

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

20 March 2020

<b>AN BORD PLEANÁLA</b>	
LDG-	_____
ABP-	_____
<b>24 MAR 2020</b>	
Fee: € <u>220</u>	Type: <u>Cheque</u>
Time: <u>8.44</u>	By: <u>Post</u>

**Re: Referral under Section 5 of the Planning and Development Act, 2000 (as amended) of the Declaration issued by Cork City Council on 11<sup>th</sup> March 2020 under Planning Ref. No. R559/19.**

Dear Sir/Madam,

We act for Brian and Clare McCutcheon of 9, Rossbrook, Model Farm Road, Cork and hereby refer to An Bord Pleanála the Declaration issued by Cork City Council on 11<sup>th</sup> March 2020 under Planning Ref. No. R559/19.

We attach:

- (a) the request for the Declaration (Appendix 1);
- (b) the Declaration issued by the Planning Authority (Appendix 2);
- (c) the Planner's Report on which the Declaration is based (Appendix 3)
- (d) the letter issued by Cork City Council to Council tenants on 8<sup>th</sup> November 2019 (Appendix 4).

We also enclose the statutory fee of €220.

### The Question on which the Declaration was Sought

The question on which the Declaration was sought from Cork City Council was:

*"whether the provision by SIRO of an overhead rather than underground broadband connection to No. 9 Rossbrook would contravene Condition 7 of TP 13908/87 and would not be exempted development under Article 9(1)(a)(i) of the Planning Regulations".*

The Planner's Report chose to reword the request as:

*"whether the provision of an overhead broadband connection to No. 9 Rossbrook is or is not development and is or is not exempted development".*

No reasons or considerations were given for the rewording. In our opinion, the request, as reworded by the Planning Authority, failed to adequately consider:



- (a) whether SIRO is deemed to be a statutory undertaker for the purpose of the Planning Regulations;
- (b) the fact that SIRO has the option of providing either an overground or an underground service having regard to the existing network of telecommunications ducts serving Rossbrook housing estate and the company policy set out on the SIRO website;
- (c) the mandatory nature of Condition 7 of TP 13908/87 in the context of Article 9(1)(a)(i) of the Planning Regulations.

We therefore ask the Board to respond to the wording of the question on which the Declaration was sought.

### The Status of Siro as a Statutory Undertaker

The Planning Authority's declaration is based on Class 31 of Part 1 of Schedule 2 of the Planning Regulations. Class 31 only applies to the carrying out of works by a "statutory undertaker authorised to provide a telecommunications service". We assumed for the purpose of our request to the Planning Authority that SIRO is generally acknowledged by the planning authorities and An Bord Pleanála to be an authorised statutory undertaker for the provision of broadband services. We therefore request that the Declaration issued by the Board explicitly refers to the works being carried out by a statutory undertaker.

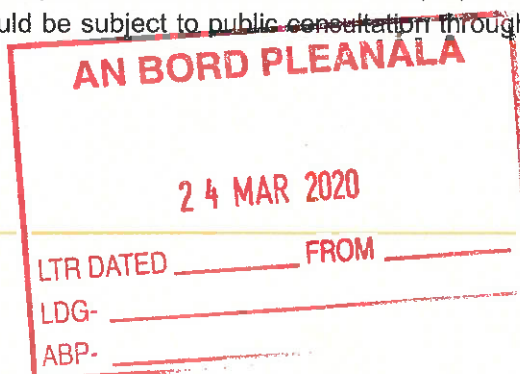
### The Option of providing an Underground or an Overground Telecommunications Service

The Planner's Report refers to the connection policy set out on the SIRO website which states that:

*"SIRO fibre-optic cables are laid alongside the existing electrical line into each home. If the electrical line is overhead, the fibre is strung just underneath it. Where the electrical line is underground, fibre is laid alongside it in the duct. In some instances, civil works may be required in the area in order to survey and gain access to underground ducts or electricity infrastructure. Any work is scheduled carefully to minimise disturbance. This is how we bring SIRO as far as the mini pillar or pole on your street. Only when you place an order for SIRO will we bring fibre directly into your home through your electrical meter box".*

This seems to imply that, in an established housing estate like Rossbrook where all other telecommunications cables have been laid underground, the normal approach would be for the broadband cable to be laid in the existing underground ducts. When assurance was sought from SIRO representatives that this approach would be adopted in Rossbrook, they provided the letter attached as Appendix 4 as proof that the City Council has no objection to overground connections. It would appear that the Planning Authority has entered into an agreement with SIRO to allow overground connection to be made to the Council's housing stock even where an underground connection is technically feasible and preferable from a planning policy viewpoint.

We would like to emphasise that we are not seeking to prevent an overground connection being used in Rossbrook if that is the only viable way to provide an improved broadband service. The purpose of our request was to ensure that the use of overground lines would be subject to public consultation through the planning application process.



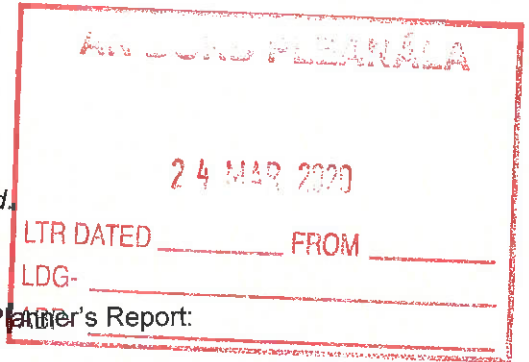


## The Status of Condition 7 of TP 13908/87

Condition 7 of 13908/87 requires that:

*"All E.S.B., P&T and cable TV services shall be laid underground.*

*Reason: In the interests of the amenities of the area."*



The status of Condition 7 of TP 13908/87 is addressed as follows in the Planner's Report:

*"However I note that the condition related to undergrounding of services at the time of building out the housing estate and was complied with at that time. Given the wording of the condition it cannot be said that it was intended to ensure that all future services for the estate would be placed underground (including broadband services which were not available at that time). I note that the condition does not state that 'All future such services shall be laid underground'. Nowadays where specific exemptions do exist, and it is the intention of the Planning Authority to de-exempt same, such conditions are normally worded as follows:*

*'No development normally considered exempted development under Class 'x' of the Planning and Development Regulations (or future amendments to same) shall be constructed/erected on site without a prior grant of planning permission'."*

In summary, the Planner's Report claims that Condition 7 only referred to the services which the developer directly installed at the construction stage and does not apply to the subsequent installation of broadband services by SIRO. It is also implied that the exempted status of an overground broadband connection could only be removed if Condition 7 included a specific reference to Class 31. In our opinion the position adopted by the Planning Authority is legally incorrect for the following reasons and considerations:

### Reasons and Considerations

The purpose of Condition 7 was to ensure that **all** telecommunications **services**, which are provided within the Rossbrook estate, are laid underground and the restriction therefore applies to the installation of broadband services by SIRO. It is not permissible to interpret the term "all services" to mean "some of the services" i.e. the services which were delivered directly by the developer during the construction period. The term "all services" must therefore include "future services" as well as "existing services".

The scheme as permitted by the Planning Authority, required the developer to provide the service **infrastructure** with the actual **services** being provided by the relevant statutory undertaker. In the case of telecommunications, the developer proposed to install the underground ducts which would later be used by the various statutory undertakers to provide phone, television and internet services. Condition 7 was therefore imposed to ensure that any statutory undertakers providing services within the estate would be compelled to use the ducts which were installed by the developer. This interpretation is consistent with the actual history of development on the site. When Brian and Clare McCutcheon moved into No. 9 Rossbrook in May 1989, there was no cable television service and the residents used aerials and satellite dishes until such time as a suitable cable service was offered. This was subsequently installed by Cork Multichannel using the ducts which had already been provided by the developer.

