

MARTIN & GROVE SOLICITORS

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36 CHARLES STREET WEST, DUBLIN 7
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LAW SOCIETY
OF IRELAND
PRACTISING
SOLICITORS

AN BORD PLEANÁLA
LDG- 038202-21
ABP- _____
01 APR 2021
Fee: € 220 Type: cheque
Time: 10.57 By: hand

Our Ref: BG / 2972
Your Ref:

1 April 2021
By:

An Bord Pleanála
64 Marlborough St,
Rotunda,
Dublin 1,
D01 V902

Re: Property: 16 Hollybrook Park, Clontarf, Dublin 3
Owner: Copperwhistle Ltd, Castleshane, Clontibret, Co. Monaghan
Applicants for Referral: Mark McCaughey, Hilary McCaughey, Eileen Appleyard
Aidan Long, Ailbhe Tarrant, Conor Shields, all of Hollybrook Road or Hollybrook Park, Clontarf, Dublin 3

Question referred: "Whether the use of the property as a guest house which provides rooms on a nightly basis offering Bed and Breakfast to Dublin City Council/ Dublin Regional Homeless Executive to accommodate homeless people, is or is not development and whether development constitutes exempted development or does not constitute exempted development?"

Reference number: 049/21

Dear Sirs,

We attach a referral for determination by the Board under Section 5 of the Planning and Development Act 2000, along with supporting documentation and fee.

The Applicants request that the Board would determine the above question, and determine as a fact what the existing use of the Property is.

Basis for Referral

The Applicants submitted their application for a declaration to Dublin City Council on 10 February 2021.

The Council did not issue a determination within 4 weeks as required, and the procedure for referral is engaged pursuant to Section 5.

Reasons for Absence of Determination

The Board might please note the circumstances giving rise to the referral.

The Council has notified the Applicants pursuant to Section 5(2)(ba) that it would not be possible, having regard to the complexity of the matter, to issue a determination within 4 weeks, and that it is awaiting further information from the Owner which it has requested pursuant to Section 5(2)(c).

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In some circumstances, the deadline for the Council to issue a declaration is extended, but the deadline for making a referral to the Board is not. Hence, if the owner never replies to the Council's notice requesting further information, the Council may never be in a position to issue a declaration, and the Applicants would then be out of time to make a referral. Accordingly, the referral is made now in compliance with the statutory deadline.

There are Multiple Applications for Declarations Relating to this Property

There are two broadly identical applications before the Council.

In the first, the owners sought a determination of the Question now being referred.

In the Second, the Applicants asked for a declaration on the same question, because there is no procedure for a member of the public to make a submission on an owner's application for a declaration.

The Applicants took the additional step of seeking to make a submission on the Owner's application, asserting that the underlying facts relating to the current use were not as stated by the Owner. They asked the Council to accept that they had an implicit right to make a submission on the application.

The Council apparently accepted the submission on the first referral and also accepted the second referral.

The Council decided, on foot of the Applicants' submission that it needed further information from the Owner, and requested that information. The information requested is similar to the information which the Applicants asked the Council to request. It relates to whether the use of the Property is use as a guest house or residential use.

The Owner has not yet replied, and in those circumstances the Council decided not to determine the Applicants' application at this time.

Substantive Issue

The primary substantive issue is whether the present use is use as a guest house or use as a residential building. That will determine whether the Owner's use of the premises as a bed and breakfast is a material change of use, and thus whether it is development. The secondary question is whether, if there is development, it is exempted.

The material relating to the primary substantive issue is the Owner's application, the Applicants' submission, and the supporting documents.

The Applicants ask the Board to determine the question posed and to make relevant findings as to the current use of the Property.

The Applicants submit that the current use of the Property is not use as a guest house, and that accordingly the proposed use as a bed and breakfast would be development, and would not be exempted development.

Use as a guest house appears to have commenced about 2000 and ceased before 2007 with the rateable valuation being updated in 2013 to reflect the effective residential use of the property. An application for permission made in 2015 described the use of the property as "long stay guest house" and described the individual rooms as bedsits. (Attention is drawn in particular to the application letter and the photo survey of the Property.) Effectively the house was in use as a multiple occupation residential development. Dublin City Council granted permission for continuation and redevelopment of the Residential Use. (Dublin City Council file reference 2428/15.) Residential use then continued in accordance with the permission but the redevelopment works were not carried out. Accordingly the

AN BORD PLEANALA

01 APR 2021

LTR DATED FROM

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current use appears to be residential use, as bedsits.

Documents

We attach the following documents:

1. Application by the Applicants for a Determination under Section 5 (submitted to the Council on 10 February 2021 and hereby referred to the Board.)
2. Submission by the Applicants on the Owner's Declaration application.
3. Owner's Application for a Declaration submitted to the Council on 25 January 2021
4. Council request for further information on the Owner's Declaration application.
5. Council notice deferring determination of Applicants' Declaration application dated 11 March 2021
6. Relevant documents from planning application 2428/15.

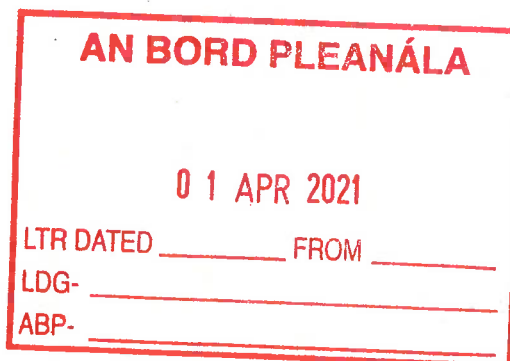
We also attach documents which the Applicants have obtained since making their application and submission to the Council:

7. Letter from the Council to the Owner dated 23 February 2021 requesting further information.
8. Planner's Report on Section 5 Application 0025/21 dated 19 February 2021.
9. Observation by Clontarf Residents Association to the Council, dated 22 February 2021.
10. Acknowledgement by the Council of Observation, dated 1 March 2021.
11. Notice from Dublin City Council dated 11 March 2021, deferring decision.
12. Information received from the Office of the Valuation Commissioner pursuant to FOI Request.
13. Email from Declan Connors, the AA, confirming cessation of guest house use about 2007.

We also attach referral fee of €220.

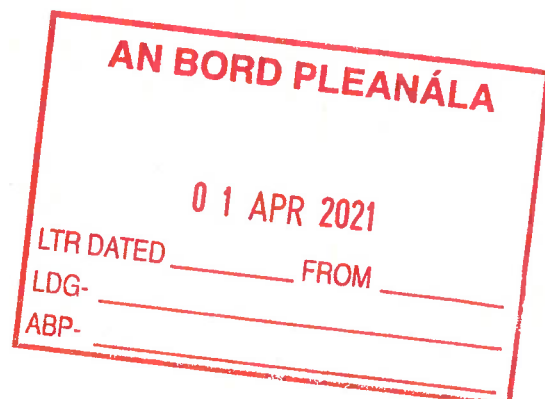
Yours faithfully,


Martin & Grove Solicitors LLP



SCHEDULE OF ENCLOSED DOCUMENTS

1. Application by the Applicants for a Determination under Section 5 (submitted to the Council on 10 February 2021 and hereby referred to the Board.)
2. Submission by the Applicants on the Owner's Declaration application.
3. Owner's Application for a Declaration submitted to the Council on 25 January 2021
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OF IRELAND
PRACTISING
SOLICITORS

Our Ref: BG / 2972
Your Ref:

Dublin City Council,
Planning Registry Section,
Block 4, Floor 0,
Civic Offices,
Wood Quay,
Dublin 8

10 February 2021
By:

Re: 16 Hollybook Park

Dear Sirs,

We attach an application for a declaration pursuant to Section 5 of the Planning and Development Act 2000 as amended in respect of the above property.

The application comprises the following documents:

1. Referral Form
2. Map in Duplicate
3. Application by Copperwhistle Ltd which is currently under consideration by the Council under separate reference 0025/21
4. Submission by our clients in response to the arguments made in that application

Our clients submit that the proposed use of the property set out in the Copperwhistle Application would constitute a material change of use of the property which would amount to development and would not be exempted development. Their reasons are as set out in their submission. They reject the justification advanced by Copperwhistle Ltd.

Our clients have an interest in the matter. They are residents of the area and would be affected by the proposed use of the property. They have previously lodged an application for a declaration relating to the property, which the Council determined under File reference EXPP 0405/20.

They note the absence of an express right to make a submission on an owner's application under Section 5. They submit that such a right is implicit in the requirements of natural and constitutional justice, in particular the audi alteram partem principle under which a decision maker is obliged to hear both sides of the argument.

We should draw the attention of the Council to the decision of the Supreme Court in the case of Dellway v NAMA in this respect. Finnegan J, agreeing with Fennelly J, summarised the principle that: "a person whose interests are capable of being affected directly by a decision of a public body

PARTNERS: LAUREN MARTIN BA HONS (DUNELM), SOLICITOR, BARBARA GROVE BA HONS PG DIP. LAW, SOLICITOR

AN BORD PLEANÁLA

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LTR DATED _____ FROM _____

LDG- _____

exercising statutory powers is ordinarily entitled to have notice of the intention to consider the making of the decision and to have his or her representations considered by the decision maker.' [2011] 4 IR 1 at p359

Our clients are submitting this Application to ensure that they are not prejudiced by the Council taking a decision in respect of which their submission may not be considered, and which they would have no right to refer to An Bord Pleanála. They ask that the Council consider the two applications together, in order to avoid the possibility of inconsistent or irreconcilable decisions.

They also request that the Council seek further information as set out at the end of their submission, and that it then refer the two applications to An Bord Pleanála for determination. This would regularise the procedural anomaly under which they have no *express* right to make a submission on the Copperwhistle application to the Council (such right being *implicit* only.)

Yours faithfully

COPY

Martin & Grove Solicitors LLP

AN BORD PLEANÁLA

01 APR 2021

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

PARTNERS: LAUREN MARTIN BA HONS (DUNELM), SOLICITOR, BARBARA GROVE BA HONS PG DIP. LAW, SOLICITOR

DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT



SECTION 5 APPLICATION FORM

Mark McCaughey, Hilary McCaughey, Eileen Appleyard
NAME OF APPLICANT: **Aidan Long, Ailbhe Tarrant, Conor Shields**

ADDRESS OF APPLICANT: **All of Hollybrook Park or Hollybrook Road**
Clontarf, Dublin 3

EMAIL ADDRESS: _____

TELEPHONE NO. Day: _____ Mobile: _____

NAME OF AGENT AND AGENT'S ADDRESS: **Martin and Grove, Solicitors**
36 Charles Street West, Inns Quay, Dublin 7

TELEPHONE NO. Day: **(01) 514 3800** Mobile: _____

ADDRESS FOR CORRESPONDENCE (if different from above)
Same

LOCATION OF SUBJECT SITE: **16 Hollybrook Park**
Clontarf, Dublin 3

Is this a Protected Structure or within the curtilage of a Protected Structure? Yes

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? No

Please provide details of works (where applicable) or proposed development.
(Note: only works listed and described under this section will be assessed under this section 5 application. Use additional sheets if required.)

the use of the property as a guest house which provides rooms on
a nightly basis offering Bed and Breakfast to Dublin City Council/ Dublin
Regional Homeless Executive to accommodate homeless people

AN BORD PLEANÁLA
01 APR 2021
LTR DATED _____ FROM _____
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ARD. _____

List of plans, drawings etc. submitted with this application

Plan of Property, x2

Owners of neighbouring properties

Please state Applicant's interest in this site: Residents of the area.

If applicant is not owner of site, please provide name & address of owner:

Copperwhistle Ltd

Castleshane, Clontibret, Co. Monaghan

Are you aware of any enforcement proceedings connected to this site?
If so please supply details:

No

Where there previous planning application/s on this site?
If so please supply details:

Y

1586/96, change of use from dwellinghouse to guesthouse.

2428/15, conversion from guesthouse to apartments

Signed _____

Date 10 Feb 2021

NOTES

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.

Application shall be forwarded to: Dublin City Council, Planning Registry
Section, Block 4, Floor 0, Civic Offices, Wood Quay, Dublin 8.
Contact Details: Phone: 01 222 2149 Fax: 01 222 2675

AN BORD PLEANÁLA

01 APR 2021

LTR DATED _____ FROM _____

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ABP- _____

Section 5 Declaration for Protected Structures

Required Documents

1. *Application form* (The application form should be used to provide a numbered list of all the proposed works. Two copies of all supporting information should be submitted).
2. *Application fee* (€80)
3. 2 copies of the *site location map* (location clearly outlined in red).
4. A photographic record of the historic fabric to be affected/impacted upon by the proposed works and a general photo of the building. (notes can be added to these photos to explain the proposed works)
5. An outline explaining justification for and assessment of the impact of the proposed works on the protected structure.
6. A method statement outlining the proposed works to include a specification of the materials to be used.
7. Elevation, plan and detail drawings where appropriate.

The Department of Arts, Heritage and the Gaeltacht Advice Series documents are recommended reading before submitting a Section 5 application for proposed works to a protected structure. These publications contain the best practice advice for conservation work and knowledge of best conservation practice must be clearly demonstrated in all applications. (See links below)

<http://www.dublincity.ie/Planning/HeritageConservation/Conservation/Pages/DoEHLGArchitecturalHeritagePublicationsandConservationAdviceSeries.aspx>

[A Guide to the Repair of Historic Brickwork:](#)

[The Repair of Wrought and Cast Iron Work :](#)

[A Guide to the Repair of Older Buildings:](#)

[A Guide the Repair of Historic Windows:](#)

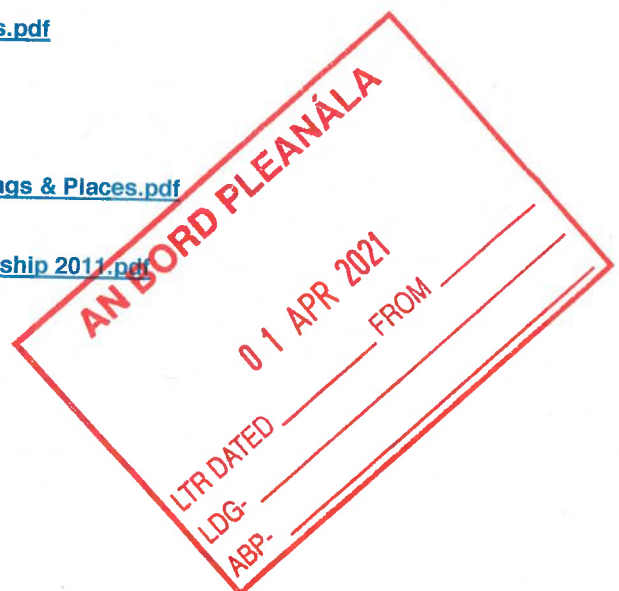
[Roofs - A Guide to the Repair of Historic Roofs.pdf](#)

[Ruins - The Conservation and Repair of Masonry Ruins.pdf](#)

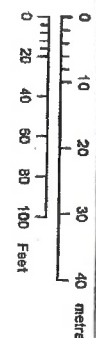
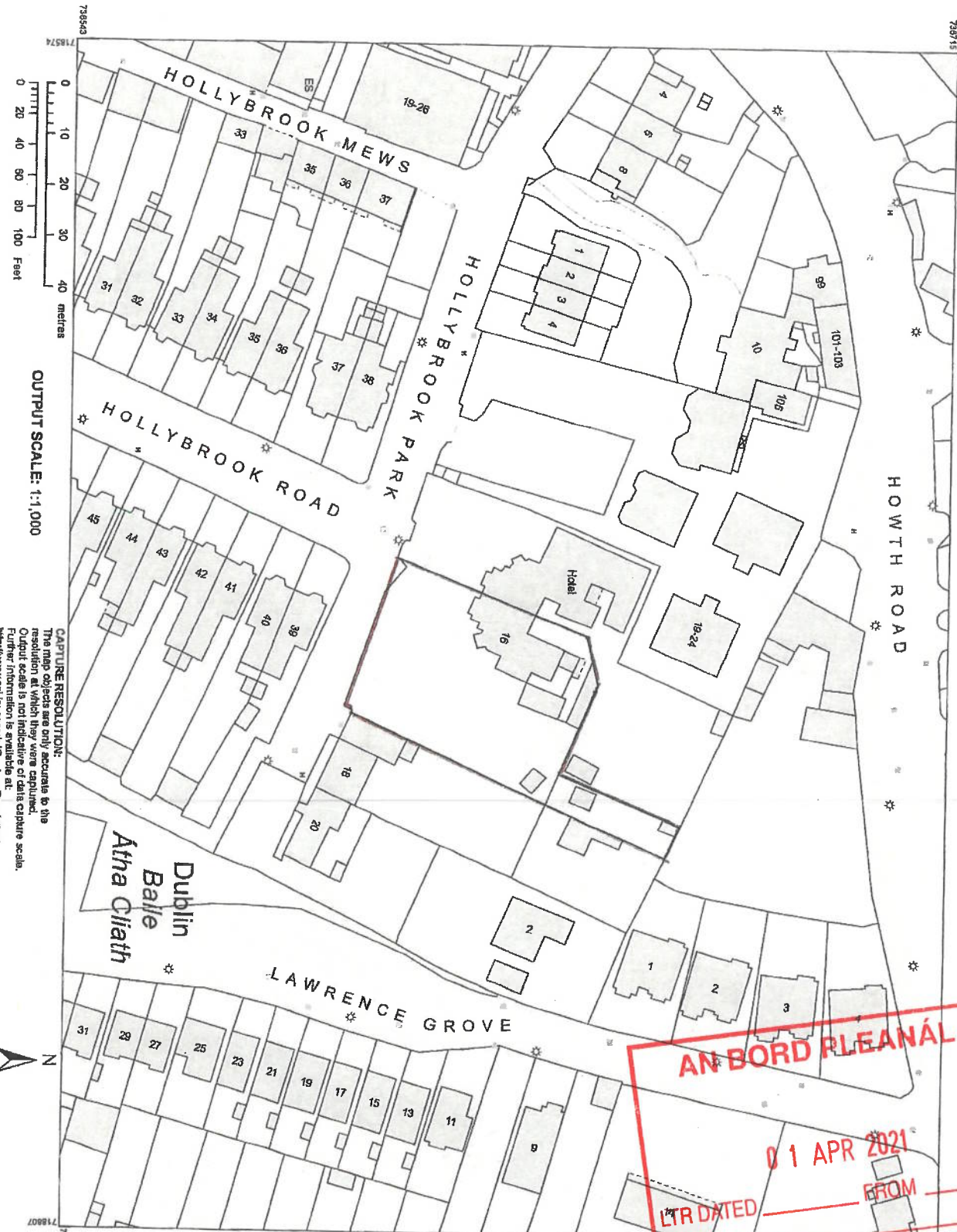
[Energy Efficiency in Traditional Buildings.pdf](#)

[Access - Improving the Accessibility of Historic Buildings & Places.pdf](#)

[Places of Worship - The Conservation of Places of Worship 2011.pdf](#)



Land Registry Compliant Map



OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:
The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Further information is available at: <http://www.osi.ie/search/CaptureResolution>



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01 APR 2021
FROM
LTD DATED
LDG-
Site Location



CENTRE COORDINATES:
ITM 718891,736629
PUBLISHED: ORDER NO.: 1874/2020 50155278_1
MAP SERIES: MAP SHEETS: 1:1,000 3198-14

COMPILED AND PUBLISHED BY:
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Phoenix Park,
Dublin 8,
Ireland.

