

DM

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Company No: 493 133 Directors: D. Mulcahy & M. Mulcahy

REFERRAL

AN BORD PLEANÁLA
LDG- 078703-25
ABP- _____
19 MAR 2025
Fee: € 220 Type: cheque
Time: 8.48 By: reg post

CONCERNING SECTION 5
DECLARATION ON

PREFABRICATED STORAGE STRUCTURE

AT

**ACE EXPRESS FREIGHT, M1 BUSINESS PARK,
COURTLOUGH, CO. DUBLIN, K32 WY84**

Client: Ascot Freight Limited Trading as Ace Express Freight

18th March 2025

1.0 INTRODUCTION

David Mulcahy Planning Consultants Ltd have been engaged by **Ascot Freight Limited, Trading as Ace Express Freight of M1 Business Park, Courtlough, Co. Dublin** to prepare a referral to An Bord Pleanála in respect of a declaration from Fingal County Council on a section 5 application to establish if the existing prefabricated storage structure at Ace Express Freight, M1 Business Park, Courtlough, Co. Dublin is development and, if so, is it exempted development.

A declaration was sought under Section 5 of the Planning and Development Act 2000 (as amended) from Fingal County Council to establish:

"Whether the existing prefabricated storage structure at Ace Express Freight, M1 Business Park, Courtlough, Co. Dublin is or is not development and is or is not exempted development".

Fingal County Council issued a declaration (Ref.FS5/010/25) on 3.3.25 that:

The existing prefabricated storage structure does not comply with Class 21 due to its express purpose for storage, and not being in the nature of either plant or machinery, nor does it fall within any other class of exempted development. Therefore, it is considered that the existing works comprise development and are not considered to be exempted development.

This referral will demonstrate that the Council's declaration is unreasonable as storage is considered to be of a similar nature to plant or machinery in this industrial context.

We now rely on the Board to undertake an independent review.

The deadline for a referral is 3rd March + 28 days = 31.3.25.

The fee is €220.

Please acknowledge receipt of this referral in writing.

2.0 SITE LOCATION AND DESCRIPTION

2.1 Location

The subject site is located in the M1 business park, between the M1 and R132 south west of Balrothery, Co. Dublin - see Fig. No.1.



Fig No.1: Site Location Map (source: Myplan.ie - OSI Licence No.EN 0080915).

2.2 Site Description

The subject site forms part of industrial units (units 5 & 6) – owned and operated by Ace Express Freight. The units form part of a wider industrial park.



Fig No.2 Storage Structure viewed from east gable end.

The storage structure has a gross floor area of 18.5sq.m wide x 55sq.m long (1,1017.5sq.m) and measures 10.56m high (ridge level).

The external finish is industrial grade PVC roofing and steel sheet walls on an Aluminum frame.

The structure is used to store packaging material directly related to the existing industrial unit.



Fig No.3 Site Context (source: Eircode.ie mapping).



Fig No.3a Most recently available satellite image showing location of the subject site (source: Google Earth Nov 2024).

2.3 Ownership

The subject site is owned by Ascot Freight Limited Trading as Ace Express Freight.

2.4 Adjoining Lands

North:	Industrial units – Ace Express Freight
East:	Internal access road with public road beyond.
West:	Internal open space with dense tree planting beyond. The M1 is further west.
South:	Industrial unit – Shed Factory

2.5 Built Heritage

The Historic Environment Viewer provided by the Department of Housing, Local Government and Heritage provides details of National Monuments Service Sites and Monuments Record (SMR) and the National Inventory of Architectural Heritage (NIAH). It shows that there is a Recorded Monument, Burnt Pit - Courtlough, SMR reference number DU 004-048 located at the eastern boundary of the wider industrial site.

2.6 Flood Risk

A review of mapping on floodinfo.ie did not reveal any flood risk associated with the site.

