

SECTION 131 FORM

Appeal NO: ABP-308254-20

Defer Re O/H

TO: SEO

Having considered the contents of the submission dated/ received 27/10/20

from Friends of the Irish Environment I recommend that section 131 of the Planning and Development Act, 2000 be/ not be invoked at this stage for the following reason(s): No new issues raised.

E.O.: Garry Dorgan

Date: 10/11/20

To EO: _____

Section 131 not to be invoked at this stage.

Section 131 to be invoked - allow 2/4 weeks for reply.

S.E.O.: _____

Date: _____

S.A.O.: _____

Date: _____

M _____

Please prepare BP _____ - Section 131 notice enclosing a copy of the attached submission

to: _____

Allow 2/3/4 weeks - BP _____

EO: _____

Date: _____

AA: _____

Date: _____

File With _____

CORRESPONDENCE FORM

Appeal No: ABP -30 8254-20

M s. McCormack

Please treat correspondence received on 27/10/20 as follows:

1. Update database with new agent for Applicant/Appellant _____	1. RETURN TO SENDER with BP _____
2. Acknowledge with BP <u>RL 20</u>	2. Keep Envelope: <input type="checkbox"/>
3. Keep copy of Board's Letter <input type="checkbox"/>	3. Keep Copy of Board's letter <input type="checkbox"/>

Amendments/Comments

Friends of Irish Environment response to Referral

* The response came in on 27/10/20 and not on 10/11/20 as per date stamp *

4. Attach to file (a) R/S <input type="checkbox"/> (d) Screening <input type="checkbox"/> (b) GIS Processing <input type="checkbox"/> (e) Inspectorate <input checked="" type="checkbox"/> (c) Processing <input type="checkbox"/>	RETURN TO EO <input type="checkbox"/>
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	Plans Date Stamped <input type="checkbox"/>
	Date Stamped Filled in <input type="checkbox"/>
EO: <u>Cathy Rogers</u>	AA: <u>Mark Lawton</u>
Date: <u>10/11/20</u>	Date: <u>11.11.2020</u>

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902
BY HAND

AN BORD PLEANÁLA
LDG- _____
ABP- _____
27 OCT 2020
Fee: € _____ Type: _____
Time: 14:55 By: Hand

AN BORD PLEANÁLA
LDG- _____
ABP- _____
10 NOV 2020
Fee: € _____ Type: _____
By: Post

Case Number: ABP-308254-20

Planning Authority Reference Number: FS5/031/20

Dear Sir/Madam,

Thank you for the opportunity to respond to this appeal lodged by Tetrarch Capital Limited.

Relevance of s.4(1)(h)

In relation to the suggestion that the works concerned are covered by s.4(1)(h) of the Planning and Development Act, we submit that the appeal is in error. The replacement of a structure is not covered by this provision.

If it was the legislature's intention to create in s.4(1)(h) an exemption for replacement structures, it would have done so explicitly. The fact that replacement of a fence is explicitly covered by the exemption provided for in Article 6 of the Regulations (and Schedule 2, Part 1, Class 11) further supports this interpretation - it would not be necessary to exempt the replacement of a fence (subject to a 2m height limit) if all replacement structures were already exempt by virtue of s.4(1)(h).

The Board has considered the meaning of s.4(1)(h) before in ABP-303219-18, in which the Inspector advised:

"The works could not in my view be construed as falling within the definition of "works for the maintenance, improvement or other alteration of any structure" in accordance with Section 4(1)(h) of the Act as they constitute the erection of a new structure."

We note in passing that the consequences for planning would be profound should the Board rule that the replacement of any structure is covered by the exempted development provision in s.4(1)(h).

Even if Tetrarch Capital Ltd.'s interpretation were correct, it would not apply here.

Tetrarch Capital Ltd. states that the fence was erected in c.1973, but does not provide evidence to indicate by whom it was erected or whether it had planning permission. With the pandemic restrictions, we are unable to carry out the necessary planning and property related searches; presumably this is something Tetrarch Capital Ltd. and/or Fingal County Council could do. The question

of the planning status of the previous fence may have a bearing on the question before the Board.

In many locations along the boundary fencing has been absent for many years - the boundary being formed by vegetation. In other places, the fence has been overgrown and provides invisible support for a boundary of brambles, ivy and other native vegetation.

The replacement fence "materially affect[s] the external appearance of the structure" as it (the boundary) has appeared for many decades. For that time period, the boundary has been composed of brambles and ivy and other growth, presenting a pleasant natural boundary to the tramway consistent with its amenity use, with only an occasional fence post visible above or through the vegetation.