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LEGEND:
<http://www.osi.ie>
search 'Large Scale Legend'



NO. 16
 ADDRESS HOLLYBROOK
 PARK, CLONTARF,
 DUBLIN 3
 SCALE 1:1000 @A4
 DATE 09.10.2020
 DWG. **S5.01**

LAWRENCE, LONG
 ARCHITECTS

AN BORD PLEANÁ
 Extension Date: 14-July-2020
 TTM Centre Point Co-ordinate:
 X,Y = 718691, 736629
 Projection: TTM
01 APR 2021
 LTR DATED _____ FROM _____
 LDG- _____
 ABP- _____



CH1280-800 Kennedy

DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT



SECTION 5 APPLICATION FORM

Planning Department
25 JAN 2021
RECEIVED

NAME OF APPLICANT: Copperwhistle Ltd.

ADDRESS OF APPLICANT: [REDACTED]

EMAIL ADDRESS: n/a

TELEPHONE NO. Day: n/a Mobile: n/a

NAME OF AGENT AND AGENT'S ADDRESS: Hughes Planning & Development Consultants
70 Pearse Street, Dublin 2

TELEPHONE NO. Day: 015390710 Mobile: _____

ADDRESS FOR CORRESPONDENCE (if different from above)
70 Pearse Street, Dublin 2

LOCATION OF SUBJECT SITE: 16 Hollybrook Park, Clontarf, Dublin 3

Is this a Protected Structure or within the curtilage of a Protected Structure? Y

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? No

Please provide details of works (where applicable) or proposed development. (Note: only works listed and described under this section will be assessed under this section 5 application. Use additional sheets if required.)

No works proposed.

AN BORD PLEANÁLA
01 APR 2021
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

List of plans, drawings etc. submitted with this application

n/a

Please state Applicant's interest in this site: Owner

If applicant is not owner of site, please provide name & address of owner:

n/a

Are you aware of any enforcement proceedings connected to this site?
If so please supply details:

Enforcement notice issued on 14th July 2020 but has since been closed.

Where there previous planning application/s on this site?

If so please supply details:

Reg. Ref. 1586/96 - change of use from dwelling to guesthouse.

Reg. Ref. 2428/15 - conversion of guesthouse to 2 no. two-bed apartments. Not implemented.

Signed [Signature]

Date 22/01/2021

NOTES

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.

Application shall be forwarded to: Dublin City Council, Planning Registry Section, Block 4, Floor 0, Civic Offices, Wood Quay, Dublin 8.
Contact Details: Phone: 01 222 2149 Fax: 01 222 2675

AN BORD PLEANÁLA

01 APR 2021

LTR DATED _____ FROM _____

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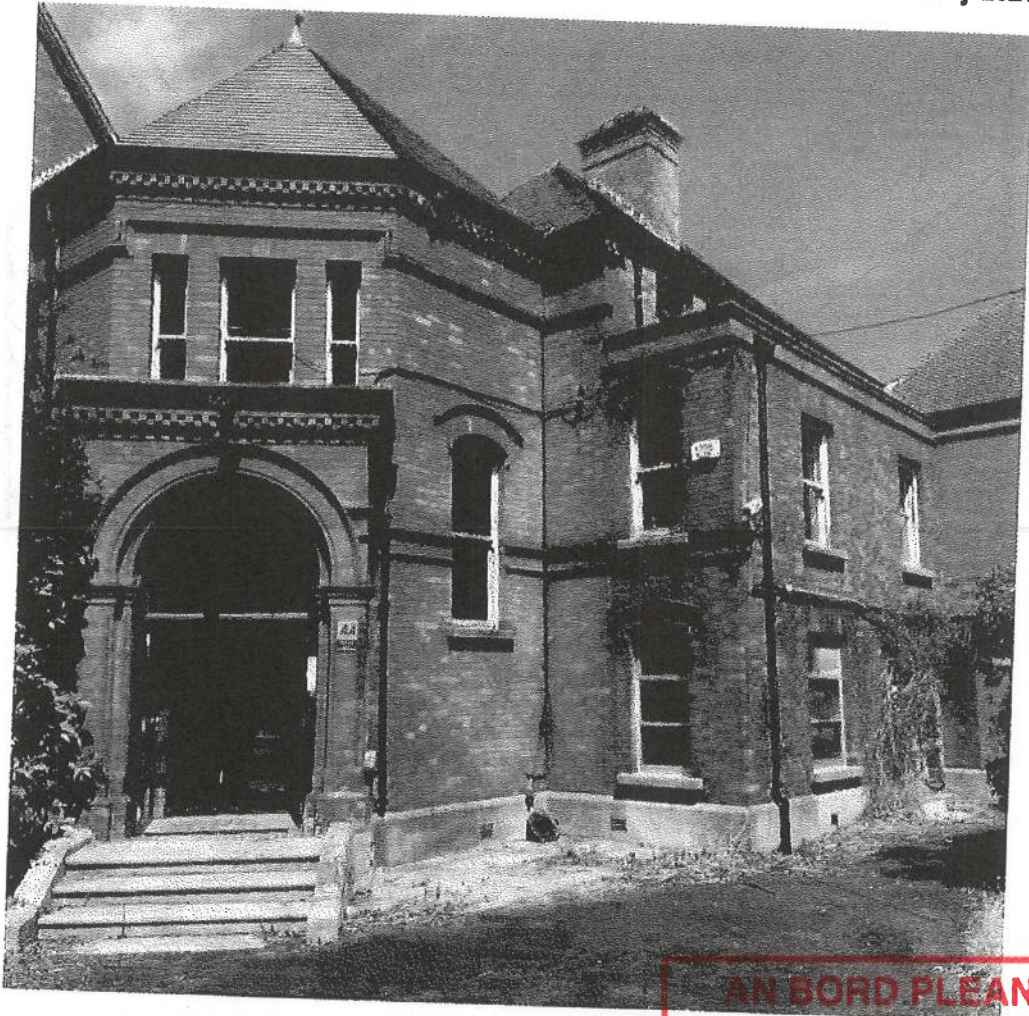
Planning Report

Section 5 Application - Declaration of Exempted Development

Use of Guesthouse at No. 16 Hollybrook Park,
Clontarf, Dublin 3

Copperwhistle Ltd.

January 2021



AN BORD PLEANÁLA

01 APR 2021

LTR DATED _____ FROM _____

Hughes Planning & Development Consultants

ABP- 70 Pearse Street, Dublin 2

+353 (0)1 539 0210 - info@hpd.ie - www.hpd.ie

1.0 Introduction

Hughes Planning and Development Consultants, 70 Pearse Street, Dublin 2, have prepared this report to accompany an application for a Declaration of Exempted Development, on behalf of Copperwhistle Ltd. [REDACTED] concerning the use of No. 16 Hollybrook Park, Clontarf, Dublin 3.

The subject site was granted planning permission for a change of use from a house to a guest house in 1996 under Reg. Ref. 1586/96. Our client intends to continue using the property as a guest house, which comprises 14 no. bedrooms, but has also agreed on Heads of Terms with the Dublin Region Homeless Executive (DRHE) to use the property to provide emergency to homeless families. Rooms will be leased on a nightly basis and a full guest house service will be provided including the provision of clean linen, breakfast and room cleaning. As with all guest houses, staff will be present 24 hours per day to provide the services listed above and conduct administrative duties required in a guest house. The management of the guest house and the provision of staff will solely be the responsibility of our client, the guest house owner. No element of care be it social, physical or emotional will be provided to guests at this guest house, nor will any non-governmental organisation or approved housing body be involved. See Appendix A for details.

Therefore, the question before the planning authority is:

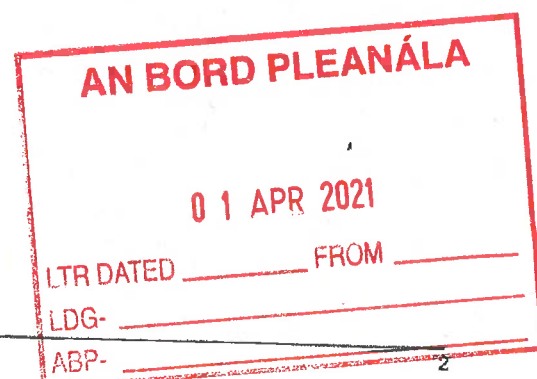
"Whether the use of the property as a guest house which provides rooms on a nightly basis offering Bed and Breakfast to Dublin City Council/ Dublin Regional Homeless Executive to accommodate homeless people, is or is not development and whether development constitutes exempted development or does not constitute exempted development?"

2.0 Site Description

The subject site fronts onto Hollybrook Park, which is a cul-de-sac accessed from the west via Howth Road. The site is located in a mature residential area, which consists of a mix of residential units with regards to building type and height.

The site is occupied by a large property laid out over three floors, which entails 14 no. bedrooms, and communal kitchen and laundry facilities. The property has an external red brick finish. The property on-site is currently vacant but was most recently used as a guest house, permitted under Planning Reg. Ref. 1586/96.

The building on site is listed on Dublin City Council's Record of Protected Structures (RPS Ref. 388



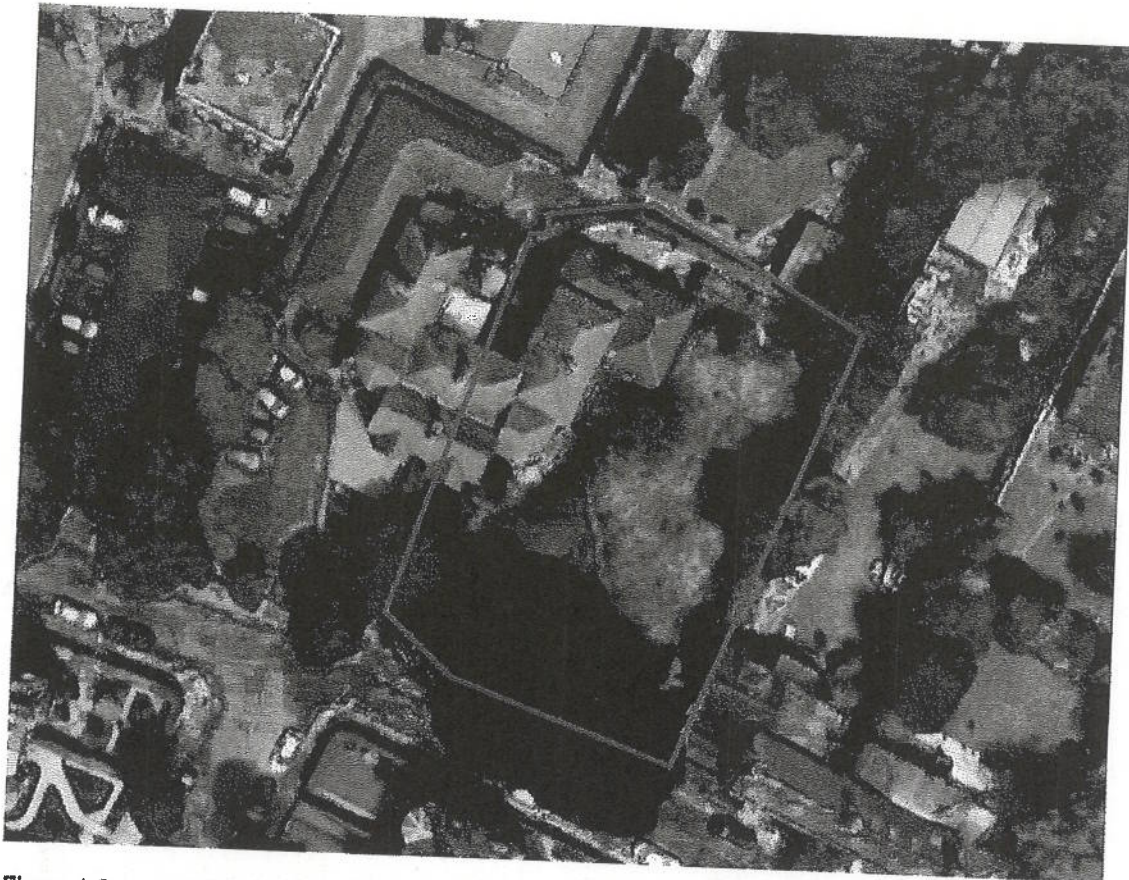


Figure 1.0 Aerial view indicating the subject site, No. 16 Hollybrook Park (red outline)

3.0 Planning History

Planning Applications

Reg. Ref. 1586/96 Planning permission was granted on 22nd October 1996 for the change of use of the existing Grade 2 listed house to guest house.

Reg. Ref. 2161/15 Planning permission was granted on 7th August 2015 for the conversion of 14 bedroom long stay guest house to 4 no. one-bedroom and 2 no. two-bedroom apartments.

The final grant of permission was notified on 7th August 2015, however, this application was **not implemented**, and works did not commence for the proposed development. Furthermore, the planning permission for this application expired on 7th August 2020. On this basis, the relevant planning application for the development of the subject site is Reg. Ref. 1586/96.

Section 5 Declarations

Reg. Ref. 0371/20 A declaration of exempted development was issued by Dublin City Council under Reg. Ref. 0371/20. This exemption relates to minor internal works proposed for the building including the repair of original features; replacement of damaged flooring; replacement of damaged sash windows on like for like basis; replacement of bathroom ware; and other minor works to improve the condition of the building.

Reg. Ref. 0297/20 A declaration of exempted development was issued by Dublin City Council under Reg. Ref. 0297/20. This exemption relates to minor internal and external

AN BORD PLEANÁLA

01 APR 2021

LTR DATED _____ FROM _____

works proposed for the building including the repair of windows and doors; repair of damaged original guttering; refitting the kitchen; painting interior and exterior; removal of overgrown vegetation from chimneys and guttering; repair of original gate; and other minor works needed to improve and preserve the building.

The works declared exempt under Section 5 were considered necessary to improve the condition of the building and allow it to continue being used as a guest house. The proposed works do not in any way affect the use as a guest house and only seek to improve it. Whilst the guest house will provide rooms to the Dublin Housing Region Executive, the established use as a guest house will continue.

The Hollybrook Park Residents Group submitted a section 5 referral to Dublin City Council regarding the use of No. 16 Hollybrook Park under Reg. Ref. 0405/20. This referral asks whether the change of use from a guesthouse to a residential facility for homeless people constitutes development.

It should be noted from the outset, that the established use as a guesthouse will not change.

4.0 Planning Context

4.1 Zoning

The subject site is zoned Z2 – 'Residential Neighbourhoods (Conservation Areas) in the Dublin City Development Plan 2016-2022. The objective of Z2 zones is to 'to protect and/or improve the amenities of residential conservation areas.' The following uses are listed as 'Permissible Uses' in 'Z2' zoned lands:

Buildings for the health, safety and welfare of the public, childcare facility, embassy residential, home-based economic activity, medical and related consultants, open space, public service installation, residential.

The following uses are considered 'Open for Consideration' in 'Z2' zoned lands:

Bed and breakfast, community facility, cultural/recreational building and uses, education, live-work units, place of public worship, restaurant, veterinary surgery.

The approved use of 'Guest House' is consistent with the zoning objectives for the subject site and is therefore compliant with the development plan.

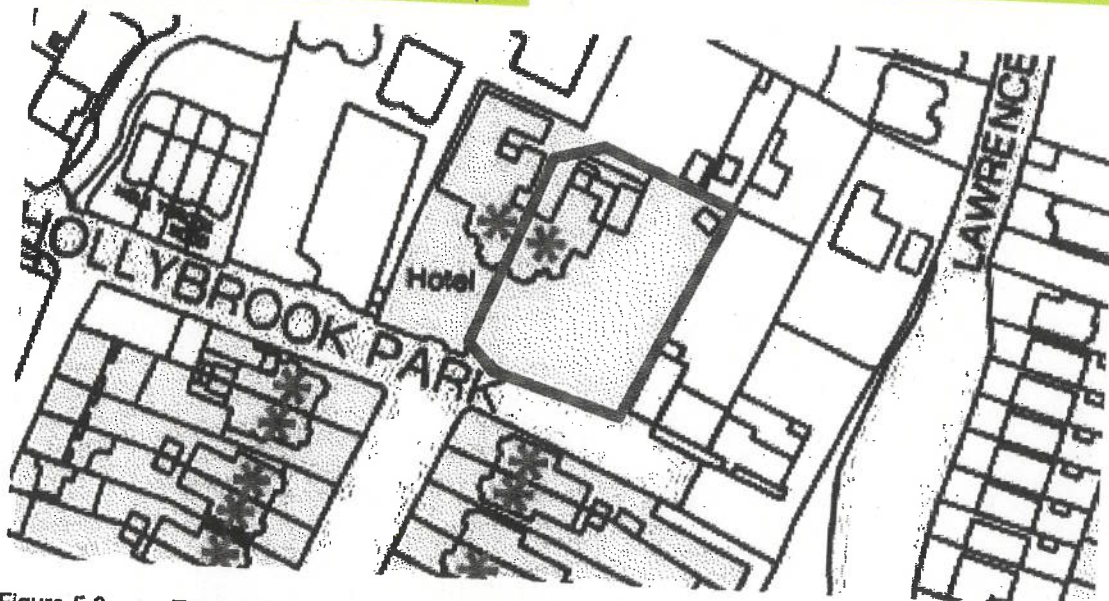


Figure 5.0 Extract from Zoning Map F showing the subject site (outlined in red) zoned Z2 in the Dublin City Development Plan 2016-2022

5.0 Basis of Exemption

Under Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3 (1) as follows:-

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."

This declaration seeks clarification on the use of No. 16 Hollybrook Park as a guest house. It is noted that legislation does not define the phrase 'material change of use' as used in Section 2(1) of the Act. In order to determine the materiality of the change, the practical impacts and effects of the proposed change of use and whether it would have led to materially different planning considerations by the Planning Authority are considered in this determination.

This is supported by findings in recent court cases which examined the practical and real-life effects caused by the change of use. In *Esat Digifone v South Dublin County Council* [2002] 3 IR 585, the court quoted the following:

"The consideration to be taken into account in determining materiality must at least be relevant to "proper planning and development and the preservation of amenities" which are the twin objectives of the preamble to the legislation. The question is whether there were sufficient planning considerations raised by the change in activity to justify its submission to development control."