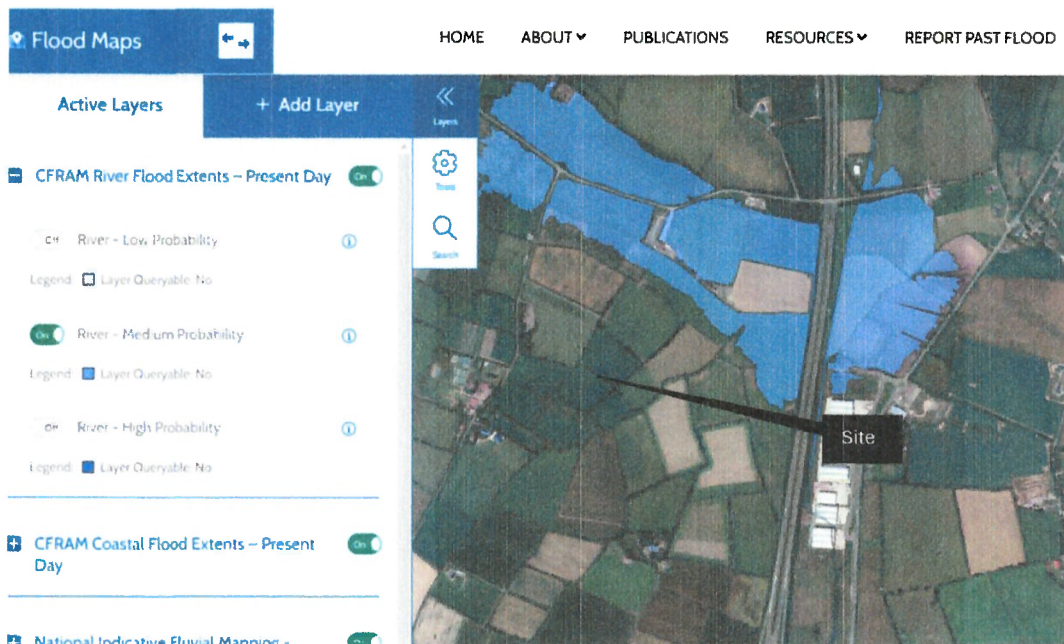


Fig No.4 Extract from floodinfo.ie mapping.

2.7 General Area

The general area is characterised by industrial development

3.0 PLANNING HISTORY

3.1 Introduction

This section deals with the planning history for the site and the surrounding area in order to determine if there are any relevant planning issues which have previously been raised and need to be addressed as part of the current application.

3.2 Planning History

A review of the on-line planning system for Fingal County Council revealed the following planning history associated with the site.

PLANNING REFERENCE	F18A/0733
APPLICANT NAME	Ace Express Freight
LOCATION	Ace Express, M1 Business Park, Balbriggan, Co Dublin
DESCRIPTION	For new 67.5 x 18 x 11.7 m high (1184m ²) single storey storage extension to south elevation and 52 x 12.8 x 5.8m high (643m ²) single storey storage extension to west elevation.
DECISION	Grant
DECISION DATE	26/3/2019