It has been established in case law that the interpretation of a condition should have regard to the reason stated for the imposition of the condition. In this case the services were required to be laid underground "in the interests of the amenities of the area". It is unreasonable to suggest that protection of the amenities



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required the services provided by the developer to be laid underground but there would be no adverse impact on the same amenities if overground services were provided at a later date by a statutory undertaker.

The Planner's Report also implies that Condition 7 cannot refer to broadband services which were not available at the time the permission was granted. However, there is no planning reason to distinguish between the provision of phone, television, internet and broadband services as they can all be provided by the same statutory undertaker using a single fibre optic cable.

It is further implied that the wording of Condition 7 is obsolete and unenforceable in the current case and that works proposed under Class 31 may only be de-exempted if there is explicit reference to that class in the relevant planning condition. We assume that the Council is referring to the wording recently used in Condition 15 of the permission granted by the Board under ABP-303454-19 which requires that:

*"Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of any of the proposed dwelling houses without a prior grant of planning permission.*

*Reason: In order to afford the Planning Authority the opportunity to control such development in the interest of visual amenity".*

In the first place we reject the suggestion that the wording used in Condition 7 of 13908/87 is no longer fit for purpose. When permission was granted on 22<sup>nd</sup> April 2016 under TP 15/36564 for the recently constructed housing estate to the north of the subject site, Condition 5 of the permission required that:

*"All services and cables associated with the proposed development (such as electrical, television, telephone, broadband and public lighting cables) shall be run underground within the site.*

*Reason: In the interests of visual amenity".*

The same wording was used in Condition 4 of 17/37565 which was permitted by Cork City Council on 13<sup>th</sup> March 2018, i.e. after the amendment to Class 31 was adopted by the Minister on 8<sup>th</sup> day of February 2018.

This means that there are two options for excluding exempted development by planning condition. The following examples demonstrate that the question as to which option should be used will depend on the planning context and the nature of the exempted development.

- (a) The wording used in Condition 15 of ABP-303454-19 reflects the fact that the purpose was not to permanently exclude domestic extensions or garden sheds but to impose greater control through the planning application process than would otherwise be available if the works were carried out under as exempted development under Classes 1 and 3.
- (b) The wording used for Condition 7 of TP 13908/87, Condition 5 of TP 15/36564 and Condition 4 of 17/37565 reflects the fact that the Planning Authority has consistently sought to exclude the use of overground cables in the interests of the visually amenities of the area.

In the case of option (a) the exemption is removed by the condition itself, but it is also implied that permission may be granted if a suitable application is made. In the case of option (b) the exemption is removed by Article 9(1)(a)(i) rather than by the condition and there is no indication that permission might be granted for the works. Both options are equally valid from a legal viewpoint and both have the effect of removing the exempted status of the works in question.





## Conclusion

Article 9(1)(a)(i) of the Planning Regulations applies to any exemption under Article 6 which would contravene a condition attached to a planning permission.

In this case, Condition 7 of TP 13908/87 is mandatory rather than discretionary as it requires **all** services to be laid underground. There is no legal defect in the wording of the condition and there is no provision for any agreement between a statutory undertaker and the planning authority to allow some of the services to be overground.

The fact that a similar condition was imposed in the recent permission for the adjoining housing estate undermines the Planning Authority's position.

In our opinion the Board does not have the discretion which the Planning Authority sought to exercise in this case. The Board is therefore obliged by Article 9(1)(a)(i) to conclude that the provision by SIRO of an overground broadband connection to 9 Rossbrook, Model Farm Road, Cork would contravene Condition 7 of TP 13908/87 and is therefore development and is not exempted development.

Yours sincerely,

*Brian McCutcheon*  
McCutcheon Halley



## Appendices

1. The request for the Declaration
2. The Declaration issued by the Planning Authority
3. The Planner's Report on which the Declaration is based
4. The letter issued by Cork City Council to Council tenants on 8th November 2019.



## Appendix 1: The Request for the Declaration



The Secretary  
Planning Department  
Cork City Council  
City Hall  
Cork

13 December 2019



**Re: Request for Declaration under Section 5 of the Planning and Development Act 2000 (as amended)**

Dear Sir/Madam,

This request for a Declaration under Section 5 is made on behalf of Brian and Clare McCutcheon in regard to overhead telecom lines which are proposed to be provided within the boundary of their property at 9, Rossbrook, Model Farm Road, Cork. The boundary of the property is outlined in red on the attached site location map and layout plan. We attach the statutory fee of €80.00.

The residents at Rossbrook have recently been offered a new fibre optic broadband service by SIRO and have been requested to provide their consent to the routing of overhead lines through their property even if they do not intend to avail of the service themselves.

The works which would be carried out to provide this service are shown on the attached elevational drawing and involve:

- (i) stringing an overhead fibre optic cable between the high points of the ridges of the adjoining houses;
- (ii) bringing the cable down along the gable fascia, across the front elevation below the eaves line and then back up along the fascia of the other gable to the high point of the ridge, and then
- (iii) crossing to the next house in the row.

A connection box would be provided on the front elevation for any house availing of the service.

The provision of the overhead fibre optic cable involves works which would have a perceptible visual impact on the property through which they are routed. The question on which the Declaration is sought is whether the proposed works are, or are not, development and are, or are not, exempted development.

SIRO was launched in 2015 as a joint venture company between ESB and Vodafone with the objective to deliver a broadband network with speeds of 1 Gigabit per second. We therefore assume that, for the purpose of Article 6 the Planning and Development Regulations 2001 (as amended), SIRO Ltd. is "a statutory undertaker authorised to provide a telecommunications service".

[www.mhplanning.ie](http://www.mhplanning.ie)

McCutcheon Halley is a limited partnership registered under the Limited Partnerships Act, 1907, registration no. 1P512. Registered in Ireland No. 326490. Registered office: 6 Joyce House, Barrack Square, Ballincollig, Co. Cork. Directors: Brian McCutcheon, BA(Econ) DipTP DigGIS MIPi (Chairman), Tom Halley, BA(Mod), MRUP BSc ARCH(Hons) Cert. Civil Eng. MIPi.

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Class 31 of Part 1 of Schedule 2 of the Regulations exempts the following works by a statutory undertaker:

- (a) *underground telecommunications structures or other underground telecommunications works (including the laying of mains and cables and the installation underground of any apparatus or equipment),*
- (b) *overhead telecommunications including the erection of poles or other support structures or the use of existing poles or other support structures,*
- (bb) *The attachment to a pole or other support structure referred to in paragraph (b) above of any bracket, clamp or other fixture required for the carrying or support of any cable (including fibre optic cable), wire, tube, pipe, duct or similar thing, or required for the carrying or support of any device containing any such cable, wire, tube, pipe, duct or similar thing, and the attachment to such fixture of—*
  - (i) *any cable (including fibre optic cable), wire, tube, pipe, duct or similar thing (including its casing or coating) or any device containing any of the foregoing,*
  - (ii) *any other equipment or apparatus used for telecommunications purposes, which is exempted development for the purposes of Article 6 and this Class,*
- (bbb) *the attachment to any cable (including fibre optic cable), wire, tube, pipe, duct or similar thing of any device containing any such cable, wire, tube, pipe, duct or similar thing,*

The conditions and limitations attached to Class 31 restrict the height of any support structure to 12 metres. As the Rossbrook houses have ridge heights of c.8 metres, the attachment of the fibre optic cable to the ridge fascia and eaves could be considered to be exempt if the houses are deemed to be “other support structures” for the purpose of Class 31(b).

