Report and Declaration

- 6.4 It is respectfully submitted that there are several points of note within the Planner's Report and the Council's final declaration, which can be clarified in the context of this Section 5 referral. These are set out below.
- 6.5 The view of DLRCC is in our opinion overly restrictive in terms of the concept of 'adjoining' in relation to the temporary provision of the structures on the subject site. It was highlighted to DLRCC in the original application, and again in Figure 2 above, that the subject site forms part of a wider landholding in control of the applicant, separated by the public road. The nature and extent of this landholding would warrant consideration of a broader interpretation of 'adjoining' as it relates to Class 16 and Class 17 of Schedule 2, Part 1 of the Planning and Development regulations 2001 (as amended).
- 6.6 It was also considered in the original application that the provision of the temporary structures, in connection to the Stillorgan Leisureplex/'Cornerstone' development, at this site is appropriate, given the proximity of existing residential property to the development site. The provision of the structures in use as a site office and compound at this site is therefore in the interest of protecting residential amenity immediately adjacent to the Stillorgan Leisureplex development site. It is respectfully submitted that this impact was not considered by DLRCC in its determination, and the issue is not mentioned in the Planner's Report for the application.
- 6.7 It is considered that a site-specific approach to the application of the Planning and Development Regulations 2001 (as amended) is warranted in this particular situation. While the exact nature of the term 'adjoining' in respect of Class 16 and Class 17 of Schedule 2, Part 1 of the Regulations is debateable, it is respectfully submitted that the spirit of the Regulations allows for flexibility in their application. The provision of structures, and structures for accommodating persons employed on site, on a temporary basis, in connection with an existing grant of planning permission is considered to be the main thrust of Class 16 and Class 17 of Schedule 2, Part 1 of the Regulations, respectively. This is further highlighted under Column 2 – Conditions and Limitations for both Class 16 and Class 17, which specify that the provision of such structures is to be strictly temporary, and that the land is to be reinstated at the expiration of the period. This is not in doubt, nor is it questioned in the DLRCC Planner's Report.
- 6.8 In relation to the relevant referral decisions mentioned above in Section 5, it is noted that this referral constitutes a question of a similar nature, but the exact circumstances of this case are different. In the case of Ref. ABP-301780-18, the referral question related to the storage of building type materials without the benefit of an extant planning permission and not in connection with any development, and was therefore in breach of the provisions of Column 1 and Column 2 of Class 16, Schedule 2, Part 1 of the Regulations. In relation to RL3607, the referral question related to the provision of a construction compound at a distance of approximately 76 metres from the site on which development was being carried out, separated by public open space and the public road, whereby there was surplus land available on the development site and a lack of any distinct relationship between the development site and the construction compound site. In relation to RL29N.RL3063, the referral question related to the provision of a

construction compound use with the provision of temporary structures in connection with a planning permission (DCC Reg. Ref. 1366/06) which had expired.

- 6.9 This referral differs from the mentioned cases in that it relates to the provision of a construction compound at Baumann's Yard including the provision of temporary structures in a dense urban area where land suitable for such uses is scarce, in connection with a valid and existing planning permission (ABP-305176-19). In this instance, the use of the land and provision of structures is on a site which forms part of a wider landholding on which development is being carried out. The nature of this use is strictly temporary, and the site is to be restored to its former status on completion of the construction of the Stillorgan Leisureplex/'Cornerstone' site, in compliance with the provisions of Class 16 and Class 17 of Schedule 2, Part 1 of the Regulations.
- 6.10 The criteria to be satisfied in relation to Class 16 and Class 17 of Schedule 2, Part 1 of the Regulations can be broken down as follows:
- (i) The proposal must relate to land on or adjoining which development is being or is about to be carried out;
 - (ii) The carrying out of this development must be subject to a valid planning permission or be exempted development;
 - (iii) The use, structures, works, plant and machinery are to be needed temporarily in connection with the carrying out of such development; and
 - (iv) The structures, plant, works, and machinery are to be removed upon completion of the development and the site is to be returned to its original use and condition.
- 6.11 Notwithstanding the nature of the dispute arising from the construal of what constitutes 'adjoining' in this case, it is considered that the use of Baumann's Yard as a construction compound including the provision of temporary structures
- (i) is on land forming part of a wider landholding on which development is being carried out;
 - (ii) the carrying out of this development on the site is in connection with a valid planning permission (ABP-305176-19);
 - (iii) the use of the site as a construction compound including temporary structures is necessary as part of the carrying out of development under this permission; and
 - (iv) is provided for on a strictly temporary basis, and on completion of the development works the site will be restored to its previous condition.
- 6.12 It is therefore considered that the use of Baumann's Yard as a construction compound including the provision of temporary structures is compliant with the provisions of Class 16 and Class 17 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended.

7.0 CONCLUSION

- 7.1 This referral is made on behalf of our client, KW Investment Funds ICAV acting for and on behalf of its sub fund KW Investment Fund VIII, following a Declaration by Dún Laoghaire-Rathdown County Council under Section 5 of the Planning and Development Act 2000 (as amended) in respect of whether the use of Baumann's Yard as a construction compound including temporary structures (i) is or is not development as defined by Section 3 of the Planning and Development Act 2000 and (ii) in the case where the provision of these structures is considered to constitute development, whether or not the development is exempted development. DLRCC issued a

Declaration stating that the provision of such structures used as a site office and compound during the construction of the 'Cornerstone' development is development and is not exempted development.

