

December '18

Title

*Third Party Submission to Referral –
ABP-302769-18
(PA Reg Ref: P/DC/3/14/18)*

Re:

"Whether the conversion of a ground floor office space for use as a two-bedroom apartment is or is not development or is or is not exempted development".

Location:

*Ti Choinn, Gleann na Ri, Murrough, Galway
City*

Submission by:

Gleann na Ri Management Company

James O' Donnell
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1.0 Introduction

I refer to An Bord Pleanála's letter dated 19th November 2018, inviting a submission to the Section 5 Referral (Ref. ABP-302769-18) with regard to proposed works at the Ti Choinn Building, Gleann na Ri, Murrough, Galway City. The latter referral has been made by K King Construction Claregalway Ltd. against the decision made by Galway City Council that the proposal to "convert existing vacant office space and seminar room to a 1 bedroom studio apartment and connections to existing services within the Building" is not exempted development. Further to the Boards invitation, I have been instructed by the Management Company to make a submission on this case, as we concur with the Planning Authority that the proposed works (which are now almost complete) do not constitute exempted development. In particular, we are of the opinion that the provisions of S.I. no. 30 of the Planning & Development (Amendment) No.2 Regulations 2018, are not available in this case. This is discussed in greater detail below.

2.0 Site Location & Context

The subject site is located to the east of Galway City at the Gleann na Ri Residential Complex at Murrough. The complex is located south of the Old Dublin Road and north of the Galway-Dublin Railway Line. The subject unit is located within Ti Choinn Building to the east of the complex, which also has also been identified as Block D or Block 14 in the course of the Planning History. The subject unit is located along the south-eastern frontage of this entrance building, fronting onto the main approach road. A large expanse of undeveloped land is located south of the Railway Line and is earmarked for future development as part of a Murrough Local Area Plan (LAP).



Figure 1: Aerial View showing location and context of Subject Unit. (Source: Google Maps)

3.0 Section 5 Declaration/ Referral Details

On 17th August 2018, a Section 5 application was made by a Tom King to the Planning Authority seeking confirmation as to whether or not a proposed conversion of ground floor offices at Ti Chionn, Gleann Na Ri, for use as a 2 bed apartment the applicant constituted exempted development. Subsequently, on 7th September 2018, the Planning Authority made a Declaration that the proposed change of use is not considered exempt from planning permission. In turn, a Section 5(3) Referral was made by the applicant to An Bord Pleanala. However, it should be noted that the applicant did not await the Decision of Planning Authority, and has proceeded with the works on site, which are now nearing completion at the time of writing (See Figure 2 below).



Figure 2: Photo (December 2018) showing the completion of the proposed external alterations to the building, which is materially different to the "shopfront" of the adjoining Creche.

4.0 Planning History

Relevant planning permissions on site include the following, in chronological order.

Pl. Ref. No. 99/918: Permission for private residential or student accommodation comprising 5 No. 3 Storey Blocks Type A (total 60 apts.); 3 No. 4 Storey Blocks Type B (total 72 apts); 5 No. 4 Storey Blocks Type C (total 140 apts.) and ancillary facilities consisting of 3 storey local shops including laundrette, bank, restaurant, caretaker's apt., conference room, with 14 apts, over this block, together with widening the access road. Ultimately Granted by An Bord Pleanala 06/04/2000 (PL 61.119288).

01/9: Permission for revisions to Block Type D (Block 14) amendment to Planning Application Ref. No. 918/99 (Private/Student Accommodation – 275 apartments, shops, launderette, restaurant, bank, conference room auxiliary works) to include revised internal layout and elevational treatment (retail units & apartment numbers unchanged) and reduction in eaves height. Granted 28/01/2001.

02/346: Permission for revisions to ground floor of Block Type D (Block 14 – Tí Choinn) previously granted Ref. No. 918/99 and 9/01 to include crèche and administrative offices. Granted 18/07/2002

Pl. Ref. No. 14/324: Permission granted for a development at Block 14 (Tí Choinn), namely the change of use of 2 No. vacant retail units (previously a restaurant and a shop) to 3 no. 2 bed ground floor apartments. This application to include alterations to North-East and North-West elevations as well as all ancillary site works.

The latter permissions will be discussed in greater detail below.

5.0 Grounds of Submission

In short, we are of the opinion that the proposed works do not comply with a number of the criteria outlined in the “*Planning & Development (Amendment)(No.2) Regulations 2018*” [S.I. No. 30 of 2018]. As such, the proposed development does not constitute exempted development. This is discussed in Table 1.

