



COMHAIRLE CONTAE CHILL Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco
Suíomh / Website: www.wicklow.ie

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

09/01/2025

Planning Register Reference: **EX84/2024**

Re: APPEAL | **ABP-321246-24** | 1) the provision of a hard surface within the curtilage of the industrial building, 2) the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building" at Ballymorris Lower, Aughrim, Co. Wicklow constitutes exempted development within the meaning of the Planning and Development

A Chara,

As requested in your Letter dated the 08th January 2024 enclosed here with is the following:-

Copy of Covering Letter and Copy of History file in respect of PRR: 24/16.

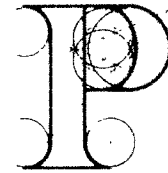
Mise, le meas,

Gerard O'Brien
Clerical Officer



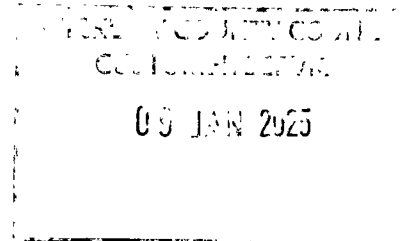
Our Case Number: ABP-321246-24

Planning Authority Reference Number: EX84/2024



An
Bord
Pleanála

Wicklow County Council
Planning Department
County Buildings
Whitegates
Wicklow Town
Co. Wicklow
A67 FW96



Date: 08 January 2025

Re: Whether the provision of a hard surface within the curtilage of the industrial building and the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building is or is not development or is or is not exempted development. Ballymorris Lower, Aughrim, Co. Wicklow

Dear Sir / Madam,

An Bord Pleanála has asked me to refer to the documents already received from you in relation to the above-mentioned appeal.

To enable consideration of the appeal to proceed, the following further documentation relevant to the application and to your decision is required:-

- **site map, planners report and decision order for file 2416**

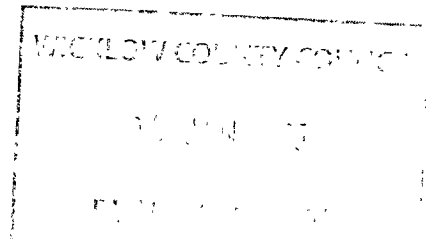
Would you be good enough to have these documents forwarded by return of post please.

In relation to "history" documents relating to a grant of permission, please include details of the final grant.

Yours faithfully,

Catherine Flynn
Executive Officer
Direct Line: 01-8737143

BP10

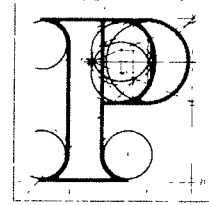


Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

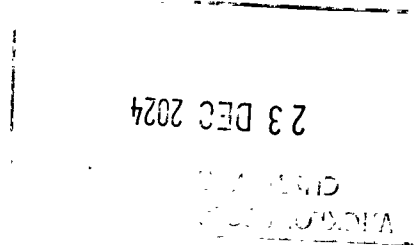
Our Case Number: ABP-321246-24

Planning Authority Reference Number: EX84/2024



**An
Bord
Pleanála**

Wicklow County Council
Planning Department
County Buildings
Whitegates
Wicklow Town
Co. Wicklow
A67 FW96



Date: 04 December 2024

Re: Whether the provision of a hard surface within the curtilage of the industrial building and the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building is or is not development or is or is not exempted development. Ballymorris Lower, Aughrim, Co. Wicklow

Dear Sir / Madam,

An Bord Pleanála has received your submission in relation to the above-mentioned referral and will take it into consideration in its determination of the referral in accordance with the Planning and Development Act, 2000, (as amended).

Please note that section 129(4) of the 2000 Act, (as amended), provides that a party to a referral shall not be entitled to elaborate in writing upon submissions made or make any further observations in writing unless requested to do so by An Bord Pleanála.

