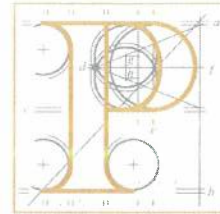


Our Ref: ABP-300975-18

PA Reg Ref: DEC 18/1



An
Bord
Pleanála



Offaly County Council
Áras an Chontae
Charleville Road
Tullamore
Co. Offaly

17 AUG 2018

Re: Whether the removal of existing roof and gutter and the replacement of roof and gutter and associated work and an extension is or is not development or is or is not exempt development. Ballycumber, Co. Offaly.

Dear Sir / Madam

An order has been made by An Bord Pleanála determining the above-mentioned referral under the Planning and Development Acts 2000 to 2018. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,

Sue Morel
Executive Officer

Encls. RL100n



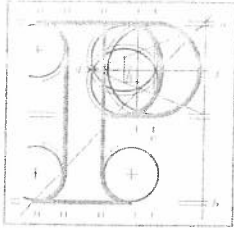
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An
Bord
Pleanála

Board Order
ABP-300975-18

Planning and Development Acts 2000 to 2018

Planning Authority: Offaly County Council

Planning Register Reference Number: DEC 18/1



WHEREAS a question has arisen as to whether the -

- (i) demolition and removal of the existing roof and gutters,
- (ii) replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new roof ridge location being now centred on the overall width while the original was off centre,
- (iii) replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater goods,
- (iv) erection of supporting roof structure, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure,
- (v) retention of the majority of the existing internal walls save only for the upper portions of the north elevation masonry between the gutter level and the lintel level of the external door opes with sheeting consistent with and matching the profiled roofing, and
- (vi) carrying out of an extension to the west (Ballycumber side) measuring circa 20 metres (gable) by circa 16 metres (front elevation),

at Ballycumber, County Offaly is or is not development or is or is not exempted development:

AND WHEREAS Ballycumber Exports Limited care of Vitruvius Hibernicus, Convent Road, Longford requested a declaration on the said question from Offaly County Council and the said Council issued a declaration on the 2nd day of February, 2018 stating that the said matter is development and is not exempted development:

AND WHEREAS the said Ballycumber Exports Limited referred the declaration for review to An Bord Pleanála on the 20th day of February, 2018:

AND WHEREAS having examined the information on file, the Board considered it appropriate to simplify the question as follows:

Whether the refurbishment (including demolition works, structural works and re-cladding) and extension of an industrial building at Ballycumber, County Offaly, is or is not development or is or is not exempted development.

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended,

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An Bord Pleanála



Page 2 of 4

- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (e) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Schedule 2 Part 1 Exempted Development — General Development for Industrial Purposes Class 21, and
- (g) relevant case law, and in particular, the Supreme Court judgement in Cronin (Readymix) Ltd -v- An Bord Pleanála & ors [2017] IESC 36 (30th May 2017).

AND WHEREAS An Bord Pleanála has concluded that:




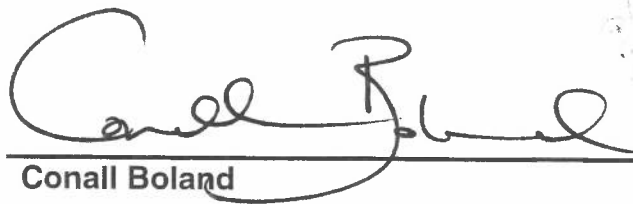
- (a) The demolition and construction carried out comprises works and, therefore, constitutes development.
- (b) The extent of demolition and structural work carried out has resulted in a materially different physical structure on the site compared with the original building, in terms of scale, form and height and, therefore, the refurbishment carried out, including structural changes, re-cladding and associated changes to the building, is considered not to fall within the scope of exemption under section 4(1)(h) of the Act.
- (c) The extension to the building does not fall within the scope of section 4(1)(h) of the Act, as amended, with reference to the case law cited above.

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NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the refurbishment (including demolition works, structural works and re-cladding) and extension of an industrial building at Ballycumber, County Offaly, is development and is not exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Conall Boland

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this 16th day of August 2018.



OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 18/1

NAME AND ADDRESS OF APPLICANT: Ballycumber Exports Limited
Ballycumber
Co. Offaly

ADDRESS FOR CORRESPONDENCE: Ballycumber Exports Limited
C/o L. Madden, Vitruvius Hibernicus,
Convent Road,
Longford, N39 EE72

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Acts 2000, as amended as to whether:

- i. Demolition and removal of the existing roof, gutters etc.
- ii. Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new ridge location being now centred on the overall width while the original ridge was off centre
- iii. Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater goods
- iv. Erection of a supporting roof structure, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure
- v. Retention of the majority of the existing external walls save only for the upper portions of the north elevation masonry between gutter level and lintol level of the external door opes with sheeting consistent with and matching the profiled roofing
- vi. The carrying out of an extension to the west (Ballycumber side) measuring c. 20m (gable) by c. 16m (front elevation)

is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ballycumber, Co. Offaly

WHEREAS a question referred to Offaly County Council on 16th January 2018 has arisen as to whether:

- i. Demolition and removal of the existing roof, gutters etc.
- ii. Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new ridge location being now centred on the overall width while the original ridge was off centre
- iii. Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater goods
- iv. Erection of a supporting roof structure, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure
- v. Retention of the majority of the existing external walls save only for the upper portions of the north elevation masonry between gutter level and lintol level of the external door opes with sheeting consistent with and matching the profiled roofing
- vi. The carrying out of an extension to the west (Ballycumber side) measuring c. 20m (gable) by c. 16m (front elevation)

at Ballycumber Exports Ltd, Ballycumber, Co. Offaly and associated works **is development and is or is not exempted development**

Contd/...

Contd/...

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Section 2 of the Planning and Development Act, 2000, as amended and
- (b) Section 3 of the Planning and Development Act, 2000 as amended and
- (c) Article 4(1)(H) of the Planning and Development Act 2000 as amended and
- (d) Class 21, Part 1, Schedule 2, of the Planning and Development Regulations 2001 as amended

AND WHEREAS Offaly County Council has concluded that –

The works subject of this declaration **Is Development and Is Not Exempted Development.**

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2) hereby decides that

- i. Demolition and removal of the existing roof, gutters etc.
- ii. Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new ridge location being now centred on the overall width while the original ridge was off centre
- iii. Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater goods
- iv. Erection of a supporting roof structure, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure
- v. Retention of the majority of the existing external walls save only for the upper portions of the north elevation masonry between gutter level and lintol level of the external door opes with sheeting consistent with and matching the profiled roofing
- vi. The carrying out of an extension to the west (Ballycumber side) measuring c. 20m (gable) by c. 16m (front elevation)

at Ballycumber Exports Ltd, Ballycumber, Co. Offaly and associated works **IS DEVELOPMENT AND IS NOT EXEMPTED DEVELOPMENT.**

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.


Administrative Officer

2/2/2018
Date

Planning Report Dec 18/1

Re: Section 5 Declaration

A question has arisen as to whether:

- i. Demolition and removal of the existing roof, gutters etc.
- ii. Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new ridge location being now centred on the overall width while the original ridge was off centre
- iii. Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater goods
- iv. Erection of a supporting roof structure, that is, steel portal frames, roof beams and purlins erected within the interior of the existing structure
- v. Retention of the majority of the existing external walls save only for the upper portions of the north elevation masonry between gutter level and lintol level of the external door opes with sheeting consistent with and matching the profiled roofing
- vi. The carrying out of an extension to the west (Ballycumber side) measuring c. 20m (gable) by c. 16m (front elevation)

and associated works at Ballycumber Exports Ltd, Ballycumber, Co Offaly Co Offaly is/is not development and is or is not exempted development.

Assessment

I refer to the above. I have inspected the site and noted and considered the submissions on file. I would consider the proposed changes to be development having considered Sections 3 of the Planning & Development Act 2000 as amended.

Section 2

2.— (1) In this Act, except where the context otherwise requires—
“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

Section 3:

3.—(1) 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.

The relevant planning history of the site is as follows:

77/349 Erection of work shop granted to Mr Denis Bracken.