- 7.2 The provision of the structures on site is strictly temporary, in connection with and during the construction of the Stillorgan Leisureplex/Cornerstone site. The subject site is unique in that it forms part of a wider landholding, separated by the public road. The provision of such structures at this site is also considered to be in the interest of adjacent residential amenity. It is considered that the provision of the structures accords with the broad thrust of the provisions of Class 16 and Class 17 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).
- 7.3 For the reasons and considerations set out above, An Bord Pleanála is respectfully requested to determine if the proposal is or is not development under Section 3 of the Planning and Development Act 2000 (as amended), and/or whether the proposal is or is not exempted development under the provisions of Class 16 and 17 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Yours faithfully,



John Spain Associates

C.0 APPENDIX 1: DLRCC DECLARATION

Planning Department
An Rannóg Pleanála
Registry Section
Cormac Heavey
Asst. Staff Officer
Direct Tel: 01 2054700
Fax: 01 2803122

John Spain Associates c/o Blaine Cregan
39, Fitzwilliam Place
Dublin 2

Reference No: Ref7022
Application Type: Declaration on Development and Exempted Development Act
– Section 5, Planning & Development Act (as amended)
Registration Date: 04-Jul-2022
Decision Date: 22-Jul-2022
Location: Baumann's Yard, Old Dublin Road, Stillorgan, Co Dublin

Development Works: Provision of temporary on-site structures used as site office and associated compound during the construction of the associated Stillorgan Leisureplex development (ABP Ref. 305176-19). The structures consist of a consist of a concrete base, railings, associated construction materials, and a two- storey prefabricated type structure used as the site office for the development under construction.

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the planning & Development Act, 2000 (as amended), Dún Laoghaire-Rathdown County Council has, by Order No. Ref.REF91/22 dated 22-Jul-2022 decided to issue a Declaration that:

Having regard to:

- a. Section 3 of the Planning and Development Act 2000, (as amended); and
- b. Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

It is considered that:

The provision of temporary on-site structures at Baumann's Yard, Old Dublin Road, Stillorgan, Co. Dublin, to be used as a site office and associated compound during the construction of the 'Cornerstone' development (ABP Ref. 305176-19), as proposed, **would constitute 'development' and would constitute 'not exempted development'**, pursuant to the provisions of Section 3 of the Planning & Development Act 2000, (as amended), and Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

Date of issue: 25-Jul-2022

Signed: Conmac Heavey
For Senior Executive Officer

NOTE: Where a Declaration is issued under Section 5, any Person issued with such a Declaration, may, on payment to An Bord Pleanála, 64 Marlborough Street, Dublin 1, of a fee of €220, refer the Declaration for review, **within 4 weeks** of the date of issue of the Declaration.

9.0 APPENDIX 2: DLRCC PLANNER'S REPORT

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

PLANNING & DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 PLANNING & DEVELOPMENT ACT 2000 (as amended)

Reference No: Ref7022

Applicant: KW Investment Funds ICAV acting on behalf of its sub fund KW Investment Fund VII Baumann's Yard, Old Dublin Road, Stillorgan, Co Dublin

Agent: John Spain Associates c/o Blaine Cregan
39, Fitzwilliam Place, Dublin 2

Registration Date: 04-Jul-2022

Location: Baumann's Yard, Old Dublin Road, Stillorgan, Co Dublin

Agent: John Spain Associates c/o Blaine Cregan
39, Fitzwilliam Place, Dublin 2

Description of Works: Provision of temporary on-site structures used as site office and associated compound during the construction of the associated Stillorgan Leisureplex development (ABP Ref. 305176-19). The structures consist of a consist of a concrete base, railings, associated construction materials, and a two- storey prefabricated type structure used as the site office for the development under construction.

Report:
Oliver Reid

PLANNING AND DEVELOPMENT ACT 2000 (AS AMENDED) SECTION 5

Ref: 7022

Matter for Determination

Declaration pursuant to Section 5 of the Planning & Development Act, 2000 (as amended), in respect of works (as described by the Applicant) consisting of:

Provision of temporary on-site structures used as site office and associated compound during the construction of the associated Stillorgan Leisureplex development (ABP Ref. 305176-19). The structures consist of a ~~consist of a~~ concrete base, railings, associated construction materials, and a two- storey prefabricated type structure used as the site office for the development under construction.

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Site Description

The subject site at Baumann's Yard, Old Dublin Road, Stillorgan, Co. Dublin. The subject site is a yard that contains no permanent structures, with previous structures on site having been demolished c. 15 years ago. The site is located immediately to the north of Stillorgan Village (formerly known as Stillorgan Shopping Centre) and immediately to the south of a row of premises located on Old Dublin Road offering a variety of retail services. The residential road of Woodlands Drive is located to the west, with residential dwellings and the Stillorgan College of Further Education located at St. Laurence's Park to the east.

The Cornerstone construction site, on the grounds of the former Leisureplex Site, is located c. 180m to the south-east of the subject site.

Planning History

D13A/0088 - Permission granted on 23 May 2013 for development consisting of the provision of a garden centre for a temporary period of five years. The proposed development includes the provision of a single storey structure of 126.29 sqm gross floor space to accommodate a retail area, a display entrance area, a glazed canopy over part of the site, new timber fence boundary treatment ranging in height from 2.3 metres to 2 metres, 2 no. illuminated signage panels and 1 no. non-illuminated signage panel and all associated and ancillary works. The development also includes pedestrian access to the site from Old Dublin Road and pedestrian access to the site from Stillorgan Shopping Centre via a new ramp.

D06A/1757 - Permission granted on 22 August 2007 for temporary planning permission for the period of four years (unless subsequent permission for its permanent use is secured) for the provision of some 35no. car parking spaces on a site area of 992 sq.m at the existing, unused enclosed yard space (known as Baumanns Yard) to use as additional car-parking for Stillorgan Shopping Centre. The site is bounded by the Old Dublin Road to the northeast; residential development to the northwest; and Stillorgan Shopping Centre to the southeast and southwest. The proposal provides for new vehicular and pedestrian access from the Old Dublin Road and pedestrian access only to the Stillorgan Shopping Centre car park to the southeast and to the Old Dublin Road to the east. The development will also comprise ancillary car park lighting, landscaping, boundary treatments (including painted metal railings and gates), and all other site excavation and development works.

