

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

ABP.	12 DEC 2019
Fee: € 110	Type: cheque
Time: 11	By: Post

11th December 2019

Re: Section 5 – R546/19 – Former Tara Steel Site, Tivoli Industrial Estate, Cork City

Dear Sir/ Madam,

Please find enclosed a referral under Section 5(4) of the Planning & Development Act 2000 with a cheque for €110.00
The reference number is R546/19.

Question Referred

Confirmation that the use of an existing industrial site and buildings for a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development

Applicant Details

Waste Recovery Services
Knoockanang
Ferryoy
Co. Cork

Person/Agent Acting on behalf of Applicant

Susan Culllan
McCutcheon Halley
6 Joyce House
Barrack Street

Yours faithfully,


Development Management

The Secretary
An Bord Pleanála
64 Marlborough Street
DUBLIN 1
D01 V902

19/11/2019

REFERRAL UNDER SECTION 5(4) OF THE PLANNING AND DEVELOPMENT ACT 2000

FORMER TATA STEEL SITE, TIVOLI INDUSTRIAL ESTATE, CORK CITY

This referral is made under section 5(4) of the *Planning and Development Act 2000* (as amended).

This referral is structured as follows:

1. Introduction
 2. Background
 3. Grounds of Referral
 4. Screening for Appropriate Assessment
 5. Conclusion
- Appendices 1 – 4

1. INTRODUCTION

1.1 RELEVANT LEGISLATIVE PROVISION

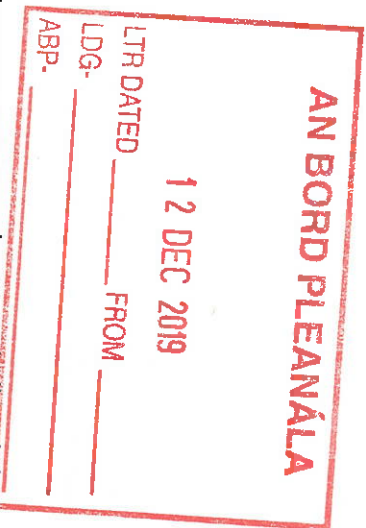
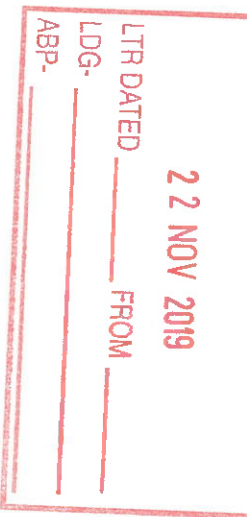
All relevant legislative provisions of the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) are included as Appendix 1 to this referral. In this referral, 'the Act' means the Planning and Development Act 2000, as amended, and 'the Regulations' means the Planning and Development Regulations 2001, as amended.

1.2 PARTICULARS OF REFERRAL

Various particulars required under section 127 of the Act are provided with this referral. The subject matter and grounds of the referral and the reasons, considerations and arguments on which they are based are included below in the body of this referral. Also enclosed is the fee of €110.

The referral is made by:

Development Management
Community, Culture and Placemaking
Cork City Council
City Hall
Cork
Telephone (021) 492-4762
Email micHELLE_broderick@corkcity.ie



1.4 THE REFERRAL SITE

For ease of reference, the lands which are the subject of this referral are referred to as 'the referral site' in this referral.

The referral site is located in the Tivoli Industrial Estate located between the River Lee and N8 Cork to Dublin road. The Cork – Cobh Rail Line, located to the north of the subject site, runs parallel to the N8. Access to the site is via the N8 Silversprings Junction flyover. A site location map is attached here as Appendix 2.

The site is bound by the Tivoli Industrial estate access roads to the north and west and Port of Cork shipyards and warehouses to the south and west. The site comprises a large structure, with office annex, formerly occupied by Tata Steel associated parking and marshalling yards.

2. BACKGROUND

2.1 GENERAL BACKGROUND

The subject referral is subsequent to a request for a Planning Authority declaration on the question to which this referral relates (as set out in Section 1.3 above). The request for declaration is recorded under Cork City Council Ref: R 546 / 19.

The application and cover letter was submitted to Cork City Council on 11 October 2019 by McCutcheon Halley, Planning Consultants on behalf of Waste Recovery Services (Fermoy) Ltd., are attached hereto as Appendix 3.

2.2 SITE PLANNING HISTORY

There are two planning permissions associated with the subject site as follows -

Parent Permission

73/4551, the 'parent permission' granted 26 February 1974 for:
Erection of steel stock depot, offices etc. at Tivoli Industrial Estate

Amendment Permission

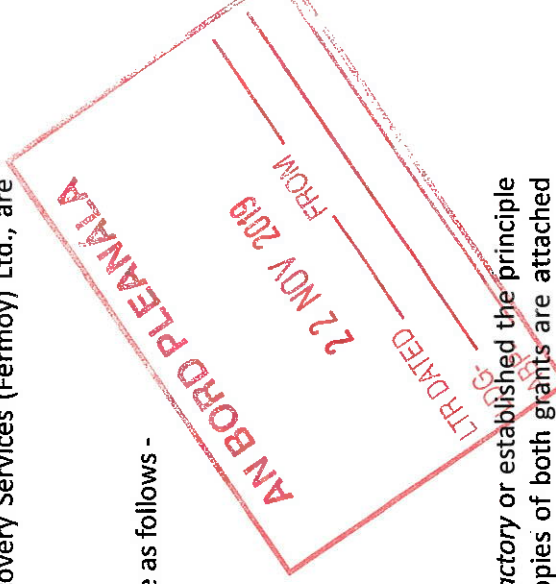
77/6677, the 'parent permission' granted 24 March 1977 for:
Erection of steel stock depot, offices etc. at Tivoli Industrial Estate

It is noted that neither of the permissions explicitly permitted a *Factory* or established the principle of the undertaking of *Industrial Processes* on the subject site. Copies of both grants are attached thereto as Appendix 4.

