

Noeleen Keavey

Subject: FW: EPA licence O'Hanlon & Sons Contractors Ltd- Lockington's Yard - Your Ref P1007-01
Attachments: S5_2014_22 Decision 17th Oct 2014.docx; S5_2014_22.docx; EPA Waste Licence information Dundlak Port.docx

From: Anne D Callan [mailto:anned.callan@louthcoco.ie]
Sent: 23 October 2015 10:34
To: Wexford Receptionist
Cc: Karen Hamilton
Subject: EPA licence O'Hanlon & Sons Contractors Ltd- Lockington's Yard - Your Ref P1007-01

Dear Sir/Madam

Please find attached EPA Waste Licence Information and other relevant documents in reply to your letter dated 17 September 2015. I apologise for the delay with replying. The request was only received by me in the Planning Section on 20 October 2015.

Yours faithfully
Anne D Callan
Administrative Officer
Planning Section

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**Louth County Council
Planner's Report
Section 5 Declaration**

Planning Ref: S5-2014-22

Applicant's Name: O'Hanlon & Sons Contractors

Type of Application: Section 5 Declaration

Site Location: George's Quay, Dundalk

Date: 17th October 2014

Due Date: 27th October 2014

The response to further information was received by the Planning Authority on 6th October 2014. The following should be read in conjunction with the original planner's report dated 2nd September 2014.

1.0 SUMMARY OF FURTHER INFORMATION & APPLICANT'S RESPONSE:

Item 1.

The applicant is requested to formally refine the description of the proposed development as provided in question 6 of the application form. In this regard the applicant is advised that the formal request should concisely state the nature of the proposal subject of the declaration.

Applicant's Response:

The applicant has provided a short development description and a detailed development description. The short description is as follows and is adequate for to reference in the order's etc. associated with this section 5 declaration:

'The designation of a set down area within Dundalk Port (Brown's Quay & Connick's Quay) for the temporary storage of up to 50,000 tonnes of baled refuse derived fuel pending loading onot ships for shipment overseas.'

Item 2.

The applicant is requested to submit revised 1:500 site layout plan showing precise detail of the area where the material is proposed to be stored and plans/sections indicating the overall height of the structure/bales when stored within the site.

Applicant's Response:

A drawing has been provided illustrating the location of the temporary storage area for the baled waste. Photographs have also been included showing the bales on site. They are 1 metre in height and 1.2metres in diameter and stacked tightly together two high.

Item 3.

The applicant is requested to submit a planning supporting statement clearly outlining the extent of the existing operations within the port and identify how the proposal will relate to current operations.

The applicant is advised that there appears to be no specific planning history associated with the port use and likewise the proposal as submitted does not outline how the development will link to the existing port operations. The planning authority is concerned that this proposal could represent a material change of use and/or an intensification of uses of the port that would require planning permission, as such the applicant needs to set out the proposed development in the context of the existing development and uses within the port and provide necessary plans/documents to support same in this regard the applicant should provide some commentary on the key development indicators e.g. traffic volumes, cargo volumes, water usage (if any) etc.

Applicant's Response:

History of the Dundalk Port-

The first vessel recorded as trading to Dundalk was the Trinitic from Liverpool to Dundalk in March 1580. The year 1646 saw a grant of 'perfect freedom of trade' to Dundalk.

In 1721 Lord Limerick made a deal with the corporation to construct a harbour.

In early 1800s Lord Roden appointed a harbour master and in 1803 the Custom House was built and there was a military guard in placed where goods were stored.

In 1840 an Act 'for regulating, preserving, improving and maintaining the river, port and harbour of Dundalk' was passed.

In 1855 the lighthouse was completed and a fog bell came into operation in 1860.

In 1967 the lighthouse was upgraded to electric and unwatched.

Activities currently at Dundalk Port are coal, grain, animal feed, fertilizer, steel, timber and baled refuse derived fuel.

In 2013 the port docked 44 ships, compared to 150 no. in 2008.

Dundalk Port is in operation prior to the planning legislation of 1964 but have had numerous applications that directly relate to port activity.

