

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

|                         |                             |
|-------------------------|-----------------------------|
| <b>AN BORD PLEANÁLA</b> |                             |
| LDG-                    | <u>063827-23</u>            |
| ABP-                    | <u>317171-23</u>            |
| 23 MAY 2023             |                             |
| Fee: €                  | <u>220</u> Type: <u>CHQ</u> |
| Time: <u>12.00</u>      | By: <u>HAND</u>             |



**O'NEILL**  
Town Planning

PLANNING AND DEVELOPMENT CONSULTANTS  
OAKDENE, HOWTH ROAD, HOWTH, CO. DUBLIN, D13 DK31.

Tel: (01) 8391896, Mob: 0862659634  
e-mail: planmon46@gmail.com

May 23, 2023.

---

**APPEAL RE: NOTIFICATION OF DECISION TO REFUSE SECTION 5 DECLARATION IN RESPECT OF LANDS  
AT BOLAND MOTORS, THE BUNGALOW, NEVINSTOWN, SWORDS, CO. DUBLIN, K67P788. (**  
**REG.REF. FS5/014/23)**

---

A Chara,

On behalf of our client, **Joseph Boland, Boland Motors, The Bungalow, Nevinstown, Swords, Co. Dublin, K67 P788**, we wish to appeal the decision of the Planning Authority, which was made by order dated April 27, 2023, refusing our Section 5 declaration made in respect of the above mentioned lands. In making this referral we are seeking a declaration with regard to the ongoing use of lands at Swords Road, Swords, as a motor parts and sales operation. The business, which has changed hands a number of times, has been in operation before 1963 and as such we believe is exempt from planning. The Planning Authority in their decision of April gave two reasons for refusing the declaration:-

*I recommend that a DECLARATION BE ISSUED pursuant to Section 5 of the PLANNING & DEVELOPMENT ACT 2000, AS AMENDED and Regulations made thereunder, informing the applicant that the above proposal is considered not to be Exempted Development for the following reason:*

*Having regard to:*

*Section 5(1) of the Planning and Development Act 2000 (as amended); and*

*Article 9(1) (a) (iii) of the Planning and Development Regulations 2001 (as amended)*

*The proposal constitutes works and is therefore development within the meaning of the Planning and Development Act, 2000, (as amended), and the proposal is development which is not exempted development as:*

- 1. In the absence of conclusive evidence to demonstrate that all land uses (i.e. car dismantling, part sales, motor sales and repairs and vehicle towaway) on site have been in existence prior to 1963 and in the absence of sufficient detail in relation to the intensification or otherwise of such uses over this period, the Planning Authority is unable to make a Declaration that these activities on site constitute exempted development by reason of the duration of time they have existed on site.*
- 2. The nature of the existing commercial operation adjacent to the R132 regional road would constitute a traffic hazard and does not accord with the restrictions / limitations on exempted development as set out under Article 9(1) (a)(iii) of the Planning and Development Regulations 2001 (as amended)*

## **1.1 GROUNDS OF APPEAL**

### **✚ PLANNING AUTHORITY REASON**

*In the absence of conclusive evidence to demonstrate that all land uses (i.e. car dismantling, part sales, motor sales and repairs and vehicle towaway) on site have been in existence prior to 1963 and in the absence of sufficient detail in relation to the intensification or otherwise of such uses over this period, the Planning*



Authority is unable to make a Declaration that these activities on site constitute exempted development by reason of the duration of time they have existed on site.

