



Question

Whether the temporary change of use of the basement, ground, first, second, and third floors of the Cube building from office use to accommodate or support displaced persons or persons seeking international protection and associated works is development, and, if so, is it exempted development.

Location

The Cube Building, Monahan Road, Ballintemple, Cork

Declaration

Planning Authority

Cork City Council (CCC)

Planning Authority Reg. Ref.

R918/25

Applicant for Declaration

Cherryinn Limited

Planning Authority Decision

No declaration. Referral to the Commission.

Referral

Referred by

Cork City Council (CCC)

Owner/ Occupier

Cherryinn Limited

Observers

1. Dassault Systèmes
2. Microchip Technology Ireland Limited

Date of Site Inspection

1st August 2025

1.0 Site Location and Description

- 1.1. The subject structure is a five storeys over basement building on the south side of Monahan Road in Ballintemple, approximately 1km south east of Cork city centre. The building is relatively contemporary in construction, is in use as offices, and is in a commercial/industrial area of the city. The building line is close to the public road with a footpath, grass verge, and tree planting to the front of the building.

2.0 The Question

- 2.1. The question cited in the referral to CCC by the applicant (Item 3 of the application form) was in the form of two statements effectively stating that the proposed development was exempted development and explaining why it was exempt, as opposed to querying whether or not the proposed development was development and, if so, whether it was exempted development. CCC sought further information, in part, on the wording of the question posed. A revised application form was submitted as part of the further information response but, from the documentation on file, no change to the wording of item 3 was made¹.
- 2.2. In its referral of the application to the Board, dated 22nd April 2025 and received by the Board on 24th April 2025, CCC rephrased the question. It removed reference to displaced persons and omitted the second part of the item which stated that the associated works would only affect the interior of the structure.
- 2.3. Having regard to the documentation on file I consider that the appropriate and intended wording of the question is as follows.

Whether the temporary change of use of the basement, ground, first, second, and third floors of the Cube building from office use to accommodate or support displaced persons or persons seeking international protection and associated works is development, and, if so, is it exempted development.

¹ I am referring to the CCC cover letter and accompanying Section 5 Declaration Application Form date stamped as having been received by the Board on 3rd June 2025.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Despite seeking further information and receiving a response to same, CCC did not make a determination on the application and instead decided to seek a determination on the referral from the Commission.

3.2. Planning Authority Reports

- 3.2.1. The referral to the Board, as received on 24th April 2025, included a CCC cover letter dated 17th April 2025 containing relevant information, application documentation, the CCC Planning Report dated 19th March 2025 in which further information was recommended, and the applicant's response to same.

4.0 Planning History

- 4.1. The planning history of the site is:

P.A. Reg. Ref. 06/30815 – In 2007 permission was granted for demolition of warehouses and construction of a business and technology building including a basement car park and a five storey building for office use with central courtyard. This has been constructed.

P.A. Reg. Ref. 08/33194 – In 2008 permission was granted for an ESB substation and switch room to service the permitted business and technology building. This has been constructed.

P.A. Reg. Ref. 16/37179 – In 2017 permission was granted for an alteration of the western elevation by inclusion of new windows, door, and associated works. This has been constructed.

P.A. Reg. Ref. 19/38678 – In 2019 permission was granted for provision of solar panels on the roof and illuminated signage to the western elevation. I do not know if the solar panels have been provided and the signage in place on the western elevation at the time of the site inspection differs from that permitted.

P.A. Reg. Ref. 20/39182 – In 2020 permission was granted for the alteration of the southern elevation by the inclusion of new windows at first floor level. The first floor plan submitted with the application indicates that this permission was not acted upon.

- 4.2. The CCC public planning mapping portal indicates that there is a current unauthorised development reference number associated with this site, E8866. I do not know what this relates to.

5.0 Policy Context

5.1. Cork City Development Plan (CCDP) 2022-2028

- 5.1.1. The site is in an area zoned 'ZO 04, Mixed Use Development' under the Plan.

5.2. Natural Heritage Designations

- 5.2.1. The nearest European site is Cork Harbour special protection area (SPA) approximately 1.6km to the south east.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. Although the referrer of the section 5 application to the Board is CCC, for the purpose of this Inspector's report (IR) all references to the referrer should be taken to mean Cherryinn Limited who made the section 5 application to CCC in the first instance. The referrer is stated as being the owner of the Cube building subject of the application in the section 5 declaration application form. The main points made in the referral can be summarised as follows, as per the cover letter dated 4th February 2025 attached as appendix 2 to the CCC referral of the application to the Board.
- The proposed development falls within Class 20F of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001 (as amended) which relates to the

temporary use to accommodate or support displaced persons or persons seeking international protection.