However, the exemptions available under Class 31 are subject to the restrictions on exemption in Article 9(1)(a)(i) of the Regulations which apply to works which would “contravene a condition attached to a permission under the Act”. We attach a copy of the governing permission for the Rossbrook housing development which was granted under Planning Register Ref. No. TP 13908/87. The grant of permission is subject to Condition 7 which specifies that “all E.S.B. P&T and Cable T.V. services shall be laid underground... in the interests of the amenities of the area”.

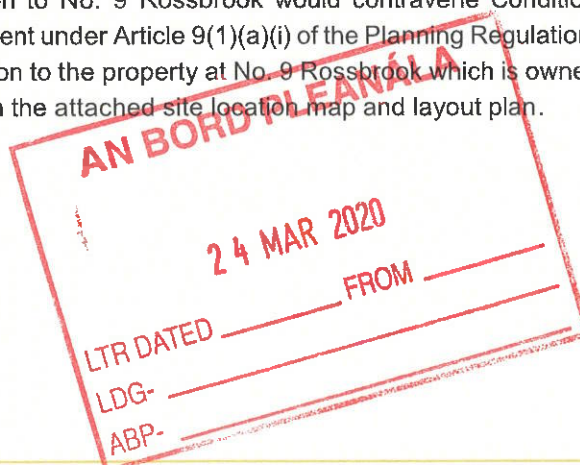
In our opinion, the exemptions for overhead lines which might normally be available to SIRO under Class 31(b) are not available in Rossbrook due to the attachment of Condition 7 to the governing permission under TP 13908/87. Any new broadband service should therefore be provided underground in accordance with Class 31(a) using the ducting which was provided by the developer for that purpose.

We therefore request a formal Declaration under Section 5(2)(a) that the provision by SIRO of an overhead rather than underground broadband connection to No. 9 Rossbrook would contravene Condition 7 of TP 13908/87 and would not be exempted development under Article 9(1)(a)(i) of the Planning Regulations. Please note that this Declaration is only sought in relation to the property at No. 9 Rossbrook which is owned by Brian and Clare McCutcheon and is outlined in red on the attached site location map and layout plan.

Yours sincerely,

*Brian McCutcheon*

Brian McCutcheon







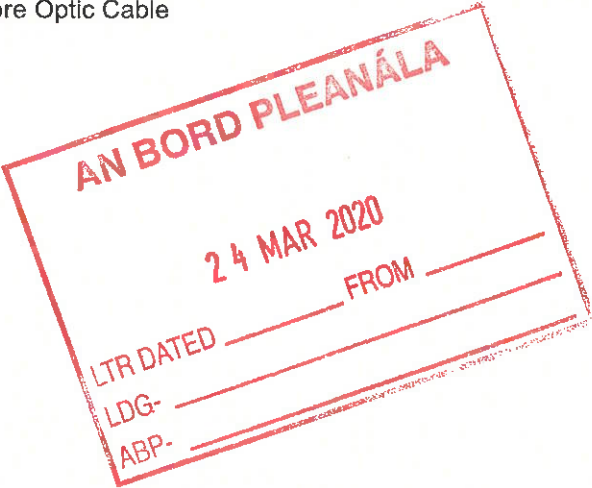
**Attachments:**

Site Location Map

Site Layout Plan

Elevational View of Proposed Overhead Fibre Optic Cable

Copy of Planning Permission TP 13908/87









BARDAS CHORCAÍ - CORK CORPORATION  
LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS 1963 to 1983

NOTIFICATION OF DECISION TO GRANT

OUTLINE PERMISSION / PERMISSION / APPROVAL

SUBJECT TO / ~~WITHOUT~~ CONDITIONS UNDER SECTION 26 OF THE ACT OF 1963

To: O'Flynn Construction Co., Ltd.,  
c/o Tony Dennehy,  
7, Woodlands,  
Cloghroe, Co. Cork

Reference No. in Planning Register T.P. 13,908/87  
1/9/87. F.I. Req. on 27.10.87  
Fthr. info. rec. on 4.1.88,  
18.1.88, 5.2.88 and 17.2.88  
Application Received:

In pursuance of the powers conferred upon them by the above-mentioned Act, the Cork Corporation have by order dated 15/88 decided to grant

OUTLINE PERMISSION / PERMISSION / APPROVAL

for the development of land, namely:-

Erection of 91 dwelling units upon a 19 acre site at Cloverfield, Model Farm Road, Cork.  
In accordance with plans and particulars submitted on 1/9/87. F.I. Req. on 27.10.87  
Fthr. info. rec. on 4.1.88, 18.1.88, 5.2.88 and 17.2.88

Subject to the conditions set out in Column 1 of attached Schedule, the reasons for the imposition of such conditions are set out in Column 2 of said Schedule.

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

OUTLINE 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 An Bórd Pleanála (see footnote).

AN BORD PLEANÁLA  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
MAR 20 1988

It should be noted that until a grant of

OUTLINE PERMISSION / PERMISSION / APPROVAL

has been issued the development in question is NOT AUTHORISED.

N.B.-This permission is subject to

18 No. condition(s)

Date: 15/88

Signed on behalf of the Corporation of Cork

*[Signature]*  
Acting Staff Officer, Planning Department

NOTE 1: An appeal against a decision of a planning authority under Section 26 of the Act of 1963 may be made to An Bórd Pleanála. An appeal shall be made in writing and shall state the subject matter of the appeal and the grounds of the appeal. An appeal by the applicant for permission should be accompanied by this form. In the case of an appeal by any other person, the name of the applicant, particulars of the proposed development and the date of the decision of the planning authority should be stated.

A fee of 20 must accompany each appeal to An Bórd Pleanála. Submission Fee £ 10

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

Appeals should be addressed to: An Bórd Pleanála, Floor 3, Block VI and VII, Irish Life Centre, Lr. Abbey Street, Dublin 1.

NOTE 2: Grant of permission under the Local Government (Planning & Development) Act, 1963, is not to be taken as a waiver of the provisions of any Building Bye-Law, Local Act, Order, Regulation or any other Statutory Provision in force in the Cork County Borough. Approval under the Corporation's Bye-Laws should also be obtained in addition to the Planning Permission.



# Bardas Chorcai Cork Corporation



CITY HALL  
CORK  
Tel.021-966222/966017

**AN BORD PLEANÁLA**  
  
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**24 MAR 2020**  
  
 LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
 Ref \_\_\_\_\_  
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Schedule of Conditions attached to  
Planning Permission issued by the Cork  
Corporation - Ref. T.P. 13,908/87

Column 1. CONDITIONS

1. Development shall be in accordance with revised layout MFR 08 received by the Planning Authority on 5/2/1988 subject to planning conditions contained in this permission.
2. One unit shall be omitted from each of the following rows of dwellings indicated on revised layout MFR 08 received by the Planning Authority on 5/2/1988 :-  
Row 68 - 77, Row 33-43, and Row 56-63.
3. The following screening details shall apply:-
  - (a) - a 2 metre high wall, capped and dashed, shall be erected along the rear boundaries of all rear gardens of area less than 80 sq. metres.
  - (b) - a 2 metre high wall, capped and dashed, shall be erected along the back boundary of all rear gardens 12-15, 44-49, and to the side of gardens 37/38 as per revised layout map MFR 08.
  - (c) - a 1 metre high wall, capped and dashed shall be erected to the front of all dwellings.
  - (d) - boundary walls, capped and dashed, shall be erected where any dwelling curtilage adjoins a public road.