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D04A/0826 – Permission granted by An Bord Pleanála on 24 February 2005 after appeal against Planning Authority's decision to grant permission on 16 September 2004 for development consisting of a mixed use residential and retail scheme with a gross floor space of 1548 sq.m. comprising the erection of 4 no. 2 bed and 3 no. 3 bed two storey mews houses each with a provision for one off-street car space and a three storey structure with retail ground floor (326.6 sq.m. including ancillary storage) with 4 no. 2 bed apartments and 1 no. 1 bed apartment over, six car spaces, all apartments having balconies associated site works including the widening of the lanes and boundary treatments and hard and soft landscaping. (Site known locally as Hamilton's Garage Lane).

D02A/0786 - Permission refused by An Bord Pleanála on 9 September 2003 after appeal against Planning Authority's decision to grant permission on 11 December 2002 for development consisting of demolition of some existing structures; the construction of a four storey (over double level basement) mixed use development; refurbishment; refurbishment of some existing units, malls and ancillary areas; re-organisation of vehicular (customer & service) and pedestrian (including disabled) access, and the relocation and increase in the provision of carparking. The development comprises a total area of 59,887sqm including a gross retail area of 21,375sqm and a total of 1,075 no car spaces. The proposal comprises; at (new) basement level, 63 no car parking spaces, kitchen/restaurant, retail services, compactors, plant and service rooms, delivery loading bays and ancillary accommodation at (new) lower ground floor level, retail space and services, office space, ancillary accommodations plant and service areas at ground floor level, the refurbishment of some existing retail units and malls provision of new retail/service units, including 2 no anchor stores, malls, ancillary accommodation, pedestrian entrances, services and plant rooms, the relocation of ATM's and 230 no car parking spaces at first floor level, retail use, offices, malls, service and plant areas, ancillary accommodation and 325 no car parking spaces at (new) mezzanine level, office space, ancillary accommodation, service and plant, mall areas and 156 no car parking spaces and at (new) second floor level, offices, plant rooms, ancillary accommodation, malls and 301 no car parking spaces, to (new) roof floor level, ancillary accommodation and plant rooms on Lower Kilmacud Road, The proposal provides for new access to the rear, surface level, service yard, combining with new ramped access/egress to first floor carpark level including the provision of traffic signals on Dublin Road, The proposal provides for egress from the rear, surface level service yard combined with access to and egress from the new basement service area, access/egress to/from first floor carpark level via a roundabout, the minor widening of Dublin Road and relocation of existing pedestrian crossing. The general reordering of the carriageway on both tower Kilmacud Road and Dublin

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Road is also proposed. The scheme also provides for the provision of feature sky lighting lifts and travellers; perimeter landscaping and all associated site works including the demolition of some of the existing structures (Unit Nos 1, 19-21, 50, 51, 52 and 56) The development relates to a 3.5hectare site approximately identified principally as the Stillorgan Shopping Centre and adjoining Baumanns Yard, The site is bounded by the Stillorgan Road (Dublin Road) to the east; Lower Kilmacud Road to the south, the Lenehans Buildings Nos 10 and 11 Beaufield Park Nos 26 and 27 Beaufield Park to the west and an unnamed right of way (south of no 37 & no 50 woodlands Drive) an unnamed commercial property and an unnamed laneway to the north.

The 3 No. refusal reasons provided by An Bord Pleanála were as follows:

1. Having regard to the District Centre designation of the site (zoned DC) as set out in the current Dun Laoghaire-Rathdown Development Plan 1998, as amended by Variation Number 5, it is considered that the proposed additional retail development (which constitutes a substantial increase to existing retail facilities in the area), would result in a retail development that would be inconsistent, both in terms of net floorspace and in terms of the type and nature of the proposed retail shopping, with the designation of the area as a District Centre, as defined in the Retail Planning Guidelines for Planning Authorities, issued by the Department of the Environment and Local Government in December 2000, and in addition, having regard to the retail floorspace cap set out in the Development Plan, would prejudice the future redevelopment of the surrounding commercial properties and sites within the District Centre. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the nature and scale of the proposed development, the consequent access arrangements, the scale of additional parking and the limited capacity of the road network in the area, it is considered that the additional traffic movements generated by the proposed development would tend to create serious traffic congestion in the vicinity of the site and constitute a hazard to pedestrian safety. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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3. It is considered that the proposed development, by reason of its design and bulk, including blank walls to the upper levels of the street facades and lack of articulation particularly on the corner of the site, would not reflect its pivotal position at this prominent corner location in the centre of Stillorgan, and would seriously injure the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

D99A/0844 - Permission refused by An Bord Pleanála on 5 June 2001 after appeal against Planning Authority's decision to grant permission on 5 July 2000 for development consisting of the demolition of some existing structures; the construction of a four storey (over double level basement), mixed use development; refurbishment of some existing units, malls and ancillary areas; re-organisation of vehicular (customer and service) and pedestrian (including disabled) access; and the relocation and increase in the provision of car parking. The development comprises a total gross development area of 57,717 sq.m., including a gross retail area of 21,501 sq.m. and a total of 890 no. car parking spaces. At (new) basement level, the proposal provides: 62 no. car parking spaces, kitchen/restaurant, stores, compactors, plant rooms and delivery loading bays. At (new) lower ground floor level, new street fronting units, ancillary accommodation, plant and service areas are proposed. At ground floor level, the refurbishment of some existing retail units and malls, provision of new retail/service units, malls, ancillary accommodation, pedestrian entrances, services and plant rooms, and the relocation of ATMs are proposed. At first floor level, retail use (anchor), offices, service areas, library, ancillary accommodation and car parking (344 no. spaces) are provided. At Mezzanine level, ancillary accommodation, service and plant, and mall areas, together with 166 no. car parking spaces are proposed. At second floor level, offices, plant rooms, ancillary accommodation and 318 no. car parking spaces are proposed. At third floor (roof) level, ancillary accommodation and plant rooms are proposed. On Lower Kilmacud Road, the proposal provides for new access to the rear, surface level, service yard, combined with new ramped access/egress to the roof car park. On Dublin Road, the proposal provides for egress from the rear, surface level, service yard combined with access to and egress from the new basement service area and access/ egress to/from the roof car park. The scheme also provides for the provision of advertising structures (including video walls); feature skylight; lifts and travellators; perimeter landscaping; all associated site development and refurbishment works, including the demolition of unit Nos. 1, 19-21, 50, 51-52 and 56. The development relates to a 2.9 hectare (7.2 acre) site identified principally as the Stillorgan Shopping Centre, and adjoining Baumann's Yard.