Yours faithfully,

Catherine Flynn
Administrative Assistant
Direct Line: 01-8737143

BPRL20

Teil
Glaio Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel
LoCall
Fax
Website
Email

(01) 858 8100
1800 275 175
(01) 872 2684
www.pleanala.ie
bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902



Comhairle Contae Chill Mhantáin Wicklow County Council

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development**

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel. (0404) 20148
Faics / Fax (0404) 69462
Rphost / Email plandev@wicklowcoco
Suíomh / Website www.wicklow.ie

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

18/11/2024

Planning Register Reference: **EX84/2024**

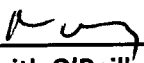
Re: APPEAL | **ABP-321246-24** | 'Whether the provision of a hard surface within the curtilage of the industrial building and the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building at Ballymorris Lower, Aughrim, Co. Wicklow is exempted development'.

A Chara,

As requested in your Letter dated the 14th November 2024 please find the following:

- **Copy of Covering Letter and Copy of full file in respect of EX84/2024.**
- **Copy of Manager's Order of Refusal for PRR 24/16.**

Mise, le meas,

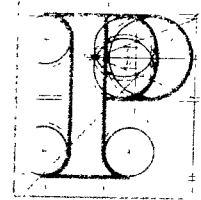


Keith O'Reilly
Clerical Officer



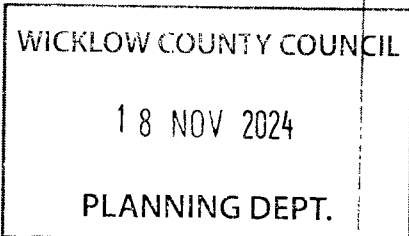
Our Case Number: ABP-321246-24

Planning Authority Reference Number: EX84/2024



An
Bord
Pleanála

Wicklow County Council
Planning Department
County Buildings
Whitegates
Wicklow Town
Co. Wicklow
A67 FW96



Date: 15 November 2024

Re: Whether the provision of a hard surface within the curtilage of the industrial building and the installation of plant and machinery to the rear of the industrial building in connection with the industrial process in the building is or is not development or is or is not exempted development. Ballymorris Lower, Aughrim, Co. Wicklow

Dear Sir / Madam,

Enclosed is a copy of a referral under the Planning and Development Act, 2000, (as amended).

In order to comply with section 128 of the Planning and Development Act, 2000, (as amended), please forward, within a period of 2 weeks beginning on the day on which a copy of the referral is sent to you, copies of any information in your possession which is relevant to the referral, including

- (i) details of previous decisions affecting the site;
- (ii) any correspondence that has taken place between the person(s) issued with a declaration under subsection (2)(a) of section 5 of the 2000 Act, (as amended), and the planning authority.
- (iii) the name and address of the owner of the land in question and the name of the occupier of the said land, if different;
- (iv) where no declaration was issued by you, indicate the date that the referral was due to be issued in accordance with subsection (2) of section 5 of the 2000 Act, (as amended)

In accordance with section 129 of the 2000 Act, (as amended), you may make submissions or observations in writing to the Board in relation to the referral within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the referral without further notice to you.

Teil
Glaio Áitiúil
Facs
Láithreán Gréasáin
Riomphost

Tel
LoCall
Fax
Website
Email

(01) 858 8100
1800 275 175
(01) 872 2684
www.pleanala.ie
bord@pleanala.ie

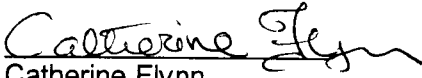
64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Please note when making a response/submission only to the referral it may be emailed to appeals@pleanala.ie and there is no fee required.

Please quote the above referral number in any further correspondence.

Yours faithfully,



Catherine Flynn
Administrative Assistant
Direct Line: 01-8737143

BPRL07

Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde Baile Átha Cliath 1 D01 V902	64 Marlborough Street Dublin 1 D01 V902
---	---

The Secretary
An Bord Pleanála
64 Marlborough St.
Dublin 1

Date: 08.11.24

Referral By: Mr. Stephen Kavanagh, Ballymorris Lower, Aughrim, Co. Wicklow

RE: Section 5 Declaration on whether the provision of hard surface within the curtilage of the industrial building and in connection with the industrial process in the building is exempted development and is the installation of plant and machinery to the rear of the building at Ballymorris Lower, Aughrim, Co. Wicklow exempted development?