Column 2. REASONS FOR CONDITIONS

1. In the interests of the proper planning and development of the area.
2. In order to achieve minimum rear garden sizes in accordance with Appendix 1.2 of the 1985 City Plan Review.
3. In the interests of the residential and visual amenities of the area.
4. In the interests of the visual amenities of the area.
5. In the interests of orderly development.

4. During construction, no excavation or land-fill shall take place in close proximity to the existing hedgerows to the west and south of the housing so as to endanger their retention. These hedgerows shall be fenced off and protected during construction.

5. A phasing arrangement for the proposed development shall be agreed with the Planning Authority.





# Bardas Choreai Cork Corporation



CITY HALL  
CORK

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AN BORD PLEANÁLA

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T.P. 13,908/87

Column 1. CONDITIONS

Column 2. REASONS FOR CONDITIONS

6. Open space to serve the development shall be in accordance with layout MFR 15 received by the Planning Authority on 1.9.87. In connection with same, the following particulars shall be agreed with the Planning Authority:-

6. The fields bordering the Curraheen River are zoned as 'An area of restricted development' (for amenity reasons) in the 1985 Cork City Plan. (A connecting footpath is required to provide access for children to the Primary School at Bishopstown Park.)

(a) a landscaping scheme, including provision for planting of the upper slopes so as to provide additional screening of the proposed housing from the Curraheen riverside.

(b) a scheme for screening of proposed pump-house and making good excavated areas which facilitate laying of sewers.

(c) the extension northwards of the Curraheen riverside walk

(d) a footpath linking the housing with the existing riverside walk

(e) proposals regarding use of open space for amenity purposes.

7. All E.S.B., P & T, and Cable T.V. services shall be laid underground.

7. In the interests of the amenities of the area.

8. All cul-de-sacs and house units shall be named and numbered upon completion of development.

8. In the interests of orderly development.

9. Roads layout to service the development shall be in accordance with revised drawings 2319/101/A received by the Planning Authority on 17/2/88 subject to the following modifications:-

9. In the interests of the proper planning and development of the area.

(a) Main access roadway fronting house Nos 11-50 shall be 7.3 metres wide throughout.

(b) Layout shall be revised in the area of house No. 63 to provide uniform road width on the bend opposite house No. 68



# Bardas Chorcaí Cork Corporation



CITY HALL  
CORK

Tel. 021-966222/966017

Ref

T.P. 13,908/87

Column 1. CONDITIONS

Column 2. REASONS FOR CONDITIONS

No. 9. Contd/ .....

(c) Turning heads fronting house No. 27 shall be amended to comply with Foras Forbartha standards, i.e. 13 m x 9 m minimum.

(d) Footpaths shall be provided to front all dwellings in the development.

(e) 6 metre driveways shall be provided to all units. Driveway gradient shall not exceed 1 in 10.

(f) A gully layout shall be submitted and be acceptable to the Planning Authority before development commences - all low points shall have 2 gullies side by side with independent connections.

(g) A public lighting layout conforming to E.S.B. specification shall be submitted and be acceptable to Cork Corporation before development commences.

(h) All works shall comply with the City Engineer's minimum requirements.

(i) Maximum road gradient shall be 2% for the first 7 metres back from edge of Model Farm Road.

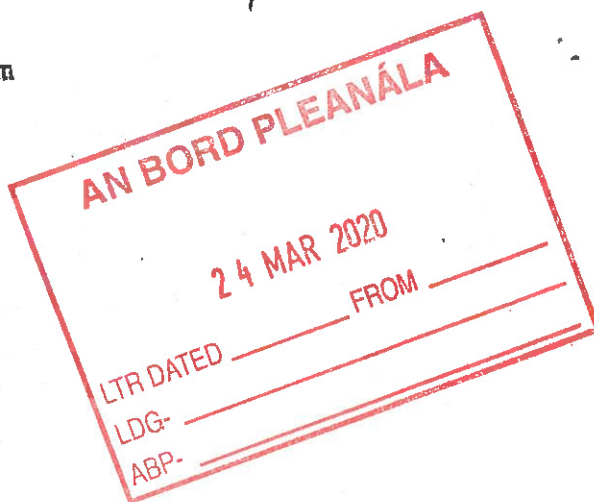
10. On completion of development, 4 sets of 'As Built Drawings' shall be submitted to Cork Corporation.

11. Drainage of site shall be in accordance with the drawings received by the Planning Authority on 1.9.87 and 20.1.88 subject to the following:-

(a) Proposed foul drainage to public sewer in Melbourne Road via Liebert property adjacent shall be a temporary arrangement only unless it can be subsequently shown that the section of the sewer in the Liebert

10. In the interests of the proper planning and development of the area.

11. To ensure the proper drainage of the site.





# Bardas Chorcaí Cork Corporation



CITY HALL  
CORK

Tel.021-966222/966017

Ref

13,908/87

Column 1. CONDITIONS

Column 2. REASONS FOR CONDITIONS

No. 11 Contd/....

(a) Contd/...

property can be taken in charge by Cork Corporation. In the absence of the latter arrangement, foul sewage shall be discharged to proposed Corporation sewer at Inchigaggin when available.

(b) The following drainage details shall be submitted to and agreed with Cork Corporation.

- calculations and design of storm sewers based on the Cork 5 year rainfall curves.

- calculations and design of foul sewers (self-cleansing velocities shall be attained)

- specifications and design calculations of the proposed foul sewer pipes and rising main. An overflow pipe shall be provided from the pumphouse which could be connected to the storm water pipe discharging to Curraheen River.

- drawings showing how it is proposed to construct the discharge points of both storm water pipes to Curraheen River

- layout of house drains:

12. (1) A 150 mm cement mortar lined ductile iron watermain shall be taken from existing 200 mm main on Modal Farm Road and laid along access road to house No. 50 as per Layout Map MFR 08 where it shall terminate in a fire hydrant, sluice valve and blank cap

12. To ensure the adequate supply of water to the site.

AN BORD PLEANÁLA

24 MAR 2020

LTR DATED \_\_\_\_\_

LDG- \_\_\_\_\_

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FROM \_\_\_\_\_



# Bardas Chorcal Cork Corporation



CITY HALL  
CORK  
Tel.021-966222/966017

Ref

T.P. 13,908/87

Column 1. CONDITIONS

Column 2. REASONS FOR CONDITIONS

Cond. 12. Contd/....

(i) Contd/...

Fire hydrants and sluice valves shall be fitted to the 150 mm main to the agreement of the Planning Authority. (The 150 mm main may be required to be increased to 200 mm diameter to facilitate further development to the south of this site - Cork Corporation will pay the difference in cost between laying the 150 mm and 200 mm diameter pipe).

