

An Bord Pleanala

Our Ref: RL 27.RL2690

P.A.Reg.Ref: EX52109

Your Ref: Friends of the Murrrough

Judy Osborne
Glasheen,
St Patricks Valley,
Wicklow Town,
Co. Wicklow.

3rd February 2010

Referral Re: Whether the provision of a metal recycling facility and the construction of a 1.8m high wall is or is not development and is or is not exempt development.

Conway Port Industrial Estate

Dear Sir/Madam,

I have been asked by An Bord Pleanala to refer to the above mentioned appeal.

The Board is of the opinion that, in the particular circumstances of this appeal, it is appropriate in the interests of justice to request you to make submissions or observations in relation to the enclosed submission dated 20th January, 2010 received from Frank O'Gallach6ir & Associates Limited on behalf of Multimetals Recycling Limited.

In accordance with section 131 of the Planning and Development Act 2000 you are requested to make any submissions or observations that you may have in relation to this enclosure on or before **23rd February, 2010**. The Board cannot consider comments that are outside the scope of the matter in question. Your submission in response to this notice must be received by the Board not later than **5.30 p.m. on the date specified above**.

If no submission or observation is received before the end of the specified period, the Board will proceed to determine the appeal without further notice to you, in accordance with section 133 of the 2000 Act.

Please quote the above appeal reference number in any further correspondence.

Yours faithfully,
Fergal Kilmurray
Executive Officer
Direct Line: 01-8737172

Our Ref: J09-056

Secretary
An Bord Pleanála

Date: 20th January, 2010

Question: Whether the Provision of a Metal Recycling Facility and the Construction of a 1.8m High Wall is or is not Development and is or is not Exempt Development.

Case Ref: 27.RL2690

Planning Ref No: EX52109

Referrer: Friends of the Murrough and Others

Date of Notification of Reference: 22 December 2009

Dear Sir,

We wish to make the following submission in relation to the appeal/s lodged regarding the above application. We act on behalf of our clients of Multimetals Recycling Ltd. Our submission follows.

Please contact us if we can be of any further assistance.

Yours faithfully,

Sgd. Frank O'Gallachoir

Enc: Submission

Figure 1 OSI 6 "/Mile Map. Revised 1908

Figure 2 OSI Aerial Photograph 2000

Figure 3 OSI Aerial Photograph 2005

Waste Facility Permit WFP-WW-09-0014-01

Whether The Provision of A Metal Recycling Facility
&
The Construction of A 1.8m High Wall is or is not Development & is or is not
Exempted Development?

At The Murrough, Wicklow Town

Case Ref: 27. RL2690

1. BACKGROUND

1.1 Introduction

Our client Multimetals Recycling Ltd has been in business for many years. It operates a metal recycling facility on this site. Used metals, normally car bodies, are received on the site separated, compacted and then removed by licensed contractors for disposal or smelting. Vehicle bodies are depolluted and compacted. This site and adjacent lands have been used for industrial purposes including waste facilities for some time. All metals are recycled and removed off-site. There is a short turnaround period. The metals are received, separated, compacted and then removed off-site by licensed contractors.

There are normally six employees on site. The hours of operation are 8AM to 6 PM. Car parking spaces are provided on-site for employees. There is sufficient on-site space for all turning movements of service vehicles.

This is a general industrial use which is not suitable in or close to residential areas. It is similarly not suitable for modern industrial parks. After many difficulties our client found this site at the Murrough, just north of Wicklow Town, in its environs. This area is zoned for employment purposes in the Wicklow Environs Local Area Plan 2008-2014.

1.2 Site Planning History

The site forms part of a site owned by RF Conway Property Holdings Ltd. It is known as the Conway Park Industrial Estate. These lands were originally developed in the late 19th Century as a chemical works as indicated in Ordnance Survey maps of the time. See attached Ordnance Survey Ireland map, revised 1908.

We are informed that this site was owned and operated by Gouldings Chemicals and later Gouldings prefabricated buildings division until the late 1960s. More recently in the 1970s it has been used as a manufacturing facility for pre-fabricated housing. The site was known as the Terrapin Factory. Since then it has been used for a variety of industrial and storage uses.

Unfortunately it has proved extremely difficult to procure any documentary evidence of the various uses of this site because of the passage of time and the fact that the preplanning land use of these lands for heavy industrial uses has meant that these changes of use have not been deemed material and have not necessitated planning permissions. We believe the above outlined planning history is consistent with the Planning Authority's understanding of the site history.

Planning permission has been granted (See Planning Register Reference 07/1597) for a four-storey enterprise centre comprising of 37 light industrial industrial/office units on lands immediately to the north of the site. This area includes three modern warehousing units and the new Wicklow Regional Wastewater Treatment Plant.

1.3 Site Description

The site and its environs, is just north of a railway level crossing and has a variety of industrial uses. Part of the site forms part of the old Terrapin factory and the remainder has been used for industrial storage and processing over the years. These lands will be served by the new Wicklow Port Access Road in the near future and will bypass the existing level crossing.