O'Hanlon & Sons were granted a Waste Facility Permit (WFP-LH-12-002-01) by LCC in October 2012 for accepting baled refuse for export. The permit allows a maximum 50,000tonnes and this equates to 18-25 ships per year.

Item 4.

The applicant is requested to provide precise detail on the traffic associated with the proposal.

On the basis of information submitted the planning authority are not clear as to the potential traffic associated with the development and therefore it is unclear whether this proposal will increase the traffic movements to the port. The applicant is advised that the planning authority is precluded from issuing a section 5 declaration where a proposal would result in any traffic hazard or obstruction of road users.

Applicant's Response:

The process for accepting the baled refuse is that it is delivered to the Port 3days before loading. A ship is loaded with c. 2000 tonnes which equates to 75lorries over a 3day period, 25 per day.

This level of traffic movement does not result in any traffic hazard or obstruction of road users. The volume of traffic is similar to any other shipment at Dundalk Port.

Up until 2008 the port was averaging 3-4ships each week and it is currently less than 3per month. This includes all activities (coal, timber, steel, grain).

Item 5.

The subject site directly adjoins Dundalk Bay SPA and SAC which is protected under the European Habitats Directive and which is a proposed Natural Heritage Area (NHA). Article 9(1) (a)(viiB) restricts the planning authority from issuing Section 5 declarations where a development would be likely to have a significant effect on the integrity of a European site. On the basis of information submitted the planning authority are not satisfied that the proposal will not have a significant effect on the Natura 2000 network. Accordingly the applicant is invited to submit an Appropriate Assessment Screening Report from a suitably qualified and indemnified ecologist addressing the impact of the development for the site in view of the sites' qualifying interests and conservation objectives. Cognisance of the following requirements should also be demonstrated in the response:

- *Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities DEHLG (2009)*
- *EU (Natural Habitats) Regulations 1997 Regulation 27(1):
"a local authority when duly considering an application for planning permission, or the Bord when duly considering an appeal on an application for planning permission, in respect of a proposed development which is not directly connected with, or necessary to the management of, a European site but likely to have a significant effect thereon either individually or in combination with other developments shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation objective is undertaken". [S.I. No. 94/1997 — European Communities (Natural Habitats) Regulations, 1997]*
- *Regulation 27 (2) of the European Communities (Natural Habitats) Regulations outlines the type of assessment that would be deemed appropriate.*

Applicant's Response:

A report has been prepared by Faith Wilson Ecological Consultant this report concludes that the proposed development will not adversely affect the integrity of any Natura 2000 site and will not adversely affect Dundalk Bay SAC/SPA. The report is a stage 1 screening report.

2.0 ASSESSMENT:

(i) **Does the proposal constitute development:**

As noted in the planner's report at FI stage Section 3 of the Planning and Development, Act 2000 (as amended) states:

"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 use of any structures or other lands.

The subject proposal relates to the storage of baled waste on the quayside at Dundalk Port. It is considered that the development constitutes the placement of physical structures on the quayside, albeit temporarily, which also changes the nature of the

lands to a storage/repository area. In summary it is considered that the proposal constitutes development within the meaning of the Act.

(ii) Does the change of use constitute a material change of use?

As indicated in the planner's report at FI stage the port use is a pre-1963 use, by way of FI the applicant was requested to clarify the precise area where the material would be stored in order for the planning authority to assess whether there was any conflict with the permitted uses on site and in order to determine whether the proposal could be deemed a material change of use. In response the applicant has provided a site layout plan clearly indicating the area where the material will be stored. This is generally located at Brown's Quay and Connick's Quay. This does not conflict with any of the permissions relating to the site (as detailed in the planner's report at FI stage). Likewise the applicant has provided a comprehensive overview of the history of Dundalk Port and its development over the years. In conclusion it is considered that the information provided clearly demonstrates the pre-1963 use as port and the set down area, where the subject material will be stored is not considered to represent a material change in use of the site. Moreover the applicant has provided information in relation to the main business of the port (which has historically been coal, grain, animal feed, fertilizer, steel, timber and baled refuse derived fuel). It is noted that the reason for this declaration request is changes in other environmental legislation and the industrial emissions licence process. From a planning perspective it is considered that the established and principal use of any quayside associated with a harbour is for the temporary storage of material prior to loading and shipping and/or for temporary storage of material that is loaded from a ship. The fact that the material for temporary storage in this instance happens to be baled refuse derived fuel is not considered to be a relevant planning consideration, at the end of the day it is merely another form of cargo. In fact it is also noteworthy that coal has historically been imported at this location which again is a fuel. Accordingly in summary it is considered that the use of an established quayside for storage of baled refuse derived fuel does not represent a material change of use.