- The parent permission for the building confirms that the permitted use is 'office'. Class 20F states the exemption applies to 'any structure or part of a structure used as a ... office'. The proposed change of use relates to the basement to third floors but not the fourth floor. The change of 'part of a structure' is consistent with Class 20F.
- The development will accord with the conditions and limitations associated with Class 20F. The section 5 application acts as notification to CCC as per condition and limitation 5.
- The proposed change of use complies with the provisions of article 9 (1)(a) of the Planning & Development Regulations, 2001 (as amended).
- Only the interior of the structure will be affected by works to facilitate the proposed temporary use, which comes within the exempted development provisions of section 4 (1)(h) of the Planning & Development Act, 2000 (as amended).

6.2. Planning Authority

- 6.2.1. The referral was submitted to the planning authority by Cherryinn Limited in the first instance. The CCC Planning Report prepared on foot of the referral considered, on page 5, that the proposed change of use comprised 'development'. However, it was concluded that further information was required to determine whether or not it comprised exempted development. Despite seeking further information, CCC then referred the application to the Board for determination rather than make a determination itself.

6.3. Occupiers/Observers Responses

- 6.3.1. The managing director of Dassault Systèmes, an occupant of the Cube building, had contacted CCC in relation to the section 5 application. On foot of the referral of the section 5 application to the Board by CCC, the Board invited Dassault Systèmes to make a submission or observation in relation to same. Another occupant, Microchip

Technology Ireland Limited, was also invited to make a submission or observation². As both submissions are similar in content and are prepared by the same agent, I consider that the main issues set out within the submissions can be collectively outlined as follows.

- As occupants of the building the observers have an interest in the referral. There are concerns relating to the operation of the building such as common areas and how business could proceed on a daily basis. While the application relates to part of the building the Board is requested to be cognisant of the operation of the entire building.
- Condition 5 of the planning permission for the building (06/30815³) restricts the use to a business and technology use.
- The observers agree with the applicant and CCC that the proposed development constitutes development.
- As per Meath County Council determination Ref. KS525033⁴, Class 20F is solely and specifically linked to displaced persons from Ukraine. The Commission is requested to confirm that any change of use would be limited to occupation by displaced Ukrainians only. In addition, in line with condition and limitation 3, the Commission is requested to confirm that the temporary change of use will have to be discontinued by 31st December 2028, unless a grant of planning permission has been issued.
- As per article 9 (1)(a)(iii) of the Planning & Development Regulations, 2001 (as amended), a development cannot be exempt if it would create a traffic hazard or obstruct road users. This application raises concerns about the operation of the basement car park and the lack of information in relation to it.
- It can only be concluded from the application that the proposed use will not have access to the basement and therefore issues arise as to where residents and staff will park, in an area with no public parking in the vicinity, and illegal parking would create a traffic hazard. Even if the basement car parking was used there is no

² A third occupant, Phoenix House Business Centre Limited (IWG), also made a submission but subsequently withdrew it on 21st August 2025. This submission has not been taken into consideration in this IR.

³ As per paragraph 4.1 of this IR.

⁴ 'Change of use from hotel to IPAS centre' in Oldcastle.

detail as to the parking requirements or whether it would be sufficient. Meath County Council determination Ref. TS525058⁵ was considered to not be exempt development as it was not shown that it would not create a traffic hazard.

- A direct provision centre will require regular deliveries. The applicant states the use of the car park is not changing indicating delivery vehicles will not use the basement. The absence of loading bays and presence of a cycle lane is considered to generate a traffic hazard. If it is intended to use the basement the volume of deliveries would create a traffic hazard. A 2.2 metres height restriction applies which would leave larger vehicles unable to access the basement, therefore requiring smaller vehicles, increased traffic movements and increased risk of traffic hazard. No detail on how deliveries will be facilitated has been provided, or consideration of potential impacts on existing tenants.
- Article 9 (1)(a)(viii) of the Planning & Development Regulations, 2001 (as amended) states exemptions do not apply where unauthorised development has been carried out. The observations make reference to both a canopy structure to the front and the undertaking of works to the rear/south of the building/site following a recent landslide resulting from ground level differences, which could not be considered to be exempt and therefore unauthorised development has been undertaken. Photographs are included.
- Article 9 (1)(a)(i) of the Planning & Development Regulations, 2001 (as amended) states exemptions do not apply if the proposed development would contravene a condition attached to a planning permission or would be inconsistent with any use specified in a permission. The proposed development would be contrary to condition 5 of 06/30815⁶. The permission is very clear on the permitted use and the proposed use would be contrary to this condition.
- The information submitted does not provide sufficient detail in relation to the operation of the building and the Commission may be unable to make a