Dún Laoghaire-Rathdown County Council

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The 2 No. refusal reasons provided by An Bord Pleanála were as follows:

1. Having regard to the district centre designation of the site (zoned DC) as set out in the current Dun Laoghaire-Rathdown County Development Plan, it is considered that the proposed additional retail development (which constitutes a substantial addition to existing retail facilities in the area) would result in a retail capacity in Stillorgan which would be out of scale with its designation as a district centre and would contravene the retail hierarchy policy for the area as set out in the current Development Plan. The proposed development would, therefore, be contrary to the proper planning and development of the area.

2. Having regard to the nature and scale of the proposed development, the consequent access arrangements, the scale of additional parking and the limited capacity of the road network in the area, it is considered that the additional traffic movements generated by the proposed development would tend to create serious traffic congestion in the vicinity of the site. The proposed development would, therefore, be contrary to the proper planning and development of the area.

Enforcement History

ENF 07722 - The placement of a 2-storey block of porta cabin type structures within the yard area of the lands without the benefit of a valid planning permission and that does not constitute exempt development.

The subject Section 5 Application seeks to address the subject matter of that Enforcement file.

Previous Section 5 Declarations

No previous Section 5 declarations on record.

Development Description

The prospective works, subject to this application, are outlined in the Matter for Determination section above.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Documentation Submitted, inter alia

- Application Form.
- Cover Letter.
- Plans, elevations, site layout and site location map.

Assessment

The Council is requested to determine in accordance with Section 5 of the Planning and Development Act, 2000 (as amended), hereafter referred to as the Act, whether the application of external insulation and render on the front elevation at No. 7 Laurel Road, is or is not development and if so, whether the development constitutes exempted development.

Development or not Development

The first matter for determination is whether the proposal would or would not constitute development.

With regard to whether the proposal constitutes development, regard is had to Section 3(1) of the Act, which states that '*development means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land*'.

Having regard to the foregoing, it is considered that the placing of a temporary structure to operate as a construction site office, which constitutes 'development' as defined by the Act.

Exempted Development or not Exempted Development

The second matter to be determined is whether the proposal would constitute exempted development or not.

Section 4(2)(a) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development for the purposes of this Act.

In assessing this element of the determination, regard is, had to of Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

Dún Laoghaire-Rathdown County Council

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RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Class 16 refers to exempted development where:

'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.'

The Conditions and Limitations with regard to Class 16 state:

'Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.'

Class 17 refers to exempted development where:

'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.'

The Conditions and Limitations with regard to Class 17 state:

'Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent, approval or confirmation granted under the Act or any other enactment.'

The Applicant has sought to highlight a lack of certainty in the definition of the term 'adjoining' with regard to physical sites to support their argument that the subject site should be considered as being adjoining to the Cornerstone site, some 180m to the south-east.

Dún Laoghaire-Rathdown County Council

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RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

The Planning Authority notes the accepted Oxford English Dictionary definition of the word 'adjoining' as being 'next to or joined with'. It is the opinion of the Planning Authority that the subject site cannot be considered to be 'next to or joined with' the Cornerstone site, by virtue of the significant distance between the two locations, and the lack of a shared boundary.

The Merriam Webster Dictionary defines adjoining as 'touching or bounding at a point or line'. It is clear that the subject site and the Cornerstone site do not fulfil that criteria either.

It is considered that the reasonable and ordinary definition of 'adjoining' with regard to two sites requires a shared physical boundary. To use a non-planning example, if an individual were to request two adjoining rooms in a hotel, they would not be satisfied to be provided with rooms at opposite ends of the same corridor, separated by the rooms of other guests located between them.

As such, it is considered that the subject referral does not meet the exempted development requirements set out in Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

Appropriate Assessment (AA) Screening

The development subject to this assessment has been screened for AA (report on file) and it has been determined that the development would not significantly impact upon a Natura 2000 Site.

Environmental Impact Assessment (EIA) Pre-Screening

Having regard to the nature of the development subject to this assessment, which comprises the provision of temporary on-site structures used as a site office and associated compound during the construction of an off-site development, it is considered that there is no real likelihood of significant effects on the environment arising from the development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and as such a screening determination is not required.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

RECOMMENDATION

I recommend that the applicant's agent, John Spain Associates c/o Blaine Cregan 39, Fitzwilliam Place, Dublin 2, be informed that:

Having regard to:

- a. Section 3 of the Planning and Development Act 2000, (as amended); and
- b. Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

It is considered that:

The provision of temporary on-site structures at Baumann's Yard, Old Dublin Road, Stillorgan, Co. Dublin, to be used as a site office and associated compound during the construction of the 'Cornerstone' development (ABP Ref. 305176-19), as proposed, **would constitute 'development' and would constitute 'not exempted development'**, pursuant to the provisions of Section 3 of the Planning & Development Act 2000, (as amended), and Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).


Administrative Officer

Executive Planner

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

ORDER

The issuing of a Declaration pursuant to Section 5 of the Planning & Development Act 2000, (as amended) to John Spain Associates c/o Blaine Cregan 39, Fitzwilliam Place, Dublin 2, that

Having regard to:

- a. Section 3 of the Planning and Development Act 2000, (as amended); and
- b. Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

It is considered that:

The provision of temporary on-site structures at Baumann's Yard, Old Dublin Road, Stillorgan, Co. Dublin, to be used as a site office and associated compound during the construction of the 'Cornerstone' development (ABP Ref. 305176-19), as proposed, **would constitute 'development' and would constitute 'not exempted development'**, pursuant to the provisions of Section 3 of the Planning & Development Act 2000, (as amended), and Class 16 and Class 17, respectively, of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), is hereby approved.