(iii) Does the proposal constitute an intensification of use which could result in a material change in use?

At FI stage, on the basis of information provided, it was unclear whether this proposal would result in an intensification of use of the port, which in turn could constitute a material change in use. In responding to the FI request the planning authority now have a better understanding of the historic context/function of the port and indeed of the level of activity and operations associated with the port. In this regard it is considered that this proposal, which is a specific type of cargo, will not result in any intensification of the overall established use of the site. Indeed on the basis of information submitted it appears that in recent years the port has been operating below its normal capacity.

(iv) Restrictions on Exemptions:

Built Heritage:

As noted in the planner's report at FI the proposal is unlikely to have any impact on the integrity of any protected structures within the wider vicinity. The detailed provided in

relation to the FI response in respect of the volume of material and the manner in which it is stored reconfirms this conclusion.

Traffic:

The applicant was invited to comment on the traffic associated with the proposal vis-à-vis the port operations. As noted above the use of the site for this type of cargo does not result in any greater intensification of use of the port and as such it is reasonable to conclude that there are no associated implications in relation to increase in traffic volumes which could result in a traffic hazard. Furthermore the applicant has indicated that the level of port activity and as a consequence on-road activity is less at present than it has been historically.

In conclusion it is considered that there is no restriction on exemption in regard to traffic.

Appropriate Assessment/Natura 2000:

As discussed in the planner's report at FI stage Article 9(1)(a)(viiB) sets out that where a planning authority, as the competent authority in relation to appropriate assessment, considers that a development would be likely to have significant effect on the integrity of a European site then there is a restriction on exemption. In this instance the applicant is seeking the planning authority to declare that the storage of baled waste on the port/quayside is exempt. The subject site is directly adjoining Dundalk Bay SAC and SPA and as such is highly sensitive. As a result the applicant was requested to provide further detail on the nature of the development and a screening report in relation to the impact of the proposal (or otherwise) on Dundalk Bay.

The report concludes that provided the development is operated in accordance with the waste facility permit licence then there will be no negative impacts on the Natura 2000 network.

The report submitted has been reviewed and is considered to be robust, the planning authority would concur with the conclusions. Accordingly it is considered that there is no restriction on exemption in relation to AA/Natura 2000 matters.

Summary & Conclusion:

Having regard to the foregoing and in particular the further information provided by the applicant it is considered that the subject proposal is development but is exempt development.

3.0 CONCLUSION:

WHEREAS a question has arisen as to whether the designation of a set down area within Dundalk Port (Brown's Quay & Connick's Quay) for the temporary storage of up to 50,000 tonnes of baled refuse derived fuel pending loading onto ships for shipment overseas is or is not development and is or is not exempt development.

AND WHEREAS the said question was referred to Louth County Council by Declan Flood on behalf of O'Hanlon & Sons Contractors Ltd.

AND WHEREAS Louth County Council in considering this reference, had regard reference particularly to -

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000 (as amended);
- (b) Planning & Development Regulations, 2001 (as amended);

AND WHEREAS Louth county Council has concluded that:

The designation of a set down area within Dundalk Port (Brown's Quay & Connick's Quay) for the temporary storage of up to 50,000 tonnes of baled refuse derived fuel pending loading onto ships for shipment overseas [as detailed on plans and particulars received 13th August 2014 & 6th October 2014] is development but does not constitute a material change in use of the established use of the subject site and is exempt from the requirement to obtain planning permission under Planning and Development Acts, 2000 (as amended) and associated Planning & Development Regulations 2001 (as amended).