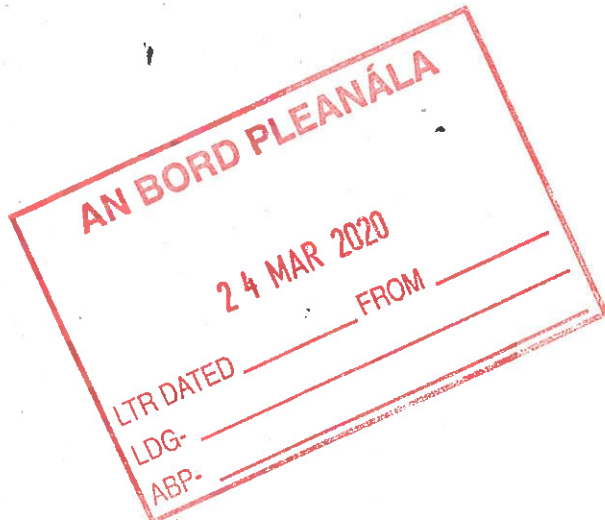
(ii) Each cul-de-sac shall be served by a 100 mm spur main taken from the proposed 150 mm main. Details of same, fire hydrants and sluice valves shall be agreed with the Planning Authority.

(iii) Each dwelling shall have an individual 12 mm water supply consisting of a 12 mm stub and a 12 mm service shall be taken from the proposed watermain on-site. Each dwelling shall have cold water storage of not less than one days demand subject to a minimum of 230 litres per dwelling. All fittings for each dwelling, except drinking points, shall be fed from storage.

(iv) All work shall conform to Cork Corporation's 'General Specifications for Watermains and Services on new Housing Sites'.

13. Prior to commencement of development the developer shall pay a contribution to Cork Corporation towards the cost of drainage works which facilitate the proposed development. The present value of the contribution is £24,666. The amount payable will be determined by the Consumer Price Index prevailing at the date of payment subject to

13. The Cork Drainage Works will facilitate the proposed development.







# Bardas Chorcaí Cork Corporation



CITY HALL  
CORK

Tel.021-966222/966017

Ref

T.P. 13,908/87

Column 1. CONDITIONS

Column 2. REASONS FOR CONDITIONS

Cond. 13 Contd/...

(a) Where the proposed works are not commenced within seven 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.

(The figure referred to above shall be reduced by £1,500 if the developer lays foul sewer to future Interceptor Sewer No. 5 to agreement of Cork Corporation).

14. Prior to commencement of development, the developer shall pay a contribution to Cork Corporation towards the construction of a new footpath from Rossa Avenue to the site boundary. The present value of the contribution is £4,250. The amount payable will be determined by the Consumer Price Index prevailing at the date of payment subject to:

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

AN BORD PLEANÁLA

24 MAR 2020

LTR DATED \_\_\_\_\_

LDG- \_\_\_\_\_

ABP- \_\_\_\_\_

FROM \_\_\_\_\_

14. The proposed footpath from Rossa Avenue will facilitate the development.





CITY HALL  
CORK  
Tel.021-966222/966017

Ref

T.P. 13,908/87

Column 1. CONDITIONS

Column 2. REASONS FOR CONDITIONS

Cond. 14. Contd/.....

(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.

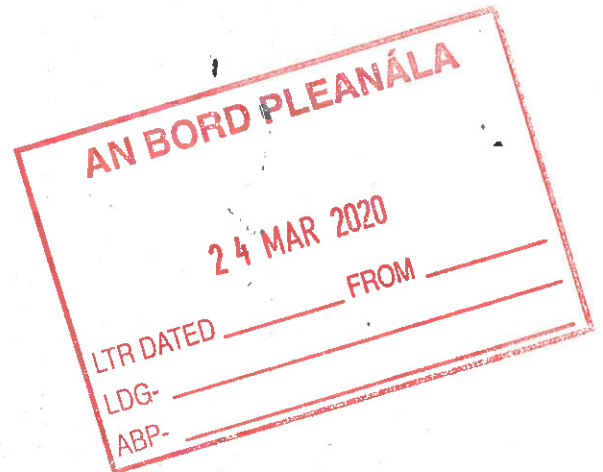
(c) The Planning Authority shall pay interest on the contribution as long as and in so far as it is retained unexpended by the Local Authority.

15. Prior to commencement of development, the developers shall pay a contribution to Cork Corporation towards the provision of a new roundabout on Model Farm Road adjacent to the site. The present value of: the contribution is £10,000. The amount payable will be determined by the Consumer Price Index prevailing at the date of payment subject to:

(a) Where the proposed works are not commenced within seven 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.



15. The proposed roundabout will facilitate the proposed development.

100

THE DATED \_\_\_\_\_  
BY \_\_\_\_\_  
AT \_\_\_\_\_





CITY HALL  
CORK  
Tel.021-966222/966017

Ref

T.P. 13,908/87

Column 1. CONDITIONS

16. Prior to commencement of development the developer shall pay a contribution to Cork Corporation towards the cost of water works which facilitate the proposed development. The present value of the contribution is £13,640. The amount payable will be determined by the Consumer Price Index prevailing at the date of payment.

17. Before the development is commenced, the developer shall lodge with the Planning Authority a bond or such other security as may be accepted by the Planning Authority, in a sum to be determined by Cork Corporation to secure the provision and satisfactory completion and maintenance until taken in charge by the Corporation of sewers, watermains, roads, footpaths, open spaces, public lighting, required in connection with the proposed development. The bond or security shall provide for the adjustment on a 3 monthly basis, in accordance with the Consumer Price Index of the amount of bond as approved by the Corporation.

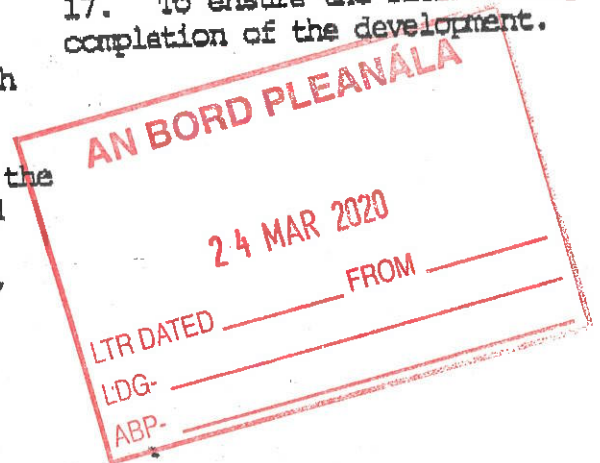
18. Details so as to comply with Conditions 2, 3, 5, 6, 9, 11, 12, 13, 14, 15, 16, 17 of this permission shall be submitted to and agreed with the Planning Authority prior to commencement of development on-site.

19. The main access road shall be upgraded to such standard as to provide for future development of the lands to the south of the development. Details shall be submitted to the Planning Authority before development commences.