Table 1: Level of Compliance of proposed development with criteria outlined in S.I. No. 30 of 2018

Criteria from S.I. No. 30 of 2018	Statement of Compliance
6(c)(i) <i>“the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018”</i>	On this matter we would concur with the applicant that the structure concerned i.e. Tí Choinn/ Block D/ Block 14, was completed prior to the making of the 2018 Regs.
6(c)(ii) <i>“the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6”</i>	<p>The parent planning permission Pl. Ref. No. 99/918 (An Bord Pleanála Reference PL 61.119288), allowed for the upper floors of the building to be used for Student Accommodation or Apartments. However, under the parent permission, the entirety of the ground floor of the structure was originally permitted to accommodate Retail units, as well as Communal Facilities for the benefit of the wider apartment/student accommodation complex at Gleann na Ri. These facilities included a Comms room (Communications Room), Seminar Room, Common Room, Tea room and Communal toilets. In fact, the extent of the subject unit is located where the Comms Room, Tea Room, Communal Toilets and Common room were originally envisaged.</p> <p>In the course of the planning history, although the internal layout evolved slightly, the subject unit was consistently dedicated to the use/accommodation of Communal Facilities to serve the wider residential complex. For example, under Pl. Ref. No. 01/9, the subject units was also dedicated to the latter uses. Again under, Pl. Ref. No. 02/346, the subject unit was dedicated for the following communal uses, i.e. Comms room, luggage room, communal toilets, waiting room/reception and office.</p>

	<p>Later under PI. Ref. No.'s 14/324 & 15/359, Existing Floor Plans for the subject unit accompanied the application. The use indicated at the subject unit was consistent with that shown under PI. Ref. No. 02/346.</p> <p>Finally, it should be noted that as the unit was permitted and used as a dedicated area to accommodate Communal Facilities for the Residential Complex, this does not fall into any of the relevant Classes i.e. Class 1, 2, 3 or 6. In these circumstances, the proposal cannot be considered exempted development.</p>
<p>6(c)(iii) <i>"the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development"</i></p>	<p>My clients wish to dispute the applicants assertion that the Comms room was vacant 2 years prior to the commencement of development, as this unit continued to have a "services use" to serve the entirety of the Residential Complex since the inception of the development. The applicants proposal seeks to supplant the existing Comms Room with a private "Utility Area" to serve the subject apartment. In this regard we refer to a letter from "Ocean Property Management" confirming the presence of vital infrastructural services within the Comms room, which perform important communal functions to operate the estate. This letter states that <i>"it is not possible for the management company to operate without having access to these essential services located in this area"</i> ¹. In other words, the Comms room acts as a nerve centre for the Complex. Owing to the fact that this Room acts as a telecommunications infrastructure and cable node, it cannot be readily be relocated. As such, it follows that the proposed Section 5 conversion cannot be availed of by the applicant. In the interest of due diligence, we request that as part of the Inspectors site visit, the location and content of the Comms room is inspected.</p>
<p>6(d)(i) <i>"The development is commenced and completed during the relevant period."</i></p>	<p>This is subject to compliance with the other criteria.</p>
<p>6(d)(ii) <i>"Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures."</i></p>	<p>It should be noted that the applicant has now proceeded with the "proposed works" and the external changes are now complete (See Figure 1 above). The south east elevation is the main elevation facing onto the access road/public realm. In time this thoroughfare could potentially serve the extensive Murrough Local Area Plan area (LAP), further to the south. The reduction in the glazing along the subject unit is significant, and is inconsistent with the frontage of the adjoining creche, and will materially affect the external appearance of the structure.</p>
<p>6(d)(iii) <i>"Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures."</i></p>	<p>Again the alteration of the existing "shopfront" is considered to be inconsistent with the character of the remainder of the structure (especially the creche unit).</p>

¹ Note: The use of the subject unit, access to the subject unit together with external works to the subject unit is currently the subject of Legal proceedings.

<p>6(d)(iv) "No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned."</p>	<p>This criteria does not appear to be relevant to the assessment of the subject case.</p>
<p>6(d)(v) "No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure."</p>	<p>We understand this criteria was designed to ensure that Part V requirements (Social Housing), are not avoided. As present (as indicated on the drawings accompanying Pl. Ref. No. 15/359), there are 17 no. units within the structure. The proposed development would facilitate at total of 18 units. Furthermore, we refer to the parallel Referral (ABP-302770-18), which could ultimately facilitate the provision of 19 residential units within the structure. As the proposal would facilitate additional residential development in excess of the 9 unit threshold, the proposed development cannot be considered exempted, and would also circumvent Part V requirements.</p>
<p>6(d)(vi) "Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines."</p>	<p>At face value, the proposed drawings would appear to comply with the latter criteria. However, owing to the function of the Comms Room and the inability to relocate this communal telecommunications/ infrastructural services node, the proposed "Kitchen Utility" for the proposed apartment cannot be provided. In these circumstances, the proposal cannot be considered exempted development.</p>
<p>6(d)(vii) "Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting."</p>	<p>The proposed drawings would appear to comply with the latter criteria.</p>
<p>6(d)(viii) "No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure."</p>	<p>N/A. The subject structure is not a protected structure.</p>
<p>6(d)(ix) "No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission."</p>	<p>Under the parent planning permission for the apartment/student accommodation complex (99/281), Condition No. 1 (as imposed by An Bord Pleanála – ABP Ref. No. PL 61.119288), required that the "development shall be carried out in accordance with the plans and particulars lodged with the application..." In turn, the area of the subject unit was dedicated to Communal Residential Facilities to serve the entirety of the apartment/student accommodation complex. In addition, the use of this unit/ground floor area continued to be controlled under the provisions of Condition no. 1 of Pl. Ref. No. 01/9 and</p>