2.3 DEVELOPMENT PLAN OBJECTIVES

Cork City Development Plan 2015-2021

The Cork City Development Plan 2015-2019 (CCDP) was made by the elected members of Cork City Council on 23/03/2015 and came into effect on 20/04/2015.



14.14 The Port of Cork proposes to relocate the existing container shipping operations from Tivoli to the lower harbour, namely, Ringaskiddy. When implemented, this will create an opportunity to redevelop Tivoli Docks for alternative purposes.

14.15 Tivoli has an extensive south facing waterfront and the commuter rail line runs along its northern boundary. The CASP Update identifies it as an area with future potential for residential and employment uses. The City Council is committed to supporting the regeneration of the Tivoli area through the preparation of a local area plan in order to determine a development strategy, i.e. an appropriate mix of land-uses and sequencing of development. The timing of the preparation of a local area plan will be linked to the programme for relocation of the Port and the likely timetable for lands becoming available for redevelopment.

14.16 It will be important to ensure that the mix of uses and timing of redevelopment of Tivoli does not take away from the potential of the City Centre and North and South Docklands for economic development and employment generating uses. Key issues to be resolved prior to redevelopment of Tivoli include the relocation of Port activities and related industrial uses including the 'SEVESO' uses and resolution of access issues, including public transport provision.

Objective 14.4 Tivoli

To prepare a local area plan for the redevelopment of Tivoli in consultation with key stakeholders, in particular Port of Cork, taking account of the following requirements:

- a. To develop a vision for the future redevelopment of the Tivoli Docks taking account of its waterfront location and potential commuter rail access;
- b. To investigate the feasibility of developing the area as a new medium-density waterside residential quarter incorporating in the region of 3,000 residential units, complemented by local services and recreational amenities, which should include high quality parks and riverside walks (and if feasible access for water-based activities) to serve local residents, workers and the wider community;
- c. To identify suitable types and quantum of other uses, including employment uses, which would complement the residential development;
- d. To develop a transport and access strategy for the area, in particular the provision of high quality public transport;
- e. To identify a strategy for the phasing of development in the area.

The Tivoli Docks Issues Paper was issued in 2017 and work is ongoing in the preparation of the local area plan.

3. GROUNDS OF REFERRAL

The planning authority contends that:

- (1) The 1974 did not explicitly permit the use of the referral site as a Factory or for Industrial

(as amended), and

- (5) It has not been established to the satisfaction of the Planning Authority that the proposed use is not a material change of use.

4. SCREENING FOR APPROPRIATE ASSESSMENT

Section 177U (9) of the Act requires planning authorities and the Board to screen declarations or referrals under section 5 of the Act for appropriate assessment. The provisions of the Habitats Directive, the Appropriate Assessment Guidelines for Planning Authorities 2009 (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel SAC (site code 001058).

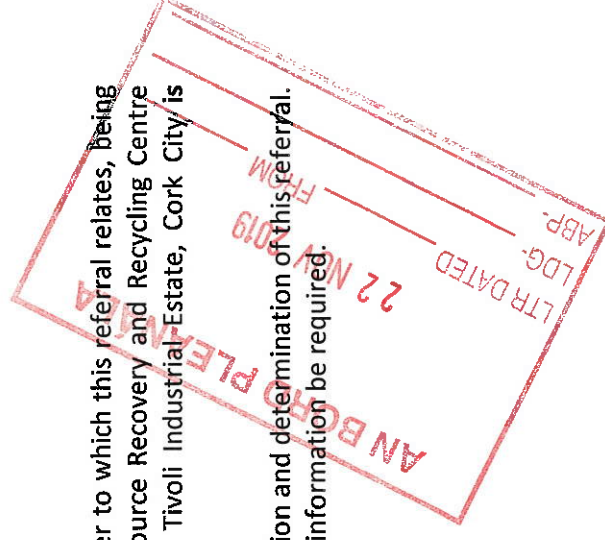
The subject site is approximately 1km west the Cork Harbour SPA. The subject site is located close to the northern edge of the River Lee which hydraulically links to both the Cork Harbour SPA and the Great Island Channel SAC further downstream.

It is however our contention that, in the absence of details regarding the proposed use, specifically measures to be taken to limit offsite impacts and having regard to the location of the referral site relative to these European sites and related watercourses and to the nature and scale of the development concerned, it not possible to determine whether the proposed use concerned will impact upon the integrity of the sites referred to above.