Signed:


Approved Officer

Dated:

22.07.2022

Thereunto empowered by order of Príomhfheidhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 2236, dated 26/06/2019, delegating to me all his powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.

10.0 APPENDIX 3: COPY OF ORIGINAL SECTION 5 DECLARATION REQUEST



**Dún Laoghaire-Rathdown County Council
APPLICATION FOR SECTION 5
Planning and Development Act 2000, (as amended)**

The purpose of a Section 5 of the Planning and Development Act 2000, (as amended), is to establish if a particular development is or is not an exempted development within the meaning of the Act.

If detailed information / drawings are not provided, we may not be in a position to make a decision.

NOTES:

- (a) Application **must** be accompanied by fee of €80.00
- (b) Application **must** be accompanied by 3 Copies of:
 - (1) site location map with site clearly outlined in red,
 - (2) site layout plan including **all** existing structures on site (this is required as conditions and limitations of exempted development include location of development and distances from site boundaries),
 - (3) scale floor plans and elevations (this is required as conditions and limitations of exempted development include height of structure and distances of windows from boundaries).
 - (4) Any other additional information so as to inform the decision.

**Forward your application to: Dún Laoghaire-Rathdown County Council,
Planning and Organisational Innovation, Registry and Decisions Section,
Marine Road, Dún Laoghaire, County Dublin.
Telephone: 01-2047240**

1. Applicant Details:

NAME OF APPLICANT: KW Investment Funds ICAV acting on behalf of its sub fund KW Investment Fund VIII

ADDRESS OF APPLICANT: 94 St. Stephen's Green, Dublin 2

EMAIL ADDRESS: info@kennedywilson.eu

TELEPHONE NO. Day: 01 588 4000 Mobile: _____

2. Agent Details:

NAME OF AGENT: John Spain Associates c/o Blaine Cregan

AGENT'S ADDRESS: 39 Fitzwilliam Place, Dublin 2

bcregan@johnspainassociates.com

TELEPHONE NO. Day: 01 662 5803 Mobile: _____

3. Correspondence Details:

ADDRESS FOR CORRESPONDENCE (if different from above)

4. Site Details:

LOCATION OF SUBJECT SITE:

Baumann's Yard, Old Dublin Road, Stillorgan, Co. Dublin

(a) area of site: 992 sq.m.

(b) floor area of existing extension(s) (if any): _____ sq.m.

(c) floor area of proposed development: _____ sq.m.

(d) area of rear garden remaining: _____ sq.m.

Please state applicant's interest in this site: Owner

If applicant is not the owner of site, please provide name & address of owner: _____

Is the above site located within the curtilage of a Protected Structure or within a Candidate Architectural Conservation Area or Architectural Conservation Area?

Yes / No

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

Yes / No

5. Details of works (where applicable) or proposed development.
(Note: Only works listed and described under this Section will be assessed under this Section 5 application. Use additional sheets if required.)

Provision of temporary on-site structures used as site office and associated compound during the construction of the associated Stillorgan Leisureplex development (ABP Ref. 305176-19).
The structures consist of a concrete base, railings, associated construction materials, and a two-storey prefabricated type structure used as the site office for the development under construction.

6. List of plans, drawings, etc. submitted with this application.

3 no. copies of Site Location Map

3 no. copies of plans and elevations of temporary structures on site

3 no. copies of a cover letter

7. Are you aware of any enforcement proceedings connected to this site? If so please supply details:

ENF07722 - enforcement proceedings in connection with the development subject to this Section 5 Request.

8. Were there previous planning application/s on this site?



If so please supply details:

Reg. Ref. D13A/0088 - Grant Permission

Reg. Ref. D06A/1757 - Grant Permission

Reg. Ref. D04A/0826 - Grant Permission

Signed:

Jan Spillars

Date: 04/07/2022

Planning Department,
Dún Laoghaire-Rathdown County Council,
County Hall,
Marine Road,
Dún Laoghaire,
Co. Dublin.

4 July 2022

**RE: REQUEST FOR SECTION 5 DECLARATION IN RELATION TO TEMPORARY
STRUCTURES AT BAUMANN'S YARD, OLD DUBLIN ROAD, STILLORGAN, CO.
DUBLIN**

1.0 INTRODUCTION

- 1.1 On behalf of our client, KW Investment Funds ICAV acting for and on behalf of its sub fund KW Investment Fund VIII, 94 St. Stephen's Green, Dublin 2, we, John Spain Associates, 39 Fitzwilliam Place, Dublin 2, wish to make an application for a Section 5 Declaration in relation to temporary structures at Baumann's Yard, Old Dublin Road, Stillorgan, Co. Dublin.
- 1.2 In determining this application, we request the Council to state whether the use of Baumann's Yard as a construction compound including temporary structures (i) is or is not development as defined by Section 3 of the Planning and Development Act 2000 and (ii) in the case where the provision of these structures is considered to constitute development, whether or not the development is exempted development.
- 1.3 The following documentation is included with this Section 5 Declaration Request Letter:
- A completed Section 5 Declaration Form;
 - 3 no. copies of plans and elevations of the temporary structures on site;
 - 3 no. copies of this cover letter;
 - 3 no. copies of a Site Location Map;
 - The appropriate fee of €80.

2.0 SITE LOCATION AND CONTEXT

- 2.1 Baumann's Yard is located close to the centre of Stillorgan village. Vehicular access to the yard is from a gate to the northeast of the site on to the Old Dublin Road. The site is bounded by retail units to the north, the Old Dublin Road to the east, an existing laneway to the west, and the Stillorgan Village Centre car park to the south.

