
INTEROFFICE MEMORANDUM

FROM: ROSS O'SHEA - EXECUTIVE PLANNER

SUBJECT: DEC 710 LANCE O'BRIEN

DUE DATE: 17/10/2022

In response to ABP appeal letter stamp dated by, Michael Smyth acting on behalf of Lance O'Brien (applicant), I wish to respond as follows under three headings of traffic, planning site history and material change of use / industrial process –

1 Traffic

The Kilkenny Roads Design section have reviewed the submission and consider as follows: -

The proposed development takes its access on to the L8217. This is a narrow local road in the order of 3m wide. The overall development site has three access points onto the L8217 which cater for both a commercial campervan repair business and some agricultural elements. The main access is approximately 50m from the junction of the L8217 and the L2643. The sight line to the west of the junction is restricted due the vertical alignment across an existing narrow bridge. Observed speeds in the vicinity of the junction are in the order of 50-60kph.

The sight visibility splays onto L8217 from the developments access points are restricted by the existing roadside hedge and boundaries. The surfacing to the entrances is constructed in concrete which is now in poor condition and leading to the breakup of the public road edge.

It is noted there is an existing access onto the public road from the adjacent orchard. The sight lines at this access are also limited. This access traverses an existing stream via a structure of dubious construction.

Insufficient detail has been provided by the applicant in terms of traffic generated by both the commercial and agricultural elements of the scheme to adequately assess the overall development in terms of traffic and road safety. It is noted however there is scope to improve the sight visibility lines at the access points and to improve their interface with the public road and thereby improving overall road safety in the vicinity of the development. Regardless of whether the cider brewery requires permission for a change of use it is recommended the applicant carry out improvements to the developments access subject to the appropriate permissions.

The main access to the site is from a local secondary narrow road with a maximum speed limit of 80km/h. Poor sightline visibility at 2.4metres back exists from the wide metal gate entrance, particularly in a southerly direction which falls well short of minimum standards. The metal security gate is not set back a minimum 5metre from the public carriageway edge. The applicant has not submitted any site layout plan showing access design and/or available sightlines in their appeal submission. Sightline and entrance design improvements are required. Traffic generation from proposed development in combination with vehicle garage

/ motor home business use on site, poor conditioned access design and restricted sightlines would it is considered endanger public safety by reason of traffic hazard and give rise obstruction of road users. This would render the development not exempt by virtue of Article 9(i)(a)(ii) of the Planning & Development Regulations 2001-2022.

2. Planning Site History

The agricultural building that is the subject of the Declaration application was fully inspected by the Area Planner during the planning visit.

A planning history search for the site was carried out. The only permission granted on the site farm yard is P05/1796 to construct two farm type buildings of 99.75 meters squared and 148.46 meters squared floor space and all associated works. Applicant Lance O'Brien.

The agricultural shed the subject of this Declaration is located further east of development granted under P05/1796. No planning permission was granted for this agriculture shed or permission granted for its change of use to a cider brewery. The existing shed appears was constructed after P05/1796 permission. The applicant considers existing agricultural shed is exempt under Schedule 2, Part 9 of the Planning and Development Regulations however has not enclosed or submitted any scaled planning drawings / dimension of the other farm yard building structures and aggregate square metres area in in support of this same. Notwithstanding above, other farm yard building are being used as a vehicle garage/shop/office and the proposed change of use of the said agricultural shed to a cider brewery is not considered exempt from planning permission.

There is enforcement history associated with the farm yard under file ENF 08-111. This file was closed after deciding that no further action is required at this stage. The matter of unauthorised development associated with operation of a motor home / garage repair business from the farmyard is not referred to in the applicant's response. The applicant claims that the site has hosted a commercial garage since 1937 and certainly since 1954 when the activity was intensified. This assertion is at variance with report under ENF08-111 in year 2008 by Kilkenny Enforcement Officer

I spoke with the owner Mr. Lance O'Brien who stated that he commenced the motor home business 12 months ago. The 2 extensions that were built are the only structures being used in connection with the motor home business. One building is being used as a maintenance garage workshop and the other is being used as an office. A range of motor homes were parked on the open hardcored farmyard and were either available for sale or rent or left in for servicing/ repair. The operation of a motor home business from the farmyard is unauthorised.