5. CONCLUSION

The planning authority contends that it is clear that the matter to which this referral relates, being the use of an existing industrial site and buildings for a Resource Recovery and Recycling Centre (RRRC) and ancillary storage at the Former Tata Steel Site, Tivoli Industrial-Estate, Cork City is **development and is not exempted development.**

The planning authority looks forward to the Board's consideration and determination of this referral. Please do not hesitate to contact this office should any further information be required.



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Section 2(1),

2.—(1) “structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—
(a) where the context so admits, includes the land on, in or under which the structure is situate, and
(b) in relation to a protected structure or proposed protected structure, includes—
(i) the interior of the structure,
(ii) the land lying within the curtilage of the structure,
(iii) any other structures lying within that curtilage and their interiors, and
(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3(1),

3.—(1) In this Act, “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 the use of any structures or other land.

Section 3(2)

3. (2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—
(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or
(b) where land becomes used for any of the following purposes—
(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,
(ii) the storage of caravans or tents, or
(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders’ waste, rubbish or debris, the use of the land shall be taken as having materially changed.

Section 4(1)(h)

The following shall be exempted developments for the purposes of this Act-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;

AN BORD PLEANÁI A

Section 5(1),

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Section 5(4),

5.—(4) Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

Section 177U (9) (screening for appropriate assessment)

177U.—(9) In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

PLANNING AND DEVELOPMENT REGULATIONS, 2001 (AS AMENDED)

Part 2 – Exempted Development

Article 5(1)

5.—(1) In this Part –

“industrial building” means a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

“industrial process” means any process which is carried in in the course of trade or business, other than agriculture, and which is–

(a) for or incidental to the making of any article or part of an article, or

(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals, and for the purposes of this paragraph, “article” includes–

(i) a vehicle, aircraft, ship or vessel, or

(ii) a sound recording, film, broadcast, cable programme, publication and computer program or other original database

Article 6 (1)

6.—(1) Subject to article 7, 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.

Article 9 (1) (a) (viii)

9.—(1) Development to which article 6 relates shall not be exempted development for the