⁵ 'The applicant proposes to provide accommodation for up to a maximum of 180 persons seeking international protection. The proposal will provide indoor recreation, dining/kitchen rooms, reception area, toilets, showers and circulatory space. There will be office space and staff facilities'. The application related to a light industrial building in Trim.

⁶ Condition 5 – 'The proposed commercial uses shall be restricted to Business and Technology uses as defined in paragraph 10.6 of the Cork City Development Plan 2004 and subject to the agreement of the Planning Authority'.

determination in favour of the applicant. This issue arose in ABP-318832-24⁷. In this case it relates to traffic, basement car park, the observers' private property rights, and the nature of the proposed occupancy.

- Use of part of an office building with existing occupants was not envisaged or intended under Class 20F. It is appropriate where the building is divisible but the concept of vulnerable people sharing common space including one set of lifts with an unrelated office use is not practical and is fraught with issues.
- The proximity to the Seveso site (Goulding's Chemicals Ltd) raises the issue as to whether this is an appropriate location for residential accommodation.

6.4. Further Referrer Response

6.4.1. On foot of the referral of the section 5 application to the Board by CCC, the Board invited the initial referrer, Cherryinn Limited, to make a submission or observation in relation to same. The main issues raised can be summarised as follows:

- It is unclear why CCC has referred this matter to the Board.
- Given the temporary nature of the Class 20F exemption the Board is asked to address the referral as soon as possible.

7.0 Statutory Provisions

7.1. Planning & Development Act, 2000 (as amended)

7.1.1. Section 3 (1)(a) states 'development' means 'the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land ...' except where the context otherwise requires. The definition of 'works', under section 2 (1), except where the context otherwise requires, 'includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...'

⁷ 'Whether a material change of use arises by reason of the type of goods being sold and consequently whether it is or is not development or is or is not exempted development' at Fonthill Retail Park, Dublin 22.

- 7.1.2. Section 4 (1) sets out various issues in which development is exempt for the purposes of the Act. The referrer (Cherryinn Limited) specifically references section 4 (1)(h) in its supporting documentation. This exempts ‘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’.
- 7.1.3. In addition to the various issues set out in section 4 (1), section 4 (2)(a) states that ‘The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act ...’

7.2. Planning & Development Regulations, 2001 (as amended)

- 7.2.1. Article 6 (1) states that ‘Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.
- 7.2.2. Article 9 (1) outlines the circumstances when development to which article 6 relates shall not be exempted development for the purposes of the Act. For example, having regard to the Occupiers/Observers Response as per subsection 6.3, if the carrying out of such development would contravene a condition attached to a permission under the Act (subsection (a)(i)), endanger public safety by reason of traffic hazard or obstruction of road users (subsection (a)(iii)), or consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use (subsection (a)(viii)).
- 7.2.3. Part 1 of Schedule 2 sets out the classes of exempted development, including Class 20F under which the exemption is sought in the referral.

PART 1	
<i>Exempted Development – General</i>	
Column 1 Description of Development	Column 2 Conditions and Limitations

<p><i>Temporary structures and uses</i></p> <p>CLASS 20F</p> <p>Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction [emphasis added]</p>	<ol style="list-style-type: none"> 1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection. 2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022 comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001. 3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028. 4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class. 5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development. 6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of
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	<p>Council Implementing Decision (EU) 2022/382 of 4 March 2022.</p> <p>7. 'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015).</p> <p>8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.</p>
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- 7.2.4. A 'displaced person' as per Class 20F effectively means people displaced from Ukraine as a result of the Russian military invasion.
- 7.2.5. 'Persons seeking international protection' as per Class 20F effectively means status in the State as a refugee or a person eligible for subsidiary protection.
- 7.2.6. 'Temporary protection' means a procedure of exceptional character to provide, in the event of a mass, or imminent mass, influx of displaced persons from third countries who are unable to return to their country of origin, immediate and temporary protection, in particular if there is also a risk that the asylum system will be unable to process this influx without adverse effects for its efficient operation.