Column 2. REASONS FOR CONDITIONS

16. Cork Corporation has laid a new 200 mm main on Model Farm Road which facilitates the proposed development.

17. To ensure the satisfactory completion of the development.

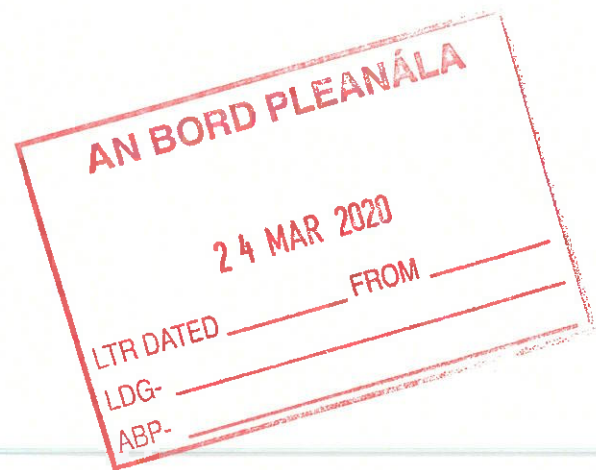


18. In the interests of the proper planning and development of the area.

19. In the interests of the proper planning and development of the area.



Appendix 2: The Declaration issued by the Planning Authority





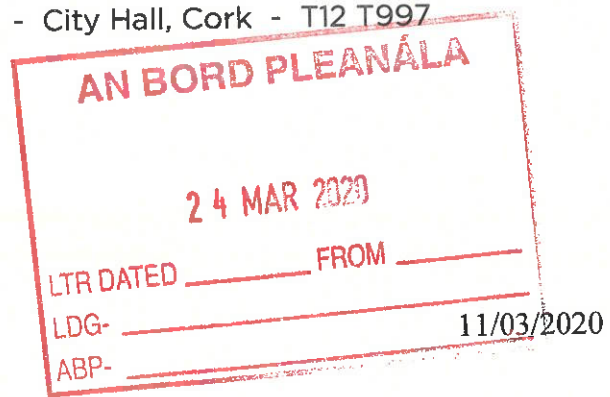




# Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Brian McCutcheon  
9 Rossbrook  
Model Farm Road  
Cork



**RE: Section 5 Declaration R559/20 9 Rossbrook, Model Farm Road, Cork**

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows having regard to:

- The nature of the proposal;
- The definition of works, alteration and development as outlined in Sections 2 and 3(1) of Part 1 the Planning and Development Act 2000 (as amended),
- Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended;
- The wording of Condition 7 attached to 13908/87 and Condition 5 attached to 14678/88 which did not de-exempt the provision of future overground services

it is concluded that the provision of an overground broadband connection to No. 9 Rossbrook, Model Farm Road

'is development' and 'is exempted development'.

Is misa le meas,

**Kerry Bergin**  
Community, Culture and Placemaking Directorate  
Cork City Council



**We are Cork.**



Appendix 3: The Planner's Report on which the Declaration is based

AN BORD PLEANÁLA  
24 MAR 2020  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_



24 MAR 2020

PLANNER'S REPORT Ref. R559/20	LTR DATED	Cork City Council
	LDG-	Development
	ABP-	Management
		Strategic Planning and Economic Development
Application type	Section 5 Declaration	
Location	9 Rossbrook, Model Farm Road	
Applicant	Brian and Clare McCutcheon	
Date	11/03/2020	

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

### 1. REQUIREMENTS FOR A SECTION 5 DECLARATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

*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.*

The requirements for making a section 5 declaration are set out in the Act.

### 2. THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the planning authority, the applicant states in Q2 of the application form: *'whether the provision of an overhead rather than underground broadband connection to No. 9 Rossbrook Model Farm Road would contravene condition No. 7 of T.P. 13908/87 and would therefore be development and would not be exempted development under Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended).'*

This may be reworded as follows:

*'whether the provision of an overground broadband connection to No. 9 Rossbrook, Model Farm Road is or is not development and is or is not exempted development'*.

### 3. SITE DESCRIPTION

The property in question is a detached two storey house situated within the Rossbrook housing estate located off the Model Farm Road.

### 4. PLANNING HISTORY

T.P. 12082/84: Outline permission granted for the erection of houses at Cloverfield, Model Farm Road.

T.P.13908/87: Permission granted for the development of a housing estate at Cloverfield, Model Farm Road.

T.P. 14615/88: Permission granted for modification of house design at site No. 9 Rossbrook, Model Farm Road subject to one condition – *'All conditions of 13,908 in so far as they effect (sic) this application shall apply to this permissions.'*

T.P. 14678/88: Permission granted for a change of house type of permitted units and an extension of the housing area into lands to the rear of Melbourne Business Park (additional units).

## 5. LEGISLATIVE PROVISIONS

### 5.1 The Act

#### Section 2(1),

*"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.*

'alteration'  
includes—

- (a) plastering or painting or the removal of plaster or stucco, or
  - (b) the replacement of a door, window or roof,
- that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;*

#### Section 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.*

*"statutory undertaker" means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—*

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport,
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;

#### 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;*

#### Section 4(2),

*Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.*

24 MAR 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

Section 5(1),  
(See section 1 of this report)

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

## 5.2 The Regulations

CLASS 31 (excluding (a), (c-l))

The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of—

- (b) overhead telecommunications including the erection of poles or other support structures or the use of existing poles or other support structures,
1. Poles or other support structures carrying overhead lines shall not exceed 12 metres in height.
  2. Poles or other support structures carrying other equipment shall not exceed 12 metres in height and 0.6 metres in diameter measured at the widest point, where "other equipment" means 2 transmitting or receiving dishes (the diameter of which shall not exceed 0.6 metres), or 1 panel antenna (the dimensions of which shall not exceed 0.85 metres in length x 0.65 metres in width x 0.2 metres in depth) used for the provision of a specific telecommunications service and the provision of which would otherwise require an additional pole route carrying overhead wires.
  3. Where a pole or poles or other support structures carry radio transmitting or receiving apparatus, the field strength of the non-ionising radiation emissions from that installation shall not exceed the limits specified by the Commission for Communications Regulation.

(bb) The attachment to a pole or other support structure referred to in paragraph (b) above of any bracket, clamp or other fixture required for the carrying or support of any cable (including fibre optic cable), wire, tube, pipe, duct or similar thing, or required for the carrying or support of any device containing any such cable, wire, tube, pipe, duct or similar thing, and the attachment to such fixture of—

The dimensions of any such device should not exceed 0.50 cubic metres measured externally.

(i) any cable (including fibre optic

cable), wire, tube, pipe, duct or similar thing (including its casing or coating) or any device containing any of the foregoing,

(ii) any other equipment or apparatus used for telecommunications purposes, which is exempted development for the purposes of Article 6 and this Class;

(bbb) the attachment to any cable (including fibre optic cable), wire, tube, pipe, duct or similar thing of any device containing any such cable, wire, tube, pipe, duct or similar thing;

The dimensions of any such device should not exceed 0.25 cubic metres measured externally.

#### Article 6. (1)

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.

#### Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

### 6. ASSESSMENT

The proposal involves the stringing an overhead fibre optic cable between No. 9 Rossbrook and two other houses (No. 8 and No. 10) as part of the roll out of a new broadband service by SIRO (a JV company between ESB and Vodaphone). The proposal is described by the applicant (owner of No. 9) in the documentation as follows:

- 'Stringing an overhead fibre optic cable between the high points of the ridges of the adjoining houses;
- Bringing the cable down along the gable fascia, across the front elevation below the eaves line and then back up along the fascia of the other gable to thigh point of the ridge and then crossing to the next house in the row.'

The applicant also states that 'A connection box would be provided on the front elevation for any house availing of the service.' It is not clear as to whether the owners of No. 9 Rossbrook would be availing of the service but I note that the question does not relate to the placement of the connection box but solely to the provision of the cabling. The box also is not shown on the drawings submitted.





I note from the SIRO website that it is stated that *'SIRO fibre-optic cables are laid alongside the existing electrical line into each home. If the electrical line is overhead, the fibre is strung just underneath it. Where the electrical line is underground, fibre is laid alongside it in the duct.'* The application has not been referred to SIRO for comment due to a request to deal with the application by 20.03.2020.