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22 NOV 2019

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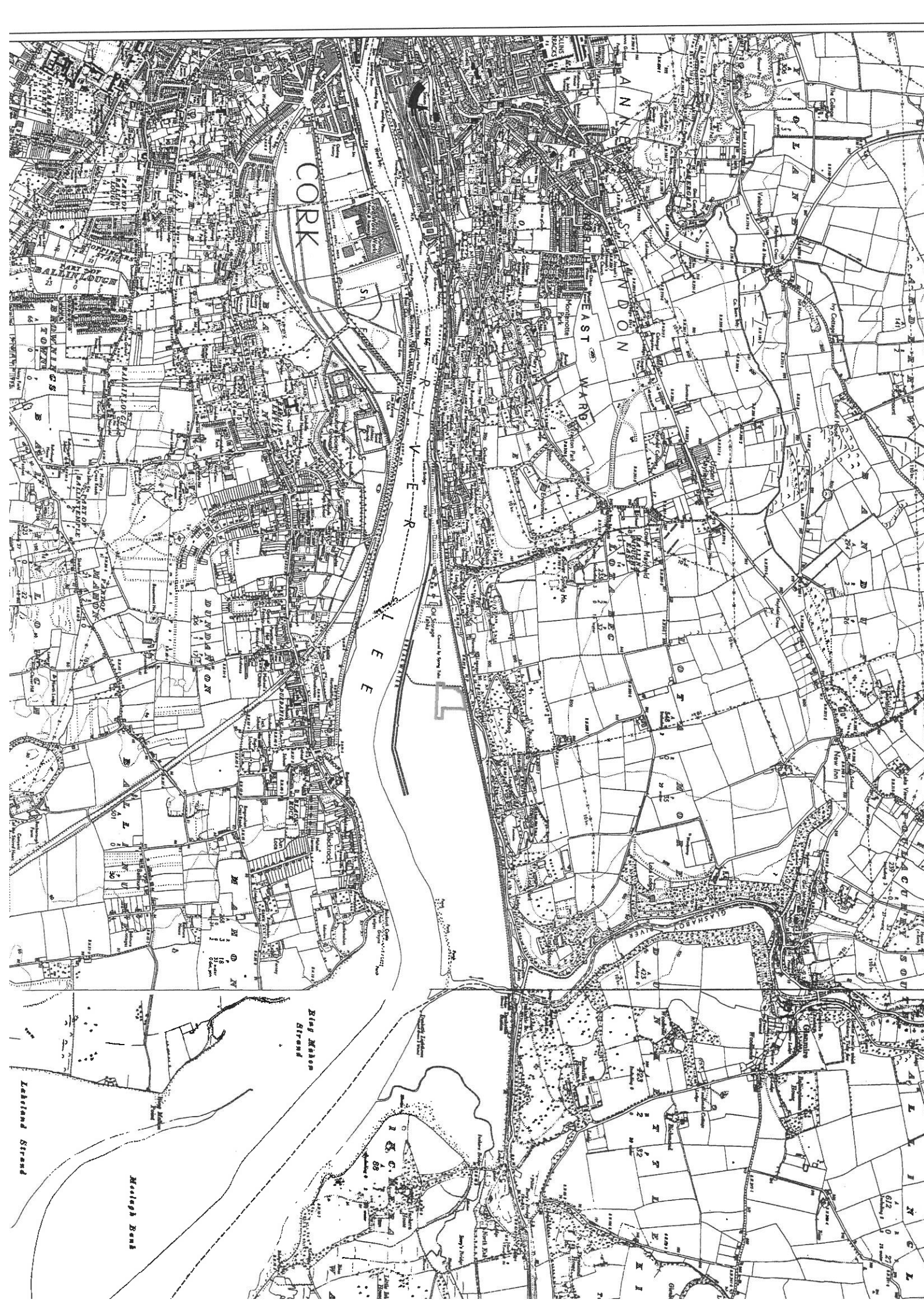
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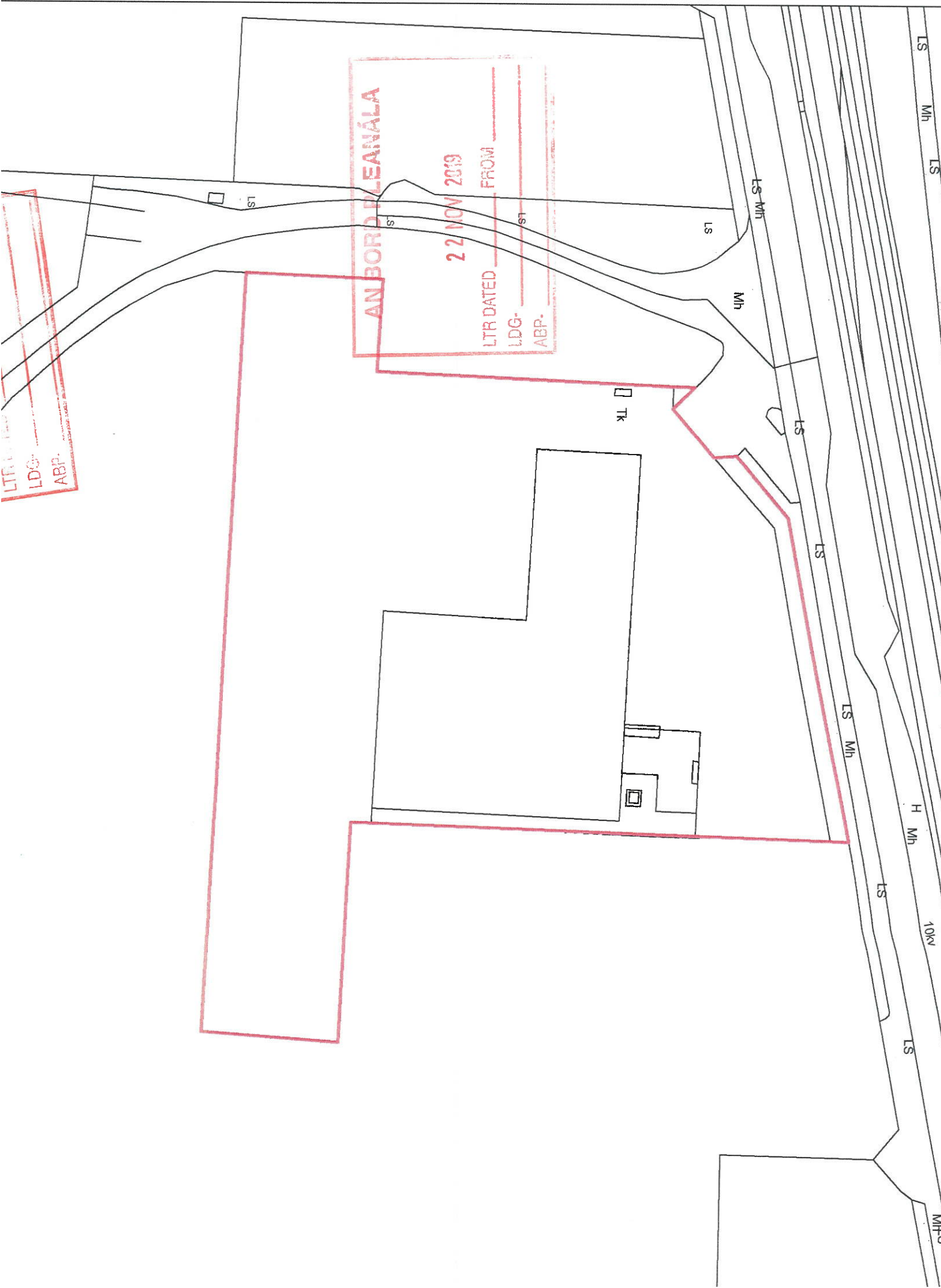
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12 FEB 2019
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AN ERIC J PLEMMING



LTR DATED _____
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AN BORD PLEANÁLA
22 NOV 2019
LTR DATED _____ FROM _____
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ABP- _____



To : M/s Gamble Stimm,

c/o M/s Brodie & Hawthorn,

Chartered Architects,

55 Malone Ave., Belfast BT9 6EP.

Reg. No. T.P. 45512 NOV 2019

LTR DATED _____ FROM _____

Application Received : LDG- 27th December, 1973.
ABP. _____



APPLICATION BY M/s Gamble Stimm,

OF c/o M/s Brodie & Hawthorn, Chartered Architects, 55 Malone Ave., Belfast.