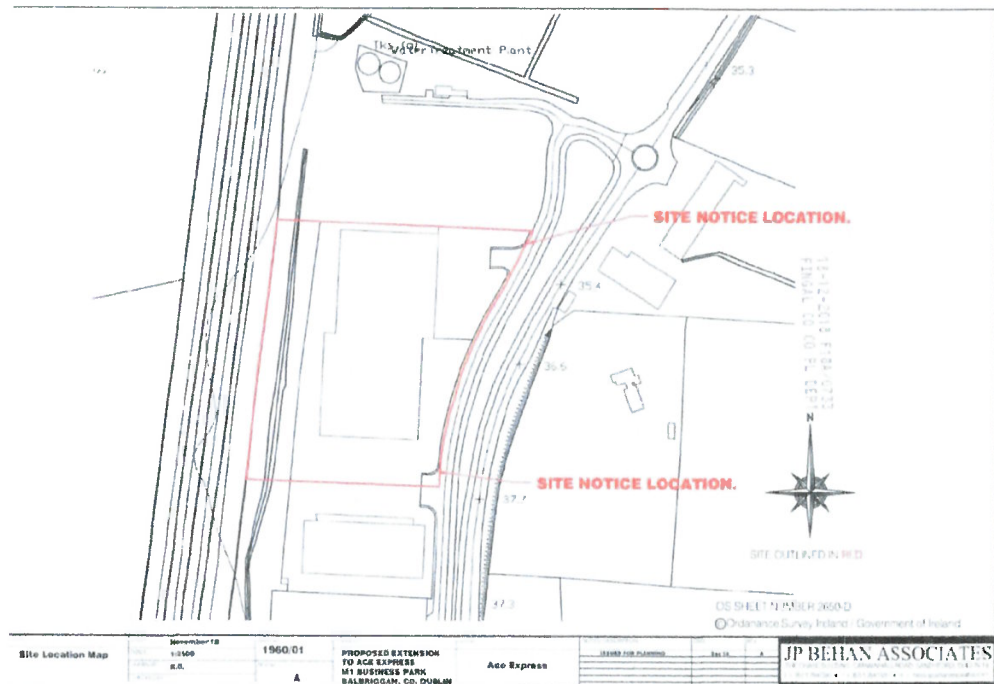


Fig No.5 Site Location Map under Reg. Ref F18A/0733

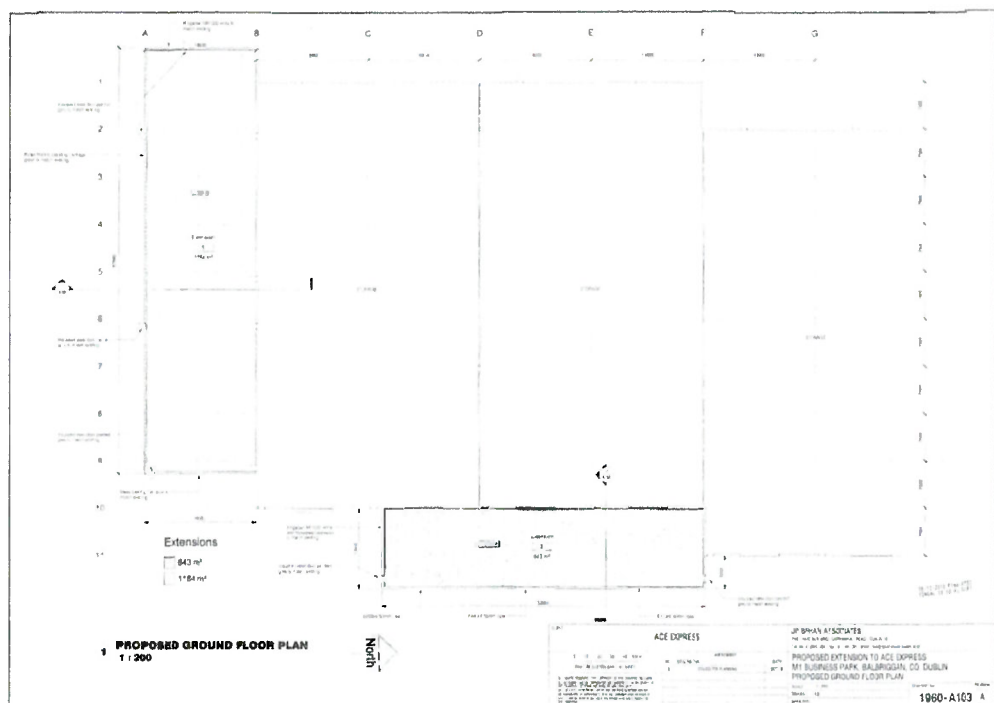


Fig No.6 Proposed Ground Floor Plan under Reg. Ref F18A/0733

Other planning applications associated with the site are outlined below (source Fingal Planning Officers Report under F18A/0733):

Planning History on subject site:

F05A/0968 – Permission GRANTED for construction of two warehouses: (A) retail showroom with storage, ancillary office and staff facilities on ground and mezzanine floors, totalling 3161 sq.m. and (B) storage unit and ancillary staff facilities on ground floor, totalling 9593 sq.m., with ancillary site services, access roads, car parking and landscaping on circa 3.76 hectares site. Previous permission was granted under application no. F03A/1090. Applicant: Kevin McNulty.

F04A/1836/E1 –Extension of duration of permission GRANTED up to and including 9th February 2016. Applicant: Hakaton Limited.