Managing Director: John P. Spain BBS MRUP MRICS ASCS MRTPI MIPI

Executive Directors: Paul Turley BA MRUP Dip Environmental & Planning Law MIPI Rory Kuhlz BA (MOD) MScERM MAT&CP Dip EIA Mgmt. MIPI
Stephen Blair BA (Mod) MRUP MIPI MRTPI Blaine Cregan B Eng BSc MSc

Senior Associate Directors: Luke Wymer BA MRUP Dip Plg & Env Law Dip PM Prof Cert Env Mgmt MIPI

Meadhbh Nolan BA MRUP MRTPI Kate Kerrigan BA MSc MRTPI

Associate Director: Ian Livingstone MA (Hons) Town & Regional Planning, MSc. Spatial Regeneration MRTPI

John Spain Associates Ltd. trading as John Spain Associates. Directors: J. Spain, S. Spain.
Registered in Ireland No. 396306. Registered Office: 39, Fitzwilliam Place, Dublin 2. VAT No. IE 6416306U

2.2 The yard has no permanent structures or features of interest. The site can generally be considered to be unused, with ground cover of gravel and some vegetation.

2.3 Stillorgan Village Shopping Centre is located immediately to the south of the site.

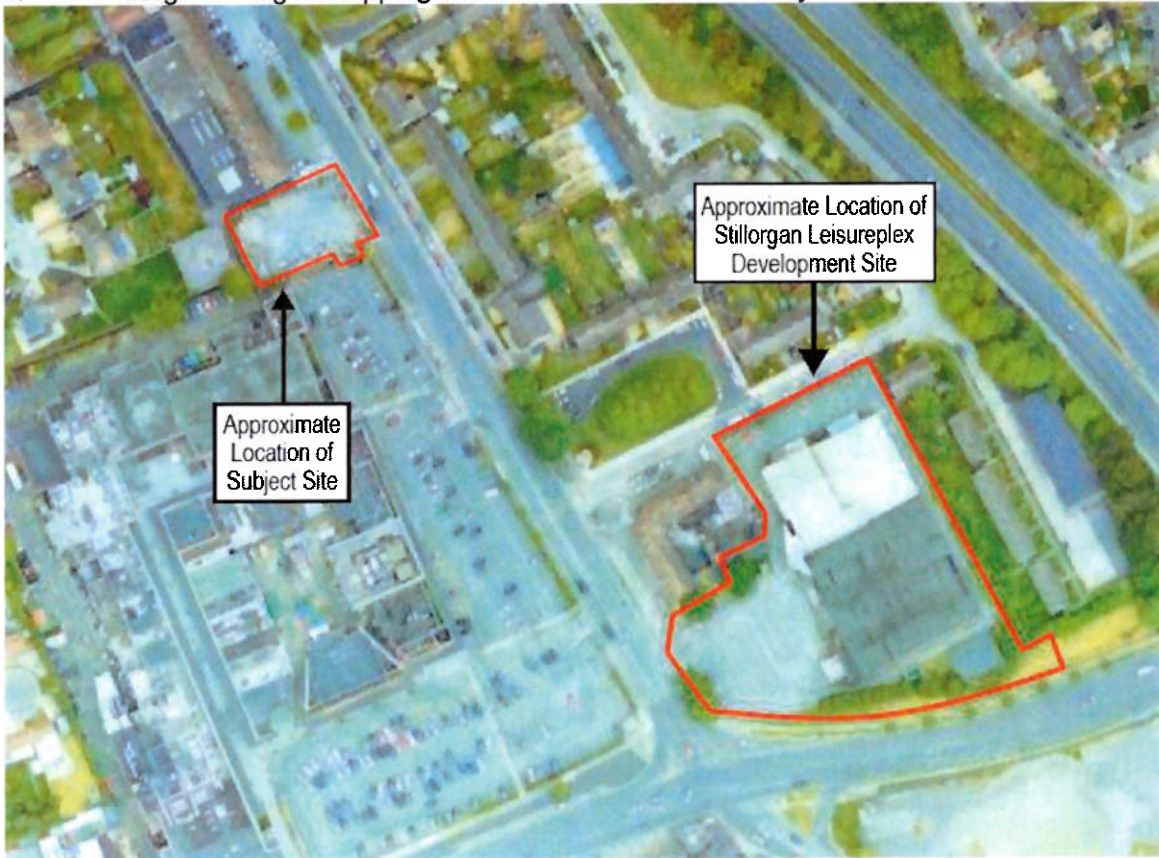


Figure 1: Approximate Location of Subject Site with Stillorgan Leisureplex site identified.



Figure 2: Site Location Map with lands in control of the applicant in blue.

3.0 PLANNING HISTORY

Reg. Ref. D13A/0088

- 3.1 Planning permission was sought by Myrmidon Propco Limited on 22 February 2013 for development consisting of:

“the provision of a garden centre for a temporary period of five years. The proposed development includes the provision of a single storey structure of 126.29 sqm gross floor space to accommodate a retail area, a display entrance area, a glazed canopy over part of the site, new timber fence boundary treatment ranging in height from 2.3 metres to 2 metres, 2 no. illuminated signage panels and 1 no. non-illuminated signage panel and all associated and ancillary works. The development also includes pedestrian access to the site from Old Dublin Road and pedestrian access to the site from Stillorgan Shopping Centre via a new ramp.”

- 3.2 Permission was granted on 23 May 2013 for the development.

Reg. Ref. D06A/1757

- 3.3 Planning permission was sought by Myrmidon Limited on 1 December 2006 for development consisting of:

“temporary planning permission for the period of four years (unless subsequent permission for its permanent use is secured) for the provision of some 35 no. car parking spaces on a site area of 992 sq.m at the existing,

unused enclosed yard space (known as Baumanns Yard) to use as additional car-parking for Stillorgan Shopping Centre."

- 3.4 The application was subject to a further information request, and permission for the development was granted on 3 October 2007.