7.3. European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022

- 7.3.1. In my opinion these Regulations do not apply to the subject referral. The Regulations are specifically directed to displaced persons from Ukraine whereas this referral also includes persons seeking international protection within the proposed occupancy of the building. In my view this widening of the envisaged occupancy negates the clear and specific provisions of the Regulations. In addition, and notwithstanding my commentary regarding the Minister in paragraph 8.2.2 of this IR, it has not been demonstrated that the development is being carried out by, or on behalf of, a State authority. Rather, it appears at this stage to be a speculative commercial proposal by a private applicant which may be accepted in future by the relevant State authority(s)

for accommodation of displaced persons or those seeking international protection. Having regard to the foregoing, I do not consider that the Planning & Development Act, 2000 (as amended), does not apply (section 181 (1)(a) of the Act refers).

8.0 **Assessment**

The purpose of this referral is not to determine the acceptability or otherwise of the proposed use in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, whether it falls within the scope of exempted development.

I have addressed the issue of the question to be addressed in subsection 2 of this IR. As per paragraph 2.3 I consider the appropriate and intended question subject of this referral to be:

Whether the temporary change of use of the basement, ground, first, second, and third floors of the Cube building from office use to accommodate or support displaced persons or persons seeking international protection and associated works is development, and, if so, is it exempted development.

8.1. **Is or is not Development**

- 8.1.1. The permitted and current use of the Cube building as an office building is not in dispute. It is described as such in the original referral to CCC and by the two observers, who are both current occupants of the building. The proposed use, to accommodate or support either displaced persons or persons seeking international protection, would clearly constitute a material change in the use of the relevant floors of the office building and would therefore constitute development as defined in section 3 (1)(a) of the Planning & Development Act, 2000 (as amended).

8.2. **Is or is not Exempted Development**

- 8.2.1. I consider the referral can be assessed under the following subheadings to reach a recommendation as to whether the proposed development would or would not comprise exempt development.

Change of use

- 8.2.2. Exemption is sought by the referrer under Class 20F of Schedule 2 Part 1 of the Planning & Development Regulations, 2001 (as amended). While I consider that the proposed use as set out in the referral would clearly be consistent with the body of Column 1 of Class 20F i.e. temporary use of part of a structure used as an office to accommodate or support displaced persons or persons seeking international protection, Column 1 also requires this to be 'by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth'. No documentation in relation to this was submitted with the referral and therefore it appears that the referral was made without the knowledge or approval of the Minister. Notwithstanding, in practice it is only logical to assume that the occupation of the relevant floors of the building with displaced persons or persons seeking international protection would effectively be carried out on behalf of the Minister. The applicant is not likely to be populating the relevant floors of the building with occupants of these statuses without the knowledge, approval, coordination of, or payment from the Minister/Department. In addition, the class does not require a supporting letter, or similar, to be provided. As such, and notwithstanding the absence of supporting documentation from the Minister, I consider the proposed use of the ground to third floors would be consistent with the provisions of Column 1.
- 8.2.3. Eight conditions and limitations are set out in Column 2. These relate to the status of future occupants, the duration of the temporary use, notification to the local authority, and definitions. None of these conditions and limitations are relevant to the referral at this stage, rather they are relevant to the operational stage. Should the development not be operated in accordance with these conditions and limitations then that would be a matter for CCC.
- 8.2.4. Having regard to the foregoing, I am satisfied that the proposed change of use would be consistent with the provisions of Class 20F and would comprise exempted development.

Associated works

- 8.2.5. The section 5 referral from Cherryinn Limited included current and proposed floor plan drawings of the basement and ground to third floors. Significant internal alterations are proposed to accommodate the proposed use, including the creation of 135 en-suite

bedrooms containing 467 beds/602 bed spaces⁸, among other uses such as storage, kitchens, and social spaces. The fourth floor is not subject of the referral. Although the basement is included in the referral description there are no changes proposed to the layout. The referral states that the associated works ‘will affect only the interior of the structure’ (page 1 of the referral cover letter) and the respective floor plans do not indicate any external changes.