FOR :-

~~PERMISSION~~ / PERMISSION / APPROVAL

FOR... Direction of steel stock depot, offices etc.....

AT Rivoli Industrial Estate.....

Further to notification of decision to grant dated 26th February, 1974.

the Cork Corporation hereby conveys a grant of

~~PERMISSION~~ / PERMISSION / APPROVAL

for the development/retention described subject to the conditions (if any) set out in the said notification.

The permission/approval is also subject to further approval being obtained in accordance with article 5 of the Local Government (Planning and Development) Act, 1963, (Permission) Regulations, 1964, prior to the

the development
any part of the development other than

Commencement of
AN BOARD

(a) Where the proposed works are not commenced within fifteen years of completion of the development, the Planning Authority shall return the contribution;

(b) Where the proposed works are within the said period, carried out in part only or in such manner as to facilitate the development to a lesser extent, the Planning Authority shall return a proportionate part of the contribution;

(c) The Planning Authority shall pay interest on the contribution as long as and in so far as it is retained unexpended by the Local Authority.

2. The concrete beds of all foul drains and surface water pipes must consist of 150 m.m. reinforced concrete as shown in drawings; and foundation concrete in protection G2 must be reinforced with 2 no. 12 mm dia. bars.

3. A bund equal to 110% of the volume of the oil storage tanks must be provided.

4. Detailed landscape proposals must be submitted and approved prior to the commencement of occupancy of the buildings.

Recd 2/7/76
Rec. No 10443

AN BORD PLEANÁLA

22 NOV 2019

LTR DATED _____ FROM _____

LDG- _____

ABP. _____

2. In the interests of the proper drainage of the area.

3. No guard against oil spillage.

4. In the interests of the amenities of the area.

AN BORD PLEANÁLA

12 DEC 2019

LTR DATED _____ FROM _____

LDG- _____

ABP. _____

NOTE 1: Any appeal against a decision of a planning authority under section 26 of the Act of 1963 may be made to the Minister for Local Government.

The applicant for permission may appeal within one month beginning on the day of receipt of the decision. Any other person may appeal to the Minister within three weeks beginning on the date of the decision.

AN BORD PLEANÁLA

To: ~~...~~ Reference No. in Planning Register T.P. ~~...~~ **677** **22 NOV 2019**

Application Received: ~~...~~ **24-3-77** decided to grant

LTR DATED FROM
LDG-
ABP-

In pursuance of the powers conferred upon them by the above-mentioned Act, the Cork Corporation have by order dated **24-3-77** decided to grant ~~...~~ **ROUTINE PERMISSION / PERMISSION / APPROVAL** for the development of land, namely:—

~~...~~ **ROUTINE PERMISSION / PERMISSION / APPROVAL** ~~...~~ **ROUTINE PERMISSION / PERMISSION / APPROVAL**

If there is no appeal against the said decision, a grant of

~~...~~ **ROUTINE PERMISSION / PERMISSION / APPROVAL**

in accordance with the decision will be issued after the expiration of the period within which an appeal may be made to the Minister for Local Government (see footnote).

It should be noted that until a grant of

~~...~~ **ROUTINE PERMISSION / PERMISSION / APPROVAL**

has been issued the development in question is NOT AUTHORIZED.

Signed on behalf of the Corporation of Cork

AN BORD PLEANÁLA
LTR DATED **12 DEC 2019** FROM
LDG-
ABP-

Date: **25-3-77**

NOTE 1: Any appeal against a decision of a planning authority under section 26 of the Act

~~...~~ **ASSISTANT TOWN CLERK**

The Secretary
Planning Department
Cork City Council
City Hall
Cork

11 11-10-2019

11th October 2019

Strategic Planning & Economic
Development Directorate

ABP

Re: Section 5 Declaration at the former TATA Steel site, Tivoli Docks, Cork seeking confirmation that the use of an existing industrial site and buildings for a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development

Dear Sir/Madam,

We McCutcheon Halley, 6 Joyce House, Barrack's Square, Ballincollig, Co. Cork act on behalf of Waste Recovery Services (Fermoy) Ltd, Knockanag, Fermoy, Co. Cork, Cork with regard to the former TATA Steel Site at Tivoli, Cork (outlined in red in the attached site location map).

Our client requests a declaration in accordance with Section 5 of the Planning and Development Act 2000 (as amended), confirming that the use of the existing permitted industrial premises at Tivoli, Cork for the Resource Recovery and Recycling Centre (RRRC) and ancillary storage is consistent with the existing permitted use and is not development and does not therefore require planning permission as:

- The existing permitted use of the TATA Steel site is for industrial use.
- The existing permission on the site has not been abandoned and therefore the use associated with the site is industrial;
- The use of the premises for a Resource Recovery and Recycling Centre falls within the definition of an industrial process;
- The storage of materials associated with the primary industrial use is a permitted use of the site; and
- The conditions of the existing permissions do not preclude the proposed use.

This declaration is required to allow Waste Recovery Services to apply for a licence to operate at this location.