In a similar vein the court quoted Barron J. in *Galway County Council v. Lackagh Rock* [1985] I.R. 120 at 127:

"To test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use."

A further decision in support of that view is that of Budd J. in *Westmeath County Council v. Quirke & Sons* [Unreported, High Court, 23rd May 1996] where the court noted that:

"Many alterations in the activities carried out on the land constitute a change of use, however, not all alterations will be material. Whether such changes amount to a material change in use is a question of fact as is explained in Monaghan County Council v Brogan [1987] IR 339. Consideration of the materiality of a change in use means assessing not only the use itself but also its effects."

No. 16 Hollybrook Park is approved to operate as a guest house as per Reg. Ref. 1586/96. It is proposed to continue the established use as a guest house whilst providing temporary accommodation to the DRHE. It is submitted that there will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying those rooms which should not be taken into consideration when having regard to whether a material change of use has occurred as evidenced by the Supreme Court *Dublin Corporation v Moore* [1984] ILRM 339 in which the judge stated:

"I can well understand the objection voiced by Mr. Heneghan in his affidavit, to which I have referred - the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin - yet others for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law - if they were, they might well offend against rights of equality."

It is considered that if this were a planning application for a guest house, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic background. Nor would they preclude the guest house from accepting block bookings of rooms. It is, therefore, submitted that the guest house will operate like any other guest house in the city and offer rooms to

members of the public for a rate. The rooms will be advertised on the guest house's website where bookings can be made by members of the public. As with any guest house or hotel, a block booking can be made by an individual or group for a specific event or occasion.

The following conditions were attached to the grant of permission for the guest house under Reg. Ref. 1586/96:

Insofar as the Local Government (Planning & Development) Acts 1963/93 and the Regulations made thereunder are concerned the development shall be carried out in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the conditions attached hereto.

REASON: To comply with permission regulations.

This permission shall apply only to the use of the existing residence for overnight guest accommodation purposes and provision of additional parking facilities as indicated in the submitted plans.

REASON: In the interests of clarity and development control.

The proposed development shall be constructed and so operated that there will be no emission of odours, or noise such as would give rise to reasonable cause for complaint by occupants of adjoining or nearby properties.

REASON: In the interests of residential amenities.

No signs or nameplates shall be erected without the prior approval of the planning authority, whether or not such development would constitute exempted development.

REASON: In the interests of visual amenities.

The existing entrance shall be widened to a width not less than 4.0 metres and shall be relocated so as to align the entrance gates parallel to the centreline of the public road. Full details to be submitted and agreed in writing with the planning authority prior to the commencement of development.

REASON: In the interests of traffic safety.

Before this development commences a financial contribution in the sum of #6,135.00 shall be paid by the applicant to Dublin Corporation, in accordance with Section 26 of the Local Government (Planning & Development) Act 1963.

REASON: Investment by Dublin Corporation in Local Authority works has facilitated and will facilitate the proposed development. It is considered appropriate and reasonable that the developer should contribute to the cost of same.

It is noted that no conditions were included about the length of stay, class of guest nor the ability to block book rooms. Therefore, the continued use as a guest house, which leases rooms to the DRHE for the provision of homeless accommodation, complies with the conditions as set out above. It is submitted that no material change of use will have occurred and the development is therefore exempted development.

It is considered that the continued use as a guest house offering accommodation to the DRHE will have no material effects on the area with regards to the proper planning and sustainable development of the area. It is considered that the use of the building will not negatively impact on the amenity of local residents in Hollybrook Park. It is therefore apparent that no material change of use will have occurred and that change of use is considered exempted development.

It should be noted that precedence for a guest house being used to accommodate homeless people exists at No. 14 Hollybrook Park, which adjoins the subject site. In this case, a warning letter was issued to the owners of the property regarding the use of the guest house to accommodate homeless people

under Reg. Ref. E0931/10. In their investigation, the Planning Authority concluded that planning permission for a guest house had been granted on the 20th January 1997 under Reg. Ref. 1957/96 subject to a number of conditions including the reduction of bedrooms. It was noted by the Enforcement Inspector that the number of rooms was never reduced, but enforcement proceedings were statute-barred as 10 years had passed since the grant of permission was issued.

Regarding the use for the provision of homeless accommodation, the Inspector confirmed that the building and its use did not materially change and were, therefore, the enforcement file was closed.

The case at No. 14 Hollybrook Park is pertinent to No. 16 Hollybrook Park as the approved use of guest house will continue at the property, as it did at No 14 where no material change of use was found to have occurred.

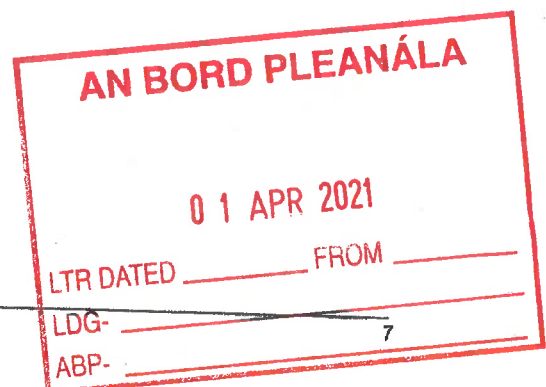
6.0 Conclusion

We note that No. 16 Hollybrook Park was granted permission to operate as a guest house. It is proposed to continue the operation of the property as a guesthouse which will lease rooms to the DRHE. These rooms will be leased on a nightly basis and a full Bed and Breakfast service will be provided to occupants. Our client will maintain the management of the guest house whilst providing staff 24/7 for regular guest house duties. It is submitted that the principal use of the property has not changed and therefore will have no adverse effects on the proper planning and sustainable development of the area.

Accordingly, we request a declaration to this effect from Dublin City Council under Section 5 of the Planning and Development Act 2000 (as amended). Should you have any queries or require any further information including access to the building, please do not hesitate to contact the undersigned.



Kevin Hughes MIPI MRTPI
Director for HPDC



Appendix A

ERROR: unregistered

OFFENDING COMMAND: imagejional Homeless Executive outlining its role in securing rooms at No. 16 Hollybrook Park.

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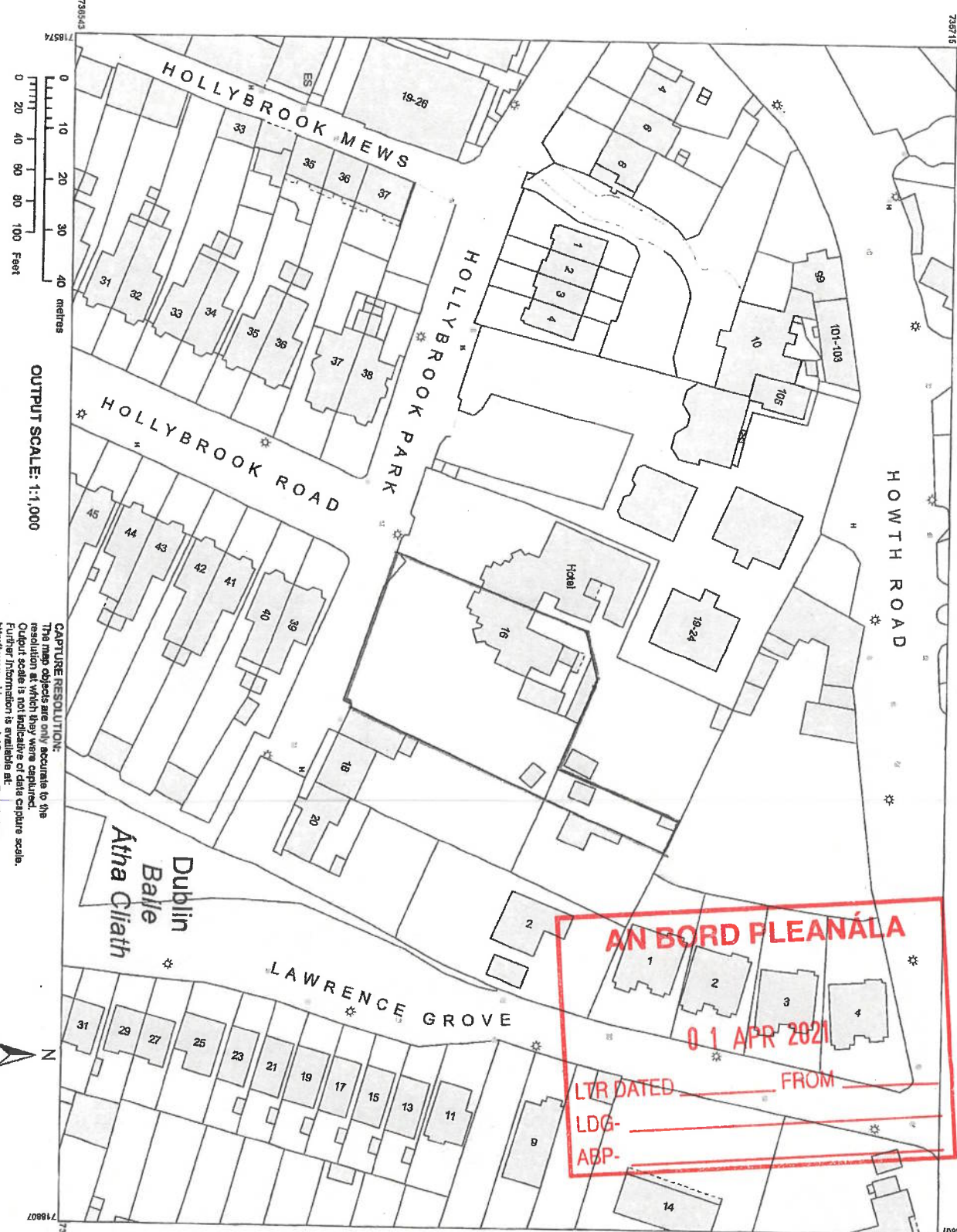
01 APR 2021

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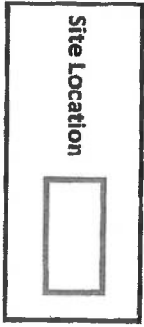
ABP- _____

Land Registry Compliant Map



National Mapping Agency

CENTRE COORDINATES:
 FTM 718891,736629
PUBLISHED: ORDER NO.: 18/11/2020 50156278_1
MAP SERIES: MAP SHEETS: 1:1,000 3198-14



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LAW SOCIETY
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PRACTISING
SOLICITORS

Our Ref: BG / 2972
Your Ref:

10 February 2021

By:

Dublin City Council,
Planning Registry Section,
Block 4, Floor 0,
Civic Offices,
Wood Quay,
Dublin 8

Re: 16 Hollybook Park
Reference: 0025/21

Dear Sirs,

We attach a submission in response to Section 5 referral by Copperwhistle Ltd as referenced above.

Our clients have an interest in the matter. They are residents of the area and would be affected by the proposed use of the property. They have previously lodged an application for a declaration relating to the property, which the Council determined under File reference EXPP 0405/20.

We note the absence of an express right to make a submission on an owner's application under Section 5. Our clients submit that such a right is implicit in the requirements of natural and constitutional justice, in particular the *audi alteram partem* principle under which a decision maker is obliged to hear both sides of the argument.

We should draw the attention of the Council to the decision of the Supreme Court in the case of *Dellway v NAMA* in this respect. Finnegan J, agreeing with Fennelly J, summarised the principle that: "a person whose interests are capable of being affected directly by a decision of a public body exercising statutory powers is ordinarily entitled to have notice of the intention to consider the making of the decision and to have his or her representations considered by the decision maker." [2011] 4 IR 1 at p359

Our clients are also submitting a separate application for a declaration in the same terms as this submission, and they request that the Council would consider the two applications together.

Our clients request that the Council would then refer the two applications to An Bord Pleanála for determination, in order to regularise the procedural anomaly under which they have no express right to make a submission to the Council.

Yours faithfully,

Martin & Grove Solicitors LLP

AN BORD PLEANÁLA

PARTNERS: LAUREN MARTIN BA HONS (DUNELM), SOLICITOR, BARBARA GROVE BA HONS PG DIP. LAW, SOLICITOR

01 APR 2021

LTR DATED _____ FROM _____
LDG- _____
ABP- _____

Submission in Relation to Application for Section 5 Declaration

Applicant for Declaration: Copperwhistle Ltd.

Reference: 0025/21

Premises: 16 Hollybrook Park, Clontarf, Dublin 3

Submission on behalf of: Mark McCaughey, Hilary McCaughey, Eileen Appleyard, Aidan Long, Ailbhe Tarrant, Conor Shields, all of Hollybrook Road or Hollybrook Park, Clontarf, Dublin 3

Abbreviations

The following abbreviations are used in this submission:

- The 2000 Act, the Planning and Development Act 2000, as amended.
- The 2001 Regulations, the Planning and Development Regulations 2001, as amended.
- Copperwhistle, Copperwhistle Ltd
- The Residents, the residents on whose behalf this submission is made, listed above.
- The Copperwhistle Application, Copperwhistle's application for a declaration pursuant to Section 5 of the 2000 Act.
- The Residents' First Application, the previous application by the Residents or some of them for a declaration pursuant to Section 5 of the 2000 Act, given Council reference EXPP 0405/20.
- The Previous Determination, the determination by the Council of the Residents' First Application.
- The Council, Dublin City Council.
- The Board, An Bord Pleanála.
- The Property, Copper Beech, 16 Hollybrook Park, Clontarf, Dublin 3. (See map, **Appendix 1.**)
- The Guest House Permission, Permission Reg. Ref. 1586/96.
- The Apartment Permission, Permission Reg. Ref. 2161/15.

Submission

1. Right to Make a Submission

1.1. The Residents submit that they are entitled to make a submission on the Copperwhistle Application. This right arises pursuant to the decision of the Supreme Court in the case of *Dellway v NAMA*¹, which holds that a person may be entitled to make a submission before a public body makes a determination, wherever it is necessary in the interests of justice that the person should be heard. The Residents are all neighbours of the Property to which the Application relates. They have an interest in the proper planning and sustainable development of their area. They have established that interest previously by making the Residents' First Application.

¹ Finnegan J, agreeing with Fennelly J, summarised the principle that: "a person whose interests are capable of being affected directly by a decision of a public body exercising statutory powers is ordinarily entitled to have notice of the intention to consider the making of the decision and to have his or her representations considered by the decision maker." [2011] 4 IR 1 at p359

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2. The Residents' First Application

2.1. The Residents' First Application was received by the Council on 24 November 2020. It asked the Council for a declaration on the following question relating to the Property:

"Whether or not the change of use of 'Copper Beech' (Protected Structure) at No. 16 Hollybrook Park, Clontarf, Dublin 3 from a guesthouse to a residential facility for accommodation of the homeless, is or is not development, and is or is not exempted development for the purposes of the Planning and Development Acts 2000, as amended

2.2. The Residents surmised, based on the permissions granted, that the existing use was use as a guesthouse and that the proposed use was use as a hostel. They submitted that this would be development and would not be exempted development.

2.3. The Council invited Copperwhistle, the owner of the Property, to make a submission on this application. Copperwhistle made no submission.

2.4. The Council prepared a report in which it recommended that the following determination be reached:

It is recommended that the applicants be advised that on the information provided by them that;

- The subject change of use is considered to be 'development' as defined by Section 3(1) of the Planning & Development Act 2000(as amended); and*
- that the change of use from a guesthouse to a residential facility for the accommodation of the homeless is not exempted development as per Article 10(1) and Class 6, Part 4, Schedule 2 of the Planning & Development Regulations 2001(as amended)*

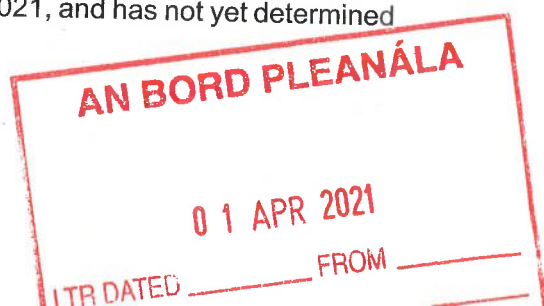
2.5. The Council issued a determination to this effect on 18 December 2020. The determination was made on the basis of the information provided by the Residents, and was not a determination as to the actual present or proposed use.

3. The Copperwhistle Application

3.1. Copperwhistle did not seek to refer the Council's determination to the Board. Instead it lodged its own counter-application for a declaration (**Appendix 2**), setting out a different outline of what it proposed to do with the Property. It asked the Council to declare:

"Whether the use of the property as a guest house which provides rooms on a nightly basis offering Bed and Breakfast to Dublin City Council/ Dublin Regional Homeless Executive to accommodate homeless people, is or is not development and whether development constitutes exempted development or does not constitute exempted development?"

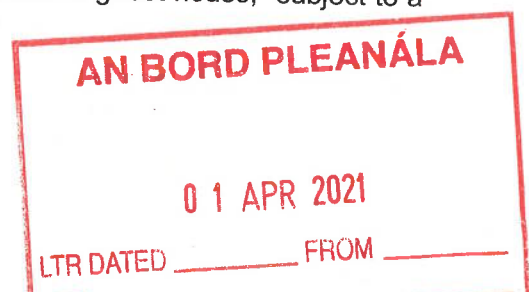
3.2. The Council received that application on 25 January 2021, and has not yet determined it.



- 3.3. The basis of that application is that the present use of the premises is use as a guest house, and that the use will not change.
- 3.4. Copperwhistle argues that bed and breakfast use is open for consideration, and that use as a guest house is therefore in accordance with the Z2 zoning of the site.
- 3.5. It argues that it will "continue the established use as a guest house whilst providing temporary accommodation to the DRHE."
- 3.6. It says this will produce "no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying those rooms which should not be taken into consideration"; and that conditions relating to accommodation of "people of particular socio-economic background" would not be imposed if this were a planning application.
- 3.7. It says conditions would also not be included to "preclude the guest house from accepting block bookings of rooms."
- 3.8. It claims that the premises will therefore "operate like any other guest house in the city and offer rooms to members of the public for a rate." These rooms "will be advertised on the guest house's website where bookings can be made by members of the public"; and "a block booking can be made by an individual or group for a specific event or occasion."
- 3.9. It asserts "that no conditions were included about the length of stay, class of guest nor the ability to block book rooms" in the Guest House Permission (see below); and that "continued use as a guest house, which leases rooms to the DRHE for the provision of homeless accommodation, complies with the conditions" of that permission.
- 3.10. It asserts that "the continued use as a guest house offering accommodation to the DRHE will have no material effects on the area with regards to the proper planning and sustainable development of the area"; and "will not negatively impact on the amenity of local residents in Hollybrook Park."
- 3.11. It cites as a precedent the adjacent property, 14 Hollybrook Park, which was granted permission for use as a guest house and is now used "to accommodate homeless people under Reg. Ref. E0931/10." It says that the Council carried out an enforcement investigation which found that the property had failed to reduce the number of rooms and was therefore in breach of its permission, but that any enforcement action was statute barred. It asserts that the Council's inspector stated that the use of the premises had not materially changed from use as a guest house.

