



MSc Spatial Planning
Proper Planning & Sustainable Development

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To An Bord Pleanála
Marlborough Street
Dublin

Dear Sirs,

Appeal under Section 5 Referral under Planning and Development Act 2000
Of director of services order No. 9851/09 20th November 2009

I and on behalf of Friends of the Murrrough and Vartry River Protection Society wish to appeal the declaration from the local authority as to whether or not a metal recycling facility and the construction of a 1.8 metre wall at a site at Conway Port industrial Estate, the Murrrough, Wicklow Town is or is not development and if it is development, is it or is it not exempted development .

Whilst the local authority has agreed that a wall 1.8metres high is development and does require planning permission we wish to appeal their decision that the metal recycling facility that has been proposed is development but DOES NOT require planning permission because it is exempt. See attached decision.

Is the proposal development? Yes.

Planning and Development Act 2000 Section 3 states that *development means the carrying out of any works on, in or under land or making of any material change in the use of any structures or other land.* Section 3 (2)iii states that *where land becomes used for the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used...the use of the land shall be taken as having materially changed.*

We maintain that the development proposed will include the 'deposit of vehicles', whether or not they have been previously stripped, as per the permit application.

Notwithstanding the interpretation by the Planning Officer that the proposal for development is a continuation of existing use as an industrial process, we maintain this is a material change of use in accordance with the Act as above. Furthermore the Act also states that change of use is material where it includes an impact on the amenity of residents or visual amenity

We submit that the proposed development will affect the residential amenity of 4 neighbours close to the site and will affect the amenity of the yet to be built office block that received planning permission close by last year. Furthermore, if the boundary wall is only 1.2 metres high (the highest allowed without planning permission), this development will also have an impact on visual amenity at this sensitive location at the entrance to the Murrrough along Wicklow Bay and in full view of traffic on the new Port Access Road which is above and adjacent to the site. See photograph

attached. It will also be in full view from the amenity walk along side the adjacent river which is of particular interest to the Friends of the Murrough.

Photographs are attached of the applicants business in Hempstead show the potential for a negative impact on visual amenity.. The photos are taken from submissions (by Ms Duggen) to a previous refused application for planning permission for the same business in Hempstown (ref (09/134) where the applicant has been subject to an enforcement notice currently in the hands of the Council's solicitor. (file no. UD 2882)

So this is a material change of use.

Is this exempted development? No, we submit that it is NOT exempt.

Planning and Development Regulations 2001 Section 10 (1) states that

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act,

This would include industrial processes, which we acknowledge this is,

However Section 10 (2) (b) states that

*Nothing in any class in Part 4 of the Schedule 2 shall include any use—
(v) as a scrap yard, or a yard for the breaking of motor vehicles,*

The proposal for development is described in the waste permit application as:
providing for the operation of a metal recycling and end of life de-pollution facility
and further described in the notice as including

Class 4 part (1),(2) ...reception storage and recovery of scrap metal, including scrapo metal arising from end of life vehicles...where scrap metal from end of life vehicles shall be subject to appropriate treatment and recovery

Class 12 the collection and storage and the appropriate treatment and recovery of end of life vehicles...

The principle class of activity is Class 4 Parts (1) and (2)

(see attached permit application)

We submit that an reasonable person would say that this is a yard for the breaking of vehicles.

It is therefore submitted that the proposals and the works commenced by Multimetals Recycling at the site at Bollarney, Murrough does require planning permission.

In unsolicited further information from agents of the developer regarding the waste permit application (attached) it is steadfastly maintained that this is not a scrap yard or breakers yard.

We question whether this is an attempt to evade the planning process and the attendant need to justify that this is an appropriate location for this proposal in the light of recently agreed policies in the Development Plan for the area?

The Development plan clearly states that the Employment Zoning at the Murrough is *in a senic setting between the sea and the candidate Murrough wetlands Special Area of Conservation...and that any proposed development in this area must take cognisance of these attributes and specifically the design of any proposed development on the perimeter of the overall site must be of a scale, quality and character that will not detract from the natural amenity of this area.* (Wicklow Environs Development Plan 2008-13 Section 4.4 Policy EMP5 page 6).

We specifically ask this question in the light of discrepancies between the permit application and the query first asked of the council. Initially the question asked by the developer, Multimetals, was regarding a 3 metre boundary wall . The Planners report (16th September 09 attached) states this is for security and the permit applications refers to the wall being to act as a sound barrier (point 4.1.1 of the permit application) Following the first determination of the council (9655/09) that a 3 metre wall would require planning permission the permit application was submitted in the mistaken belief that a wall 1.8 metres would not require planning permission.

We are also concerned that that any development on this site take account of the proximity of the adjacent river which contains Trout and Salmon and the flora and fauna on the banks of the river which are protected by the Habitats Directive. Notwithstanding information contained in the permit application that this development will be 50 metres from the river, an examination of the site shows that works have already begun less than 25 metres from the river.

Whilst the proposals to secure the site may be adequate to ensure that no pollutants can escape or find their way into the river, it is a requirement of Article 6.3 of the Habitats Directive 92/43/EEC that any risk of damage to the habitat is specifically excluded. We submit that only a Stage One Appropriate Assesemnt in accordance with the Directive can establish if an Environmental Impact Statement is required. Of course if an Environmental Impact Statement is required then the development cannot be exempt from the need to get planning permission.

Friends of the Murrough and the Vartry River Protection Society appreciate the need to find a suitable location in County Wicklow for the recycling of end of life vehicles in a safe way. It is acknowledged that it is important to find a site that can accommodate the business of Multimetals who are currently working in an unauthorised site in Hempstown to the great distress of neighbours there. However it is difficult to accept that it is proper to avoid the normal process of applying for planning permission to ensure that this too is not another wrong site. Had planning permission be applied for in August, when the first submission was made by Multimetals to the planning authority, the issue could have been properly resolved by now.

Yours truly,

Judy Osborne

On behalf of Malcolm spencer, chairman Friends of the murrough. Killoughter, Ashford Co.Wicklow and matthew weiss. Vartry River Protection Society. Nuns Cross Ashford. Co.Wicklow