	Condition No. 2 of Pl. Ref. No. 02/346.
6(d)(x) "No development shall relate to any structure in any of the following areas: (I) an area to which a special amenity area order relates; (II) an area of special planning control; (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply."	N/A. None of these constraints apply in this case.
6(d)(xi) "No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply."	9(1)(a)(iv) – N/A 9(1)(a)(vii) – N/A 9(1)(a)(viiA) – N/A 9(1)(a)(viiB) – N/A 9(1)(a)(viiC) – N/A 9(1)(a)(viii) – N/A 9(1)(a)(ix) – N/A
6(d)(xii) "No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it."	6(d)(xii) – N/A

6.0 Summary:

We trust this submission is comprehensive and we now look forward to the decision of An Bord Pleanála.

Yours faithfully,

James O'Donnell



Senior Planning Consultant,
BA MRUP Dip APM
Planning Consultancy Services.

Appendix 1: Letter from Ocean Property Management

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OCEANPROPERTY
M A N A G E M E N T

5th December 2018

Mr. James O'Donnell,
Planning Consultancy Services,
Ross House,
Victoria Place,
Galway.

RE: ABP-302769-18

Dear Mr. O'Donnell,

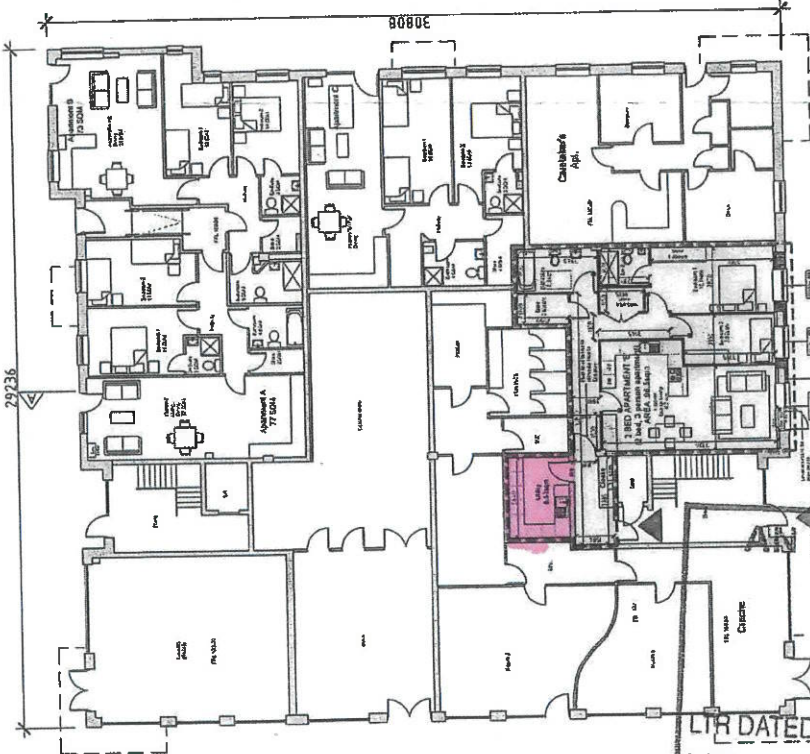
I refer to the An Bord Pleanála case ABP-302769-18.

I wish to make you aware that the proposed drawings ignore the existence of the Gleann Na Ri communications room that contains the essential common area services of the estate. The Gleann Na Ri estate comprises of fourteen apartment complexes and the entire estate's CCTV cables, CCTV equipment, telephone and internet lines and patch panels, fibre optic cables, gate communication cables and all of the fire alarms cabling and connections are housed within this area. I have outlined the location of these services on the attached drawing. It is not possible for the management company to operate without having access to these essential services located in this area.

Yours Sincerely,



John Fitzgerald



Council Building Floor Area: 386 sqm
 Ground Floor Area: 222 sqm
 First Floor Area: 164 sqm
 Total Floor Area: 386 sqm

Proposed Apartment Area:
 86.5 sqm
 (86.5 sqm)

Council Building Floor Area:
 386 sqm
 Ground Floor Area:
 222 sqm
 First Floor Area:
 164 sqm
 Total Floor Area:
 386 sqm

AN BORD PLEANÁLA

1 OCT 2018

LTR DATED _____ FROM _____
 LDG- _____
 ABP- _____

No. of Units: 18161
 No. of Units: 3103
 O'Neill O'Malley Ltd.
 329 PROPOSED PLANS

Scale: 1:100
 Project: Proposed 2 bedroom Apartment
 Location: Clonilla, Clontarf St, Maragh
 Date: 10/08/2018
 Author: G. O'Neill
 Checked: G. O'Neill

REMINDERS
 The following information is provided for your information and is not intended to constitute an offer of any financial product or service. It is provided for your information only and should not be relied upon as a basis for any investment decision. It is not intended to constitute an offer of any financial product or service. It is provided for your information only and should not be relied upon as a basis for any investment decision.