8.2.6. Notwithstanding the absence of existing or proposed elevation drawings, as there are no external changes cited in the referral or apparent from the floor plans, I am satisfied that the provisions of section 4 (1)(h) of the Planning & Development Act, 2000 (as amended), applies i.e. works which affect only the interior of the structure. Therefore, I consider that the proposed associated works comprise exempt development.

8.3. Restrictions on Exempted Development

8.3.1. As outlined in subsections 8.1 and 8.2 I consider that the proposed development would comprise development which would be exempted development. However, article 9 (1)(a-d) of the Planning & Development Regulations, 2001 (as amended) sets out the restrictions on exemption i.e. the circumstances under which Class 20F would not be exempt.

8.3.2. The observers consider that three of the restrictions set out in article 9 (a) are applicable. I address these as follows:

- 9 (1)(a)(i) – contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act – The observations note that condition 5 of the original grant of permission for the Cube building restricts the use to business and technology uses⁹. Therefore, the observers are of the view that the use of the building for any form of residential accommodation would be contrary to condition 5 and 9 (1)(a)(i) would apply.

A similar argument arose in *Leitrim County Council and Dromaprop Ltd.* [2024] IEHC 233. In paragraphs 59 and 60 of the judgement it is stated ‘the reference to contravention of a condition (and in particular in the context of an exemption

⁸ There is one double bed indicated on the proposed floor plans in each bedroom which are counted as two bed-spaces.

⁹ As per footnote 6.

arising from doing something specifically allowed by an exemption, such as a change of use specifically allowed) does not include reference to a condition whose only relevance is merely that non-compliance is inherent in the very action being permitted. Hence where the exemption applies in terms of a change of use from A to B, a condition which requires or arises from use A doesn't prevent the change being exempted'. In addition, subsection (iv) of paragraph 80 (Summary) states 'article 9(1)(a)(i) of the 2001 regulations does not apply to conditions that would be inherently contravened by any type of development that is envisaged by a given exemption'.

As such, I do not consider that condition 5 de-exempts the exemption.

- 9 (1)(a)(iii) – endanger public safety by reason of traffic hazard or obstruction of road users – The observations outline concerns relating to the operation of the basement car park, the absence of public parking in the vicinity, and deliveries.

It is suggested in the observations that the wording of the referral leads to confusion in terms of the proposed use of the basement and 'it can only be concluded that the proposed residential accommodation ... will not have access to the parking in the basement ...'¹⁰ In the observers view this would lead to illegal parking in the area, creating a traffic hazard. In my opinion neither the referrer's application nor further information response to CCC implies that the proposed residential use would not have use of the basement car park and cannot reasonably be interpreted as such. The referrer's response states that 'There are no changes proposed to the basement layout ...' which clearly implies that the 77-space basement would continue to be used for car parking for the building i.e. both proposed residential and existing office uses. Notwithstanding that car parking provision is not a material issue for this referral, if this was a standard planning application the proposed 602 bed-spaces would generate a maximum requirement of approximately 30 car parking spaces which, together with the continuing fourth floor office use, would be comfortably accommodated in the basement¹¹.

¹⁰ Paragraph 26 of the Dassault Systèmes observation and paragraph 29 of the Microchip Technology Ireland Limited observation.

¹¹ Table 11.13 of the CCDP 2022-2028 sets out a maximum car parking standard of one car parking space per 20 bed-spaces in Zone 2 for a 'residential institution', which I consider to be the most relevant land use category. This results in a maximum requirement of approximately 30 car parking

While I note the relatively restricted height of the basement entrance and the absence of a dedicated drop-off area, I do not consider that any issue with deliveries would be of such significance that it would warrant a de-exemption of the proposed use on the basis of a traffic hazard or obstruction of road users. The basement can be accessed by smaller vans and I note that there is a vehicular gate immediately to the eastern side of the building, which from the ground floor plan submitted with 06/30815 is within the curtilage of the Cube building and which could be utilised for deliveries.

Having regard to the foregoing, I am satisfied that no undue traffic hazard or obstruction of road users would arise as a result of the proposed development.

- 9 (1)(a)(viii) – consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use – The observations consider that certain works that have been carried out on site i.e. a canopy area and activity to the rear following a landslide, are unauthorised which would therefore restrict the application of article 6 to the structure.