The remainder of this declaration request is set out as follows:

- Site and Context and Planning History
- Description of Proposed Industrial Use
- Planning legislation
- Case Law
- Assessment

AN BORD PLEANÁLA

12 DEC 2019

LTR DATED _____ FROM _____

... the site is situated within the Tivoli Industrial Estate within the Cork City Development Boundary on the eastern side of the City as shown in Figure 1 below. The site is accessed via the existing Tivoli Estate road running to the north of the subject site. Existing development on the site consists of 1 no. industrial building, 1 no. roof covered structure and 1 no. office and associated parking / hard standing / yard and ancillary areas. To the south, west and east lie lands within the ownership of the Port of Cork.

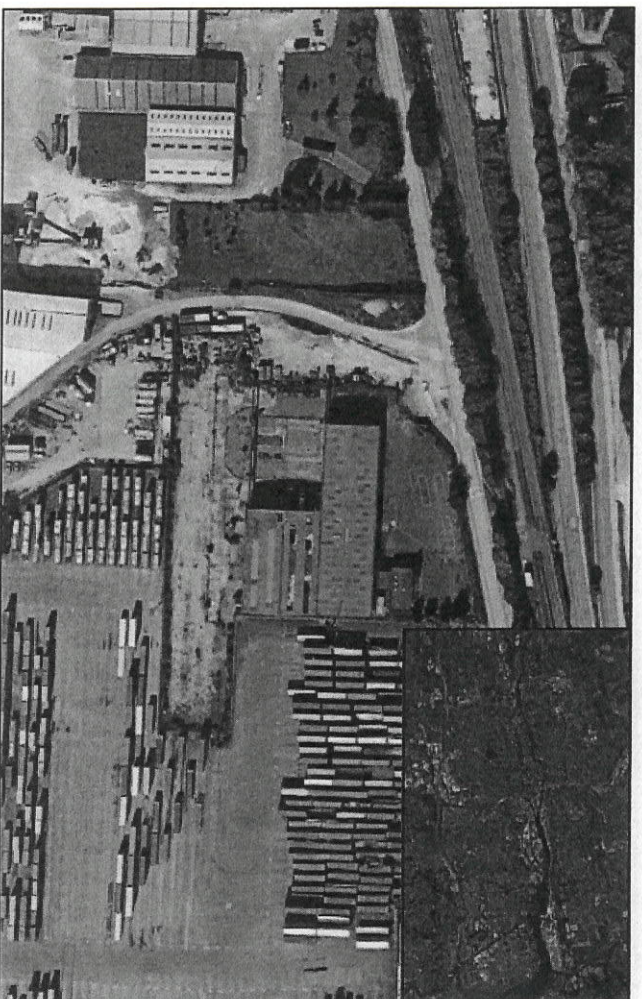


Fig. 1 Location of the Site in the context of Tivoli, Cork

The area is currently zoned as 'Local Area Plan to be prepared' in Map 5 - North Eastern Suburbs Objectives of the Cork City Development Plan 2015 and as illustrated in Figure 2 below.

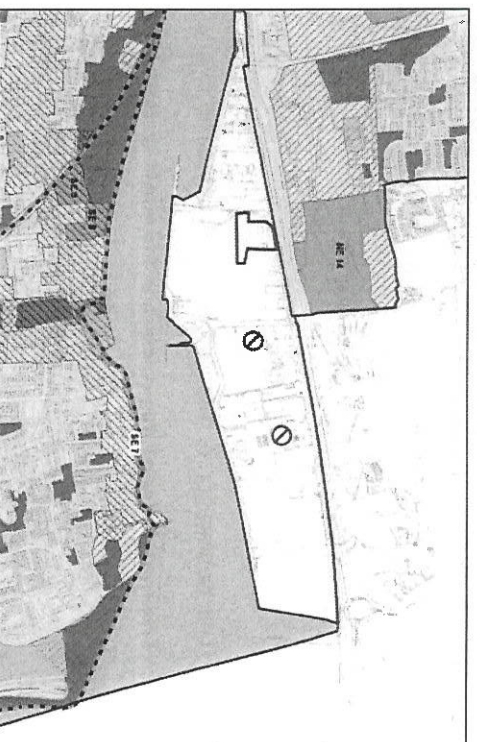


Fig. 2 Extract from the Cork City Development Plan 2015-2021.

The industrial use on this site was first permitted by Cork City Council Ref. No. 73/455/1 for permission for a

The new industrial use being considered... steel... Livoli Docks consists of recovering waste materials to the economy. The proposed industrial use will consist of the processing of these materials to an 'end of waste status' material or product as well as an ancillary storage of materials on the site.

The impetus for the consideration of establishing a Resource Recovery and Recycling Centre is the European Commission's Action Plan on the Circular Economy. The objective of this Action Plan is to chart a way for the European Union's economy to retain the value of products, materials and resources for as long as possible thereby reducing the generation of waste.

The Commission has recognised that it is a pre-condition of a circular economy to ensure that the maximum possible amount of waste generated by economic activities are returned back to the economy and used again. In order to re-introduce these materials into the economy they must achieve an 'end of waste status' under article 28 of the European Communities (Waste Directive) Regulations, 2011, S.I. No. 126 of 2011.

As detailed on the EPA's website:

'Certain specified waste shall cease to be waste when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions:

- *the substance or object is commonly used for specific purposes;*
- *a market or demand exists for such a substance or object*
- *the substance or object fulfills the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and*
- *the use of the substance or object will not lead to overall adverse environmental or human health impacts.'*

This can be achieved by ensuring materials that reach the end of their life cycle are, in so far as is technically feasible, recovered through recycling and ideally reintroduced to the product lifecycle. These "secondary raw materials" can then be traded like "primary raw materials" from traditional extractive resources.