Wicklow Co. Council Reference: EX84/2024

A Chara,

In relation to the above, please find enclosed a declaration for review by the Board.

I include the following:

- Referral fee of €220.
- Copy of council's decision and reports.
- Copy of original submission, maps and drawings
- Copy of planning search and 85/1187 Bord decision

AN BORD PLEANÁLA	
LDG-	<u>076255-24</u>
ABP-	_____
14 NOV 2024	
Fee: €	<u>220</u> Type: <u>Chg</u>
Time:	<u>9.06</u> By: <u>Rajp</u>

I submitted a section 5 declaration application for the above development to Wicklow Co. Council and on the 21st October 2024, they issued the decision that the proposal was development and "not" exempted development.

Having reviewed their report, it is my opinion that they have based their decision on incorrect facts, and I kindly request the Board to review their decision.

Wicklow Co. Council Decision

The council decision has been largely based on the belief that industrial/ commercial use does not exist on the site and as a result, the criteria under which we are applying for exempt development did not apply.

A planning search request by the applicant (copy included) to Wicklow Co. Council provides evidence that industrial/commercial use was permitted on the site since 1978.

- **78/2735** – Permission was granted for a fish farm on the site by An Board Pleanala
- **85/1187** – Permission was granted for change of use to smokehouse, extension to premises and treatment tank on the site by An Bord Pleanala

Please note that we are still a fish processing unit, considerably smaller than the original grantee, and we have significantly less staff than the previous owners had at the height of their business. As an example, IDAS trout who were the previous owners, produced 500 tons of trout annually, much of it being processed and smoked in this premises. We extract 12 tons of oyster meat per year but process it into very high value, end-products.

The above approved planning was not taken into account by the council in their decision making and as a result, they deemed the site did not have the benefit of planning permission for industrial/commercial use.

The provision of a hard surface within the curtilage of the industrial building?

In relation to the above question, it is my opinion that in the Planning and Development Regulations, 2001 (as amended) Schedule 2 under class 21 (b), the excavation and subsequent hard surface provided for our process to be carried out fall within this meaning of 'any works' where it states,

(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.