I note initially that the carrying out of the proposed development would not ‘consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use’. The structure itself is not unauthorised and the existing office use is not unauthorised. Therefore, insofar as subsection (viii) is concerned there is no issue with the exemption.

Notwithstanding, the canopy and activity to the rear that are referred to by the observers have not, to my knowledge, been determined by CCC to be unauthorised and as they are not specifically the subject of the referral, I make no comment as to whether or not they are unauthorised. Notwithstanding, the canopy, which appears to be a smoking shelter, is not attached to the Cube building itself, and the works to the rear appear, from the observations and photographs contained therein, to comprise leaning a board against a window (presumably to

spaces. The fourth floor area is 1,334sqm, as per the clarification of further information response received by CCC in relation to the parent permission on site, 06/30815. Table 11.13 sets out a maximum car parking standard of one car parking space per 100sqm of office use in Zone 2. This results in a maximum requirement of approximately 13 car parking spaces. Therefore, under the current CCDP 2022-2028 maximum requirements, there would be a combined requirement for a maximum of 43 car parking spaces, significantly less than in the 77 space basement car park.

protect it against falling rocks) and signage/restricting access to the rear for safety purposes.

These two issues, which I consider to be minor in the context of the proposed development, and external to the building itself, could not reasonably be considered sufficient to trigger a de-exemption. The issues are similar to the external signage which I have noted in paragraph 4.1 in relation to 19/38678. The purpose of subsection (viii), in my view, is not to encourage third parties to try to find any minor infraction on a site in order to de-exempt an otherwise exempt development. Rather subsection (viii) is in place for material or more significant issues such as an unauthorised structure or a structure the use of which is unauthorised, neither of which would apply to the Cube building.

Having regard to the foregoing, I am satisfied that the proposed development would not consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

8.3.3. I do not consider that the proposed development is relevant to the other subsections of article 9 (1)(a). These are summarised below:

- the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
- endangering public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,
- building lines, works under a public road, interfering with the character of a landscape or a view or prospect of special amenity value or special interest,
- excavation, alteration or demolition of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest etc., or excavation, alteration or demolition of any archaeological monument,
- development requiring appropriate assessment¹²,
- development likely to have an adverse impact on a natural heritage area,
- preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the

¹² See section 10 (Appropriate Assessment (AA) Screening).

building or other structure would remain available for such use and such objective has been specified in a development plan for the area,

- fencing or enclosing any land habitually open to or used by the public during the 10 years preceding for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility, or obstruct any public right of way, and,
- works to the exterior of a structure located within an architectural conservation area.

8.3.4. Subsection (1)(b) relates to an area where there is a special amenity area order, subsection (1)(c) relates to environmental impact assessment¹³, and subsection (1)(d) relates to an establishment which could have significant repercussions on major accident hazards¹⁴. None of these apply in my opinion.

8.3.5. Therefore, in my opinion, none of the restrictions on exemption are applicable to the subject referral.

8.3.6. Notwithstanding the foregoing, the observations set out a number of concerns in relation to the continued operation of the existing office use in the context of the proposed use sought in the referral. While I acknowledge the concerns set out, the purpose of this referral is not to determine the acceptability or otherwise of the proposed use in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, whether it falls within the scope of exempted development.

9.0 **Appropriate Assessment (AA) Screening**

9.1. I have considered this application in light of the requirements of section 177U of the Planning & Development Act, 2000 (as amended).

¹³ See section 11 (Environmental Impact Assessment (EIA) Screening).

¹⁴ The site is in proximity to Goulding Chemicals Ltd., a lower tier Seveso site as per section 9.36 of the CCDP 2022-2028. However, there is existing residential development closer to the Goulding site than the referral site e.g. Marina Park, Seveso sites are not specifically referenced in article 9 (1), and the proposed development itself could not have a significant repercussion on major accident hazards.

- 9.2. The five storey Cube building subject of the referral is located in a largely industrial / commercial area within the built-up area of Cork city, to the south east of the city centre. The referral involves the proposed temporary change of use of four floors from office use to use to accommodate or support displaced persons or persons seeking international protection and associated works. The associated works would involve internal alterations within the building.
- 9.3. The nearest European site is Cork Harbour SPA approximately 1.6km to the south east. No AA-related issues were raised by any party to the referral.
- 9.4. Having considered the nature, scale and location of the proposed development I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European site. The reasons for this conclusion are:
- the relatively small scale and nature of the proposed development which comprises a change of a use of four storeys of an existing five storey building with the only works being internal.
 - the approximate 1.6km distance from the closest European site and lack of connections (the site is in an urban location and there is no watercourse adjoining the subject building).
- 9.5. I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European site either alone or in combination with other plans or projects. Likely significant effects are excluded and therefore AA (under section 177V of the Planning & Development Act, 2000 (as amended)) is not required.