NOW THEREFORE Louth County Council in exercise of the powers conferred on it by Section 5 (2) (a) of the Planning and Development Act, 2000, that the development is 'development' and is 'exempted development'.

Sinéad Mullen
Senior Executive Planner
Date:

Mary T Daly
A/Director of Services
Date:

**Louth County Council
Planner's Report
Section 5 Declaration**

Planning Ref: S5-2014-22

Applicant's Name: O'Hanlon & Sons Contractors

Type of Application: Section 5 Declaration

Site Location: George's Quay, Dundalk

Date: 2nd September 2014

Due Date: 10th September 2014

1.0 SITE LOCATION & DESCRIPTION:

The subject site is located within the Port area to the east of Dundalk town centre. The port is accessed from the inner relief road and Quay Street. The site directly adjoins Dundalk Bay which is a designated SAC and SPA.

2.0 PLANNING HISTORY:

The following applications are noted on the map register on the part of the overall lands subject of this declaration:

09/520157 – The storage of decontaminated scrap metal and signage. The application is to include the demolition of an existing vacant building, partial demolition of storage shed and associated site works

08/520026 – New quay walls with 2 berth with capacity for 3000tonne vessel; no decision made.

Other miscellaneous application in relation to the overall port area includes:

55524729 – Retaining wall

55526575 – Signage

55526509 – Gates

55523057 – Workshop building

55522369 – Offices and canteen

03520288 – 4no. cubic grain storage units and associated works.

55521026 – Alterations to weight office at coal yard

55522684 – Closure of two gates and opening of two new gateways.

55525841 – Demolition of 7no. derelict dwelling houses and construction of retaining wall.

04520045 – Construction of 2.7m high security walls and gates.

55524022 – Grain store.
55523871 – Grain store, refused permission.
55523787 – Store building, refused permission.
55521520 – 3no. storage bins

3.0 PROPOSED DEVELOPMENT:

The applicant's for states that the waste permit allows for storage of up to 50,000 tonnes of baled refuse derived fuel pending shipment to overseas incineration. The applicant seeks written confirmation for the EPA that regarding the planning status of the site.

It is noted that the development description is does not succinctly state the specific question posed to the planning authority as would be standard in a declaration request. It is considered that the development description – declaration request should be more accurately defined as follows:

The designation of a set down area within George's Quay, Dundalk Port, Dundalk for the storage of up to 50,000 tonnes of baled refuse derived fuel pending loading onto ships for shipment overseas is exempt from the requirement to obtain planning permission under the exempted development regulations as per the Planning and Development Regulations 2001 (as amended).

4.0 Summary of the Applicant's Submission:

The applicant has completed a Section 5 declaration form and provided a location map (outlining in red the entire extent of the port) and a further site layout map (1:500) indicating a loading area at 'Brown's Quay' which is positioned in front of the existing coal yard. No further documentation or supporting information has been provided.

5.0 DEVELOPMENT PLAN & POLICY CONTEXT:

The proposed development is located on land zoned Port Harbour Area where it is the objective of the Council:

To provide for port, port related and mixed use development.

6.0 SUBMISSIONS/OBSERVATIONS:

N/A

7.0 INTERNAL REPORTS:

None requested.

8.0 ASSESSMENT:

(i) Does the proposal constitute development:

Section 3 of the Planning and Development, Act 2000 (as amended) states:

“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 use of any structures or other lands.

The subject proposal relates to the storage of baled waste on the quayside at Dundalk Port. It is considered that the development constitutes the placement of physical structures on the quayside, albeit temporarily, which also changes the nature of the lands to a storage/repository area. In summary it is considered that the proposal constitutes development within the meaning of the Act.

(ii) Does the change of use constitute a material change of use?