4. Permissions

- 4.1. Both Section 5 Applications refer to 2 different permissions granted by the Council: the Guest House Permission, Reg. Ref. 1586/96, and the Apartment Permission, Reg. Ref. 2161/15.
- 4.2. Under the Guest House Permission, permission was granted on 22nd October 1996 for the "change of use of existing Grade 2 listed house to guest house," subject to a total of 7 conditions, which included the following: -



- *"This permission shall apply only to the use of the existing residence for overnight guest accommodation purposes and provision of additional parking facilities as indicated on the submitted plans. REASON: In the interest of clarity and development control."*
- *"That the proposed development shall be operated in such a manner that there will be no emissions of odours, or noise such as would give rise to reasonable cause for complaint by occupants of adjoining properties. REASON: In the interest of residential amenity."*
- *Note: This permission relates only to the change of use of the existing house and extension to overnight guest accommodation and private residence and does not provide for any alterations to the exterior of the premises." [Emphasis added.]*

4.3. Under the Apartment Permission, permission was granted on 7 August 2015 for conversion of "a 14 bedroom long stay guesthouse" to 4 no. one-bedroom and 2 no. two-bedroom apartments with associated works. [Emphasis added.]

4.4. The cover letter with the application for the Apartment Permission made the following statement in relation to the use of the property in 2015:

This is an Edwardian house which currently has the benefit of guest house use. There are fourteen bedrooms in the development which have effectively been used as long-stay bedrooms similar to apartments but with communal cooking and laundry facilities.

4.5. Hence, the permissions for the site begin by authorising conversion of a house to a guest house for overnight guests; and conclude with a permission to convert a long stay guest house to residential apartments.

5. New Factual Evidence

5.1. The Residents' First Application took the view that the use as a guest house had commenced pursuant to the Guest House permission, and that the apartment use pursuant to the Apartment Permission had never commenced.

5.2. That assumption now appears to have been incorrect. Investigations carried out by the Residents have indicated the following:

- Rates: the Property is not registered for rates in the valuation office, indicating that the guest house use either was not commenced or was allowed to lapse.
- Residential Tenancies Board: the Property was registered with the Residential Tenancies Board in the period after 2015, indicating that a residential use of the Property was in existence at that time.
- Eircodes: the Property was issued with a series of Eircodes for a series of apartments, indicating that it was in residential use.
- Guest House Registration: the Property is not registered as a Guest House with Failte Ireland pursuant to the Tourist Traffic Acts 1939 to 2016, and has not been registered since 2003 (this being as far back as records are held,

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indicating that the Guest House use either did not commence or has not been extant for some time.

5.3. The Residents are currently seeking formal written confirmation of the above information from the relevant regulators. This is not available to them within the window allowed for the Council to issue a Declaration on the Copperwhistle Application, and therefore they have had to proceed without it. In the circumstances, the Residents request that the Council would use its powers to request further information (see below.)

6. Use Classes and Zoning

6.1. Hollybrook Park and Hollybrook Road are zoned Z2 in the City Development Plan. This is a residential conservation zoning. The site is an Architectural Conservation Area and many of the properties in the area are protected structures, including the Property.

6.2. Use as a bed and breakfast, use as a Guest House and use as a hotel are separate uses under the City Development Plan. The zoning areas in which they are permitted are not the same, reflecting their different planning impacts. They are, however, all tourist uses, and some of them are open for consideration or permissible in residential areas. See Table below.

Zone	Category	Bed and Breakfast Allowed?	Guest House Allowed?	Hotel Allowed?
Z1	Residential	OFC		OFC
Z2	Residential conservation	OFC		
Z3	Neighbourhood centres	YES	YES	
Z4	Mixed service facilities	YES	YES	YES
Z5	Central area,	YES	YES	YES
Z6	Employment / Enterprise zones			YES
Z7	Industrial and port	OFC	OFC	OFC
Z8	Georgian conservation areas	OFC	OFC	YES
Z9				
Z10	Inner suburban and inner city	OFC	OFC	YES
Z11				
Z12	Institutional land	OFC	YES	YES
Z13				
Z14	Rejuvenation areas	OFC		YES
Z15	Institutional and community	OFC	OFC	OFC

OFC = Open for Consideration

6.3. The distinction between bed and breakfast, guest house and hotel is based on definitions in the Tourist Traffic Acts 1939-2016 (**Appendix 3**, see Sections 23 to 37) Responsibility for defining the criteria of each category of accommodation rests with Fáilte Ireland which adopts Regulations with the approval of the Minister. Under the schemes adopted by it, a bed and breakfast is a premises with 2 to 6 bedrooms, operated by the owner who lives on site; a guest house is a more formal structure,

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with 7 to 30 guest bedrooms; and a hotel is larger again, having upwards of 30 bedrooms.

- 6.4. A guest house is an accommodation for travellers. The Registration and Renewal of Registration Regulations for Guest Houses 2003 (**Appendix 04**). It states:

4.5 The premises shall be used primarily for the lodging or sleeping of travellers presenting themselves with or without prior arrangement and for the provision and service to such travellers, at reasonable hours, of breakfast.

- 6.5. The long title of the Tourist Traffic Acts 1939-2016 makes clear that the designation is restricted to tourist accommodation. It provides that the Act is:

An Act to make further and better provision for the encouragement and development of the tourist traffic, and for that purpose to establish a Board having powers of regulation, registration, and control in matters relating to the tourist traffic....

- 6.6. It is a principle of law that Regulations made pursuant to an Act are limited by the principles and policies of the Act under which they are adopted (Cases of McGowan v Labour Court [2013] 3 IR 718, **Appendix 05**, and cases cited therein.)

- 6.7. Hence, when the Act provides for regulation of guest houses, it means premises used by tourist travellers. It does not regulate residential accommodation. It does not regulate lodging houses or digs. It does not regulate housing. (A house is defined in the 2000 Act: *“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied.*)

- 6.8. A guest house must be registered under the Tourist Traffic Acts. It is an offence to describe a building as a guest house if it is not registered. (Section 34)

- 6.9. A bed and breakfast is too small to be subject to mandatory registration, but it may be registered and approved by Failte Ireland under a separate scheme, which is set out in the Minimum Requirements and Classification Matrix for Approved Irish Home Bed & Breakfast, February 2013 (**Appendix 06**). The first minimum requirement is that the premises be a private home where the owner lives:

“The premises shall be a private domestic dwelling, the primary home of the operator who must reside in same....”

- 6.10. The purpose of Failte Ireland, and by extension the purpose of the bed and breakfast scheme, is *“to increase the contribution of tourism to the economy by facilitating the development of a competitive and profitable tourist industry.”*

- 6.11. It is not correct to assert, as Copperwhistle does, that because bed and breakfast use is within the Z2 zoning matrix for the area, guest house use is compatible with the zoning of the Property. Guest house use is no longer open for consideration in Zone 2.

- 6.12. The City Development Plan deals with tourist accommodation at para 16.11. It says:

*16.11 Bed and Breakfasts, Guest Houses
Planning permission is required for the conversion of more than four bedrooms
in a dwelling house into a bed and breakfast establishment, in accordance with*

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Article 10(4) of the Planning and Development Regulations, 2001(as amended).

In determining planning applications for change of use to bed and breakfast, guesthouse, hotel or hostel in residential areas, the planning authority will have regard to the following:

- *Size and nature of facility*
- *The effect on the amenity of neighbouring residents*
- *The standard of accommodation for the intended occupiers of the premises*
- *The availability of adequate, safe and convenient arrangements for car parking and servicing*
- *The type of advertising proposed*
- *The effect on listed buildings and/or conservation areas*
- *The number of existing facilities in the area.*

6.13. This implies that enlargement of a bed and breakfast requires permission. Creation of a guest house requires permission, and would require it even if it involved further enlargement of a bd and breakfast. It implies that there are material planning considerations which arise when tourist accommodation is enlarged, or where property is converted for tourist accommodation. (These material considerations include impact on amenity of neighbours, standard of accommodation for occupiers, parking and advertising.) It also implies that tourist accommodation is not the same as residential accommodation, or lodgings for non-tourists.

7. What Needs to be Determined

7.1. In order to determine the present application, the Council will need to determine the present use and the intended use. It will need to consider them, to determine if they are different. It will then need to determine if any difference is material in planning terms. It will need to ask if different planning considerations would apply to the grant of permission for the intended use from the considerations that would apply to the grant of permission for the existing use. Copperwhistle has cited the decision in Galway County Council v Lackagh Rock Quarries and Westmeath County Council v Quirke. The Residents accept that these cases set out the correct approach for the Council to follow.

8. Present Use

8.1. The present use of the Property is unclear. The Residents had thought a guest house use was established. It now appears this may not be the case. The reasons it appears not to be a guest house are as follows:

- The Property is not registered as a guest house. (See email from Failte Ireland, **Appendix 7.**)
- There is no evidence before the Council that it was ever registered as a guest house.
- The Property is not registered for rates, indicating that it has not been in use as a guest house. (See communication from the Valuation Office, **Appendix 8.**)
- There is no receipt from the City Council for payment of rates, again indicating that it has not been in use as a guest house.

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FROM

- The Property has a series of eircodes in respect of different apartments within it, indicating that it was in use as a series of separate units, rather than as a single guest house. (See screenshot from eircodes website, **Appendix 9**.)
- The Apartment Permission authorises conversion of the Property for residential use.
- The application for the Apartment Permission indicates that the use was not a use for overnight accommodation, but a long term residential use: in effect, an unauthorised residential use had begun, or continued, before permission was sought.

8.2. It may be added that one of the Residents noticed a person breaking into the Property over the weekend of 6-7 February. When apprehended, the person breaking in claimed that he was merely breaking back in to his own home.

8.3. This indicates that a residential use has commenced or continued under the Apartment Permission, although condition 1 (which requires that certain works be completed in accordance with the plans and particulars submitted) has not been complied with. Accordingly, the present use appears in fact to be residential, not a guest house.

8.4. It may also be noted that the present use is not use as a bed and breakfast, for the following reasons:

- There are too many bedrooms.
- The owner does not live in the Property.
- There is no evidence that the owner intends to live in the Property.
- In fact the owner is a limited liability company that cannot live in the Property.

8.5. With reference to the present use being in breach of Condition 1 of the Apartment Permission, this has the consequence that the present use constitutes unauthorised development unless and until Condition 1 is complied with.

9. Proposed Use

9.1. The proposed use of the Property is not in fact a use as a guest house. The reasons are as follows:

- The Property will not be used by tourist travellers. It will be used as overnight accommodation by homeless people who do not want to have to travel.
- The Property will not in fact be available for travellers if it is block booked by the Dublin Region Homeless Executive.

9.2. The proposed use of the Property is also not in fact a residential use. It is use as temporary overnight accommodation. Residential use means use as a dwelling. A person who resides in a place can put down roots and call the place home. The proposed use does not provide a home for homeless people, merely a transitory resting place.

9.3. What is proposed is short term lodging for people from night to night. It is not accommodation for travellers. It is not a guest house. It is not a dwelling or a residence. It is not long stay accommodation.

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10. Change of Use

- 10.1. The existing use is different from the proposed use. Use as a residential apartment development is different from use as overnight accommodation. Use as a guest house for tourist travellers is different from use as overnight accommodation for people who are neither tourists nor travellers.

11. Materiality

- 11.1. The Change of Use is material. Different planning considerations apply to the proposed new use by virtue of City Development Plan Policy QH30 which considers that homeless accommodation should be spread out across the city, and should not be concentrated in one area. It provides:

*It is the Policy of Dublin City Council:
QH30: To ensure that all proposals to provide or extend temporary homeless accommodation or support services shall be supported by information demonstrating that the proposal would not result in an undue concentration of such uses nor undermine the existing local economy, resident community or regeneration of an area. All such applications shall include: a map of all homeless services within a 500 metre radius of the application site, a statement on the catchment area identifying whether the proposal is to serve local or regional demand; and a statement regarding management of the service/facility.*

- 11.2. This is a relevant planning consideration to be taken into consideration when determining if the change of use from one form of occupation to another is material. Because different planning considerations arise where homeless accommodation is concentrated in one area, the proposed use is necessarily materially different from the present use. The presence of existing homeless accommodation at number 14 Hollybrook Park, adjacent to the Property, would lead to concentration of homeless accommodation which could undermine the existing resident community. Whether it would in fact do so is a matter to be determined in the course of a planning application, not a Section 5 declaration. Once the change is material, whether it is justifiable is a matter for permission.

12. Alternative Submission

- 12.1. If the Council were to hold that the established use is in fact a guest house use, it is submitted that the proposed use would not be a continuation of that use.
- 12.2. It would not be a use by tourist travellers. It would not be a use in accordance with the Guest House Registration Regulations. It would be a use with different implications for the proper planning and development of the area, having regard to the concentration of homeless accommodation. That would be a material planning consideration leading to a material change of use for which permission would be required under the terms of the 2000 Act.
- 12.3. Different considerations would apply to a guest house use under para 16.11 of the City Development Plan, as set out above. Material planning considerations that arise in relation to tourist accommodation, and include impact on amenity of neighbours, standard of accommodation for occupiers, parking and advertising, would cease to

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apply, and would be replaced by the considerations that apply under Policy QH30. These considerations are materially different.

13. Comments on Copperwhistle's Submission

- 13.1. This section refutes certain arguments advanced by Copperwhistle in its submission.
- 13.2. It is not correct to say, as Copperwhistle does, that bed and breakfast use is open for consideration, and to infer from this that use as a guest house is therefore in accordance with the Z2 zoning of the site. Bed and breakfast use is different from guest house use. The number of rooms is too great for a bed and breakfast, and the owner will not reside in the property. Guest house use is not open for consideration within the Z2 zoning of the Property.
- 13.3. There will be a "discernible change to the use of the building." That change is a change from a long term residential use to short term overnight use by transient occupants.
- 13.4. Even if the Council were to hold that the present use is a guest house use, the proposed use would not be a use by tourist travellers, so it would be a material change of use.
- 13.5. There is no significance to the suggested "socio-economic class associated with the inhabitants." But what is significant in relation to the established *residential* use is that the proposed occupants will change all the time. What would be significant in relation to the asserted *guest house* use, if it were in fact the use, is that the occupants will not be tourist travellers.
- 13.6. Copperwhistle appears to think that only people of "a certain socio-economic class" become homeless. It is not accepted that this is either correct or relevant. People become homeless for a variety of reasons. The fact that someone does so is not a reason to label that person as being of a socio-economic class.
- 13.7. Copperwhistle is wrong to contend that block booking of rooms is irrelevant. It is of course true that anyone can make a block booking. A travel agent, for instance, may do so. But the particular block booking in this instance is relevant because the block booking of large numbers of rooms over a prolonged period of time will in practice make the Property unavailable for use by bona fide tourist travellers. The fact that hypothetically an individual tourist might from time to time manage to make a booking will not alter the fact that the predominant use will be use as transient accommodation for homeless people. The Guest House Regulations cited above require that the predominant use must be use for tourist travellers.
- 13.8. Copperwhistle's claim that the premises will "operate like any other guest house in the city and offer rooms to members of the public for a rate" is incorrect. Even if rooms are "advertised on the guest house's website where bookings can be made by members of the public," this will be merely a sham. The Homeless Executive will have already block booked most or all of the rooms. Similarly, the suggestion that "a block booking can be made by an individual or group for a specific event or occasion" is true only in a hypothetical sense: a group might make a block booking if there was room, but there will not be. Hence, the premises will not operate like any other guest house, because it will not in fact routinely accept bookings from individuals seeking to stay for a day or two while they visit Dublin.

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- 13.9. Copperwhistle is wrong to assert "that no conditions were included about the length of stay" in the Guest House Permission. In fact the conditions required that the guest house use was for "overnight" accommodation. As the application for the Residential Permission showed, the use that took place was in fact long term residential use, of the sort that might be provided in a boarding house or lodging house, but not in overnight accommodation.
- 13.10. Copperwhistle is incorrect to assert that there will be "no material effects on the area with regards to the proper planning and sustainable development of the area." The City Development Plan (Policy QH30) makes it clear that the concentration of homeless accommodation in one area gives rise to material considerations which must be taken into account when considering an application for permission.
- 13.11. The precedent of the adjacent property, 14 Hollybrook Park, serves to cast doubt on activities there rather than to confirm what is proposed for number 16. Number 14 in fact has an extant permission for use as a guest house, and the reduction in the number of rooms would appear to be a matter required by condition, which would not be statute barred: Section 157(4)(b) of the 2000 Act allows the enforcement of a condition at any time. The current use is use as accommodation for homeless people, and the inspector's report as cited does not appear to address the issues arising from the proper definition of a guest house in accordance with the Tourist Traffic Acts.
- 13.12. For these reasons, the submission of Copperwhistle does not support the proposition that the proposed use is in accordance with the existing use. Rather, they tend to show that the proposed use will be materially different from the existing use, and will represent a material change of use, and a development for which permission is required.

14. Next Steps

- 14.1. The Residents request that the Council take the following steps:
- Require that Copperwhistle provide the following information, pursuant to Section 5(2)(b) of the 2000 Act –
 - proof of rateable valuation of the Property
 - proof of payment of rates for all relevant years
 - proof of registration as a guest house with Failte Ireland for all relevant years
 - proof that the Property was not registered with the Residential Tenancies Board as one or more apartment units
 - proof that Residential Property Tax was not paid in respect of the Property for all relevant years
 - a copy of the Requisitions on Title and Replies thereto, provided when Copperwhistle purchased the Property
 - a copy of all tax clearance certificates obtained when Copperwhistle purchased the Property.
 - Require the Residents to provide the following information which they are currently seeking pursuant to the Freedom of Information Act and the Access to Information on the Environment Regulations, but which will not be available for 4 weeks (which would be outside the time within which the Council would normally be required to determine the Copperwhistle Application):
 - a letter from the Valuation Office confirming that the Property is not valued for rating purposes,

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- a letter from Failte Ireland confirming that the Property is not registered as a guest house,
 - a letter from the Residential Tenancies Board confirming that the Property was in fact registered with the Residential Tenancies Board as one or more apartment units.
- 14.2. Having obtained that information, the Residents request that the Council would give them and Copperwhistle the opportunity to comment on all material submitted by the other, pursuant to their rights to be heard in accordance with the principles of natural justice and the judgment of the Supreme Court in *Dellway v NAMA* (referenced above².)
- 14.3. The Residents further request that the Council would then refer the Copperwhistle Application and the Present Application to the Board for determination together. This will enable the two Applications to be determined consistently, and will enable the Residents to make a formal observation in relation to the Copperwhistle Application. It will eliminate any procedural inconsistencies in the process.
- 14.4. (If the Council were to make a declaration in Copperwhistle's favour, the Residents could refer the declaration in their own application to the Board, but would be unable to do so in respect of the declaration on Copperwhistle's application. They would then have no option, having regard to Section 50 of the 2000 Act, but to seek to judicially review the Council's determination of the Copperwhistle Application and to challenge the legislation in order to preserve their position. This paragraph is to put the Council on notice of this potential outcome. In the event that such a course of action should become necessary, the Residents will rely on this paragraph in relation to any application for costs.)
- 14.5. The Residents submit that the Council should take the above steps in the interests of justice, and to ensure that all parties with an interest are duly heard in relation to the matter.