F04A/1836 – Permission GRANTED for development on a 7.56 hectare site. Development will consist of construction of internal access and service roads, cycleways and footpaths required to service an alternative site arrangement of the Motorway Service Centre and associated facilities approved under Register Reference F01A/0476; the construction of vehicular access to Balbriggan Road at the proposed roundabout junction; the construction of a three storey, 114 no. bedroom hotel, totaling 5,456 sq.m. incorporating associated restaurant, meeting rooms, conference facilities and staff and food preparation areas; the construction of a 150 no. space surface car park; and all other infrastructure works facilitating the revised site arrangement and proposed hotel. Applicant: Hakaton Ltd.

F04A/0984 – Permission GRANTED for development on lands to the east of the M1 Motorway and west of the N1, Balbriggan Road, to consist of display of 2 no. non-illuminated site development signs for a period of two years. Applicant: Hakaton Ltd.

F03A/1090 – Permission GRANTED for development at this site to the east of the M1 motorway and west of the N1, Balbriggan Road. The development will consist of alterations to the previously approved plans for a warehouse and distribution development, including ancillary offices and staff facilities (Reference: F01A/0575) comprising the construction of an additional total floor area of 4,644 sq.m. onto the approved buildings; the reconfiguration and repositioning of the car parking areas along the western boundary of the lands to form 305 no. spaces in total; the relocation of an ESB substation and all associated site development works on 10.13 hectares of land approximately. Applicant: Hakaton Ltd.

F01A/0575 – Permission GRANTED for construction of a warehouse and distribution development comprising 9 no. buildings of 31,212 sq. metres approximately, including ancillary offices and staff facilities over two floors; a single storey pumping station of 836 sq. metres approximately; two new pedestrian and vehicular access/egress points off the N1 (Balbriggan Road); internal circulation roads and service areas; 313 no. car parking spaces; ESB MV substations and all associated site development and landscaping works on 10.12 hectares of land approximately to the east of the M1 Motorway and west of the N1, Balbriggan Road. This application will be accompanied by an Environmental Impact Statement. Applicant: M1 Development Company Ltd.

F01A/0476 – Permission GRANTED for construction of a motorway services centre and associated facilities totaling 13,474 sq. m. comprising a 2 storey 7,071 sq. m. motorway services building incorporating a newsagents and food concessions, a 124 no. bed hotel (3 storeys, 4,666 sq. m.) a hotel restaurant building (2 storeys, 1,425 sq. m.) a 32 no. pump petrol filling station and 2 pump truck fuel station; and site development works, including vehicular access to Balbriggan Road (N1), 270 no. car parking spaces and 14 no. bus parking spaces, internal circulation roads and service areas; and all associated infrastructure and landscaping works on 7.56 hectares of land to the east of the M1 Motorway and west of the N1, Balbriggan Road, at Courtlough/Rowan's Road, Co. Dublin. This application for planning permission will be accompanied by an Environmental Impact Statement. Applicant: M1 Development Company Ltd.

4.0 LEGAL CONTEXT

4.1 Development

Section 3(1) of the Planning and Development Act, 2000 defines 'development' as

"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".

4.2 Works

"Works" are defined at Section 2 (1) of the Act as:

"any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

"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;

"industrial process" means any process which is carried in the course of trade or business, other than agriculture, and which is-

*(a) for or incidental to the making of any article or part of an article, or
(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, **packing**, canning, adapting for sale, breaking up or demolition of any **article**, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, "article" includes-*

- (i) a vehicle, aircraft, ship or vessel, or*
- (ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database.*

Schedule 2, Part 1: Exempted Development – Development for Industrial Purposes Class 21

(a) Development of the following descriptions, **carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process**, or on land used as a dock, harbour or quay for the purposes of any industrial undertaking –

(i) the provision, rearrangement, replacement or maintenance of private ways or private railways, sidings or conveyors,

(ii) the provision, rearrangement, replacement or maintenance of sewers, mains, pipes, cables or other apparatus,

(iii) **the installation or erection by way of addition** or replacement of plant or machinery, or **structures of the nature of plant or machinery**.

(b) Any works for the provision within the curtilage of an industrial building of a hard surface to be used for the purposes of or in connection with the industrial process carried on in the building.

Conditions / Limitations

1. Any such development **shall not materially alter the external appearance of the premises of the undertaking**.

2. **The height of any plant or machinery, or any structure in the nature of plant or machinery, shall not exceed 15 metres** above ground level or the height of the plant, machinery or structure replaced, whichever is the greater.