In the first instance the established use of the site must be considered, from a review of the site history as noted above it is considered that the established and permitted use of the overall site is for port use, which would infer that there would be set down areas on the quayside where cargo would be stored temporarily before loading onto ships. However there are no specific planning permissions in relation to Dundalk Port, as it is effectively a pre-1963 use, that set out the internal workings or layout of the port area. The applicant has also not specified an area/zone within the port where the said material will be positioned. It is unclear on the information provided whether the proposal will represent a material change of use of the existing port facilities as there is no baseline information provided. The applicant should be invited to clarify the extent and nature of uses on site and illustrate the specific areas subject of this referral and relate same to the other port functions and operations.

(iii) Does the proposal constitute an intensification of use which could result in a material change in use?

Further to consideration above it is unclear if this proposal will result in the intensification of use of the port that could constitute a material change in use. The planning authority need to have a full understanding of the existing port functions and operations in order to decipher if this proposal will result in any intensification of use. In this regard some commentary on the key indicators e.g. traffic volumes, cargo volumes, water usage (if any) etc. should be provided.

(iv) Restrictions on Exemptions:

Built Heritage:

There are no protected structures within the overall site as outlined in red. It is noted that there is a protected structure onto Quay Street to the south of the lands outlined. However it is considered that the proposal is unlikely to have any impact on the integrity of same.

Traffic:

The applicant has not provided any information in relation to the traffic associated with the development it is unclear whether this proposal will increase the traffic movements to the port and therefore it is unclear if the proposal will result in any traffic hazard or obstruction of road users.

Appropriate Assessment/Natura 2000:

Article 9(1)(a)(viiB) sets out that where a planning authority, as the competent authority in relation to appropriate assessment, considers that a development would be likely to have significant effect on the integrity of a European site then there is a restriction on exemption. In this instance the applicant is seeking the planning authority to declare that the storage of baled waste on the port/quayside is exempt. The subject site is directly adjoining Dundalk Bay SAC and SPA and as such is highly sensitive. It is considered that there is potential for pathways from the quayside to the bay that could have potential to impact on same. The applicant has not provided any specific detail on the nature of the material baled and/or the manner in which it is stored or the length of time it could remain on the quayside. In absence of this information it is difficult to decipher whether the proposal will affect the integrity of the Natura 2000 network. The applicant should be invited to submit further information in relation to the precise nature of the development and a screening report prepared by suitably qualified person to demonstrate the potential impact of the proposal and enable the planning authority to undertake an Appropriate Assessment of the proposal.

Summary & Conclusion:

Having regard to the foregoing it is considered that further information is necessary in relation to the nature of the development, the site history/current operations and the potential environmental impact of the development prior to determination as to whether this development can be considered exempt or not.

9.0 CONCLUSION:

- (1) The applicant is requested to formally refine the description of the proposed development as provided in question 6 of the application form. In this regard the applicant is advised that the formal request should concisely state the nature of the proposal subject of the declaration.

The applicant is advised that the section 5 declaration query/description could read something along the following lines:

The designation of a set down area within George's Quay, Dundalk Port, Dundalk for the storage of up to 50,000 tonnes of baled refuse derived fuel pending loading onto ships for shipment overseas is exempt from the requirement to obtain planning permission under the exempted development regulations as per the Planning and Development Regulations 2001 (as amended).

- (2) The applicant is requested to submit revised 1:500 site layout plan showing precise detail of the area where the material is proposed to be stored and plans/sections indicating the overall height of the structure/bales when stored within the site.

- (3) The applicant is requested to submit a planning supporting statement clearly outlining the extent of the existing operations within the port and identify how the proposal will relate to current operations.

The applicant is advised that there appears to be no specific planning history associated with the port use and likewise the proposal as submitted does not outline how the development will link to the existing port operations. The planning authority is concerned that this proposal could represent a material change of use and/or an intensification of uses of the port that would require planning permission, as such the applicant needs to set out the proposed development in the context of the existing development and uses within the port and provide necessary plans/documents to support same in this regard the applicant should provide some commentary on the key development indicators e.g. traffic volumes, cargo volumes, water usage (if any) etc.

- (4) The applicant is requested to provide precise detail on the traffic associated with the proposal.

On the basis of information submitted the planning authority are not clear as to the potential traffic associated with the development and therefore it is unclear whether this proposal will increase the traffic movements to the port. The applicant is advised that the planning authority is precluded from issuing a section 5 declaration where a proposal would result in any traffic hazard or obstruction of road users.