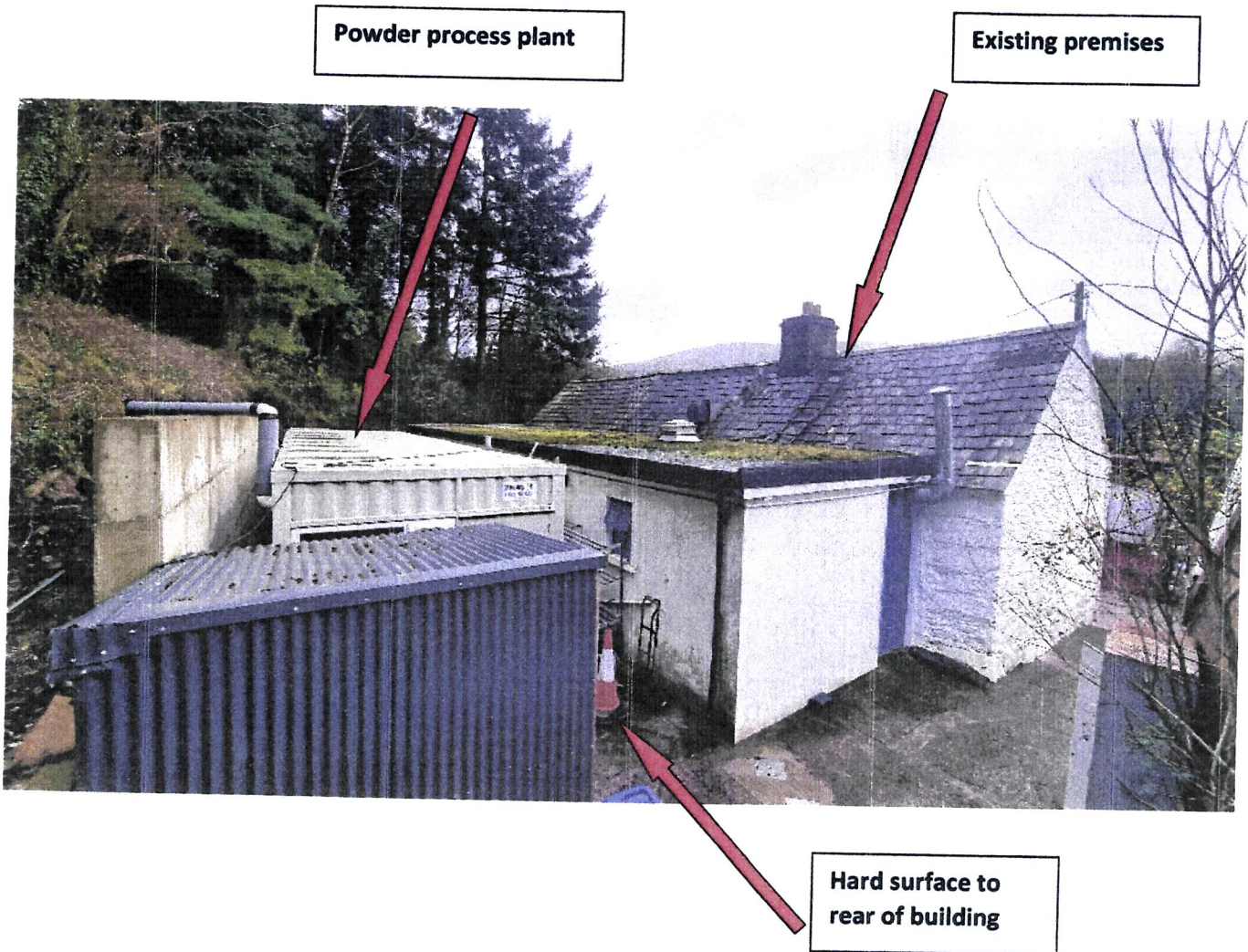
- I believe that cleaning up the rear of the premises to remove the mud slide and other issues associated with it which were compromising our ability to comply with health regulations fit this description of exempted development.
- 78/2735 and 85/1187 confirms that industrial/ commercial use is approved for the site.
- The council in their planning report for this referral also confirm that the site is “industrial” in nature.

The installation of plant and machinery to the rear of the industrial building?

In relation to the above question, it is my opinion that under class 21 (a)iii, that the container and associated machinery therein we placed to the rear of the building fits the description for plant or nature of plant where it states,

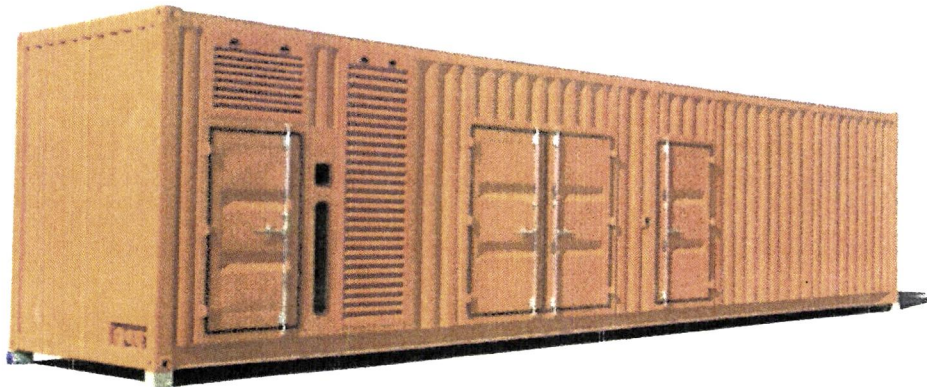
(a)(iii) the installation or erection by way of addition or replacement of plant or machinery, or structures of the nature of plant or machinery.

- 78/2735 and 85/1187 confirm that industrial/ commercial use is approved for the site.
- I include the following additional information to show that the container to the rear of the building is plant and machinery as opposed to the assumption by the local council that it is a structure. Please see the enclosed drawing showing the size of the container is the same as a standard 40ft industrial container.