5.0 PLANNING CONTEXT

5.1 Fingal County Development Plan 2023-29

Zoning

The site is zoned **GE - General Employment**

Objective: *Provide opportunities for general enterprise and employment.*

Objective Vision: *Facilitate opportunities for compatible **industry and general employment uses** including appropriate sustainable employment and enterprise uses, logistics and warehousing activity in a good quality physical environment. General Employment areas should be highly accessible, well designed, permeable and legible*

There is an objective to preserve views along the R132 which runs to the east of the subject site and which is also designated as a rural route. It is submitted that the view in question is that to the east of the site toward the coast and not that to the west toward industrial buildings. This view is therefore not relevant.

The Bracken River flows to the west of the subject site. There is a significant setback from same (s.30m) and no risk impact on same.

It is important to note that for the purpose of a Section 5 application the policies and objectives of a county development plan generally do not apply, unless Article 9 Restrictions on Exemptions are relevant.

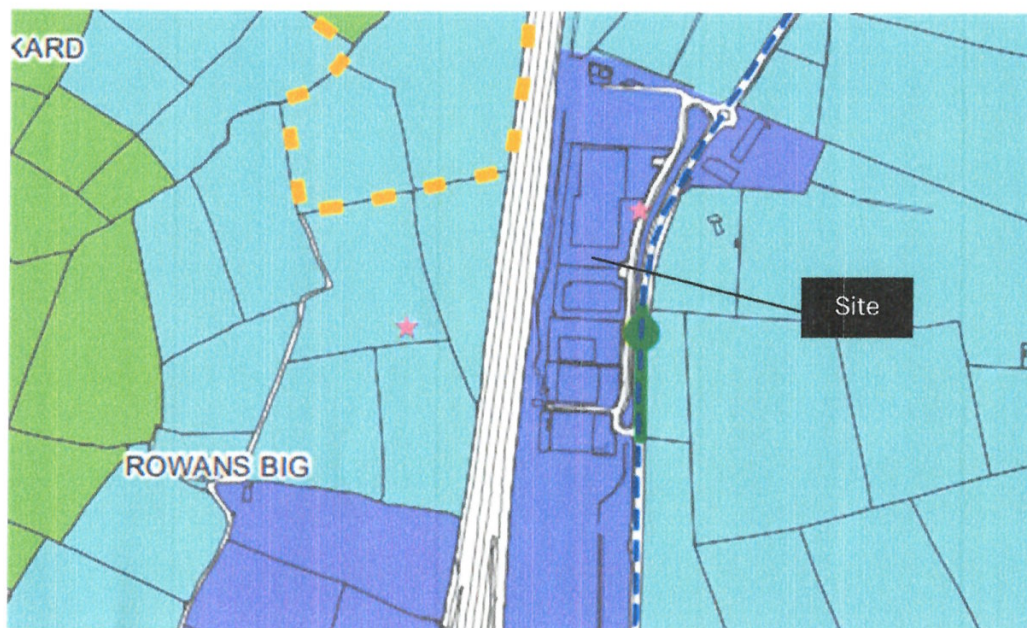


Fig No. 7 Extract from Sheet 2 Fingal Development Plan 2023-29 zoning maps.

6.0 APPROPRIATE ASSESSMENT SCREENING

6.1 Screening

Under Article 9 (restriction on exemption) an exemption from planning permission cannot be availed of if Stage II Appropriate Assessment is required (Art. 9 (1)(a)(viiB)).

Screening is the first stage within the overall process of 'Appropriate Assessment' (AA) or 'Habitats Directive Assessment', required by the Habitats Directive (Article 6 (3) s.1.2). Circular NPW 1/10 and PSSP 2/10, dated 11th March 2010, issued by the Department of the Environment, Heritage and Local Government states that any project must be assessed for impact upon Natura 2000 sites, in accordance with Article 6 (3) of the European Habitats Directive. The Circular further notes that while:

"all projects involving land use change are subject to screening, in the majority of cases this will not necessitate the consent authority having to seek additional information" - emphasis added.