**OUR RESPONSE**

We would submit that we issued the Planning Authority with enough information to show that the business was taking place on the site since before 1964. All of the land uses purported by the council to be occurring - *car dismantling, part sales, motor sales and repairs and vehicle towaway* - can all be classified as motor sales and repairs which is a single land use in most development plans and are not deemed to be separate land uses as suggested by the Planning Authority. Indeed in 1963 when the business was operating the range of businesses would have been even greater than at present. Indeed as we stated in the report in support of the declaration, any purported intensification for the lands for the development of the business has been as a result of the development of the economy, population increase, and the increase in the number of vehicles on the road. The subject site could in some ways be likened to a graveyard where the number of gravestones reflects the population increase, which automatically leads to an increase in deaths and then graves and gravestones. No one would argue that the graveyard had been intensified by virtue of the number of gravestones which were an accumulation over the years. The number of people working in the graveyard could remain the same - particularly as they were easily able to handle the number of internments per year. Our clients operation is very much the same with the number of vehicle carcasses on the land been reflective of the population increase and vehicle numbers rather than any intensification of the business. While the site has been more extensively used over the period we would submit that this intensification does not warrant an intensification – thus deeming a change of use - but a natural expansion of the business due to external factors not in the control of our client. The business is still small scale employing two to three people, but the way the business is managed means that there are a lot more derelict cars on display on the site, which are only transferred to a foundry after a sizable number are available for collection. This view of the lands should not be considered an intensification of the business as both the site, the number of employees, and the number of trips to and from the site has not significantly changed over the years. We submitted to the Planning Authority all of the folio information, along with affidavits from previous owners and operators of the business; rate payments; licenses for the existing commercial use; and a statutory declaration that the property is not a family home.

**PLANNING AUTHORITY REASON**

*The nature of the existing commercial operation adjacent to the R132 regional road would constitute a traffic hazard and does not accord with the restrictions / limitations on exempted development as set out under Article 9(1) (a)(iii) of the Planning and Development Regulations 2001 (as amended)*

**OUR RESPONSE**



Entrance to our client's premises off the R132. Photo on left heading towards Swords, while photo on right coming out of Swords.



Other Businesses with access off the R132 proximate to our client's premises. Industrial park across the road from our client's premises on left, while the garage on the right is within one hundred metres of our client's entrance.

The entrance to our client's holding is set back approximately ten metres from the side of the R132, a seventeen metre wide piece of road that runs from Swords as far as the roundabout to Dublin Airport. Sight distances in each direction from 2.5 metres from R132 are over one hundred and sixty metres in each direction<sup>1</sup>. Given the speed limit on the road – at eighty metres an hour, the sight distance available are more than adequate to deal with all traffic safety issues. Furthermore as left hand turns out of, and into the premises are only allowed, any perceived traffic hazard from right hand turns is avoided.

We would therefore argue that the R132 is a regional route with numerous entrances to commercial premises close to our client's business. The road is wide and straight and the suggestion that the nature of our client's commercial operation would constitute a traffic hazard is difficult to countenance given that the level of traffic arriving at and leaving would be substantially less than that arriving and leaving the adjoining filling station or industrial premises across the road. We would therefore ask the Bord not to consider this reason for refusal in their deliberations on the subject referral.

## 1.2 PLANNING RATIONALE

### ✚ BACKGROUND

Our client bought the site in 1984 and that all structures<sup>2</sup> on site, except the portacabin, were present when the site was purchased. The business on site has always been for the motor trade and includes sales and motor parts. Owing to the time scale the type and scale of the business has changed in line with population and motor vehicle registration over the period. In 1963 there were approx. 33,000 new cars sold in Ireland. In 2019 117,000 new cars were sold – a 300% increase. In 2016 there were 1.76 million cars in the country. From this it can be seen that there was an exponential growth in the number of cars on the road, along with stricter controls on the quality and safety of cars. Together this has resulted in an increase in all sectors of the business including our client's business. That said all of the land was available and solely used for his motor factor trade. The changes over the period has meant that the use of the lands has been intensified but the intensification could not be deemed a change of use given the national growth of the business of

<sup>1</sup> While the parking of cars on the area outside the boundaries to the premises occurs at present, this activity will cease in the event of the declaration being decided.

<sup>2</sup> The structures on the site were burnt down – maliciously – in 2012.



which our client and his site were a part of. At no stage was there any increase in the number of people employed in the business nor on the extent of the lands available for the operation, but the subject site was made better use of than in 1963. There are similarities with all commercial activities over the period – from farming to retail – where herd numbers, milk quotas, and retail product ranges all led to more intensive practices due to changing market conditions.

Our client's business is a motor trade business involving car dismantling, part sales and motor sales and repairs and vehicle towaway. The use of the site is therefore a generic motor trade use with no particular emphasis on sales, repairs, or dismantling. When our client purchased the business in 1984 the same business operations were ongoing on site, and the use has not changed in the intervening period. As stated above we are of the opinion that there has been no material change in the nature of the activities ongoing on site, nor has there been any intensification in the level of activities over the ensuing period – either to an increase in employees or on the number of customers that our client deals with.