Lands immediate to the north are used by East-Coast Recycling Ltd for waste separation and recycling. We understand this is a permitted use which also has a waste permit. Other adjacent lands are used for storage of goods, a truck park and for tyre sales/recycling.

2. MULTIMETALS RECYCLING LTD. SECTION 5 REFERENCE -EX 43/09

2.1 Introduction

Our client submitted a Section 5 reference EX 43/09 on the 24th of August in order to confirm the status of the use of this site as a metal recycling facility. This reference was decided in September 2009 and it determined that;

- A 3 metre high concrete panel wall to surround the site was development and was not exempted development.
- The proposed use of the land for metal recycling is exempted development having regard to the provisions of Schedule 2, Part 1, Classes 21 and 22 of the Planning Development Regulations 2001-2008.

This reference decision was not appealed. On the basis of this decision, our client applied for a waste facility permit which was granted by Wicklow County Council See Waste Facility Permit WFP-WW-09-0014-01 attached, Our client has now commenced operations.

Our client has recently applied for permission for the three metre high wall which would surround the site. Since our client has agreed to make a planning application for the said proposed wall, we believe this wall is not material to this reference. We do not dispute the Planning Authority's decision in relation to the proposed 3 metre high surrounding wall.

2.2 Planning Authority's Considerations- Reference EX43/09

The Planning Authority's considerations and conclusions in this reference included the following:

- Historically the site and the existing structure were in industrial usage. Reference was made to pre-Planning Act and later previous heavy industrial

uses on this site such as a chemical works, a fertiliser manufacturing plant and pre-fabricated buildings manufacturing uses.

- The activity proposed was "development" as defined under Section 3(1) of the Act.
- The processes to be carried out comprise "industrial processes" as defined by Article 5 of the Planning and Development Regulations 2001-2008.
- The building is an "industrial building" as defined by Article 5 of the Planning & Development Regulations 2001-2008.
- The proposed use of lands would be industrial and the external storage and hard surfacing would be exempt under Classes 21 and 22 of the Planning and Development Regulations.
- The proposed use does not interfere with any listed view or prospect.

3. THIRD PARTY'S REFERENCE - EX 52/09

3.1 Questions

Notwithstanding the previous Section 5 Reference on this site and the Planning Authority's decision, Ms. Judy Osborne on her own behalf and on behalf of Friends of the Murrough made another reference regarding our client's use of the site.

The questions referred to were:

- Whether or not a metal recycling facility/is or is not development and is not exempt development, and
- Whether the construction of a 1.8 m (sic) wall is or is not development or is or is not exempted development.

3.2 3rd Partys' Arguments

The submission by the 3rd parties seeks to disagree with the Planning Authority's decision on the previous reference because of the following submitted arguments:

- The deposition of vehicles on a site is a material change of use under section 3 (2) (ii) of the Act.
- The use is a material change of use under Article 10(2) (b) (v) of the Planning Development Regulations 2001 which states that "*nothing in any class in Part 4 of Schedule 2 shall include any use (v) as a scrap yard for the breaking of motor vehicles*"

3.3 Planning Authority's Considerations

The Planning Authority reviewed its previous considerations in the first Reference and further considerations to submissions of the 3rd party referrers. The Planning Authority's decided that the usage of lands for a metal recycling facility is development and is exempted development for reasons including the following.

- The fundamental issue referred to by the 3rd Party Referrers is whether a material change of use would occur by the provision of a metal recycling facility on this site.
- Because this site has been used for general and heavy industrial uses and storage for over a century, the proposed recycling use would be a continuation of these uses and therefore would not be a "*material change of use*".
- Part 4 of Schedule 2 of the Planning and Development Regulation 2001-2008 refers to certain uses, but does not refer to "*industrial building*" and only refers to "*light industrial buildings*". Article 10 states that nothing in Part 4 shall include any use "(v) as a scrap yard or a yard for the breaking of motor vehicles",
- As the subject use refers to an "*industrial use*" and not a "*light industrial use*", Part 4 and Article 10 therefore do not apply. This subject site use comes within the definition set out for "*an industrial process*" and the building is "*an industrial building*", as defined.
- The external storage area and hard surface would be exempted development under Class 21 and Class 22 of the Planning & Development Regulations 2001-2008 being storage associated with an industrial use.
- There is a Board precedent (RL2561) where, motor repair and maintenance use was determined to be an "*industrial use*" and that the use of an industrial unit for this purpose was not a material change of use.

3.4 Multimetals Recycling Submission

3.4.1 Standing of Referrers and the Reference

We have examined the submission by the 3rd parties in this Section 5 Reference. The Board is aware of the previous Reference which was not appealed by the 3rd parties. We are disappointed by this attempt by the 3rd parties to resurrect these issues on a site to which the 3rd parties have no legal or financial interest.

We further question the "*locus standii*" of the 3rd parties and their right to make a Reference under Section 5 of the 2000 Planning & Development Act. We find this Reference to be vexatious and a misuse of the Section 5 process. We request the Board to dismiss this reference for the above reasons, given the pre-planning Act heavy industrial usage of these lands for over 100 years, the distance of the site

boundary from Broadlough (over 60 m) and the lack of any legal or financial interest of the Referrers in the lands.