- (5) The subject site directly adjoins Dundalk Bay SPA and SAC which is protected under the European Habitats Directive and which is a proposed Natural Heritage Area (NHA). Article 9(1)(a)(viiB) restricts the planning authority from issuing Section 5 declarations where a development would be likely to have a significant effect on the integrity of a European site. On the basis of information submitted the planning authority are not satisfied that the proposal will not have a significant effect on the Natura 2000 network. Accordingly the applicant is invited to submit an Appropriate Assessment Screening Report from a suitably qualified and indemnified ecologist addressing the impact of the development for the site in view of the sites' qualifying interests and conservation objectives. Cognisance of the following requirements should also be demonstrated in the response;

- *Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities DEHLG (2009)*
- *EU (Natural Habitats) Regulations 1997 Regulation 27(1):*
"a local authority when duly considering an application for planning permission, or the Bord when duly considering an appeal on an application for planning permission, in respect of a proposed development which is not directly connected with, or necessary to the management of, a European site but likely to have a significant effect thereon either individually or in combination with other developments shall ensure that an appropriate assessment of the implications for the site in view of the site's conservation

objective is undertaken". [S.I. No. 94/1997 — European Communities (Natural Habitats) Regulations, 1997]

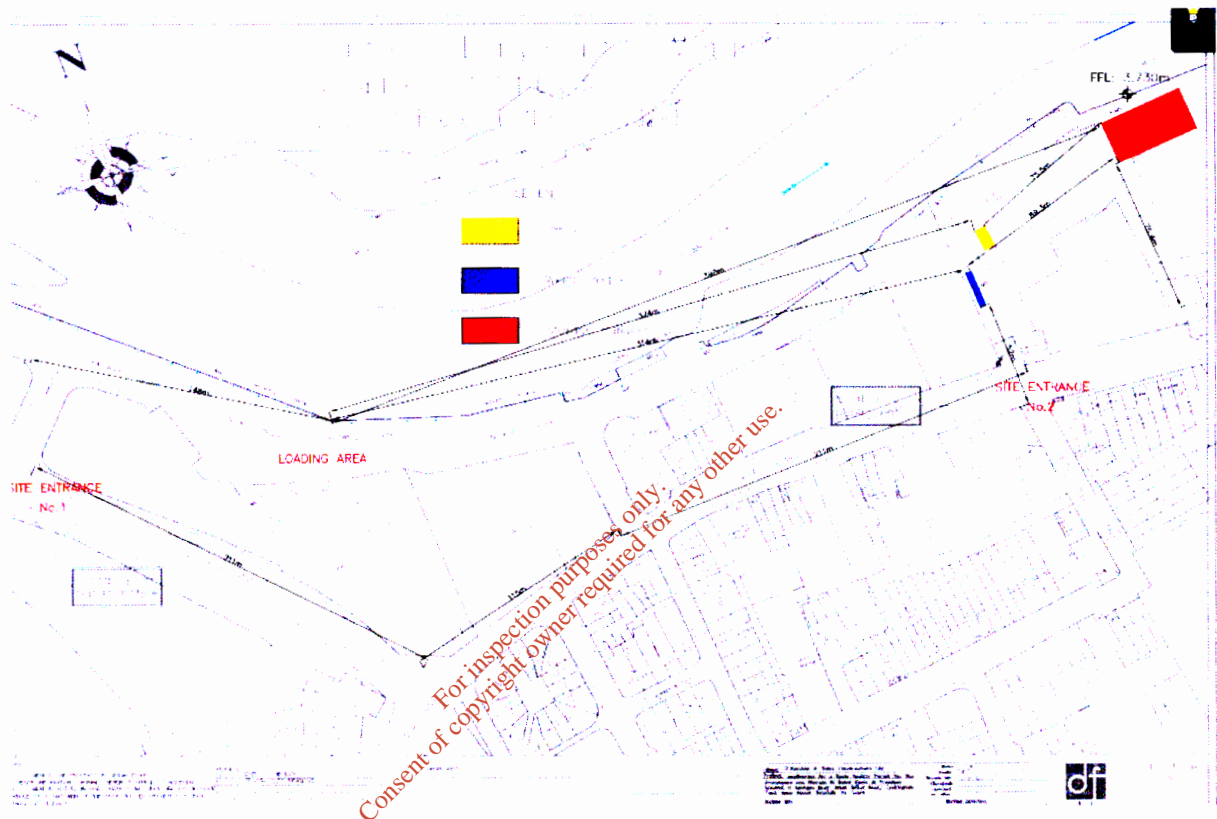
- *Regulation 27 (2) of the European Communities (Natural Habitats) Regulations outlines the type of assessment that would be deemed appropriate.*