The purpose of the screening is to assess, in view of best scientific knowledge, if the proposed development, individually or in combination with another plan or project is likely to have a significant effect on a site of European-level ecological importance (i.e. Natura 2000 sites: candidate Special Areas of Conservation and Special Protection Areas).

Screening is defined in the Appropriate Assessment for Plans and Projects in Ireland: Guidance for Planning Authorities, 2009 ('AA Guidelines, 2009') as:

"the process that addresses and records the reasoning and conclusions in relation to the first two tests of Article 6(3):

- i) whether a plan or project is directly connected to or necessary for the management of the site, and*
- ii) whether a plan or project, alone or in combination with other plans and projects, is likely to have significant effects on a Natura 2000 site in view of its conservation objectives.*

If the effects are deemed to be significant, potentially significant, or uncertain, or if the screening process becomes overly complicated, then the process must proceed to Stage 2 (AA). Screening should be undertaken without the inclusion of mitigation, unless potential impacts clearly can be avoided through the modification or redesign of the plan or project" (emphasis added).

If no likely significant effects have been identified then the assessment process does not proceed any further.

In this context "likely" means any effect that may be reasonably predicted and "significant" means not trivial or inconsequential but an effect that is potentially relevant to the site's conservation objectives (English Nature, 1999). Any effect which would compromise the functioning and viability of a site and interfere with achieving the conservation objectives of the site would constitute a significant effect.

The closest Natura 2000 site is **c.4.7 kilometres** away – **SPA: 004236 - North-west Irish Sea SPA.**

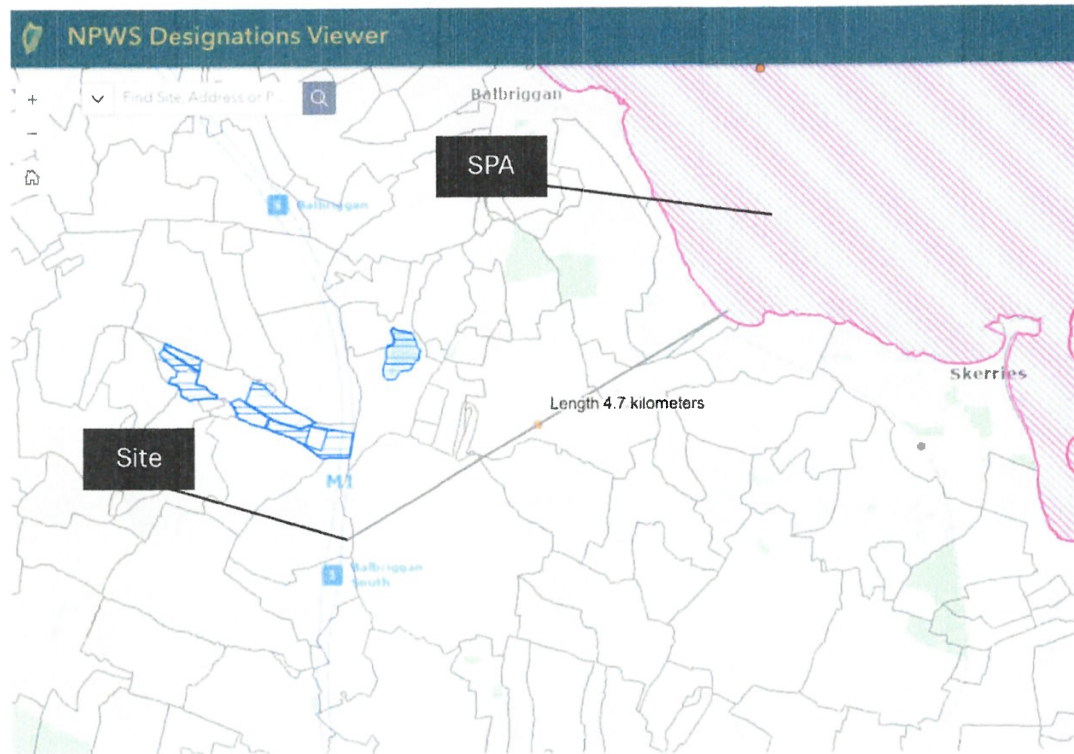


Fig No.8 Location of site relative to Natura 2000 sites (source: Myplan.ie - OSI Licence No.EN 0080915).