3.4.2 Relevant Considerations

The significant question that the Board is being asked to decide, is in our opinion, whether the use of the lands for metal recycling is or is not development and is or is not exempted development with the meaning of the Planning Acts and case law.

3.4.3 Appropriate Description of Site Use

The third parties refer to this development as one which comprises of the deposition of cars on the site and that the site is used for the breaking of cars. Both of these statements are incorrect and are, in our opinion, misleading.

- No cars or other vehicles are deposited on this site. The cars are de-polluted and then compacted in a short turnaround period in preparation for shipping.
- Similarly the site is not used for car breaking or as a scrap yard. No scraps or spare parts are sold from the site. The site is as described "*a metal recycling facility*" only. Car bodies are not retained on the site. Once the cars are depolluted, they are compacted and transported off-site for smelting.

3.4.4 Industrial Use

Clearly metal recycling (including the compaction of waste metal) is an industrial process and a use which would be described as industrial development. Our client receive disused and scrap metal and car bodies on site. The car bodies are depolluted with tyres, fuel, oils, break fluid and antifreeze removed and taken off-site by licensed contractors. All metals including depolluted vehicles are fed into a compactor and compacted into 5 foot by 2 foot metal bales of circa 750 kgs. weight. These bales are smelter ready and are then sent for smelting.

In our opinion and not disagreed with by any of the parties, there have been a number of general and heavy industrial uses of this site for over 100 years. We understand over 200 persons worked on this site at one time. These uses pre-dated the commencement of the 1963 Local Government (Planning & Development) Act in October 1964. Therefore the uses of these lands as of October 1964 were deemed authorised. We understand that at that time, the site was used by Gouldings as a prefabricated building manufacture plant.

We believe our client's use is not a material change of use of the previous old 1964 use or the other uses since then (i.e. for the manufacturing of prefabricated buildings and outdoor storage) because its planning impacts are if anything less i.e.

- No visual impact from protected views or prospects.
- No material intensification, since only 6 persons would be employed on this 0.6 ha (15 acre) site.

- There is no effluent treatment on this site or effluent discharge from this site. Oils and other effluents are collected and discharged off site, in accordance with the terms of the Waste Permit Facility. See attached permit.

3.4.5 Plant & Machinery

We suggest that questions of plant and machinery are not the subject of this reference and are a separate matter. Notwithstanding this the items of plant and machinery on the site are listed below.

- A mobile pre-fabricated weighbridge.
- A wheeled compactor.
- A wheeled loader with a grab.

We consider these items to be exempted developments under Class 21 (a) (iii) which refer to the "*installation or erection of plant and machinery or structures of the nature of plant and machinery*",

3.4.6 Skips and Storage

Waste metal is stored on the site prior to processing. Processed compacted metal is stored on site prior to shipping. Portable skips are used for storage. We believe that skips and outdoor storage are exempt development under Class 22 as storage within the curtilage of an industrial building, in connection with "an industrial premises" etc. This storage is not visible from any public road.

3.4.7 Offices & Toilet Cabin

Since occupying the site, our client has provided offices in two converted containers, a W.C. for staff in a PortoCabin and has started work in connection with the construction of a small pay station adjacent to the offices.

These additional structures are not raised in the question to be considered as part of this Reference. Moreover, the structures have been placed on the site subsequent to the commencement of the use in question. We therefore believe consideration of the planning status of these buildings is outside of the scope of this Reference.

It is our advice to our client that these offices, WC and pay station require planning permission and we understand that they shall be the subject of a planning application to the Planning Authority.

3.4.8 Precedents

We have examined Section 5 References and Bord Pleanala precedents for waste uses and facilities since 2001. No reference deals with metal or other recycling on a heavy industrial Pre-Planning Act site, which has been in such use for such a period as the subject site.

However it is clear from the References that a crucial issue is whether the waste recycling is an industrial process which involves the processing, altering or

demolition of articles. We are convinced that our client's development is an industrial process because of the following:

- Metals that are received on site are all compacted on site into small concentrated bales for transshipment and shipping to the smelter.
- Vehicles are significantly altered by the depollution process with the removal of tyres and all fluids prior to compaction.

Therefore in our opinion, this is an industrial process carried out on industrial lands.

See the following References which we have consulted, RF.0956, RF.0961, RF.1042, RL.I042, RL.21 04, RL.2137, RL.2218, RL.2290, RL.2521, RL.2537 and RL.2639.

4. CONCLUSION

We believe we have demonstrated the long pre-Planning Act 1963 and post -1963 Planning Act history of heavy industrial uses on this site. Our client's industrial use of this site is therefore not a material change of use of this land. Our client also benefits from the industrial exemptions set out in the Planning & Development Regulations 2001-2008 for plant and machinery on the site. Recent structures erected on the site do not form part of this Reference and will be the subject of future planning applications to the Planning Authority.

We request the Board to dismiss this vexatious reference and confirm the Planning Authority's two previous determinations of these matters.

Yours faithfully,

Sgd. Frank O'Galloir
Dip. T.C.P., Dip. E.I.A.M., M.Sc., M.I.P.I

20th January 2010