*Aerial view of our clients motor business site on the Swords Road<sup>3</sup>.*

### 1.3 PLANNING HISTORY

✚ **REG.REF. REF: 5/013/10**

A section 5 declaration was made in March 2010 seeking an exemption certificate for our client based on the fact that the development was pre 1963. Following an Additional Information request seeking clarification on a number of issues, a decision was made by the Planning Authority, by order dated May 26, 2010. The Planning Authority stated in their order, which clearly stated that they would not be in a position to issue a Section 5 Declaration, that,

<sup>3</sup> The site to the north of the subject site is not part of this referral and while our client owns those lands and stores cars on the lands we are not seeking a declaration on those lands at present.

***That in the absence of conclusive evidence to demonstrate that all land uses on site have been in existence prior to 1963 and in the absence of sufficient detail in relation to the intensification or otherwise of such uses over this period, the Planning Authority is unable to make a Declaration as to whether or not these activities on site constitute exempted development by reason of the duration of time they have existed on site.***

In support of their decision the Planning Authority stated the following:-

*It has not been conclusively demonstrated by the Applicant that the uses and operations ongoing on site have been in existence prior to 1963 and the enactment of planning and development legislation. Nor has it been satisfactorily established by the Applicant that there has not been an intensification in the level of activities ongoing, nor that new activities/processes have not been introduced. Furthermore, it cannot be conclusively concluded that the boundaries of the site remain unaltered since the initial purchase of the site and commencement of development.*

In this section 5 application we would hope to show that the reasons given by the Planning Authority to deny our client an exemption notice cannot be sustained when the overall picture of development on the site has been reviewed and the type of land use on the site reinforced.

#### **1.4 RELEVANT STATUTORY PROVISIONS**

Consideration as to whether a development constitutes exempted development or not is governed by Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended) and Part 2 of the Planning and Development Regulations 2001 (as amended).

**Section 2(1) of the Act states that - *In this Act, except where the context otherwise requires—***

***.....“unauthorised structure” means a structure other than—***

***(a) a structure which was in existence on 1 October 1964, or***

***.....“unauthorised use” means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—***  
***.....***

**Section 3.1 of the Planning and Development Act 2000 as amended defines 'development' as follows:**

***'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'.***

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

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

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

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

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

Section 4.4 of the Planning and Development Act 2000 as amended provides that development shall not be exempted if it requires an environmental impact assessment or appropriate assessment.

As can be seen from the above there is nothing in the Act that would require our clients to seek planning permission for the proposed changes, particularly as there will be no intensification of use on the site or a change of use on the site that is not exempt. As such the changes proposed are not material and as such must be deemed exempt.

Section 5 of the Planning and Development Act 2000 -2022 states the following:-

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

### 1.5 PLANNING AND DEVELOPMENT REGULATIONS 2001 -2022

*Article 5 (1) in this Part 'business premises' means any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons.*

**Article 9 of the Planning and Development Regulations 2001** as amended sets out specific circumstances where development (**to which Article 6 relates**) is not exempted development, specifically (and of particular relevance to the subject site);

(a) if the carrying out of such development would, *inter alia*, -

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

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

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

The change of use could be restricted by the provisions of Article 9, and in particular in this case to Article 9(1)(a)(iii) which states that exemptions would not apply if the changes of proposed exempted development, i.e. (a) if the carrying out of such development would, *inter alia*, -.....(iii) endanger public safety by reason of traffic hazard or obstruction of road users.....

#### APPROPRIATE ASSESSMENT SCREENING:

Section 4 (4) of the Planning and Development Act 2000 as amended states '*notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate. assessment of the development is required.*

Given the nature of the proposed development, the distance to the closest Natura 2000 site and the absence of a receptor pathway, no negative impacts on Natura 2000 sites are anticipated. Accordingly, an Appropriate Assessment is not required in respect of the proposal.

### 1.6 PLANNING APPRAISAL

On the basis of documentation submitted to the Planning Authority in support of the referral, which includes affidavits, licences and rates paid over the last sixty years, we would maintain that there is more than adequate information regarding the pre 1963 status of the use on the lands, and the fact that the site has safe access to the regional route. As such there no residual argument to suggest that the use endangers public safety by reason of traffic hazard or obstruction of road users. As such this can not clearly be

considered a valid reason for rejecting our claims that the use is exempt from the requirements to seek planning permission for same.