² This case is over 350 pages long so only an excerpt summarising the conclusion has been included. A full copy can be provided as further information if requested.

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Appendix
Definition of Development, Works, and Use

Section 3

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.

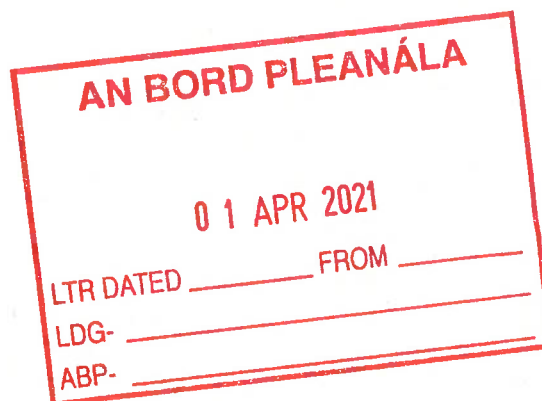
...

(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.

Section 2

“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;

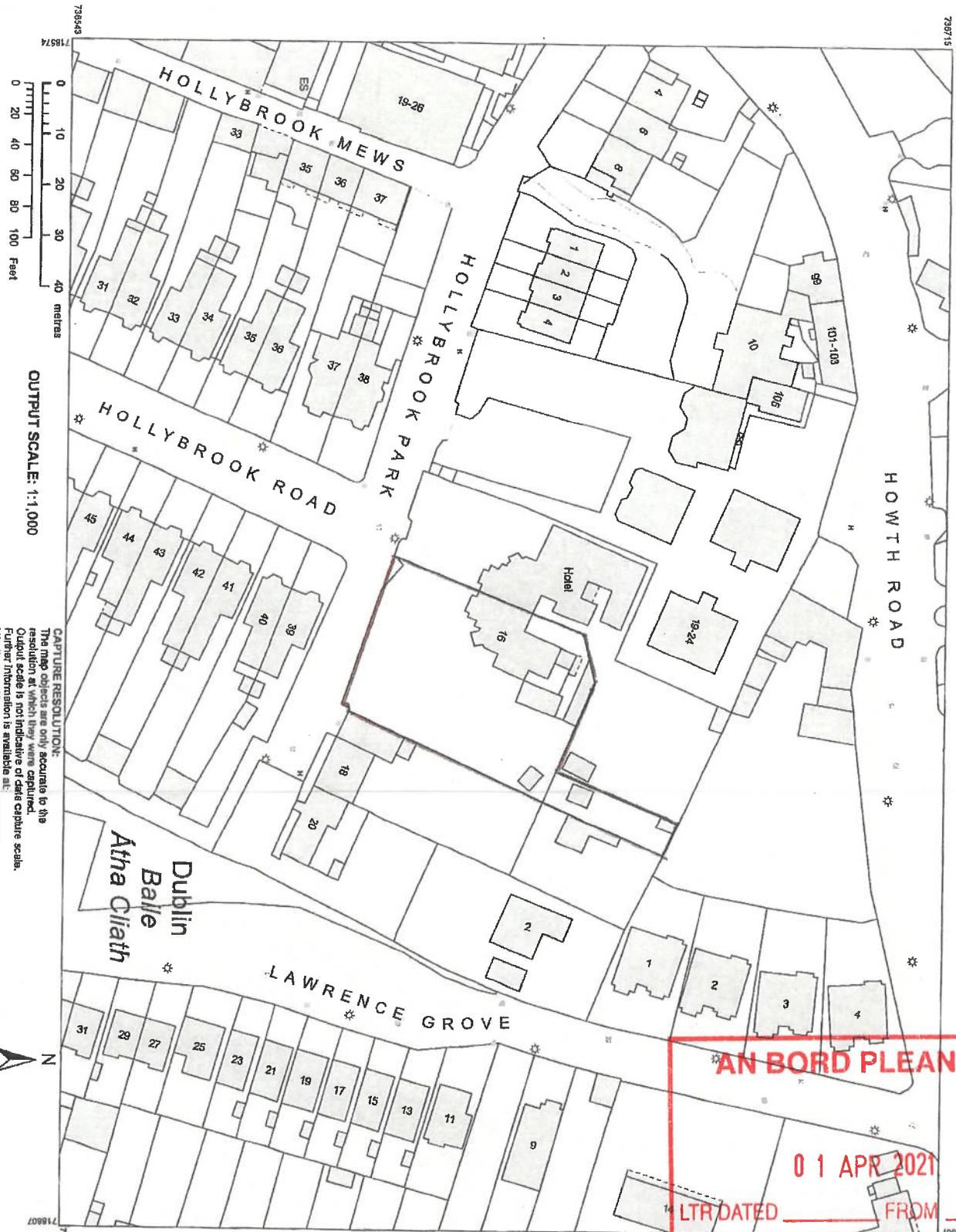
“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or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



APPENDIX 1

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Land Registry Compliant Map

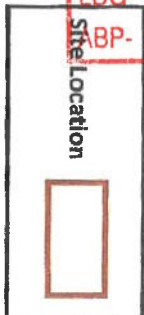


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LDG-BP-



National Mapping Agency

CENTRE COORDINATES:
ITM 718991,736629

PUBLISHED: 18/11/2020 **ORDER NO.:** 50158278_1

MAP SERIES: 1:1,000 **MAP SHEETS:** 3198-14

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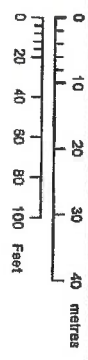
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OUTPUT SCALE: 1:1,000



APPENDIX 2

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LTR DATED _____ FROM _____

LDG- _____

ABP- _____

CH2680-804 received

DECLARATION ON DEVELOPMENT & EXEMPTED DEVELOPMENT



SECTION 5 APPLICATION FORM

RECEIVED
25 JAN 2021
Planning Department

NAME OF APPLICANT: Copperwhistle Ltd.

ADDRESS OF APPLICANT: [REDACTED]

EMAIL ADDRESS: n/a

TELEPHONE NO. Day: n/a Mobile: n/a

NAME OF AGENT AND AGENT'S ADDRESS: Hughes Planning & Development Consultants
70 Pearse Street, Dublin 2

TELEPHONE NO. Day: 015390710 Mobile: _____

ADDRESS FOR CORRESPONDENCE (if different from above)
70 Pearse Street, Dublin 2

LOCATION OF SUBJECT SITE: 16 Hollybrook Park, Clontarf, Dublin 3

Is this a Protected Structure or within the curtilage of a Protected Structure? Y

If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority? No

Please provide details of works (where applicable) or proposed development. (Note: only works listed and described under this section will be assessed under this section 5 application. Use additional sheets if required.)

No works proposed.

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List of plans, drawings etc. submitted with this application

n/a

Please state Applicant's interest in this site: Owner

If applicant is not owner of site, please provide name & address of owner:

n/a

Are you aware of any enforcement proceedings connected to this site?
If so please supply details:

Enforcement notice issued on 14th July 2020 but has since been closed.

Where there previous planning application/s on this site?

If so please supply details:

Reg. Ref. 1586/96 - change of use from dwelling to guesthouse.

Reg. Ref. 2428/15 - conversion of guesthouse to 2 no. two-bed apartments. Not implemented.

Signed 

Date 22/01/2021

NOTES

Application shall be accompanied by 2 copies of site location map with site clearly outlined in red and a fee of €80.00. Please submit 2 copies of any additional plans/reports etc. you may wish to include as part of the application.

Application shall be forwarded to: Dublin City Council, Planning Registry
Section, Block 4, Floor 0, Civic Offices, Wood Quay, Dublin 8.
Contact Details: Phone: 01 222 2149 Fax: 01 222 2675

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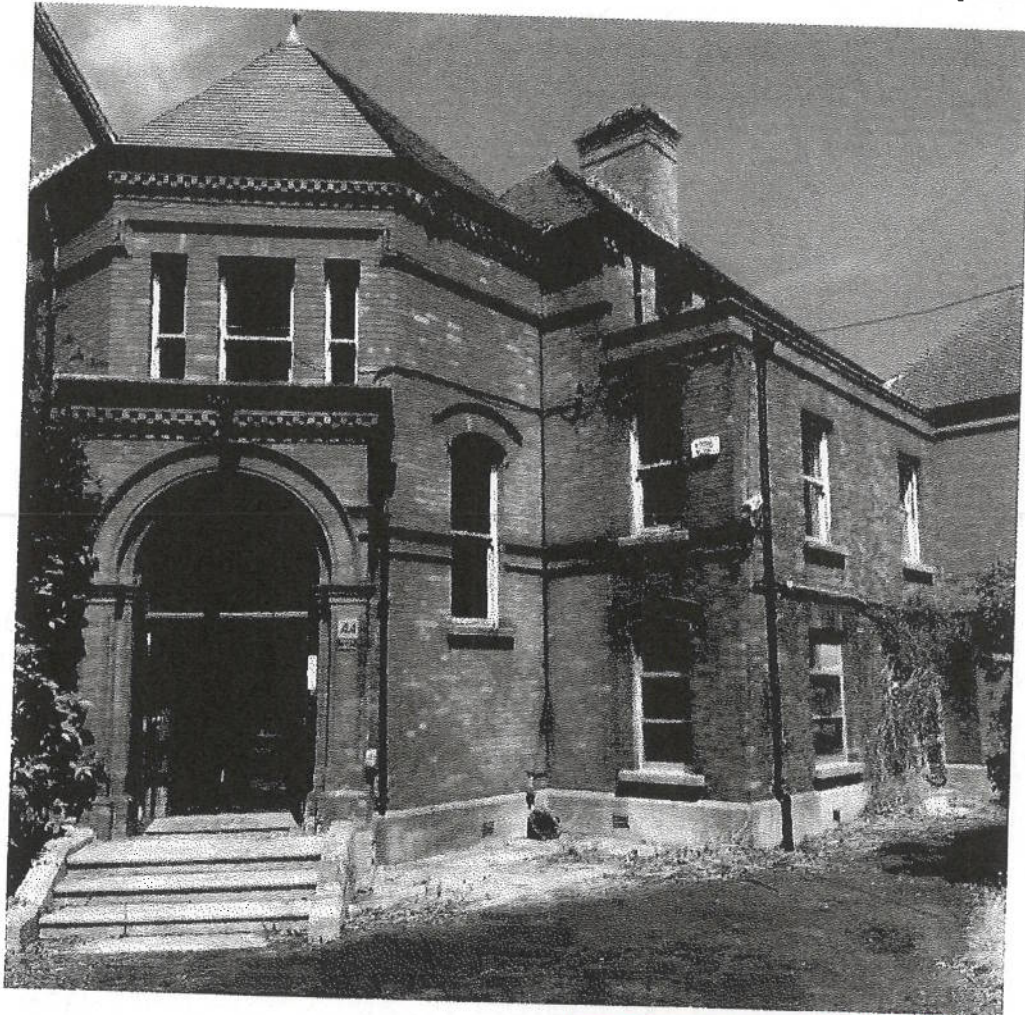
Planning Report

Section 5 Application - Declaration of Exempted Development

Use of Guesthouse at No. 16 Hollybrook Park,
Clontarf, Dublin 3

Copperwhistle Ltd.

January 2021



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Hughes Planning & Development Consultants

01 APR 2021

LTR DATED 70 Pearse Street, Dublin 2 FROM

+353 (0)1 539 0710 - info@hpdc.ie - www.hpdc.ie

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ABP-

1.0 Introduction

Hughes Planning and Development Consultants, 70 Pearse Street, Dublin 2, have prepared this report to accompany an application for a Declaration of Exempted Development, on behalf of Copperwhistle Ltd., [REDACTED] concerning the use of No. 16 Hollybrook Park, Clontarf, Dublin 3.

The subject site was granted planning permission for a change of use from a house to a guest house in 1996 under Reg. Ref. 1586/96. Our client intends to continue using the property as a guest house, which comprises 14 no. bedrooms, but has also agreed on Heads of Terms with the Dublin Region Homeless Executive (DRHE) to use the property to provide emergency to homeless families. Rooms will be leased on a nightly basis and a full guest house service will be provided including the provision of clean linen, breakfast and room cleaning. As with all guest houses, staff will be present 24 hours per day to provide the services listed above and conduct administrative duties required in a guest house. The management of the guest house and the provision of staff will solely be the responsibility of our client, the guest house owner. No element of care be it social, physical or emotional will be provided to guests at this guest house, nor will any non-governmental organisation or approved housing body be involved. See Appendix A for details.

Therefore, the question before the planning authority is:

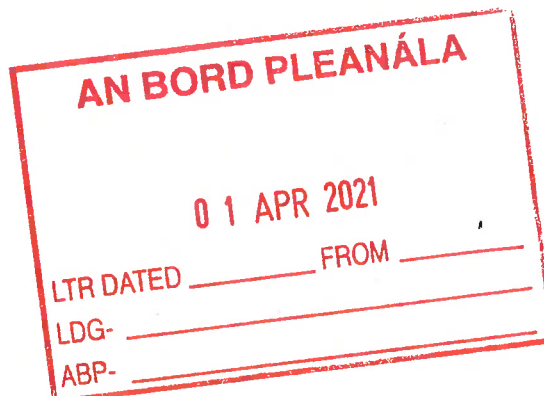
"Whether the use of the property as a guest house which provides rooms on a nightly basis offering Bed and Breakfast to Dublin City Council/ Dublin Regional Homeless Executive to accommodate homeless people, is or is not development and whether development constitutes exempted development or does not constitute exempted development?"

2.0 Site Description

The subject site fronts onto Hollybrook Park, which is a cul-de-sac accessed from the west via Howth Road. The site is located in a mature residential area, which consists of a mix of residential units with regards to building type and height.

The site is occupied by a large property laid out over three floors, which entails 14 no. bedrooms, and communal kitchen and laundry facilities. The property has an external red brick finish. The property on-site is currently vacant but was most recently used as a guest house, permitted under Planning Reg. Ref. 1586/96.

The building on site is listed on Dublin City Council's Record of Protected Structures (RPS Ref. 388



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January 2021

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Figure 1.0 Aerial view indicating the subject site, No. 16 Hollybrook Park (red outline)

3.0 Planning History

Planning Applications

- Reg. Ref. 1586/96** Planning permission was granted on 22nd October 1996 for the change of use of the existing Grade 2 listed house to guest house.
- Reg. Ref. 2161/15** Planning permission was granted on 7th August 2015 for the conversion of 14 bedroom long stay guest house to 4 no. one-bedroom and 2 no. two-bedroom apartments.

The final grant of permission was notified on 7th August 2015, however, this application was **not implemented**, and works did not commence for the proposed development. Furthermore, the planning permission for this application expired on 7th August 2020. On this basis, the relevant planning application for the development of the subject site is Reg. Ref. 1586/96.

Section 5 Declarations

- Reg. Ref. 0371/20** A declaration of exempted development was issued by Dublin City Council under Reg. Ref. 0371/20. This exemption relates to minor internal works proposed for the building including the repair of original features; replacement of damaged flooring; replacement of damaged sash windows on like for like basis; replacement of bathroom ware; and other minor works to improve the condition of the building.
- Reg. Ref. 0297/20** A declaration of exempted development was issued by Dublin City Council under Reg. Ref. 0297/20. This exemption relates to minor internal and external

works proposed for the building including the repair of windows and doors; repair of damaged original guttering; refitting the kitchen; painting interior and exterior; removal of overgrown vegetation from chimneys and guttering; repair of original gate; and other minor works needed to improve and preserve the building.

The works declared exempt under Section 5 were considered necessary to improve the condition of the building and allow it to continue being used as a guest house. The proposed works do not in any way affect the use as a guest house and only seek to improve it. Whilst the guest house will provide rooms to the Dublin Housing Region Executive, the established use as a guest house will continue.

The Hollybrook Park Residents Group submitted a section 5 referral to Dublin City Council regarding the use of No. 16 Hollybrook Park under Reg. Ref. 0405/20. This referral asks whether the change of use from a guesthouse to a residential facility for homeless people constitutes development.

It should be noted from the outset, that the established use as a guesthouse will not change.

4.0 Planning Context

4.1 Zoning

The subject site is zoned Z2 – ‘Residential Neighbourhoods (Conservation Areas) in the Dublin City Development Plan 2016-2022. The objective of Z2 zones is to ‘to protect and/or improve the amenities of residential conservation areas.’ The following uses are listed as ‘Permissible Uses’ in ‘Z2’ zoned lands:

Buildings for the health, safety and welfare of the public, childcare facility, embassy residential, home-based economic activity, medical and related consultants, open space, public service installation, residential.

The following uses are considered ‘Open for Consideration’ in ‘Z2’ zoned lands:

Bed and breakfast, community facility, cultural/recreational building and uses, education, live-work units, place of public worship, restaurant, veterinary surgery.

The approved use of ‘Guest House’ is consistent with the zoning objectives for the subject site and is therefore compliant with the development plan.

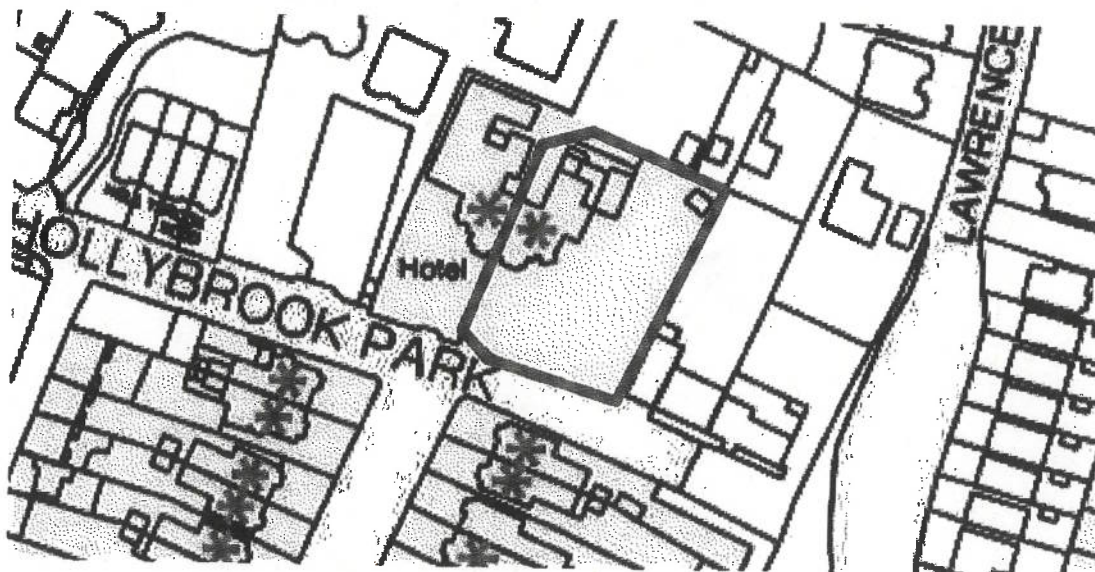


Figure 5.0 Extract from Zoning Map F showing the subject site (outlined in red) zoned Z2 in the Dublin City Development Plan 2016-2022

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Under Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3 (1) as follows:-

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."