Taking into consideration:

- The nature of the proposed development
- the relatively small scale of the development,
- the significant distance from the Natura 2000 site
- the lack of any direct link to any nearby Natura 2000 site
- the lack of any flood risk associated with the site

it is submitted that there is no requirement for a Stage II Appropriate Assessment.

7.0 CASE FOR EXEMPTION

7.1 Introduction

The question before Fingal County Council was *"Whether the existing prefabricated storage structure at Ace Express Freight, M1 Business Park, Courtlough, Co. Dublin is or is not development and is or is not exempted development"*.

The existing yard forms part of a long-established industrial premises where goods are packed and distributed.

The storage structure is in situ.

Works

There is no dispute that works have taken place.

Exempt Development

Under Planning and Development Regulations, 2001 (as amended) Schedule 2, Part 1: Exempted Development – Development for Industrial Purposes, Class 21

development carried out by an industrial undertaker on land occupied and used by such undertaker for the carrying on, and for the purposes of, any industrial process, involving the installation or erection by way of addition of structures *"of the nature of plant or machinery"* is exempt development.

We submit that the reference to *"of the nature of plant or machinery"* reflects the legislators efforts to be flexible in terms of the type of structures that could be deemed exempt. It is clear that the development does not have to be plant or machinery and can be similar to such development. We submit that plant

comes in many different forms and is often self-contained. In this regard we submit that the prefabricated storage structure is of a similar nature to plant and qualifies for an exemption in this instance.

In relation to the Conditions / Limitations that apply, we consider that the development does not materially alter the external appearance of the premises of the undertaking. The structure has an industrial appearance in terms of its built form and materials.

We further note that the height of the structure does not exceed 15 metres above ground level.

Therefore, the Council were invited to issue a declaration to confirm the prefabricated storage structure is exempt development under Planning and Development Regulations, 2001 (as amended) Schedule 2, Part 1: Exempted Development – Development for Industrial Purposes, Class 21.

8.0 COUNCIL DECISION & RESPONSE TO SAME

Fingal County Council issued a declaration on 3.3.25 that:

The existing prefabricated storage structure does not comply with Class 21 due to its express purpose for storage, and not being in the nature of either plant or machinery, nor does it fall within any other class of exempted development. Therefore, it is considered that the existing works comprise development and are not considered to be exempted development.

The FCC Officer's report stated that:

Whilst the applicant suggests structures of the nature of plant or machinery is exempt development, it is clear from the description of development that this prefabricated storage structure may not be considered as a structure of the nature of plant or machinery. Moreover, the structure is considered an extension

of the existing building at the site, and a further intensification of the existing use of the site.

The Officer did not consider that Appropriate Assessment was applicable.

The Officer concluded as follows:

Conclusion

*Having regard to the details submitted as part of the application, the proposed **water storage tank/irrigation tank and pump house** would not comply with Class 20 (1) of Schedule 2, Part 3, Exempted Development (Rural) of the Planning & Development Regulations 2001 (as amended) due to the exceedance of 10 metres in length and 5 metres in width for the underground water tank structure. Therefore, it is considered that the proposed works are development and would not be exempted development – bold emphasis added.*

Clearly the works described in this conclusion had nothing to do with the application before the Council and appear to be a 'copy and paste' from another report. The fact that this was not picked up by more senior staff who signed off on the report suggests that the Planning Officer's report was not properly examined before signing.

The Planning Officer's stance is that this prefabricated storage structure may not be considered as a structure of the nature of plant or machinery. No explanation is given to justify or support this statement. It is just presented as a matter of fact.

We submit that the wording of the regulations are written to allow for flexibility where they refer to "*of the nature of plant or machinery*". The legislators clearly intended for more than just plant or machinery to be considered under this exemption and have broadened out the works that can be included without being prescriptive. We highlight that the conditions / limitations which include a 15m height which again suggests quite considerable structures can be allowed under this exemption. We maintain our view that the prefabricated structure is

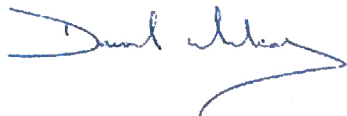
of the nature of plant which is in itself is a broad term applying to a range of structures i.e. fixed structures located external to an industrial building that are used in direct connection with the industrial use.