A previous Section 5 application was returned on basis of the inadequacy of information provided by the applicant regarding the extent of the lands covered by the use. A map showing the extent of the lands in the ownership of our client is included here.

We would also maintain that there is an established existing use and that the current operator does not intend to intensify the use of the premises. The owner/occupier has offered historical evidence of the established existing use.

We would therefore respectfully ask the Bord to determine that:-

***The proposed unauthorised use on the lands comes within the scope of section 2 of the Planning and Development Act 2000, i.e. ....***

***"unauthorised structure" means a structure other than—***

***(a) a structure which was in existence on 1 October 1964, or***

***....."unauthorised use" means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—  
.....***

As the use and the structures existed before October 1, 1964, and as the proposed development does not give rise to a traffic hazard we respectfully ask An Bord Pleanála to declare the subject use on the lands set out in this referral as exempt from the requirement to seek planning permission.

We attach the required fee of €220.00 to cover the cost of this appeal along with a copy of the Planning Authority decision on same. Please forward all correspondence relating to this referral to this address.

Yours Sincerely,



**Michael A. O'Neill MIPI**



---

**ANNEX**

---

The following were submitted to the Planning Authority in support of the referral, and should be available on their file.

*Location map at 1~1000*  
*Affidavit from Ronald Johnson*  
*Letter from Ordnance Survey*  
*Affidavit from Robert McGlynn – including map*  
Affidavit from John Barron – including map  
Rateable Valuation – Offices and Yard  
Rate Bill 2021  
Affidavit from Ronald Johnson 1986  
Copy of Waste permit 2004  
Rating Printout 2019  
Rate Payment for Ronald Johnson 1986  
Rateable Annual Valuation for Nevinstown West 1945 -1986





Michael O'Neill,  
Michael O'Neill Town Planning  
Oakdene Howth Road  
Howth  
Co. Dublin  
D13 DK31

NOTIFICATION OF DECLARATION UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

|                               |                            |
|-------------------------------|----------------------------|
| Decision Order No. PF/0853/23 | Decision Date: 27-Apr-2023 |
| Ref: FS5/014/23               | Registered: 31-Mar-2023    |

Area: Swords

Applicant: Joe Boland

Development: Motor vehicle and parts yard.

Location: Boland's Motor Salvage, Nevinstown, Cloghran,  
Swords Road, Co. Dublin

Application Type: Request for Declaration Under Section 5

Dear Sir/ Madam

With reference to your request for a **DECLARATION** under Section 5 (1) received on 31-Mar-2023 in connection with the above, I wish to inform you that the above proposal **IS NOT Exempted Development** under Section 5(1) of the Planning and Development Act 2000 for the following reason(s):

1. I recommend that a **DECLARATION BE ISSUED** pursuant to Section 5 of the **PLANNING & DEVELOPMENT ACT 2000, AS AMENDED** and Regulations made thereunder, informing the applicant that the above proposal is

considered not to be Exempted Development for the following reason:

Having regard to:

- Section 5(1) of the Planning and Development Act 2000 (as amended); and
- Article 9(1) (a) (iii) of the Planning and Development Regulations 2001 (as amended)

The proposal constitutes works and is therefore development within the meaning of the Planning and Development Act, 2000, (as amended), and the proposal is development which is not exempted development as:

- In the absence of conclusive evidence to demonstrate that all land uses (i.e. car dismantling, part sales, motor sales and repairs and vehicle towaway) on site have been in existence prior to 1963 and in the absence of sufficient detail in relation to the intensification or otherwise of such uses over this period, the Planning Authority is unable to make a Declaration that these activities on site constitute exempted development by reason of the duration of time they have existed on site.

- The nature of the existing commercial operation adjacent to the R132 regional road would constitute a traffic hazard and does not accord with the restrictions / limitations on exempted development as set out under Article 9(1) (a)(iii) of the Planning and Development Regulations 2001 (as amended).

**NOTE:** Where a declaration is issued under section 5 (1) any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Signed on behalf of Fingal County Council.

Ref No: FS5/014/23

  
02-May-2023  
for Senior Executive Officer