10.0 Environmental Impact Assessment (EIA) Screening

- 10.1. While the proposed temporary change of use cited in the referral does not constitute a project for the purposes of EIA i.e. it does not comprise construction works, demolition, or intervention in the natural surroundings, the proposed internal works to facilitate it would come within the definition of a project. However, these works are not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning & Development Regulations, 2001 (as amended), or Part V of the

1994 Roads Regulations. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to appendix 1.

11.0 Recommendation

11.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the temporary change of use of the basement, ground, first, second, and third floors of the Cube building from office use to accommodate or support displaced persons or persons seeking international protection and associated works is or is not development or is or is not exempted development:

AND WHEREAS Cherryinn Limited requested a declaration on this question from Cork City Council and the Council did not issue a declaration:

AND WHEREAS Cork City Council referred the question for review to An Coimisiún Pleanála on 24th April 2025:

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

- (a) Section 2 (1) of the Planning & Development Act, 2000 (as amended),
- (b) Section 3 (1) of the Planning & Development Act, 2000 (as amended),
- (c) Section 4 (1)(h) of the Planning & Development Act, 2000 (as amended),
- (d) Section 181 (1)(a) of the Planning & Development Act, 2000 (as amended),
- (e) Article 6 (1) and article 9 (1) of the Planning & Development Regulations, 2001 (as amended),

- (f) Class 20F of Schedule 2 Part 1 of the Planning & Development Regulations, 2001 (as amended),
- (g) The provisions of the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations, 2022,
- (h) The planning history of the site,
- (i) the nature of the current use of the Cube building,
- (j) the pattern of development in the area,
- (k) the provisions of the Cork City Development Plan 2022-2028,
- (l) Relevant case law, specifically Leitrim County Council and Dromaprop Ltd. [2024] IEHC 233, and,
- (m) The submissions of Cherryinn Limited, Cork City Council, and the two observations received:

AND WHEREAS An Coimisiún Pleanála has concluded that –

- (a) The temporary change of use of the basement, ground, first, second, and third floors of the Cube building from office use to accommodate or support displaced persons or persons seeking international protection and associated works constitutes development as defined in section 3 (1)(a) of the Planning & Development Act, 2000 (as amended).
- (b) The temporary change of use of the basement, ground, first, second, and third floors of the Cube building from office use to accommodate or support displaced persons or persons seeking international protection and associated works is exempted development as it comes within the scope of Class 20F of Schedule 2 Part 1 of the Planning & Development Regulations, 2001 (as amended) and section 4 (1)(h) of the Planning & Development Act, 2000 (as amended).

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (4) of the Planning & Development Act, 2000 (as amended) hereby decides that the temporary change of use of the basement, ground, first, second, and

third floors of the Cube building from office use to accommodate or support displaced persons or persons seeking international protection and associated works is development and is exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Date: 16th February 2026

Appendix 1 – Environmental Impact Assessment (EIA) Pre-Screening

Case Reference	ABP-322371-25
Proposed Development Summary	Change of use of part of an office building to accommodate or support displaced persons or persons seeking international protection and associated works
Development Address	The Cube Building, Monahan Road, Ballintemple, Cork
In all cases check box or leave blank	
<p>1. Does the proposed development come within the definition of a ‘project’ for the purposes of EIA?</p> <p>(For the purposes of the Directive, ‘Project’ means:</p> <ul style="list-style-type: none"> - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources) 	<p><input checked="" type="checkbox"/> Yes, it is a ‘Project’. Proceed to Q2.</p> <p>The proposed temporary change of use is not a project but the internal works to facilitate the change of use is a project.</p> <p><input type="checkbox"/> No. No further action required.</p>
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning & Development Regulations, 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning & Development Regulations, 2001 (as amended), OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	

<input checked="" type="checkbox"/> No, the development is not of a Class specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.	
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.	

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Date: 16th February 2026