The Planning Officer also comments that the structure is considered an extension of the existing building at the site, and a further intensification of the existing use of the site. Clearly the structure is not an extension of the existing building as it is a detached structure so this is simply incorrect.

In terms of intensification we submit that additional storage does not necessarily generate intensification from a planning perspective. There is no material planning implication arising; there is no additional traffic movements generated by this additional storage.

Please contact **Mr. Philip Treacy** at [REDACTED] to arrange a site visit (allow 24 hour notice).

Signed:



David Mulcahy
BA (Mod. Natural Sciences), MRUP, MSc. Urban Design, MIPI, MRTPI
David Mulcahy Planning Consultants Ltd
CHARTERED PLANNING CONSULTANTS

Encl: Copy of the declaration issued by Fingal County Council

Comhairle Contae Fhine Gall
Fingal County Council

An Roinn um Pleanáil agus
Infrastruchtúr Straitéiseach
Planning and Strategic
Infrastructure Department



David Mulcahy,
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Athgarvan
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Co Kildare
W12 X248

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

Decision Order No. PF/0625/25	Decision Date: 03-Mar-2025
Ref: F55/010/25	Registered: 06-Feb-2025

Area: Balbriggan

Applicant: Ascot Freight Limited T/A Ace Express Freight

Development: Prefabricated storage structure associated with industrial unit.

Location: Ace Express Freight, M1 Business Park, Courtlough, 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 06-Feb-2025 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):

Swords Office: Áras an Chathair Saird Fhine Gall, Co. Shíle Átha Cliath / County Hall, Swords, Fingal, Co. Dublin G12 X8YA
Contact Details: Registry (01) 850 5541 - Decisions (01) 491 5670 - Appeals (01) 491 5124
e: planning@fingal.ie - www.fingal.ie

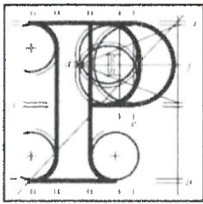
Ref No: ES5 010/25

1. The existing prefabricated storage structure does not comply with Class 21 due to its express purpose for storage, and not being in the nature of either plant or machinery, nor does it fall within any other class of exempted development. Therefore, it is considered that the existing works comprise development and are not considered to be exempted development

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.

 03-Mar-2025
for Senior Executive Officer



An
Bord
Pleanála

Planning Appeal Form

Your details

1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Ascot Freight Limited, Trading as Ace Express
Freight

(b) Address

M1 Business Park, Courtlough, Co. Dublin K32
WY84

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

David Mulcahy Planning Consultants Ltd

(b) Agent's address

67 Old Mill Race, Athgarvan, Newbridge, Co.
Kildare

Postal address for letters

3. During the appeal we will post information and items to you or to your agent. For this appeal, who should we write to? (Please tick ✓ one box only.)

You (the appellant) at the address in Part 1

☐

The agent at the address in Part 2

☒

Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) Planning authority

(for example: Ballytown City Council)

Fingal County Council

(b) Planning authority register reference number

(for example: 18/0123)

FS5/010/25

(c) Location of proposed development

(for example: 1 Main Street, Baile Fearainn, Co Ballytown)

M1 Business Park, Courtlough, Co. Dublin K32 WY84

Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

Attached separately

Supporting material

6. If you wish you can include supporting materials with your appeal.

Supporting materials include:

- photographs,
- plans,
- surveys,
- drawings,
- digital videos or DVDs,
- technical guidance, or
- other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it.

Fee

8. You **must** make sure that the correct [fee](#) is included with your appeal. You can find out the correct fee to include in our [Fees and Charges Guide](#) on our website.

Oral hearing request

9. If you wish to [request the Board to hold an oral hearing](#) on your appeal, please tick the “yes, I wish to request an oral hearing” box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on [our website](#) or by contacting us.

If you do not wish to request an oral hearing, please tick the “No, I do not wish to request an oral hearing” box.

Yes, I wish to request an oral hearing

☐

No, I do not wish to request an oral hearing

☒

NALA has awarded this document its Plain English Mark

Last updated: April 2019.