In determining whether or not a proposal/project falls within the remit of the requirement to obtain planning permission under the scope of Planning and Development legislation two tests must be applied:

1. Is development (as defined under the Planning and Development legislation) involved? If the answer is 'No' then the project/proposal falls outside the remit of the requirement to obtain planning permission. If the answer is 'Yes' then it is necessary to proceed to Test 2.
2. Are there any exemptions provided for in the Act or in the Regulations (that are not otherwise de-exempted) that can be availed of in respect of the development?

*'Development'* as defined in the Act (3)(1) comprises two possible chief components: *'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'*. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

*'Works'* is defined in section 2(1) of the Act as *'the carrying out of any works on, in, over, or under land' including '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.'*

a definition of 'alteration' is provided at Section 2 of the Act, as follows;  
*"Alteration" includes –*

- (a) *Plastering or painting or the removal of plaster or stucco, or*
- (b) *The replacement of a door, window or roof,*

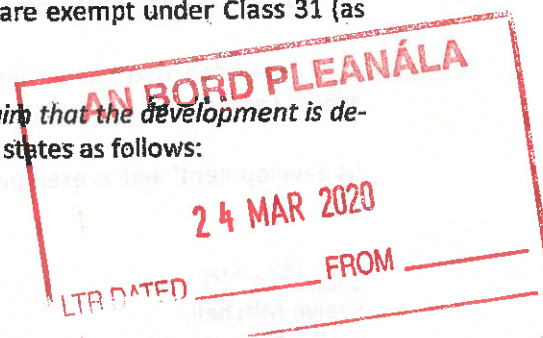
The stringing of fibre optic cabling, could be said to fall under the definition of works and as such constitutes 'development'.

I note Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) under which provision has been made to exempt such cables and fixings (in this case the house is the support structure). I consider therefore that the works are exempt under Class 31 (as outlined above).

I note the applicant is relying on *Article 9 (1) of the Regulations to claim that the development is de-exempted given Condition 7 attached to T.P. 13908/87.* This condition states as follows:

*'All E.S.B., P & T and Cable TV services shall be laid underground.  
Reason: In the interests of the amenities of the area.'*

This condition was also attached to T.P. 14678/88 (Condition 5).



However I note that the condition related to undergrounding of services at the time of building out the housing estate and was complied with at that time. Given the wording of the condition it cannot be said that it was intended to ensure that all future services for the estate would be placed underground (including broadband services which were not available at that time). I note that the condition does not state that 'All future such services shall be laid underground'. Nowadays where specific exemptions do exist and it is the intention of the Planning Authority to de-exempt same such conditions are normally worded as follows:

*No development normally considered exempted development under Class 'X' of the Planning and Development Regulations (or future amendments to same) shall be constructed/erected on site without a prior grant of planning permission.'*

## **7. ENVIRONMENTAL ASSESSMENT**

### **7.1 Screening for Environmental Impact Assessment**

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that an environmental impact statement is not required to be submitted.

### **7.2 Screening for Appropriate Assessment**

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration 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 eSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.


## **8. CONCLUSION & RECOMMENDATION**

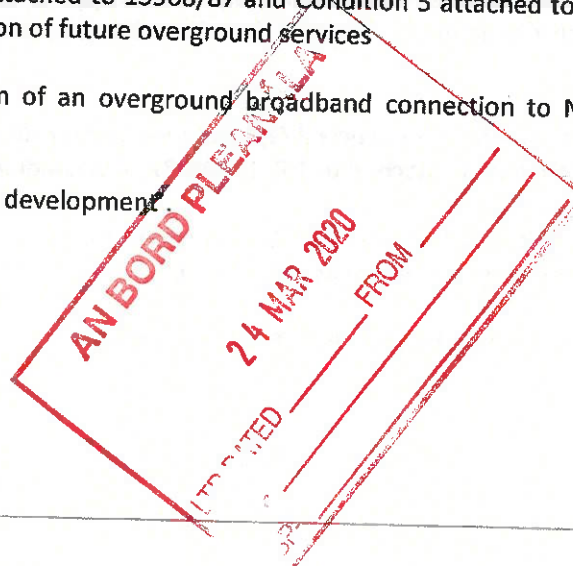
In view of the above and having regard to:

- The nature of the proposal;
- The definition of works, alteration and development as outlined in Sections 2 and 3(1) of Part 1 the Planning and Development Act 2000 (as amended),
- Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended;
- The wording of Condition 7 attached to 13908/87 and Condition 5 attached to 14678/88 which did not de-exempt the provision of future overground services

it is concluded that the provision of an overground broadband connection to No. 9 Rossbrook, Model Farm Road

'is development' and 'is exempted development'.

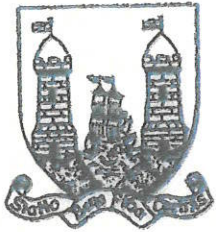
  
Evelyn Mitchell,  
Senior Executive Planner.  
11.03.2020.



Appendix 4: Letter issued by Cork City Council to Council tenants on 8th November 2019

AN BORD PLEANÁLA  
24 MAR 2020  
LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_





# Comhairle Cathrach Chorcaí Cork City Council

Halla na Cathrach, Corcaigh - City Hall, Cork - T12 T997

Friday, 08 November 2019

Cork City Council,  
City Hall,  
Anglesea Street,  
Cork, T12 T997  
Tel: +353 21 4924000

Dear Resident,

I am writing to you about the SIRO broadband installation program for Cork City. SIRO are a joint venture company owned by ESB and Vodafone which is building a 100% Fibre broadband network in Cork.

Cork City Council supports the provision of very high speed broadband for Cork homes and businesses and is working with SIRO to ensure that broadband services are rolled out across the city with minimal disruption to residents.


To deliver the fibre optic cable to homes and businesses SIRO will use the ESB's existing electricity poles and ducts. Where these are not available SIRO will be seeking permission from property owners to install Broadband components on the front and/or rear facades of their properties. This is necessary to connect the various parts of the broadband network.

Following discussions between Cork City Council and SIRO, Cork City Council is satisfied that the components installed will have minimum impact of the front facade of its housing stock. Hence Cork City Council has given permission for SIRO and its contractor Huawei to install the cables and associated components on the external walls of council-owned properties.

The components will be installed with the minimum of disruption to you.

If you have any queries about this you can contact Cork City Council at 4924000 OR email SIRO at [info@siro.ie](mailto:info@siro.ie).