The following outlines the process and materials which can be produced at the Resource Recovery and Recycling Centre. All processing of material will be undertaken within the existing building which will be modified internally to accommodate the processing plant and equipment.

Construction & Demolition (C&D) and Commercial and Industrial (C&I) Waste Materials

The materials will arrive in skips and small tipper trucks and be offloaded inside the building. Large pieces of timber, metal, plastic, cardboard, etc. will be removed. The remaining materials will then be mechanically treated to segregate them into lighter materials (plastic and paper, ferrous and non-ferrous metals (cans), hard plastic and cardboard) and heavy materials (brick, stones, and ceramics).

The processing of the waste materials will produce the following products or articles:

1. Recycled Aggregate - The concrete rubble, brick, stones and ceramics will be crushed to produce recycled aggregate. This product will meet end of waste status that can be used in the manufacture of concrete products.

Any metals and the recyclable plastic and cardboard will be baled and sent to other authorised treatment plants for further processing.

Plastic Film

Initially the plastic film will be baled and sent to an authorised recycling plants. WRS is assessing the potential to process the film to produce pellets that will replace virgin material in the manufacture of new plastic materials. The aim will be to produce another 'end of waste status' article subject to approval by the EPA.

Household Skip Waste

The skip waste is predominantly from household clearances and renovations and does not contain organic/food waste. The skips will be inspected by the drivers when being collected and the householder requested to remove any unsuitable wastes, e.g. black bin bags, paint tins etc.

On arrival the skip will be inspected and off-loaded in a designated area. Any unsuitable materials will be removed to a quarantine area. Recyclables such as timber, metal, plastic and cardboard will be separated and directed to the C&D and C&I processing lines where similarly they will be used to produce Recycled Aggregate, SRF, and Biomass Fuel.

The non-recyclable/non-recoverables, which will comprise approximately 5% by weight, will be sent for disposal at an appropriately licenced facility.

Waste Electrical and Electronic Equipment (WEEE)

Initially the WEEE will be stored pending onward consignment to authorised recycling facilities. WRS is assessing the feasibility of processing the items either to salvage base and precious metals, or provide added value.

Relevant Legislation

In order to assess whether the proposal is or is not development and/or is or is not exempted development, regard must be had to the 2000 Planning and Development Act (as amended) and the 2001 Planning and Development Regulations (as amended). The principal provisions of both the Act and the Regulations are outlined below:

Planning and Development Act, 2000 (as amended)

Section 2 of the 2000 Planning and Development Act (PDA), defines a "Structure" as:

"Any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and-

- (a) Where the context so admits, includes the land on, in or under which the structure is situate, and*
- (b) In relation to a protected structure or proposed protected structure, includes:*
 - i. The interior of the structure*

other land'

Section 4 of the Act refers to "exempted development" and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act, including subsection (1)(h) which includes:

"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".

Section 4 (1)(h) of the Act makes it clear that works which affect only the interior of the structure or which do not materially affect the external appearance of the structure will be considered exempted development.

Section 4(2) of the Act provides for the making of regulations. The provisions from the planning and Development Regulations (2001) most relevant to this declaration are set out below:

Planning and Development Regulations, 2001 (as amended)

Under Article 5(1) of the regulations (as amended by Article 3 of S.I. No.364 of the Planning and Development Regulations 2005) an "industrial building" is defined as:

"a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process";

Article 5(1) of the regulations defines "industrial process" as:

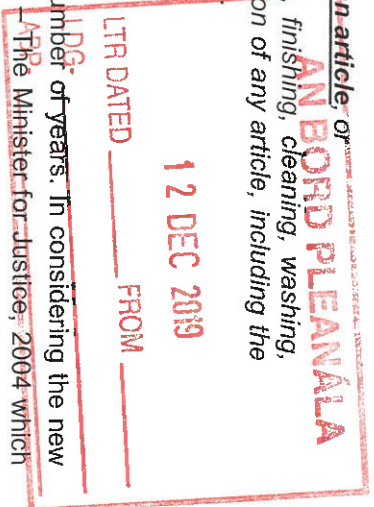
"any process which is carried on in the course of trade or business, other than agriculture, and which is-

- (a) for or incidental to the making of any article or part of an article; or*
- (b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals" (emphasis added).*

Case Law

We acknowledge that the TATA Steel site has been inactive for a number of years. In considering the new industrial use of the site we refer the Council to Molloy & Others – v – The Minister for Justice, 2004 which specifically addresses the validity of a planning permission when a use has ceased for a period of time.

The Molloy Case (Molloy & Others v The Minister for Justice, 2004) found that in circumstances where a planning permission is capable of being implemented and there has been no material structural alteration to the land or property, which would render the planning permission incapable of being implemented, a valid planning permission cannot be lost or abandoned. So, for example, in a situation where a planning permission was granted for an industrial use but that use ceased for a period having been implemented, the industrial use can be reawakened if there has been no material structural alteration to the premises.



complaint raised by any adjoining interested party in respect of the material unauthorised change of use and no enforcement action has been taken by the appropriate Planning Authority, where in circumstances that the original planning permission is capable of being implemented and by this concept I mean where there has been no material structural alteration to the land or property which would render the original planning permission for use incapable of being implemented, I hold that the original valid planning permission cannot be lost or abandoned."