This declaration seeks clarification on the use of No. 16 Hollybrook Park as a guest house. It is noted that legislation does not define the phrase 'material change of use' as used in Section 2(1) of the Act. In order to determine the materiality of the change, the practical impacts and effects of the proposed change of use and whether it would have led to materially different planning considerations by the Planning Authority are considered in this determination.

This is supported by findings in recent court cases which examined the practical and real-life effects caused by the change of use. In *Esat Digifone v South Dublin County Council* [2002] 3 IR 585, the court quoted the following:

"The consideration to be taken into account in determining materiality must at least be relevant to 'proper planning and development and the preservation of amenities' which are the twin objectives of the preamble to the legislation. The question is whether there were sufficient planning considerations raised by the change in activity to justify its submission to development control."

In a similar vein the court quoted Barron J. in *Galway County Council v. Lackagh Rock* [1985] I.R.120 at 127:

"To test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use."

A further decision in support of that view is that of Budd J. in *Westmeath County Council v. Quirke & Sons* [Unreported, High Court, 23rd May 1996] where the court noted that:

*"Many alterations in the activities carried out on the land constitute a change of use, however, not all alterations will be material. Whether such changes amount to a material change in use is a question of fact as is explained in *Monaghan County Council v Brogan* [1987] IR 339. Consideration of the materiality of a change in use means assessing not only the use itself but also its effects."*

No. 16 Hollybrook Park is approved to operate as a guest house as per Reg. Ref. 1586/96. It is proposed to continue the established use as a guest house whilst providing temporary accommodation to the DRHE. It is submitted that there will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying those rooms which should not be taken into consideration when having regard to whether a material change of use has occurred as evidenced by the Supreme Court *Dublin Corporation v Moore* [1984] ILRM 339 in which the judge stated:

"I can well understand the objection voiced by Mr. Heneghan in his affidavit, to which I have referred - the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin - yet others for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law - if they were, they might well offend against rights of equality."

It is considered that if this were a planning application for a guest house, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic background. Nor would they preclude the guest house from accepting block bookings of rooms. It is, therefore, submitted that the guest house will operate like any other guest house in the city and offer rooms to

members of the public for a rate. The rooms will be advertised on the guest house's website where bookings can be made by members of the public. As with any guest house or hotel, a block booking can be made by an individual or group for a specific event or occasion.

The following conditions were attached to the grant of permission for the guest house under Reg. Ref. 1586/96:

Insofar as the Local Government (Planning & Development) Acts 1963/93 and the Regulations made thereunder are concerned the development shall be carried out in accordance with the plans, particulars and specifications lodged with the application, save as may be required by the conditions attached hereto.

REASON: *To comply with permission regulations.*

This permission shall apply only to the use of the existing residence for overnight guest accommodation purposes and provision of additional parking facilities as indicated in the submitted plans.

REASON: *In the interests of clarity and development control.*

The proposed development shall be constructed and so operated that there will be no emission of odours, or noise such as would give rise to reasonable cause for complaint by occupants of adjoining or nearby properties.

REASON: *In the interests of residential amenities.
No signs or nameplates shall be erected without the prior approval of the planning authority, whether or not such development would constitute exempted development.*

REASON: *In the interests of visual amenities.*

The existing entrance shall be widened to a width not less than 4.0 metres and shall be relocated so as to align the entrance gates parallel to the centreline of the public road. Full details to be submitted and agreed in writing with the planning authority prior to the commencement of development.

REASON: *In the interests of traffic safety.*

Before this development commences a financial contribution in the sum of #6,135.00 shall be paid by the applicant to Dublin Corporation, in accordance with Section 26 of the Local Government (Planning & Development) Act 1963.

REASON: *Investment by Dublin Corporation in Local Authority works has facilitated and will facilitate the proposed development. It is considered appropriate and reasonable that the developer should contribute to the cost of same.*

It is noted that no conditions were included about the length of stay, class of guest nor the ability to block book rooms. Therefore, the continued use as a guest house, which leases rooms to the DRHE for the provision of homeless accommodation, complies with the conditions as set out above. It is submitted that no material change of use will have occurred and the development is therefore exempted development.

It is considered that the continued use as a guest house offering accommodation to the DRHE will have no material effects on the area with regards to the proper planning and sustainable development of the area. It is considered that the use of the building will not negatively impact on the amenity of local residents in Hollybrook Park. It is therefore apparent that no material change of use will have occurred and that change of use is considered exempted development.

It should be noted that precedence for a guest house being used to accommodate homeless people exists at No. 14 Hollybrook Park, which adjoins the subject site. In this case, a warning letter was issued to the owners of the property regarding the use of the guest house to accommodate homeless people

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under Reg. Ref. E0931/10. In their investigation, the Planning Authority concluded that planning permission for a guest house had been granted on the 20th January 1997 under Reg. Ref. 1957/96 subject to a number of conditions including the reduction of bedrooms. It was noted by the Enforcement Inspector that the number of rooms was never reduced, but enforcement proceedings were statute-barred as 10 years had passed since the grant of permission was issued.

Regarding the use for the provision of homeless accommodation, the Inspector confirmed that the building and its use did not materially change and were, therefore, the enforcement file was closed.

The case at No. 14 Hollybrook Park is pertinent to No. 16 Hollybrook Park as the approved use of guest house will continue at the property, as it did at No 14 where no material change of use was found to have occurred.

6.0 Conclusion

We note that No. 16 Hollybrook Park was granted permission to operate as a guest house. It is proposed to continue the operation of the property as a guesthouse which will lease rooms to the DRHE. These rooms will be leased on a nightly basis and a full Bed and Breakfast service will be provided to occupants. Our client will maintain the management of the guest house whilst providing staff 24/7 for regular guest house duties. It is submitted that the principal use of the property has not changed and therefore will have no adverse effects on the proper planning and sustainable development of the area.

Accordingly, we request a declaration to this effect from Dublin City Council under Section 5 of the Planning and Development Act 2000 (as amended). Should you have any queries or require any further information including access to the building, please do not hesitate to contact the undersigned.



Kevin Hughes MIPi MRTPI
Director for HPDC

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Appendix A

Letter issued by the Dublin Regional Homeless Executive outlining its role in securing rooms at No. 16 Hollybrook Park.

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01 APR 2021

LTR DATED _____ FROM _____

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20th January 20201

>> Web www.homelessdublin.ie

To whom it may concern,

Guesthouse at 16 Hollybrook Park

Dublin Region Homeless Executive have agreed Heads of Terms for the use of the above guesthouse at 16 Hollybrook Park for the provision of Emergency Accommodation for homeless families. This agreement was reached in June 2020, for a term of 12 months, commencing from the date of first occupation.

The owners, Copperwhistle Ltd., have agreed to provide guest accommodation to our clients on a B&B basis, which includes provision of 24 Hour staffing to ensure that this premises is operated to an acceptable standard.

The owner have engaged their own design team to oversee the refurbishment of this previously vacant property. This includes the engagement of a Grade 1 Conservation Architect, to ensure that all works are carried out in safe and sensitive manor and in line with approved section 5 submissions as grant by the planning authority.

Please note that no care element is attached to this agreement, be it physical, social or emotional care.

This guesthouse will be managed solely by the owners and their staff. No NGO or Approved Housing body will have any role in the day to day operations of this facility.

The section 5 submission, November 2020, on behalf of the local stakeholders, states the guesthouse is a homeless facility. To reiterate the DRHE has agreed Heads of Terms with the owner of a guesthouse and no Approved Housing Body or a NGO is involved in the running of this operation.

Dublin Regional Homeless Executive is satisfied that this premises will be managed to acceptable standards.

If you require any further information regarding this matter please do not hesitate to contact me,

Yours sincerely,



Authorised Officer

Dublin City Council

AN BORD PLEANÁLA

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APPENDIX 3

AN BORD PLEANÁLA

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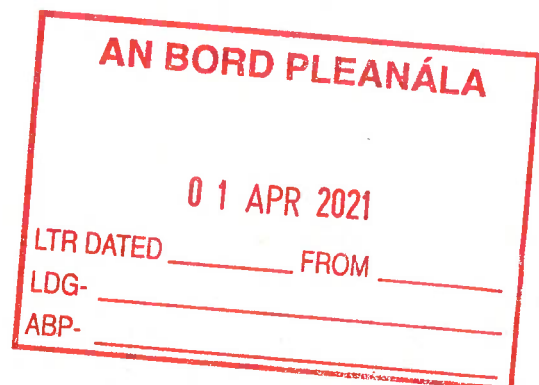
TOURIST TRAFFIC ACT 1939

REVISED

Updated to 16 September 2020

This Revised Act is an administrative consolidation of the *Tourist Traffic Act 1939*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Criminal Justice (Enforcement Powers) (Covid-19) Act 2020* (14/2020), enacted 11 September 2020, and all statutory instruments up to and including the *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) Order 2020* (S.I. No. 356 of 2020), made 15 September 2020, were considered in the preparation of this Revised Act.



Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

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TOURIST TRAFFIC ACT 1939
REVISED
Updated to 16 September 2020

Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Tourist Traffic Acts 1939 to 2016: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*National Tourism Development Authority (Amendment) Act 2016 (14/2016)*, s. 2(2)). The Acts in the group are:

- *Tourist Traffic Act 1939 (24/1939)*
- *Tourist Traffic Act 1952 (15/1952)*
- *Tourist Traffic Act 1955 (5/1955)*
- *Tourist Traffic Act 1957 (27/1957)*
- *Tourist Traffic Act 1966 (3/1966)*
- *Tourist Traffic Act 1970 (16/1970)*
- *Tourist Traffic Act 1983 (31/1983)*
- *Tourist Traffic Act 1995 (13/1995)*
- *National Tourism Development Authority Act 2003 (10/2003)*
- *National Tourism Development Authority (Amendment) Act 2011 (33/2011)*
- *National Tourism Development Authority (Amendment) Act 2016 (14/2016)*

Acts previously included in the group but now repealed are:

- *Tourist Traffic Act 1946 (14/1946)*
- *Tourist Traffic Act 1959 (27/1959)*
- *Tourist Traffic Act 1961 (37/1961)*
- *Tourist Traffic Act 1963 (22/1963)*
- *Tourist Traffic Act 1968 (29/1968)*
- *Tourist Traffic Act 1972 (28/1972)*
- *Tourist Traffic Act 1975 (26/1975)*
- *Tourist Traffic Act 1979 (22/1979)*
- *Tourist Traffic Act 1987 (11/1987)*
- *Tourist Traffic Act 1998 (45/1998)*

Annotations

AN BORD PLEANÁLA	
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This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *National Tourism Development Authority (Amendment) Act 2011* (33/2011)
- *National Tourism Development Authority Act 2003* (10/2003)
- *Tourist Traffic Act 1998* (45/1998)
- *Tourist Traffic Act 1995* (13/1995)
- *Tourist Traffic Act 1987* (11/1987)
- *Tourist Traffic Act 1983* (31/1983)
- *Tourist Traffic Act 1979* (22/1979)
- *Tourist Traffic Act 1975* (26/1975)
- *Tourist Traffic Act 1972* (28/1972)
- *Tourist Traffic Act 1970* (16/1970)
- *Tourist Traffic Act 1968* (29/1968)
- *Tourist Traffic Act 1966* (3/1966)
- *Tourist Traffic Act 1963* (22/1963)
- *Tourist Traffic Act 1961* (37/1961)
- *Tourist Traffic Act 1959* (27/1959)
- *Tourist Traffic Act 1957* (27/1957)
- *Tourist Traffic Act 1955* (5/1955)
- *Tourist Traffic Act 1952* (15/1952)
- *Tourist Traffic (Amendment) Act 1946* (14/1946)

All Acts up to and including *Criminal Justice (Enforcement Powers) (Covid-19) Act 2020* (14/2020), enacted 11 September 2020, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) Order 2020* (S.I. No. 356 of 2020)
- *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 140 of 2011)
- *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1993* (S.I. No. 15 of 1993)
- *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 95 of 1987)
- *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1986* (S.I. No. 42 of 1986)
- *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1980* (S.I. No. 8 of 1980)
- *Tourist Traffic Act, 1939 (Commencement) Order 1969* (S.I. No. 61 of 1969)
- *Transport, Fuel and Power (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 1961* (S.I. No. 246 of 1961)

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- *Fines and Penalties (Disposal) Order 1946* (S.I. No. 141 of 1946)
- *Tourist Traffic Act, 1939 (Commencement of Sections 33, 34, 35, 36 and 37) Order 1944* (S.I. No. 52 of 1944)

All statutory instruments up to and including *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) Order 2020* (S.I. No. 356 of 2020), made 15 September 2020, were considered in the preparation of this revision.

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TOURIST TRAFFIC ACT 1939
REVISED
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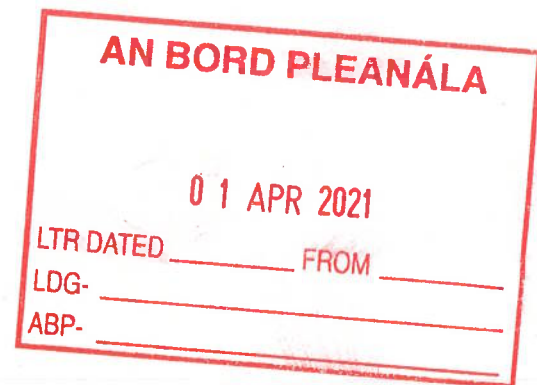
ARRANGEMENT OF SECTIONS

PART I.

PRELIMINARY AND GENERAL.

Section

1. Short title.
2. Definitions.
3. Expenses.



PART II.

ESTABLISHMENT AND GENERAL POWERS OF THE IRISH TOURIST BOARD.

4. Constitution of the Irish Tourist Board.
5. Disqualification of members of Board from being members of the Oireachtas.
6. Common seal of the Board.
7. Removal of members of the Board.
8. Resignation and disqualification of members of the Board.
9. Meetings and procedure of the Board.
10. Accounts and audits.
11. Officers and servants of the Board.
12. Exercise of functions of Board through its officers.
13. Disclosure of interest in contract.
14. General powers of the Board.
15. Non-repayable grant to the Board.
16. Repayable advances to the Board.
17. Payment of interest on repayable advances.
18. Repayment of repayable advances.

19. Compulsory acquisition of land, etc., by the Board.
20. Regulations.
21. Furnishing of information by the Board to the Minister.
22. Annual report, statistics and returns.

PART III.

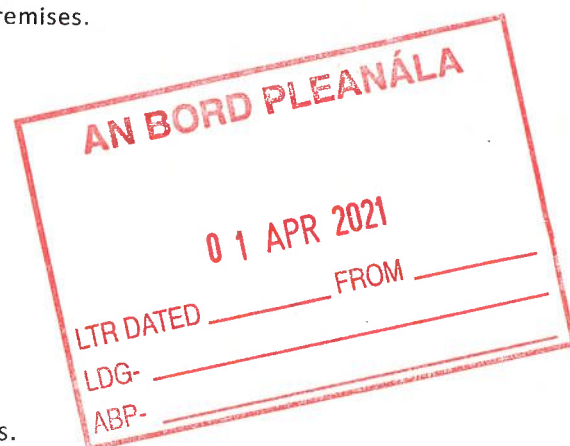
REGISTRATION OF PREMISES.

23. Definitions for the purposes of Part III.
24. The registers and their contents.
25. Eligibility for registration in the respective registers.
- 25A. Caravans and camping sites
26. Applications for registration.
27. Registration of premises.
28. Duration of registration.
29. Applications for renewal of registration.
30. Renewal of registration.
31. Registration certificates.
32. Amendment of register in certain circumstances.
33. Restriction on describing premises as a hotel.
34. Restriction on describing premises as a guest house.
35. Restriction on describing premises as a holiday hostel, etc.
36. Restriction on describing premises as a youth hostel.
37. Restriction on describing premises as a holiday camp.
- 37A. Motor Hotels.
- 37B. Caravan sites and camping sites.
- 37C.
- 37D. Register of holiday apartments.
38. Exemptions.
39. Grades.
40. Devolution and transfer of registered premises.
41. Inspection.
42. Evidence of the contents of registers.
43. Display of charges.
44. External signs.
45. Annual list of registered premises.
46. Service of notices.
47. Offences.

PART IV.

ESTABLISHMENT OF SPECIAL AREAS.

48. Areas to which this Part of this Act applies.



[No. 24.]

Tourist Traffic Act 1939

[1939.]

49. Conferring of powers on the Board in respect of areas to which this Part of this Act applies.
50. Amendment and revocation of orders under this Part of this Act.
51. Laying of orders under this Part of this Act before Houses of the Oireachtas.

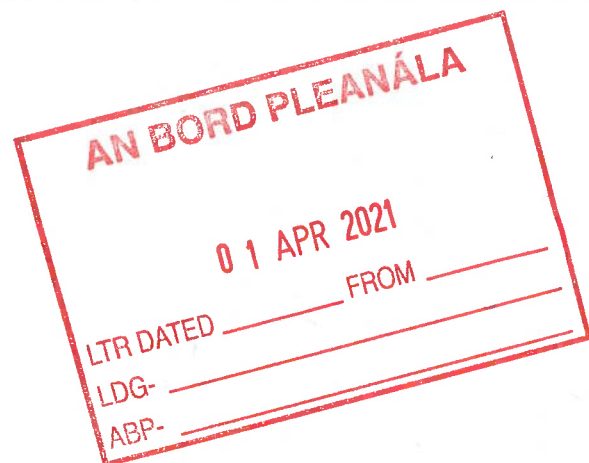
PART V.

AMENDMENT OF THE TOURIST TRAFFIC (DEVELOPMENT) ACT, 1931.