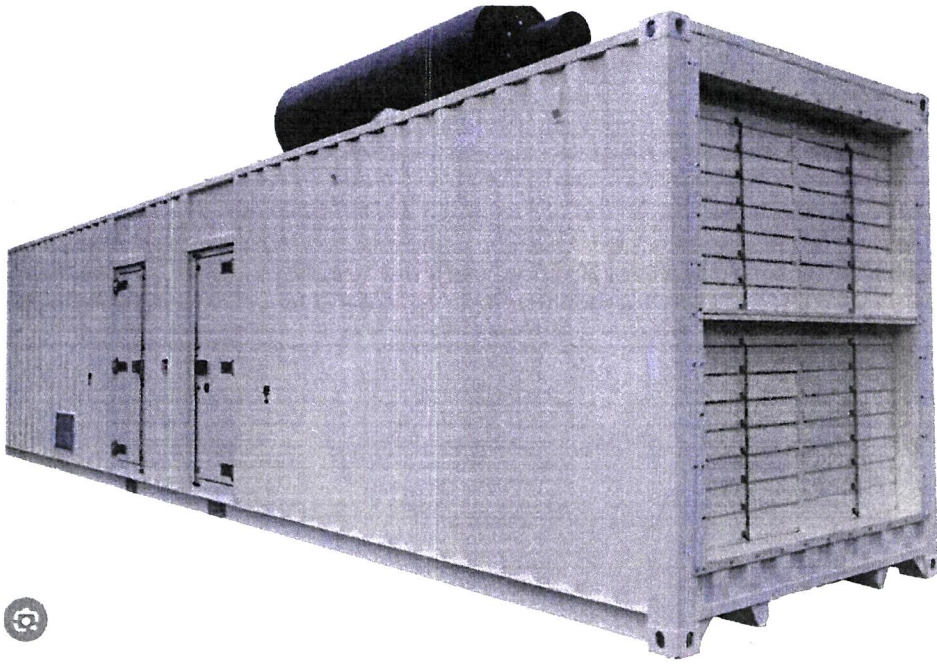


- I now include photographic samples of similar sized industrial plant and machinery containers

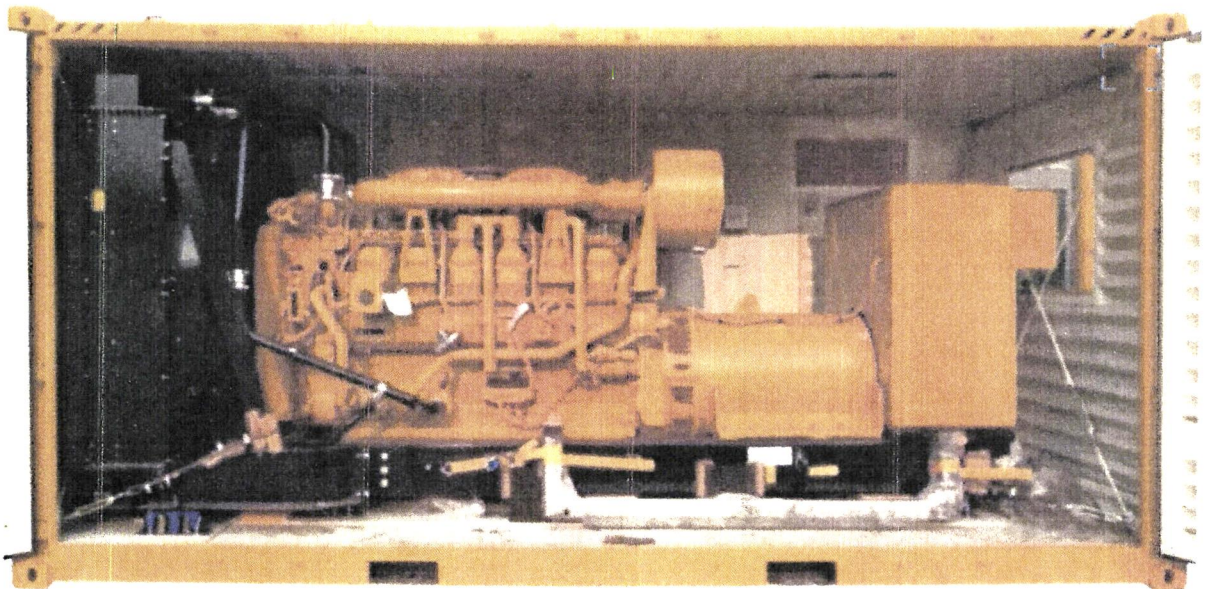
Examples of 40' plant units.