01/341 BALLYCUMBER EXPORTS LTD which was refused planning permission for NEW ROOF TO EXISTING WORKSHOP & OIL INCEPTORS

03/347 BALLYCUMBER EXPORTS LTD. C/O DAVID BRACKEN JNR who applied for EXTENSION TO EXISTING WORKSHOP, WHICH COMPRISES OR IS FOR THE PURPOSE OF ACTIVITY REQUIRING A WASTE LICENSE which was withdrawn.

I note that the description of the works subject of this declaration is inaccurate. The works as broken down in the applicants description appear to describe building works to an existing shed. The development on site consists of the building of a new shed, the volume of which contains a previous structure on site. No exemption exists for the building of such a structure. Please see attached photos taken of the shed on the 12/10/2017 as a result of a planning enforcement inspection. Please note that the structure in question has since been completed.





Please note photos attached to this report which were taken on the 26/1/2018 on the finished structure.

4.—(1) The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Given that the development consists of a new shed it is not considered that Section 4(1)(H) of the act applies as the development materially affects the external appearance of the structure.

I also note that the application states "I also submit copies of high court cases" to support the request for a declaration. These cases are not on file.

I note that "Development for industrial purposes" of class 21, Part 1, Schedule 2 of the planning regulations as amended is not applicable as the development is not plant or machinery but a building.

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.

- 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.

Furthermore I would consider that no exemption from planning permission exists in law to permit the structure without the benefit of planning permission.

I would therefore recommend that the following Managers Order issue

WHEREAS a question has arisen as to whether the:

- i. Demolition and removal of the existing roof, gutters etc.
- ii. Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new ridge location being now centred on the overall width while the original ridge was off centre
- iii. Replacement of guttering and rainwater downpipes materially matching the external appearance of the replaced rainwater goods
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- v. Retention of the majority of the existing external walls save only for the upper portions of the north elevation masonry between gutter level and lintol level of the external door opes with sheeting consistent with and matching the profiled roofing
- vi. The carrying out of an extension to the west (Ballycumber side) measuring c. 20m (gable) by c. 16m (front elevation)

At Ballycumber Exports Ltd, Ballycumber, Co Offaly and associated works is development and is or is not exempted development.

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to-

- (a) Section 2 of the Planning & Development Act 2000 as amended and
- (b) Sections 3 and of the Planning & Development Act 2000 as amended and
- (c) Section 4(1)(H) of the Planning & Development Act 2000 as amended and
- (d) Class 21, Part 1, Schedule 2 of the planning regulations as amended

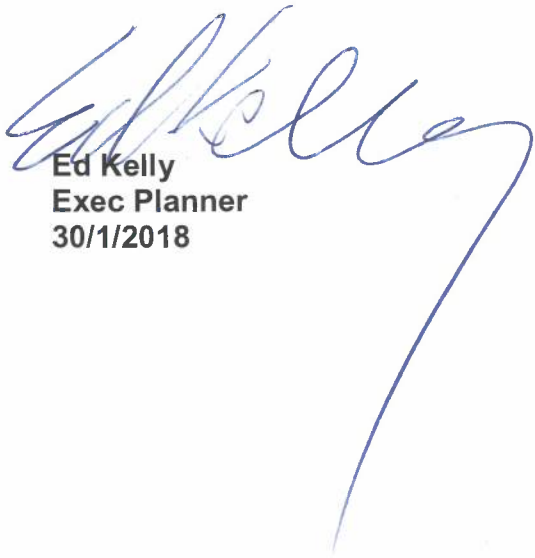
AND WHEREAS Offaly County Council has concluded that –

The ~~proposed~~ ^{*subject of this declaration*} works is development and is not exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) hereby decides that the

- i. Demolition and removal of the existing roof, gutters etc.
- ii. Replacement of the roof to match materially the external appearance of the replaced roof and consistent with the character of the structure of the replaced roof, the new ridge location being now centred on the overall width while the original ridge was off centre
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- vi. The carrying out of an extension to the west (Ballycumber side) measuring c. 20m (gable) by c. 16m (front elevation)

at Ballycumber Exports Ltd, Ballycumber, Co Offaly and associated works is development and is not exempted development.



Ed Kelly
Exec Planner
30/1/2018

L Mitchell rep
31/1/18