Reg. Ref. D04A/0826

- 3.5 Planning permission was sought by Myrmidon (Propco) Limited on 23 July 2004 for development consisting of:

"a mixed use residential and retail scheme with a gross floor space of 1548 sq.m. comprising the erection of 4 no. 2 bed and 3 no. 3 bed two storey mews houses each with a provision for one off-street car space and a three storey structure with retail ground floor (326.6 sq.m. including ancillary storage) with 4 no. 2 bed apartments and 1 no. 1 bed apartment over, six car spaces, all apartments having balconies associated site works including the widening of the lanes and boundary treatments and hard and soft landscaping. (Site known locally as Hamilton's Garage Lane)."

- 3.6 A Notification of Decision to Grant Permission was issued by Dún Laoghaire-Rathdown County Council on 16 September 2004. An appeal to An Bord Pleanála was submitted, and permission was granted by the Board for the development on 24 February 200

4.0 DESCRIPTION OF PROPOSAL

- 4.1 The proposal involves the use of Baumann's Yard as a construction compound including the provision of temporary on-site structures used as site offices during the construction of the adjacent Stillorgan Leisureplex development (ABP Ref. 305176-19). The structures consist of a concrete base, railings, associated construction materials, and a two-storey temporary prefabricated type structure used as the site office for the development under construction.
- 4.2 The structures on site at Baumann's Yard are strictly temporary and are to be removed on completion of construction works at the former Stillorgan Leisureplex development. It is not proposed to carry out any works on the site in connection with any other development.



Figure 3: Image of structures on site.



Figure 4: Image of structures on site.

5.0 ASSESSMENT

- 5.1 The works involve the provision of temporary structures. It is considered that the works constitute development, i.e. the carrying out of works as set out under Section 3(1) of the Planning and Development Act 2000 (as amended). Section 3(1) of the 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."

- 5.2 It is considered that these works are exempted development in line with Class 16 and Class 17 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

- 5.3 Column 1 (Description of Development) for Class 16 states the following:

"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."

- 5.4 Column 2 (Conditions and Limitations) of Class 16 states the following:

"Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act."

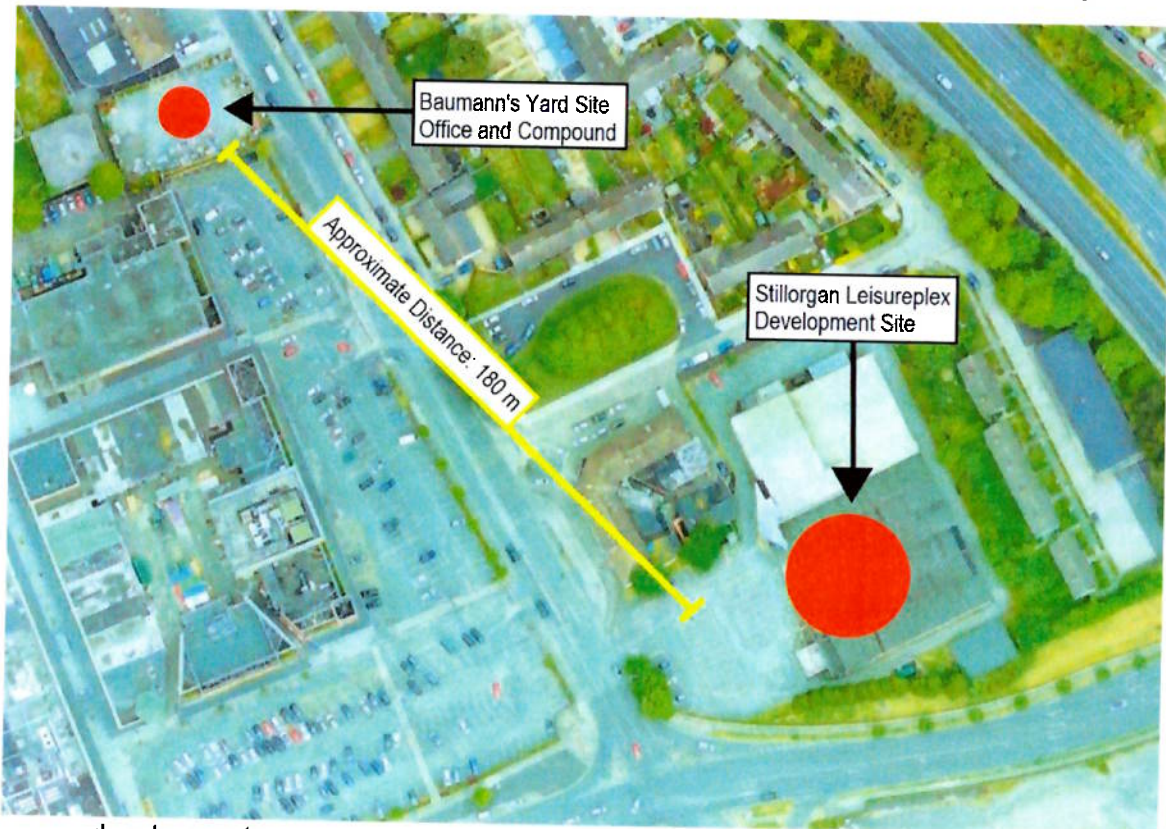
- 5.5 Column 1 (Description of Development) of Class 17 states the following:

"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."

- 5.6 Column 2 (Conditions and Limitations) of Class 17 states the following:

"Such accommodation shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by the permission, consent, approval or confirmation granted under the Act or any other enactment."

- 5.7 The proposal involves the placement of a concrete base, and the provision of portable buildings on the base. The overall site is used as a site office compound associated with the development of the Stillorgan Leisureplex site. The use of the site and provision of the associated structures is considered to be in compliance with the provisions of Column 1 of Class 16 and Class 17 as set out above. The temporary structures on site are provided expressly in connection with the ongoing construction at the Stillorgan Leisureplex site, and are to be removed on completion of the development. The structures are provided for use as a site office and compound for the Leisureplex site development and are not used in connection with any other



development.