The applicant is invited to consult with the planner dealing with this declaration prior to making a formal response.

Sinéad Mullen
Senior Executive Planner
Date:

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Lockingtoun Yard.



Information from Declan Flood on 22.10.15.

The building in question is located in the top right hand corner and was granted under planning reference 55320 (55520320) for a storage building. It was also approved for storage in the original application as granted by Louth County Council "LH-12-002-01 - O'Hanlon & Sons Contractors Ltd".

Planning Authority comments.

1. Any comment to EPA does not confirm that there is planning permission "allowed". There is currently a range of planning permissions on the site AT Lockingtons Yard, and a Section 5 declaration S5- 2014-22 for a "set down area within Georges Quay, Dundalk Port Dundalk for the storage of up to 50,000 tonnes of baled refuse derived fuel pending loading onto ships for shipment overseas". This section 5 declaration relates to Browns Quay and Connick Quay and is attached.

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Permissions on the site at Lockington yard.

09520157 APPLICATION
FINALISED

C

06/10/2009
Tuesday

DUNDALK
PORT
COMPANY

OAKES
QUAY
DUNDALK
PORT
DUNDALK

THE STORAGE OF
DECONTAMINATED
SCRAP METAL AND
SIGNAGE. THE
APPLICATION IS TO
INCLUDE THE
DEMOLITION OF AN
EXISTING VACANT
BUILDING, PARTIAL
DEMOLITION OF
STORAGE SHED
AND ASSOCIATED
SITE WORKS.

13520132

INCOMPLETED
APPLICATION

02/12/2013
Monday

Edwin
DeRoover

Lockington's
Yard
Dundalk
Port
Quay
Street,
Dundalk

Permission for part
change of use of
existing storage
building to
"processing facility"

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<u>14520004</u>	APPLICATION FINALISED	C	20/01/2014 Monday	Edwin deRoeвер	Lockington's Yard Dundalk Port Quay Street, Dundalk	Permission for change of use of part of existing storage building to waste recovery facility. The proposed development is within the 3artilage of a Protected Structure, Ref. D260 in Dundalk Environs Development Plan- House at "B&I" Gate
<u>55520199</u>	DECISION MADE	C	18/11/1965 Thursday	BRITISH & IRISH STEAMPACKET CO. LTD	DUNDALK	ERECTION OF PROPOSED ENTRANCE TO PREMISES OF BRITISH & IRISH STEAMPACKET CO. LTD
<u>55520320</u>	APPLICATION FINALISED	C	03/08/1966 Wednesday	J TUOMINEY	DUNDALK QUAYS DUNDALK	PROPOSED STORAGE TERMINAL
<u>55520585</u>	APPLICATION FINALISED	C	18/06/1968 Tuesday	GOULDINGS FERTILISERS LTD	QUAY STREET DUNDALK	PROPOSED CONVERSION OF PREMISES TO A FACTORY
<u>55520772</u>	APPLICATION FINALISED	C	28/08/1969 Thursday	QUAY STREET STRAMIT LTD	QUAY STREET DUNDALK	ERECTION OF STORE ON PREMISES
<u>55525842</u>	APPLICATION FINALISED	C	12/12/1991 Thursday	CONNICK COOPER & O'ROURKE LTD	QUAY STREET DUNDALK	FUEL DEPOT

2. There was no EIA submitted with any of these planning permissions for Lockingtons yard.

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