During the planning site inspection in August 2022, approximately 10 mobile home vehicles were parked on the hardstanding area. The operation of a motor home business from the farmyard is still being carried out without the benefit of planning permission. This matter is of importance in relation to point 1 traffic impact and combined agricultural and commercial traffic onto the public road network and resulting traffic safety hazard concern.

3. Material Change of Use / Industrial process

The use of the shed for purposes of storing apples / farm machinery etc falls under the definition of agriculture. The construction / change of use of an agricultural farm building from an orchard machinery store to a cider brewery does not come under the definition of agriculture and is considered a use other than for the purpose of agriculture. The Act's definition for agriculture makes no reference to a brewery/distillery in the development description. A brewery is considered more than an ancillary use to apple fruit growing/distribution and therefore cannot be construed as solely agricultural.

Cider brewing activities can be considered an industrial process under the definition in the Planning Regulations. Under Part 2, Exempted Development Article 5(1) In this Part – “industrial building” means a structure (not being a shop, or a structure in or Adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process; “light industrial building” means an industrial building in which the processes carried on or the plant and machinery installed are such as could be carried on or installed in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit;

It is reasonable to determine that the brewing of cider is an industrial process, a process which includes mashing, boiling, filtering, maturing, pasteurising, fermenting and bottling/packaging as confirmed by the applicant and shown in floor plan drawing submitted. Thus, it is accepted that the brewery undertakes an “industrial process” as defined by Article 5 of the Planning and Development Regulations.

The 4 no fermentation tanks and other associated plant and equipment would comprise a “structure”, being a structure or similar thing constructed or made on and in the land. The installation of the fermentation tanks and other equipment / plant etc would involve the carrying out of “works” by way of construction and alteration which would be carried out on and over land. The subject matter would, thereby, constitute “development” in accordance with the provisions of sections 2(1) and 3 of the Planning and Development Act.

The fermentation process in the making of cider allows for the conversion of sugars to ethyl alcohol. The fermentation tanks can reasonably be understood to be “plant” or structures of the nature of plant which are integral to the brewing of cider at the site

The Planning Authority consider that an assessment of any odours that may arise from the process and any mechanisms put in place to prevent odours becoming a nuisance is not properly addressed or covered under existing planning permission conditions on site. This should include the odour from the storage of any pulp and waste apples.

Confirmation of the processing and final disposal of all wash water is not detailed as part of the application and/or drawing submitted. This should include washing the apples, condensate of steam used for sterilising the equipment, washing of manufacturing area etc. The impact of surface water and waste water is not properly addressed and/or covered under existing planning permission conditions and/or exempted regulation limitations on site in terms of environmental controls.

Conclusion

The proposed activities/structures relating to a cider brewery represent an industrial process which constitute development and a change of use of development that is material having regard to Section 3(1) of the Planning and Development Act 2000, would give rise to new planning and environmental issues not covered under existing planning permission controls, the Act or planning exempted regulations relating to agriculture / structures.

The proposal contravenes Article 9 (1) (i) & (iii) of the Planning and Development Regulations 2001 as amended as it constitutes a use of development that is inconsistent with existing agricultural use specified in planning permission reference No P05/1796, definition of Agricultural under the Act and exempted regulations limitations relating to rural agricultural structures and would in combination with existing motor home garage business, access design and restricted sightlines give rise to a traffic hazard, and thereby endangering public safety and obstructing other road users.

The Planning Authority does not consider an oral hearing is necessary in this case given the site's rural location, development description and nature. National, Regional or local complex issues does not arise and is not a strategic infrastructure development.



Ross O'Shea
Executive Planner
12/10/2022