Kind regards

  
Thomas Rogers  
Senior Engineer  
Housing Maintenance Department

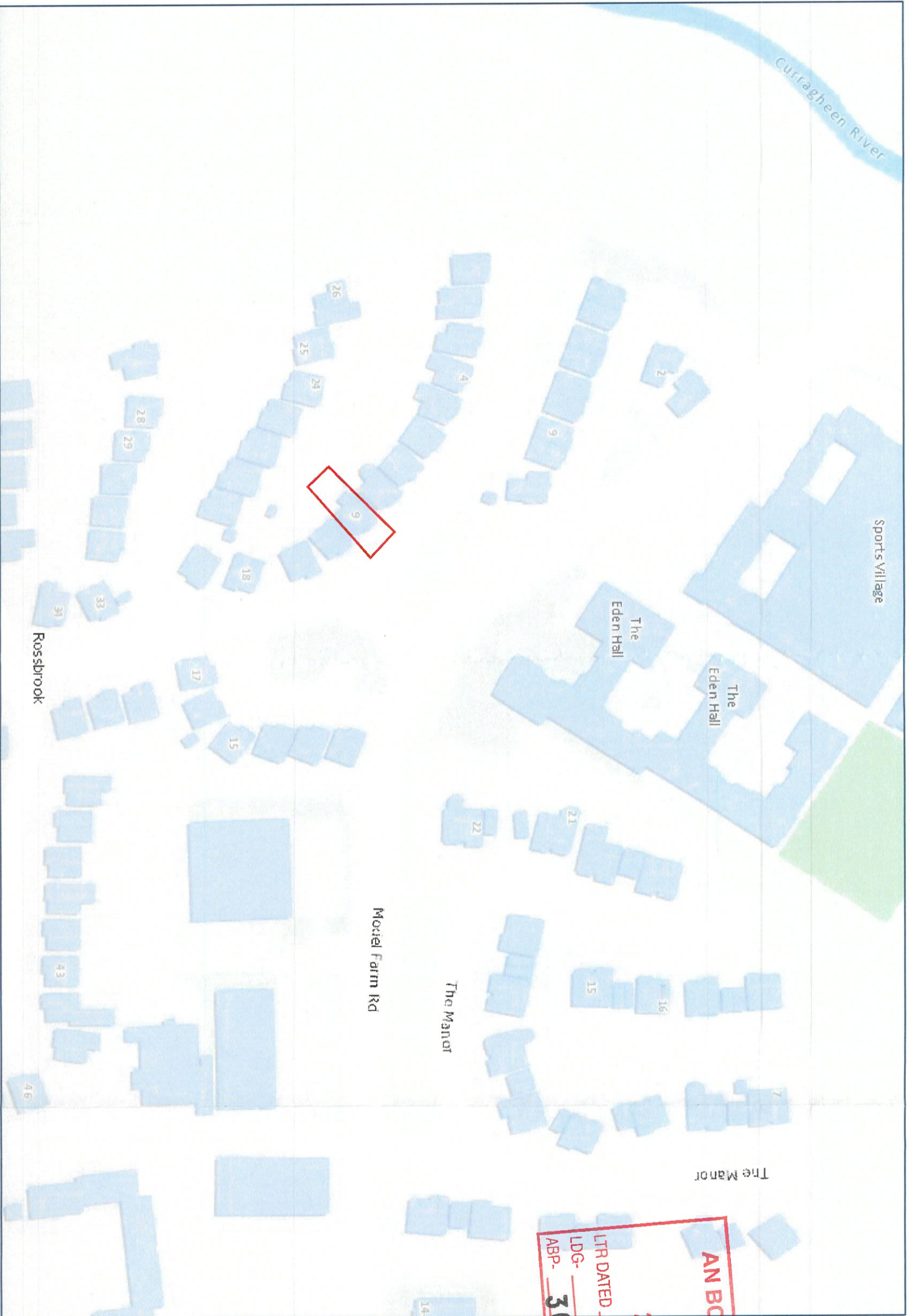


We are Cork.





Site Layout Plan

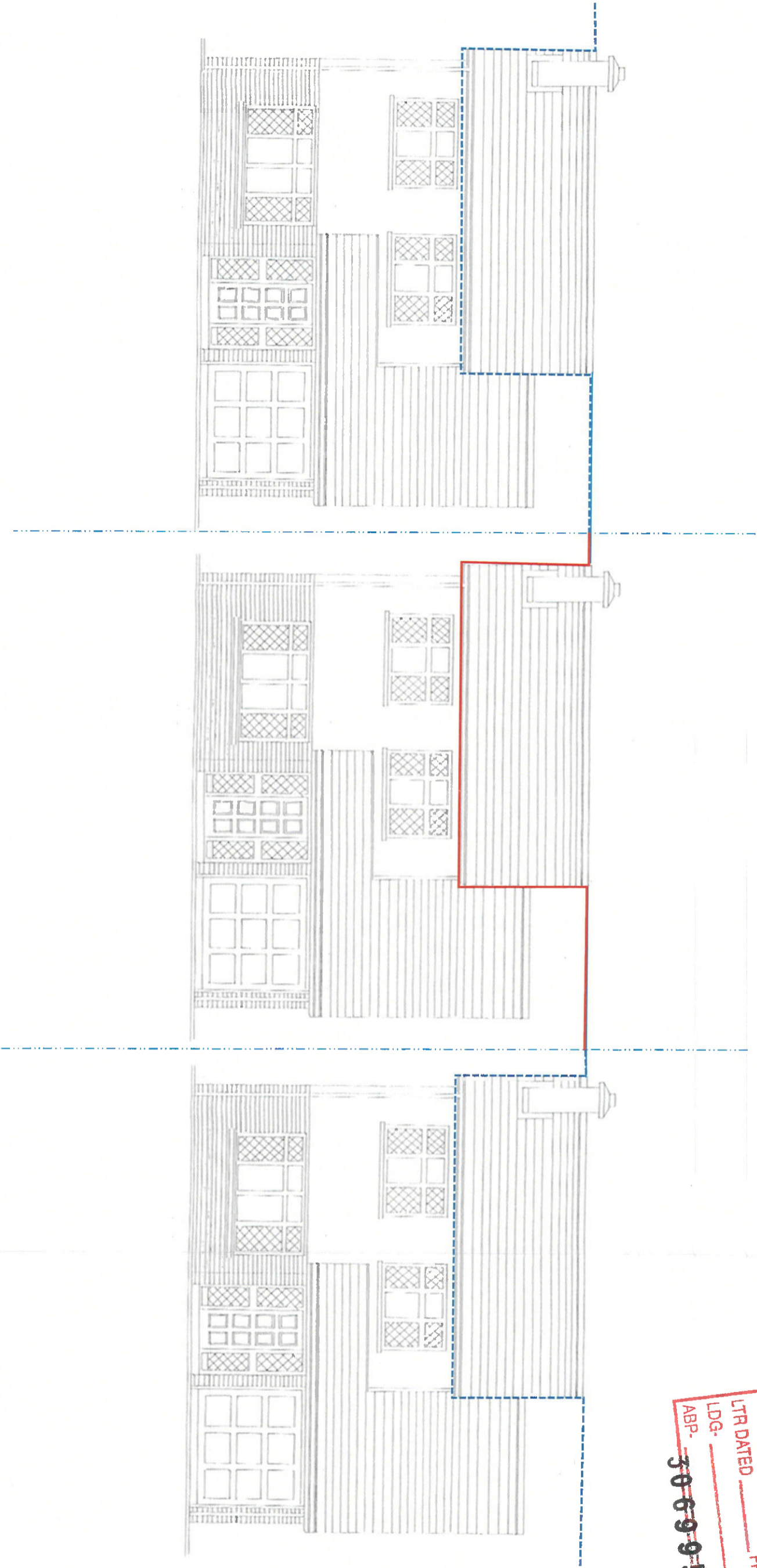


Site Location Map

**AN BORD PLEANÁLA**  
24 MAR 2020  
LTR DATED FROM *supplied*  
LDG- 306995-20  
ABP-



Elevational View of Proposed Overhead Fibre Optic Cable



No. 10 Rossbrook

No 9 Rossbrook

No 8 Rossbrook

AN BORD PLEANÁLA  
24 MAR 2020  
LTR DATED \_\_\_\_\_ FROM *applied*  
LDG- \_\_\_\_\_  
ABP- ~~306995-2~~