Figure 5: Google Maps extract showing proximity of Baumann's Yard to Stillorgan Leisureplex Site.

- 5.8 A question arises on the nature of the term "adjoining" in both Class 16 and Class 17 in relation to the provision of structures on this site associated with the development of the Stillorgan Leisureplex site. There is no definition of 'adjoining' provided in the Planning and Development Act. The default approach to the interpretation of terms is their literal meaning. The Oxford Dictionary definition of "adjoining" is: "(of a building, room, or piece of land) next to or joined with." Based on this definition, two criteria can be established for the term "adjoining": "next to" and "joined with."
- 5.9 The Baumann's Yard site is not physically joined with the Stillorgan Leisureplex site, however it is in the ownership of Kennedy Wilson, in addition to the Stillorgan Village Centre and former Stillorgan Leisureplex and therefore with regard to ownership is joined and associated with the overall landholding. In relation to the criterion of "next to," it is submitted that due to the nature of the site as a generally unused yard and its proximity to the Stillorgan Leisureplex site, all within Stillorgan Village and as part of a wider land ownership, Baumann's Yard is in effect next to the development site, albeit with a public roadway in between.

5.10 The test for the interpretation of terms is to consider what meaning a reasonable person with the requisite background knowledge would ascertain from the term. In this instance our client is the owner of Baumann's Yard, Stillorgan Village Shopping Centre, and the Stillorgan Leisureplex site. It is submitted that a reasonable person, having regard to the Regulations and this information, would consider the Baumann's Yard to be adjoining the Stillorgan Leisureplex site, and therefore consider the temporary structures are compliant with the description, conditions and limitations of Class 16 and Class 17 of the Regulations.

5.11 It is noted that this site was chosen for the provision of the site office and compound due to the proximity of the Leisureplex site to adjacent residential properties at St. Laurence's Park. The provision of the site office and compound at Baumann's Yard is in the interest of protecting the residential amenity of existing properties in relation to noise and disturbance.

Article 9 of the Regulations sets out the restrictions on exempted development. The following provisions of Article 9 are relevant to the structures at Baumann's Yard, with an assessment after each point:

*"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,

5.12 As noted in the Planning History section of this letter, there are no active planning permissions on site. The structures are strictly temporary in nature and the site is to be returned to its previous state on completion of the Stillorgan Leisureplex development.

(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,

5.13 No widening of access has taken place or is proposed to take place.

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

5.14 The yard utilises an existing access and trips to the yard are not such which would significantly increase traffic in the area or result in a traffic hazard. No obstruction of road users arises due to the proposal.

(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,

- 5.15 The structures do not protrude from the existing building line, and the building line is not altered in any way.

(xi) obstruct any public right of way,

- 5.16 There is no public right of way on or through the site.

- 5.17 Having regard to the provisions of the Regulations as set out above, it is respectfully considered that the provision of the temporary structures at Baumann's Yard for the purpose of a site office for the adjacent Leisureplex development is development and is exempted development.

6.0 CONCLUSION

- 6.1 In determining this application, we request the Council to state whether the use of Baumann's Yard as a construction compound including temporary structures (i) is or is not development as defined by Section 3 of the Planning and Development Act 2000 and (ii) in the case where the provision of these structures is considered to constitute development, whether or not the development is exempted development.
- 6.2 It is requested that the development be declared as exempted development under the provisions of Class 16 and 17 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) and we trust the Council will be in agreement with the assessment as provided above.

**REFERRAL OF SECTION 5 DECLARATION
SITE KNOWN AS BAUMANN'S YARD, OLD DUBLIN ROAD,
STILLORGAN, CO. DUBLIN**

DRAWING SCHEDULE

Drawing Name	Drawing Number	Scale
Site Location Map	1625-OMP-00-00-DR-A-1103	1:1000 @ A1
Site Plan	-	1:100 @ A1
Elevation A	-	1:75 @ A1
Elevation B	-	1:75 @ A1
Elevation C	-	1:75 @ A1
Elevation D	-	1:75 @ A1
Floor Plans	9282761-005.dwg	A1

Site Location Map

- site boundary outlined in red
- additional lands in control of the applicant outlined in blue

OS Map Series:
 1:1000
 OS Map Ref:
 3392-10, 3392-15, 3393-11, 3393-06
 ITM Centre Point Co-ordinate:
 XY = 720093, 728062
 Elevation datum:
 22-Aug-2015

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 Ordnance Survey Ireland Licence no. CYAL30741973
 All dimensions in millimeters.
 All levels (in meters) are related to Mean High datum.



AN BORD PLEANÁLA

01 SEP 2022

LTR DATED _____ FROM pa

LDG- _____

ABP- 314387-22

Revision Description	Date	Rev. No.	Issued by
	14-06-2022	001	MA
	13-06-2022	002	MA
	02-06-2022	003	TS

Project Code:	SLX	Scale @ A1:	1:1000
Project Level:	CV/AS	Date Issued:	14-06-2022
Drawn By:	MA	Current Rev.:	003
Job No.:	1425	Status:	52
Project Name:	o'mahony pike	Project Code:	SLX
Location:	Baumann's Yard Sillorgan, Dublin	Project Level:	CV/AS
Client:	KW Investment Funds (KY) Acting For And On Behalf Of Its Sub Fund (KW Investment Fund) VIII	Drawn By:	MA
Project:	Baumann's Yard	Job No.:	1425
Location:	Sillorgan, Dublin	Purpose:	Planning

o'mahony pike

Architectural Urban Design
 100-100A
 100-100B
 100-100C
 100-100D
 100-100E
 100-100F
 100-100G
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 100-100K
 100-100L
 100-100M
 100-100N
 100-100O
 100-100P
 100-100Q
 100-100R
 100-100S
 100-100T
 100-100U
 100-100V
 100-100W
 100-100X
 100-100Y
 100-100Z

Drawing Title: Site Location Map
 Drawing No.: 1625-OMP-03-00-DR-A-1103