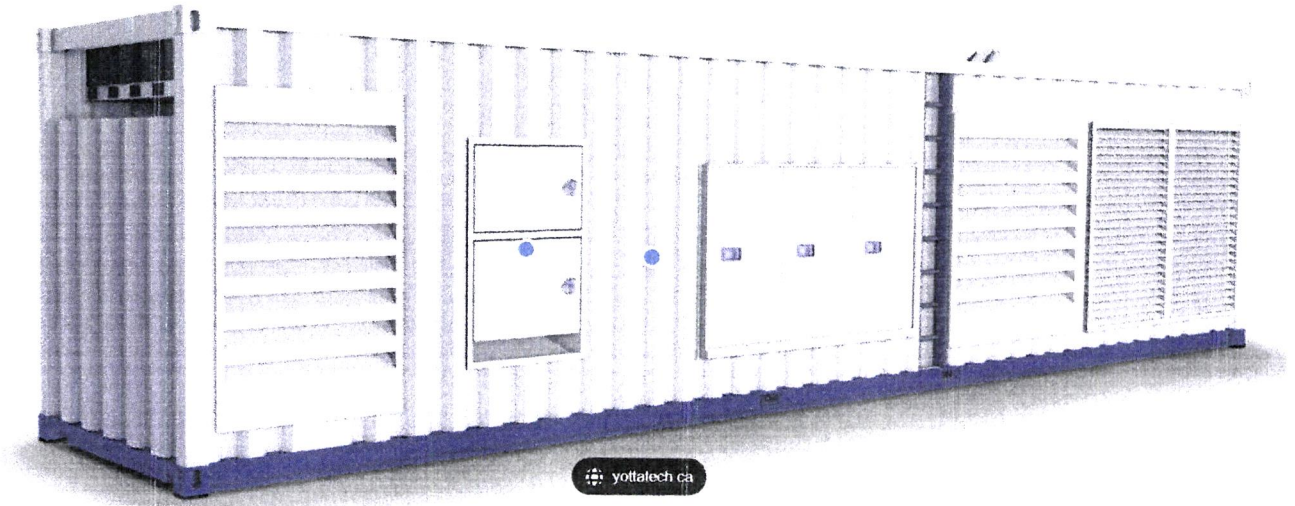
40ft-cummins-diesel-generator-set-1000kw-1250kva power



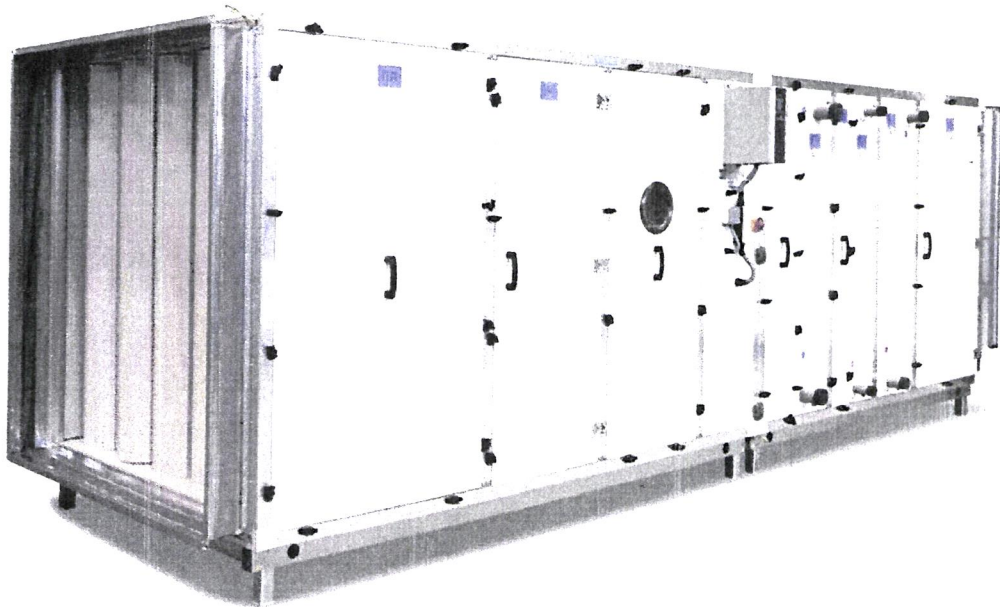
Sound-proof generator, practically identical to what we have installed.