Local residents and public representatives had urged Tetrarch Capital Ltd. to respect the amenity use of the tramway and if they wished to replace the fence to do with a hedge of native species consistent with the edge of the other side of the woodland.

Tetrarch Capital Ltd. have accepted (3.1 of their submission) that the erection of the fencing and the installation of a vehicular-sized metal gate constitute development but they have failed to provide information (e.g. before and after documentary photographs or similar) supporting their assertion that they are in fact replacing like with like and that the development might therefore be exempt.

The new vehicular-sized gate "materially affect[s] the external appearance of the structure". Tetrarch Capital Ltd. acknowledge that it is not a replacement. The gate is entirely new and very wide compared to the previous ungated pedestrian-scaled entrance which has existed there for centuries - this access being, in fact, the historical pedestrian route for estate workers to access the village and vice-versa.

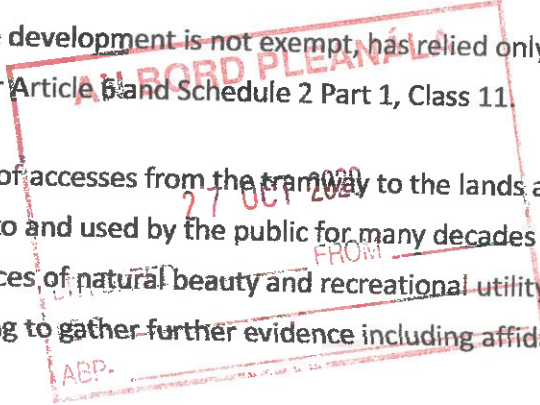
While we welcome Tetrarch's stated concern to facilitate social distancing among members of the public passing into the grounds of Howth Castle / Deer Park along the traditional footpath, we submit that this doesn't form the basis for an exemption from planning.

De-exemption by virtue of Article 9(1)(a)(x), (xi)

Fingal County Council, in its decision finding that the development is not exempt, has relied only on the 2m limit on the height of replacement fencing under Article 6 and Schedule 2 Part 1, Class 11.

We submit, as we did to the Council, that a number of accesses from the tramway to the lands at Howth Castle/Deer Park have been habitually open to and used by the public for many decades for recreational purposes or as a means of access to places of natural beauty and recreational utility. We have submitted evidence in this regard and are willing to gather further evidence including affidavits should this be required.

In light of this long-standing access, fencing at any of these locations (even if it complies with Article 6



and Schedule 2, Part 1, Class 11) is 'de-exempted' by virtue of Article 9(1)(a)(x) of the Planning and Development Regulations.

Tetrarch Capital Ltd. have not commented in their appeal on the issue of whether or not the development consists of "the fencing of lands habitually open to the public, etc." Fingal's Inspector suggested that if there is any other access then Article 9(1)(a)(x) is not relevant. Although, we note that the Council did not include this in its decision, we wish to emphasise that it would be a misinterpretation of the Regulations, and we do not see anything in the regulations themselves which would support such an interpretation.

As before, we submit that Article 9(1)(a)(xi) applies to the obstruction of the footpath marked on the Ordnance Survey Map which leads across the Tramway from Grace O'Malley Road and through the woods over towards the Castle, as well as to other entrances (now fenced off) to the Deer Park at Evora Park and Balkill Road.

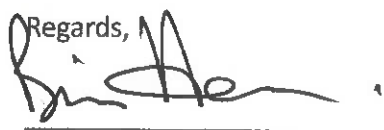
We repeat our offer to supply additional local information on the use of the accesses into and across the grounds at Howth Castle/Deer Park from the tramway over recent decades, should the Board consider that this is relevant, notwithstanding the fact that it was not an issue which was disputed in Fingal County Council's decision nor in Tetrarch Capital Ltd.'s appeal.

Context and conclusion

We are aware that Tetrarch Capital Ltd. were advised on more than one occasion in advance of/ at the start of their work to engage with the Planning Department of Fingal in respect of their proposed work. They were advised by the Planning Department itself to make a section 5 referral to establish the planning status of their proposed works. Despite this Tetrarch apparently decided not to make a Section 5 referral.

We, along with local residents, continue to assert that the boundary treatment of Howth Castle / Deer Park should be subject to planning and that is the process by which to reach an acceptable outcome.

We hope the board will consider the contents of our submission fully and we are ready to provide any additional information that we can to assist in the Board's evaluation of this matter.

Regards,


Brian Hewson (Agent)
For Friends of the Irish Environment