52. Amendment of the Tourist Traffic (Development) Act, 1931.

ACTS REFERRED TO

Local Authorities (Officers and Employees) Act, 1926	No. 39 of 1926
Town and Regional Planning Act, 1934	No. 22 of 1934
Tourist Traffic (Development) Act, 1931	No. 15 of 1931





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TOURIST TRAFFIC ACT 1939

REVISED

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AN ACT TO MAKE FURTHER AND BETTER PROVISION FOR THE ENCOURAGEMENT AND DEVELOPMENT OF THE TOURIST TRAFFIC, AND FOR THAT PURPOSE TO ESTABLISH A BOARD HAVING POWERS OF REGULATION, REGISTRATION, AND CONTROL IN MATTERS RELATING TO THE TOURIST TRAFFIC AND, IN PARTICULAR, THE ACCOMMODATION AND ATTRACTIONS AVAILABLE FOR TOURISTS, AND TO PROVIDE FOR THE CHARGING OF FEES BY SUCH BOARD IN RESPECT OF REGISTERS KEPT BY THEM, AND TO PROVIDE FOR DIVERS MATTERS ANCILLARY TO OR CONNECTED WITH THE MATTERS AFORESAID. [27th July, 1939.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

Annotations

Modifications (not altering text):

C1 Functions transferred and references to “Department of Transport, Tourism and Sport” and “Minister for Transport, Tourism and Sport” in collectively cited *Tourist Traffic Acts* construed (16.09.2020) by *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) Order 2020* (S.I. No. 356 of 2020), arts. 2 and 3, in effect as per art. 1(2), subject to transitional provisions in arts. 4-8.

Note change of name of Department and Minister to Tourism, Culture, Arts, Gaeltacht, Sport and Media (30.09.2020) by *Culture, Heritage and the Gaeltacht (Alteration of Name of Department and Title of Minister) Order 2020* (S.I. No. 403 of 2020), in effect as per art. 1(2).

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Culture, Heritage and the Gaeltacht.

(2) References to the Department of Transport, Tourism and Sport contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Department of Culture, Heritage and the Gaeltacht.

3. (1) The functions vested in the Minister for Transport, Tourism and Sport by or under —

(a) the *Tourist Traffic Acts 1939 to 2016*,

...

are transferred to the Minister for Culture, Heritage and the Gaeltacht.

(2) References to the Minister for Transport, Tourism and Sport contained in any Act or instrument made under such Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Culture, Heritage and the Gaeltacht.

Editorial Notes:

- E1** Previous affecting provision: functions transferred and references to "Department of Tourism, Culture and Sport" and "Minister for Tourism, Culture and Sport" construed (1.04.2011) by *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 140 of 2011), arts. 2 and 3, in effect as per art. 1(2); superseded as per C-note above.
- E2** Previous affecting provision: functions transferred and references to "Department of Tourism, Transport and Communications" and "Minister for Tourism, Transport and Communications" construed (20.01.1993) by *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1993* (S.I. No. 15 of 1993), arts. 3 and 4, commenced on enactment; superseded as per C-note above.
- E3** Previous affecting provision: functions transferred and references to "Department of the Marine" and "Minister for the Marine" construed (31.03.1987) by *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 95 of 1987), arts. 3 and 4, in effect as per art. 1(2); superseded as per C-note above.
- E4** Previous affecting provision: functions transferred and references to "Department of Industry, Trade, Commerce and Tourism" and "Minister for Industry, Trade, Commerce and Tourism" construed (18.02.1986) by *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1986* (S.I. No. 42 of 1986), arts. 3 and 4, in effect as per art. 1(2); superseded as per C-note above.
- E5** Previous affecting provision: functions transferred and references to "Department of Tourism and Transport" and "Minister for Tourism and Transport" construed (24.01.1980) by *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1980* (S.I. No. 8 of 1980), arts. 3 and 4, in effect as per art. 1(2); superseded as per C-note above.
- E6** Previous affecting provision: functions transferred and references to "Department of Industry and Commerce" and "Minister for Industry and Commerce" construed (31.10.1961) by *Transport, Fuel and Power (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 1961* (S.I. No. 246 of 1961), arts. 3 and 4, commenced on enactment; superseded as per C-note above.

PART I.**PRELIMINARY AND GENERAL.**

Short title. 1.—This Act may be cited as the Tourist Traffic Act, 1939.

Definitions. 2.—In this Act—

F1['contractor' has the meaning assigned to it by section 12(1) of the National Tourism Development Authority Act 2003;]

the expression "the Minister" means the Minister for Industry and Commerce;

the expression "the Board" means the Irish Tourist Board established in pursuance of this Act;

the word "prescribed" means prescribed by regulations made by the Board under this Act.

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Pt. I.S. 2

[No. 24.]

LTR DATED Tourist Traffic Act 1939

[1939.]

LDG- _____

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Annotations**Amendments:**

- F1 Substituted (13.04.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(6), commenced on enactment.

Modifications (not altering text):

- C2 Functions transferred and references to "Department of Transport, Tourism and Sport" and "Minister for Transport, Tourism and Sport" in collectively cited *Tourist Traffic Acts* construed (16.09.2020) by *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) Order 2020* (S.I. No. 356 of 2020), arts. 2 and 3, in effect as per art. 1(2), subject to transitional provisions in arts. 4-8.

Note change of name of Department and Minister to Tourism, Culture, Arts, Gaeltacht, Sport and Media (30.09.2020) by *Culture, Heritage and the Gaeltacht (Alteration of Name of Department and Title of Minister) Order 2020* (S.I. No. 403 of 2020), in effect as per art. 1(2).

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by Article 3 are transferred to the Department of Culture, Heritage and the Gaeltacht.

(2) References to the Department of Transport, Tourism and Sport contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Department of Culture, Heritage and the Gaeltacht.

3. (1) The functions vested in the Minister for Transport, Tourism and Sport by or under —
(a) the *Tourist Traffic Acts 1939 to 2016*,

...

are transferred to the Minister for Culture, Heritage and the Gaeltacht.

(2) References to the Minister for Transport, Tourism and Sport contained in any Act or instrument made under such Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Culture, Heritage and the Gaeltacht.

- C3 Term "holiday apartment" defined (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 1(2), commenced on enactment.

Interpretation.

1. — ...

(2) For the purposes of the *Tourist Traffic Acts, 1939 to 1983*, "holiday apartment" shall include a tourist apartment, an apartotel and a holiday flat.

- C4 Term "holiday cottage" defined (5.08.1970) by *Tourist Traffic Act 1970* (16/1970), s. 1(2), commenced on enactment.

Interpretation.

1.— ...

(2) For the purposes of the *Tourist Traffic Acts, 1939 to 1970*, "holiday cottage" shall include a holiday house, a holiday home and a holiday villa.

Editorial Notes:

- E7 Previous affecting provision: functions transferred and references to "Department of Tourism, Culture and Sport" and "Minister for Tourism, Culture and Sport" construed (1.04.2011) by *Tourism and Sport (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 140 of 2011), arts. 2 and 3, in effect as per art. 1(2); superseded as per C-note above.

- E8** Previous affecting provision: definition of “contractor” inserted (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 7, substituted as per F-note above.
- E9** Previous affecting provision: functions transferred and references to “Department of Tourism, Transport and Communications” and “Minister for Tourism, Transport and Communications” construed (20.01.1993) by *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1993* (S.I. No. 15 of 1993), arts. 3 and 4, commenced on enactment; superseded as per E-note above.
- E10** Previous affecting provision: functions transferred and references to “Department of the Marine” and “Minister for the Marine” construed (31.03.1987) by *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1987* (S.I. No. 95 of 1987), arts. 3 and 4, in effect as per art. 1(2); superseded as per E-note above.
- E11** Previous affecting provision: functions transferred and references to “Department of Industry, Trade, Commerce and Tourism” and “Minister for Industry, Trade, Commerce and Tourism” construed (18.02.1986) by *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1986* (S.I. No. 42 of 1986), arts. 3 and 4, in effect as per art. 1(2); superseded as per E-note above.
- E12** Previous affecting provision: functions transferred and references to “Department of Tourism and Transport” and “Minister for Tourism and Transport” construed (24.01.1980) by *Tourism (Transfer of Departmental Administration and Ministerial Functions) Order 1980* (S.I. No. 8 of 1980), arts. 3 and 4, in effect as per art. 1(2); superseded as per E-note above.
- E13** Previous affecting provision: functions transferred and references to “Department of Industry and Commerce” and “Minister for Industry and Commerce” construed (31.10.1961) by *Transport, Fuel and Power (Transfer of Departmental Administration and Ministerial Functions) (No. 2) Order 1961* (S.I. No. 246 of 1961), arts. 3 and 4, commenced on enactment; superseded as per E-note above.

Expenses.

3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

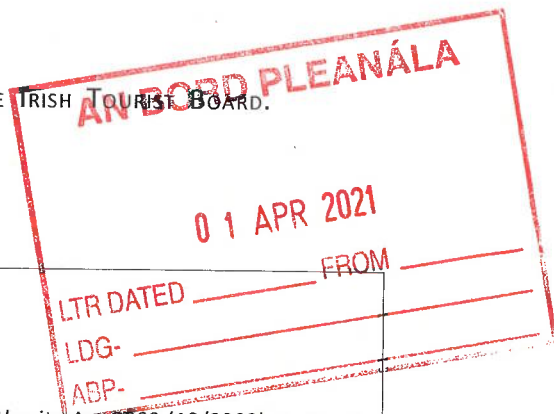
PART II.

ESTABLISHMENT AND GENERAL POWERS OF THE IRISH TOURIST BOARD.

Constitution of the Irish Tourist Board.

4.—F2[...]

Annotations	
Amendments:	
F2	Repealed (28.05.2003) by <i>National Tourism Development Authority Act 2003</i> (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.
Editorial Notes:	
E14	Previous affecting provision: subs. (3) amended (5.08.1970) by <i>Tourist Traffic Act 1970</i> (16/1970), s. 6(a), commenced on enactment; repealed as per F-note above.
E15	Previous affecting provision: subss. (3) and (6) amended (3.07.1952) by <i>Tourist Traffic Act 1952</i> (15/1952), s. 16, commenced on enactment; repealed as per F-note above.



Disqualification of members of Board from being members of the Oireachtas.

5.—F3[...]

Annotations**Amendments:**

F3 Repealed (3.07.1952) by *Tourist Traffic Act 1952 (45/1952)*, s. 3(1), commenced on enactment.

Common seal of the Board.

6.—F4[...]

Annotations**Amendments:**

F4 Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

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Removal of members of the Board.

7.—F5[...]

Annotations**Amendments:**

F5 Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

Resignation and disqualification of members of the Board.

8.—F6[...]

Annotations**Amendments:**

F6 Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

Editorial Notes:

E16 Previous affecting provision: subs. (2) substituted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 10, commenced on enactment; repealed as per F-note above.

Meetings and
procedure of the
Board. 9.—F7

Annotations**Amendments:**

- F7** Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

Accounts and
audits. 10.—F8[...]

Annotations**Amendments:**

- F8** Repealed (3.07.1952) by *Tourist Traffic Act 1952 (15/1952)*, s. 3(1), commenced on enactment.

Officers and
servants of the
Board. 11.—F9[...]

Annotations**Amendments:**

- F9** Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

Editorial Notes:

- E17** Previous affecting provision: subs. (2) substituted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 11, commenced on enactment; original provision and amendment repealed as per F-note above.
- E18** Previous affecting provision: subs. (2) amended (3.12.1975) by *Tourist Traffic Act 1975 (26/1975)*, s. 5, commenced on enactment; substituted as per E-note above and repealed with original provision as per F-note above.

Exercise of
functions of
Board through its
officers. 12.—F10[...]

Annotations**Amendments:**

- F10** Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

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Disclosure of
interest in
contract.

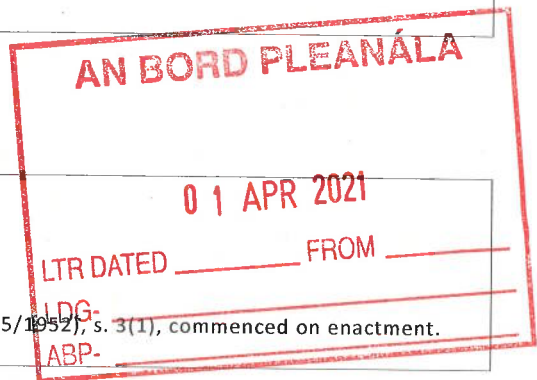
13.—F11[...]

Annotations	
Amendments:	
F11	Repealed (28.05.2003) by <i>National Tourism Development Authority Act 2003</i> (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

General powers
of the Board.

14.—F12[...]

Annotations	
Amendments:	
F12	Repealed (3.07.1952) by <i>Tourist Traffic Act 1952</i> (15/1952), s. 3(1), commenced on enactment.



Non-repayable
grant to the
Board.

15.—F13[...]

Annotations	
Amendments:	
F13	Repealed (3.07.1952) by <i>Tourist Traffic Act 1952</i> (15/1952), s. 3(1), commenced on enactment.

Repayable
advances to the
Board.

16.—F14[...]

Annotations	
Amendments:	
F14	Repealed (28.05.2003) by <i>National Tourism Development Authority Act 2003</i> (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.
Editorial Notes:	
E19	Previous affecting provision: application of section restricted (3.07.1952) by <i>Tourist Traffic Act 1952</i> (15/1952), s. 11, commenced on enactment; s. 11 applies only to s. 16 of the Principal Act and therefore would appear to be spent.
E20	Previous affecting provision: subs. (1) substituted (12.06.1946) by <i>Tourist Traffic (Amendment) Act 1946</i> (14/1946), s. 2, commenced on enactment; subs. (1) effectively repealed by restrictions placed as per E-note above and formally repealed as per F-note above.

Payment of interest on repayable advances.

17.—F15[...]

Annotations

Amendments:

F15 Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

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Repayment of repayable advances.

18.—F16[...]

Annotations

Amendments:

F16 Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

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Compulsory acquisition of land, etc., by the Board.

19.—(1) In this section the word "land" includes land covered with water and also includes easements, way-leaves, water-rights, fishing rights, sporting rights, and other rights over or in respect of any land or water.

(2) If and whenever the Board thinks proper to acquire compulsorily any land for the purpose of the exercise of any of the powers or the performance of any of the duties or functions conferred or imposed on it by this Act, the Board may, with the consent of the Minister, by order declare its intention so to acquire such land and every such order shall operate to confer on the Board full power to acquire compulsorily the land mentioned therein under and in accordance with this section.

(3) Whenever the Board proposes to make an order under this section for the purpose of acquiring any land, it shall so inform the Irish Land Commission and if, within three months of their being so informed, the said Commission inform the Board that the said Commission are about to acquire such land for their purposes under the Land Purchase Acts, the Board shall not make such order.

(4) Before making an order under this section, the Board—

(a) shall deposit and keep open for inspection in its principal office or some other suitable place such plans, specifications, and other documents as will show fully and clearly the land intended to be acquired by virtue of the order, and

(b) shall give notice, in such manner as it may consider best adapted for informing persons likely to be affected by the order, of the intention of the Board to consider the making thereof and of the manner in which representations and objections in respect of the order may be made, and

(c) shall, if it considers it expedient so to do, cause a public inquiry to be held in regard to the making of the order.

(5) Whenever the Board acquires under this section any land which is subject, either alone or in conjunction with other land, to a purchase annuity, or an annual sum equivalent to a purchase annuity payable to the Irish Land Commission, the following provisions shall have effect, that is to say:—

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- (a) if such purchase annuity or annual sum is payable in respect only of the land so acquired, the Irish Land Commission may require the Board to redeem such purchase annuity or annual sum;
 - (b) if such purchase annuity or annual sum is payable in respect of the land so acquired and other land, the said Commission may apportion such purchase annuity or annual sum between the land so acquired and such other land and may require the Board to redeem the part of such purchase annuity or annual sum so apportioned on the land so acquired;
 - (c) whenever the said Commission so requires the Board to redeem any such purchase annuity or annual sum, or such apportioned part thereof, the Board shall forthwith redeem such purchase annuity or annual sum, or such apportioned part thereof (as the case may be) under and in accordance with the Land Purchase Acts.
- (6) Compensation shall be paid by the Board for land compulsorily acquired by virtue of an order under this section to the several persons entitled thereto or having estates or interests therein, and such compensation shall, in default of agreement, be fixed under and in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919.
- (7) Sections 69 to 83 of the Lands Clauses Consolidation Act, 1845, shall apply to any compensation payable by the Board under this section and to the conveyance to the Board of any land compulsorily acquired by virtue of an order under this section, and for the purpose of such application the Board shall be deemed to be the promoter of the undertaking.
- (8) The following provisions shall have effect in relation to any public inquiry held under this section—
- (a) the Minister shall appoint a fit and proper person to hold such inquiry;
 - (b) such person is hereby authorised to administer oaths to persons appearing as witnesses at such inquiry;
 - (c) any person interested in the subject matter of such inquiry shall be entitled to appear personally or by counsel or solicitor and to adduce evidence.

Annotations

Modifications (not altering text):

C5 Application of section extended (3.07.1952) by *Tourist Traffic Act 1952 (15/1952)*, s. 7, commenced on enactment.

Erection of notices and fences at, and provision of means of access to, historic sites, etc.

7.—(1) Where the Board proposes to erect a notice or fence at, or to provide or improve means of access to, any historic building, site or shrine, or other place which, in the opinion of the Board is likely to be of particular interest to the public, and the owner refuses to permit the Board to carry out the proposed work, the Board shall have power to acquire, under section 19 of the Act of 1939, such land as the Board thinks proper to enable the work to be carried out.

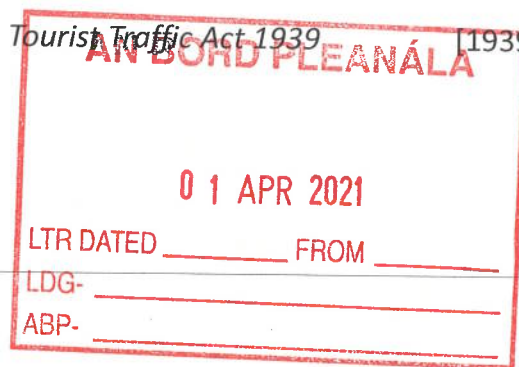
...

Regulations.

20.—The Board may, with the consent of the Minister, make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed.

Furnishing of information by the Board to the Minister.

21.—F17[...]



Annotations

Amendments:

- F17** Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

Annual report, statistics and returns.

22.—F18[...]

Annotations

Amendments:

- F18** Repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

PART III.

REGISTRATION OF PREMISES.

Annotations

Modifications (not altering text):

- C6** Application of Part III (ss. 23-47) extended (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 8, commenced on enactment.

Extension of references to premises.

8.—In Part III of the Act of 1939 and Part IV of the Act of 1952, any reference to premises shall, in a case in which there is both a main building used or intended to be used to provide accommodation or service for guests and one or more annexes or other supplementary structures to the main building used or intended to be used to provide such accommodation or service, be construed as including both a reference to the main building and a reference to such one or more annexes or supplementary structures.