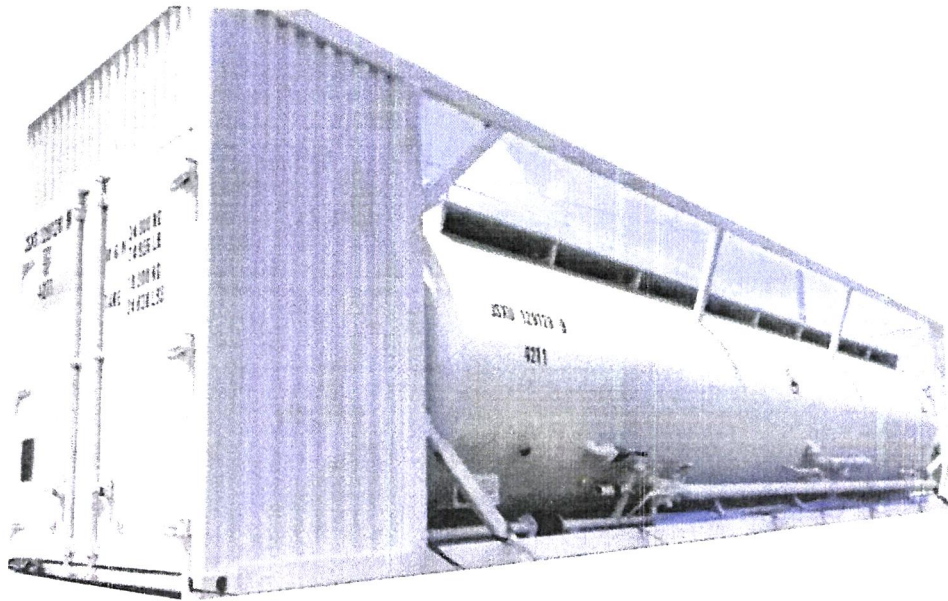
Internal view of 40' plant unit.



Power Generation Plant



40' air handling plant unit.



40' powder handling unit.

Above are some examples of plant units that bear very close resemblances to our installed plant at our premises. It is quite common for plant to be put inside 40' units and for very good reasons. These are mainly for transport and installation, sound proofing to avoid disturbing people close by, protection from the elements and / or for the containment and control of certain aspects of that plant. The above examples are of power generation plant, air handling plant, and powder handling plant. Several of the units above have doors so the internal plant can be accessed during operation, no different from what we have done.

The container for which we are applying for exemption is a powder handling plant unit which is used in our process. Our plant has been connected to our building because of the need for us to maintain public health and safety in our process and as part of our biosecurity policy which is an FDA requirement for the goods we export to the USA.

Specifically, I will direct you to the following as it pertains to our business.

In line with Regulation EC 852/2004 on the hygiene of foodstuffs, chapter 1 on GENERAL REQUIREMENTS FOR FOOD PREMISES, point 2 (a) states

The layout, design, construction, siting and size of food premises are to: (a) permit adequate maintenance, cleaning and/or disinfection, avoid or minimise air-borne contamination, and provide adequate working space to allow for the hygienic performance of all operations;"

We have installed this powder handling plant to facilitate the safe production of our products and to protect public health and as a result it is critical "plant and machinery" to the operation of our business and so deem it exempted development.

We have extended an invitation to the local planning authority to come and see this plant in operation, but that offer has to date not been accepted. We would like to extend the same offer to An Bord Pleanala so that they can have an accurate opinion on same.

Please can you confirm that the works carried out are exempted development.

Yours sincerely



Stephen Kavanagh