The Molloy case is particularly relevant in this instance as the development has always been used for industrial purposes as granted by Ref No.'s 73/4551 and 77/6677. There has also been no material or structural alteration to the land or property which would render any original permission incapable of being implemented. Therefore the industrial and ancillary uses permitted by Cork City Council under Ref No.'s 73/4551 and 77/6677 have not been lost or abandoned and remain in effect.

Assessment

In this case, our clients request a declaration in accordance with Section 5 of the Planning and Development Act 2000, confirming that the use of an existing industrial site and buildings at Tivoli, Cork for a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development and / or does not constitute a material change of use and does not therefore require planning permission as:

- **There is a permitted and long-established industrial use on the site**

The use of our clients' site in Tivoli for industrial use has been established since the 1970's. The industrial use was first permitted under Council Ref. No. 73/4551 for permission for a steel stock depot / office. This industrial use was then extended under Ref. No. 77/6677 when permission was granted for an additional covered area. As the permitted industrial uses have been established since the 1970's, there is an authorised and long-established industrial use on site.

The permitted use remains in effect and has not been abandoned.

- **The use of the premises for manufacturing and ancillary storage falls within the definition of an industrial process and therefore is not development and does not constitute a material change of use and does not therefore require planning permission**

Article 5(1) of the 2001 Planning and Development Regulations defines an "industrial building" as "a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any "**industrial process**", while "industrial process" is defined in the Regulations as:

"any process which is carried on in the course of trade or business, other than agriculture, and which is:

*(a) for or incidental to **the making of any article or part of an article**, or*

(b) for or incidental to the altering, repairing, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article, including the getting, dressing or treatment of minerals".

3. Biomass Fuel – The breaking up of suitable timber will be shredded to produce a woodchip that can be used as a biomass fuel complies with the definition of industrial process.

In considering the definition of industrial process, we consider that the each of the articles resulting from the processing of the waste material adheres to the definition of an industrial process.

Conclusion

With regard to the planning history, provisions of the 2001 Planning and Development Regulations and the case law cited in this submission, it is our opinion that the use of the existing industrial site for the Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development as it does not constitute a material change of use.

In accordance with the Council's requirements for Section 5 declarations please find enclosed:

1. This cover letter which includes the applicant's name and address; the location of development; and the nature of development;
2. Letter of Consent from the Port of Cork;
3. The correspondence address which is: McCutcheon Halley Chartered Planning Consultants, 6 Joyce House, Barrack Square, Ballincollig, Co. Cork;
4. Ordnance Survey Site Location Maps, Site Plan, Floor Plans and Elevations;
5. Copy of planning permissions granted under Council Ref. No. 73/4551 and Ref. No. 77/6677;
6. The appropriate referral fee of €80.00.

Please do not hesitate to contact us should you require any further information.

Yours sincerely



Susan R. Cullen
McCutcheon Halley

AN BORD PLEANÁLA	
22 NOV 2019	
LTR DATED _____	FROM _____
LDG- _____	
ABP. _____	

AN BORD PLEANÁLA	
12 DEC 2019	
LTR DATED _____	FROM _____
LDG- _____	

SECTION 5 DECLARATION APPLICATION FORM
(under Section 5 of the Planning & Development Acts 2000 (as amended))

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

Tata Steel, Tivoli, Cork

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Confirmation that the use of an existing industrial site and buildings for a Resource Recovery and Recycling Centre (RRRC) and ancillary storage is not development.

12 DEC 2019
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

AN BORD PLEANNÁLA

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:
(Use additional sheets if required).

See attached cover letter

(b) If a domestic extension, have any previous extensions/structures been erected at this location after 1st October, 1964, (including those for which planning permission has been obtained)?

Yes No

If Yes, please provide floor areas. (sq m)

3,488 sqm

(c) If concerning a change of use of land and / or building(s), please state the following:

Existing/ previous use (please circle) N/A Proposed/existing use (please circle) N/A

4. APPLICANT/ CONTACT DETAILS

Name of applicant (principal, not agent):

Waste Recovery Services

LTR DATED 22 NOV 2019 FROM LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

LDG-

Person/Agent acting on behalf of the Applicant (if any):

Name: Susan Cullen

Address: *McCutcheon Halley*
6 Joyce House
Barrack Square
Ballincollig
Cork

Telephone: 021 4208710

Fax: N/A

E-mail address: *scullen@mhplanning.ie*

AN BORD PLEANNÁLA

LTR DATED 12 DEC 2019 FROM LDG-

LTR DATED LDG- FROM LDG-

LTR DATED LDG- FROM LDG-

LTR DATED LDG- FROM LDG-

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

5. LEGAL INTEREST

Please tick appropriate box to show applicant's legal interest in the land or structure

Where legal interest is 'Other', please state your interest in the land/structure in question

If you are not the owner...

A. Owner

B. Other

X

See attached letter of consent from Port of Cork

Date: 11/10/2019

LTR DATED	FROM
LDG-	
ADP-	

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1,000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Strategic Planning & Economic Development
 Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

AN BORD PLEANÁLA