- C7** Part III (ss. 23-47) included in collective construction (3.07.1952) by *Tourist Traffic Act 1952 (15/1952)*, s. 25, commenced on enactment.

PART IV REGISTRATION OF PREMISES (ss. 25-32)

Construction.

25.—This Part shall be construed as one with Part III of the Act of 1939.

- C8** Application of Part III (ss. 23-47) extended (1.05.1946) by *Fines and Penalties (Disposal) Order 1946 (S.I. No. 141 of 1946)*, art. 3.

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3. Every fine imposed in respect of an offence under any section contained in Part III of the Tourist Traffic Act, 1939 (No. 24 of 1939), shall, in lieu of being paid into the Exchequer, be paid to the Irish Tourist Board.

Definitions for the purposes of Part III.

23.—In this Part of this Act—

F19[‘premises’ includes land on which there are no buildings]

the word “register” when used without qualification means a register kept under this Part of this Act;

the word “registration” when used without qualification means registration in a register;

the expression “registered premises” means premises registered in a register;

the expression “registered proprietor” means a person who is entered in a register as the proprietor of premises registered in that register.

Annotations

Amendments:

F19 Inserted (8.02.1966) by *Tourist Traffic Act 1966* (3/1966), s. 2(1)(a), commenced on enactment.

The registers and their contents.

24.—(1) As soon as conveniently may be after the establishment of the Board, the Board shall establish and shall thereafter maintain and keep the following registers, that is to say:—

(a) a register to be called and known and in this Act referred to as the register of hotels;

(b) a register to be called and known and in this Act referred to as the register of guest houses;

(c) a register to be called and known and in this Act referred to as the register of holiday hostels;

(d) a register to be called and known and in this Act referred to as the register of youth hostels;

(e) a register to be called and known and in this Act referred to as the register of holiday camps.

F20[(f) a register to be called and known and in this Act referred to as the register of motor hotels]

F21[(g) a register to be called and known and in this Act referred to as the register of caravan sites and camping sites]

F22[(h) a register to be called and known and in this Act referred to as the register of approved holiday cottages.]

F23[(i) a register to be called and known (and referred to in this Act) as the register of holiday apartments.]

(2) There shall be entered in the several registers respectively the following matters in respect of every premises registered therein, that is to say:—

(a) the full name, address, and description of the proprietor of the premises;

(b) the name of the premises and the address or situation thereof;

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(c) such other particulars as shall for the time being be prescribed.

(3) Premises registered in any one of the registers shall not, while so registered, be capable of being registered in any other of the registers.

Annotations**Amendments:**

- F20** Inserted (17.12.1957) by *Tourist Traffic Act 1957* (27/1957), s. 5(1)(i), commenced on enactment.
- F21** Inserted (8.02.1966) by *Tourist Traffic Act 1966* (3/1966), s. 2(1)(b), commenced on enactment.
- F22** Inserted (5.08.1970) by *Tourist Traffic Act 1970* (16/1970), s. 6(b), commenced on enactment.
- F23** Inserted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 7(1), commenced on enactment.

Modifications (not altering text):

- C9** Transfer of certain Board functions under subs. (1) enabled (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003. Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in *Schedule 2*.

...

Editorial Notes:

- E21** Previous affecting provision: subs. (1) modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

Eligibility for registration in the respective registers.

25.—The Board shall, by regulations made by it under this Act, prescribe the following matters, that is to say:—

- (a) the general character, the type of accommodation and service provided, and the other qualifications which shall be requisite in respect of any premises in order that such premises may be eligible for registration in the register of hotels;
- (b) the general character, the type of accommodation and service provided, and the other qualifications which shall be requisite in respect of any premises in order that such premises may be eligible for registration in the register of guest houses;
- (c) the general character, the type of accommodation and service provided, and the other qualifications which shall be requisite in respect of any premises in order that such premises may be eligible for registration in the register of holiday hostels;
- (d) the general character, the type of accommodation and service provided, and the other qualifications which shall be requisite in respect of any premises in order that such premises may be eligible for registration in the register of youth hostels;
- (e) the general character, the type of accommodation and service provided, and the other qualifications which shall be requisite in respect of any premises

in order that such premises may be eligible for registration in the register of holiday camps.

F24[(f) the general character, the type of accommodation and service provided, and the other qualifications which shall be requisite in respect of any premises in order that such premises may be eligible for registration in the register of motor hotels.]

F25[(g) the general character, the type of accommodation and services provided and the other qualifications which shall be requisite in respect of any premises in order that such premises may be eligible for registration in the register of caravan sites and camping sites.]

F26[(h) the general character, the type of accommodation and services provided, and the other qualifications which shall be requisite in respect of any premises in order that such premises may be eligible for registration in the register of approved holiday cottages.]

F27[(i) the general character, the type of accommodation and services provided, and the other qualifications which shall be requisite in respect of any premises in order that such premises may be eligible for registration in the register of holiday apartments.]

Annotations

Amendments:

- F24 Inserted (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 5(1)(ii), commenced on enactment.
- F25 Inserted (8.02.1966) by *Tourist Traffic Act 1966 (3/1966)*, s. 2(1)(c), commenced on enactment.
- F26 Inserted (5.08.1970) by *Tourist Traffic Act 1970 (16/1970)*, s. 6(c), commenced on enactment.
- F27 Inserted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 7(2), commenced on enactment.

F28[Caravans and camping sites

25A. The Minister shall, before giving his consent to the making of regulations under section 25 of this Act prescribing the matters referred to in paragraph (g) of that section, consult with the Minister for Local Government.]

Annotations

Amendments:

- F28 Inserted (8.02.1966) by *Tourist Traffic Act 1966 (3/1966)*, s. 2(1)(d), commenced on enactment.

Editorial Notes:

- E22 The side-note is taken from the amending provision in the absence of one included in the amendment.

Applications for registration.

26.—(1) The proprietor of any premises may apply to the Board for the registration of those premises in such register as he thinks proper and specifies in his application.

(2) Every application under this section for the registration of any premises shall—

- (a) be made in writing in the prescribed form and manner,
- (b) contain the prescribed particulars,

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(c) be accompanied by such fee F29[] as shall be prescribed, and

(d) be also accompanied by a statement (in this Act referred to as a scale of charges) in the prescribed form of the charges which the applicant proposes to make for rooms, meals, and services provided in such premises during the period between such registration (if granted) and the then next following 31st day of December.

Annotations

Amendments:

F29 Deleted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 5(1), commenced on enactment.

Modifications (not altering text):

C10 Transfer of certain Board functions under subs. (1) enabled (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003. Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.— (1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in Schedule 2.

...

C11 Application of section extended (17.12.1957) by *Tourist Traffic Act 1957* (27/1957), s. 6, commenced on enactment.

Fee in the case of amended application for registration.

6.— Where—

- (a) an application for registration is made to the Board under section 26 of the Act of 1939, and
- (b) before a decision on the application has been reached by the Board, the application is amended so as to be for registration in a different register,

the fee paid in connection with the original application shall be applied by the Board towards the amount of the fee required under paragraph (c) of subsection (2) of the said section 26 to accompany an application for registration in such different register.

C12 Application of section extended (3.07.1952) by *Tourist Traffic Act 1952* (15/1952), s. 27, commenced on enactment.

Return of application fee.

27.—The fee sent with an application under section 26 or 29 of the Act of 1939, for the registration or renewal of the registration of premises may, on the request of the applicant and at the discretion of the Board, be repaid to the applicant unless, after the receipt of the fee, the premises have been inspected by an officer of the Board.

Editorial Notes:

E23 Previous affecting provision: subs. (1) modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

Registration of premises.

27.—(1) Whenever an application is duly made to the Board for the registration of premises in a register, the Board shall cause such premises to be inspected by an officer of the Board.

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(2) Whenever premises in respect of which an application was duly made to the Board for registration in a register have been inspected under sub-section (1) of this section and the Board is of opinion that such premises are eligible for registration in such register, the Board shall inform the applicant that his premises will be registered in such register on payment to the Board of the appropriate prescribed fee.

(3) Whenever premises in respect of which an application was duly made to the Board for registration in a register have been inspected under sub-section (1) of this section and the Board is of opinion that such premises are not eligible for registration in such register, the following provisions shall apply and have effect, that is to say:—

- (a) the Board shall serve notice upon the applicant that the Board is of opinion that such premises are not eligible for registration in such register and that the applicant may, within fourteen days after service of such notice make written representations to the Board with a view to showing that such premises are eligible for such registration;
- (b) if during the said fourteen days no such written representations are received by the Board, the Board shall refuse such application;
- (c) if during the said fourteen days such written representations are received by the Board, the Board shall cause a second inspection of such premises to be made by a different officer of the Board;
- (d) if the Board, notwithstanding such second inspection and having considered the written representations received as aforesaid, remains of opinion that such premises are not eligible for registration in such register, the Board shall refuse such application;
- (e) if the Board, as a result of such second inspection and having considered the written representations received as aforesaid, becomes of opinion that such premises are eligible for registration in such register, the Board shall inform the applicant that his premises will be registered in such register on payment to the Board of the appropriate prescribed fee.

(4) An applicant for registration of premises in a register who has been informed by the Board that such premises will be registered in such register on payment to the Board of the appropriate prescribed fee may pay the said fee to the Board, and thereupon the Board shall register such premises in such register.

(5) References in this section to the opinion of the Board that premises are not eligible for registration in any register shall be construed as references to such opinion formed by the Board itself and not by the Board acting through or by any of its officers or servants.

(6) The fees prescribed for the purposes of this section may be so prescribed as to vary in amount according to the register in which the relevant premises are to be registered and according to any other matters which the Board thinks proper.

Annotations

Modifications (not altering text):

C13 Transfer of certain Board functions under subss. (1), (2), (3)(a) and (b) and (4) enabled (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003, and subject to the exclusion in s. 27(2) of the words: "and the Board is of opinion that such premises are eligible for registration in such register," and in s. 27(3)(a) and (b) of the words: "and the Board is of opinion that such premises are not eligible for registration in such register,". Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

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12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in *Schedule 2*.

- ...
C14 Application of subs. (3)(b) and (d) extended for period (17.12.1957) by *Tourist Traffic Act 1957* (27/1957), s. 7(a), commenced on enactment.

Application for registration after refusal or cancellation of registration.

7.—Where—

- (a) an application for registration is refused by the Board under paragraph (b) or paragraph (d) of subsection (3) of section 27 of the Act of 1939,

...
no application for registration of the premises in the same register by the Board may be made during the period of nine months commencing on the day of the refusal or cancellation.

- C15 Application of subs. (4) restricted (3.07.1952) by *Tourist Traffic Act 1952* (15/1952), s. 26, commenced on enactment.

Payment of registration fee.

26.— If an applicant for registration of premises in a register, having been served with notice by the Board that the premises will be registered on payment of the appropriate prescribed fee, does not pay the fee to the Board within three months after such service, then, notwithstanding subsection (4) of section 27 of the Act of 1939, his application shall be void.

Editorial Notes:

- E24 Previous affecting provision: subss. (1), (2), (3) (a) and (b) and (4) modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), ss. 2, 8 and sch; ss. 2 and 8 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

Duration of registration.

28.—(1) Every registration of premises in a register shall (unless sooner terminated under this Act) continue in force until the next following 31st day of December and shall then terminate unless it is renewed under this Act.

(2) Save as is otherwise provided by this Act, the registration (whether original or by way of renewal) of any premises in a register may be renewed as from the 31st day of December on which, but for such renewal, it would terminate.

(3) Whenever the registration of any premises in a register is renewed under this Act, the registration of such premises in such register shall (unless sooner terminated under this Act) continue until the 31st day of December next after the day on which such renewal commences and shall then terminate unless it is further renewed under this Act.

Applications for renewal of registration.

29.—(1) The registered proprietor of any premises registered in a register may apply to the Board F30[on or before the 15th day of October] or, with the consent of the Board, F30[on or before the 15th day of November] in any year for the renewal of the registration of such premises as from the next following 31st day of December.

(2) Every application under this section for the renewal of the registration of any premises shall—

- (a) be made in writing in the prescribed form and manner,
(b) contain the prescribed particulars,

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(c) be accompanied by the prescribed fee, and

(d) be also accompanied by a statement (in this Act referred to as a scale of charges) in the prescribed form of the charges which the applicant proposes to make for rooms, meals, and services provided in such premises during the period while such registration, if it is renewed, will remain in force by virtue of such renewal.

(3) The fees prescribed for the purposes of this section may be so prescribed as to vary in amount according to the register in which the relevant premises are registered and according to any other matters which the Board thinks proper.

Annotations

Amendments:

F30 Substituted (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 10(1), commenced on enactment.

Modifications (not altering text):

C16 Transfer of certain Board functions under subs. (1) enabled (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003. Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in *Schedule 2*.

...

C17 Application of section extended (3.07.1952) by *Tourist Traffic Act 1952 (15/1952)*, s. 27, commenced on enactment.

Return of application fee.

27.—The fee sent with an application under section 26 or 29 of the Act of 1939, for the registration or renewal of the registration of premises may, on the request of the applicant and at the discretion of the Board, be repaid to the applicant unless, after the receipt of the fee, the premises have been inspected by an officer of the Board.

Editorial Notes:

E25 Previous affecting provision: subs. (1) modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995 (13/1995)*, s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

Renewal of registration.

30.—(1) Whenever an application is duly made to the Board for the renewal of the registration of premises in a register, the Board, if it is of opinion that such premises have not ceased to be eligible for registration in such register, shall, before the 31st day of December next after the date of such application, renew the registration of such premises in such register.

(2) Whenever an application is duly made to the Board for the renewal of the registration of premises in a register and the Board is of opinion that such premises have ceased to be eligible for registration in such register, the Board shall cause such premises to be inspected by an officer of the Board.

(3) Whenever premises in respect of which an application was duly made to the Board for the renewal of the registration thereof in a register have been inspected under sub-section (2) of this section and the Board, as a result of such inspection,

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becomes of opinion that such premises have not ceased to be eligible for registration in such register, the Board shall, before the 31st day of December next after the date of such application, renew the registration of such premises in such register.

(4) Whenever premises in respect of which an application was duly made to the Board for the renewal of the registration thereof in a register have been inspected under sub-section (2) of this section and the Board, notwithstanding such inspection, remains of opinion that such premises have ceased to be eligible for registration in such register, the following provisions shall apply and have effect, that is to say:—

F31[(a) the Board shall serve notice upon the applicant that the Board is of opinion that such premises have ceased on stated grounds to be eligible for registration in such register and that the applicant may, within fourteen days after service of such notice, make written representations to the Board with a view to showing that such premises have not ceased to be eligible for registration in such register;]

(b) if during the said fourteen days no such written representations are received by the Board, the Board shall refuse such application;

(c) if during the said fourteen days such written representations are received by the Board, the Board shall cause a second inspection of such premises to be made by a different officer of the Board;

(d) if the Board, notwithstanding such second inspection and having considered the written representations received as aforesaid, remains of opinion that such premises have ceased to be eligible for registration in such register, the Board shall refuse such application;

(e) if the Board, as a result of such second inspection and having considered the written representations received as aforesaid, becomes of opinion that such premises have not ceased to be eligible for registration in such register, the Board shall before the 31st day of December next after the date of such application, renew the registration of such premises in such register.

(5) Notwithstanding anything contained in the foregoing sub-sections of this section, the Board may refuse an application duly made to the Board for the renewal of the registration of any premises if the Board is of opinion that either—

(a) in case such application is the first application for the renewal of such registration, the applicant has, during the period between such registration and such application for renewal, failed, save with the consent of the Board, to adhere to charges not exceeding those specified in the scale of charges furnished by him with his application for such registration, or

(b) in case such application is not the first application for the renewal of such registration, the applicant has, during the then current year, failed, save with the consent of the Board, to adhere to charges not exceeding those specified in the scale of charges furnished by him with his next previous application for renewal of such registration.

(6) References in this section to the opinion of the Board that premises have ceased to be eligible for registration in any register or that an applicant has failed to adhere to any charges shall be construed as references to such opinion formed by the Board itself and not by the Board acting through or by any of its officers or servants.

Annotations

Amendments:

F31 Substituted (3.07.1952) by *Tourist Traffic Act 1952* (15/1952), s. 28, commenced on enactment.

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Modifications (not altering text):

- C18** Transfer of certain Board functions under subs. ~~(3), (4)(a) and (b) enabled (28.05.2003-~~ establishment day) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003, and subject to the exclusions in:

S. 30(1) of the words: "if it is of the opinion that such premises have ceased to be eligible for registration in such register,";

S. 30(2) of the words: "and the Board is of opinion that such premises have ceased to be eligible for registration in such register";

S. 30(3) of the words: "and the Board, as a result of such inspection, becomes of the opinion that such premises has not ceased to be eligible for registration in such register,";

S. 30(4)(a) and (b) of the words: "and the Board, notwithstanding such inspection, remains of opinion that such premises have not ceased to be eligible for registration in such register,".

Sch. 2 of the Act of 2003 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in Schedule 2.

...

- C19** Application of subs. (4)(b) and (d) extended (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 7(b), commenced on enactment.

Application for registration after refusal or cancellation of registration.

7.—Where— ...

(b) an application for the renewal of registration is refused by the Board under paragraph (b) or paragraph (d) of subsection (4) of section 30 of the Act of 1939,

...

no application for registration of the premises in the same register by the Board may be made during the period of nine months commencing on the day of the refusal or cancellation.

- C20** Subss. (5) and (6) construed (3.07.1952) by *Tourist Traffic Act 1952 (15/1952)*, s. 29, commenced on enactment.

Amendment of section 30 of Act of 1939.

29.—Subsections (5) and (6) of section 30 of the Act of 1939 (which empower the Board to refuse an application for renewal of registration where the applicant has failed to adhere to his specified scale of charges) shall be construed as if the word "wilfully" were inserted before "failed" wherever the latter word occurs in the subsections.

Editorial Notes:

- E26** Previous affecting provision: section modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995 (13/1995)*, ss. 2, 8 and sch; ss. 2 and 8 repealed (28.05.2003) by *National Tourism Development Authority Act 2003 (10/2003)*, s. 5 and sch. 1, S.I. No. 205 of 2003.

Registration certificates.

F32[31. (1) Whenever the Board registers any premises, the Board shall give, free of charge, a certificate (in this Act referred to as a registration certificate) of such registration to the registered proprietor.

(2) Where the registered proprietor of any registered premises satisfies the Board that the registration certificate for the time being in force in respect of such premises

has been accidentally destroyed, the Board may issue to such registered proprietor a new registration certificate in lieu of that so destroyed.

(3) The following provisions shall have effect in respect of every registration certificate, that is to say:—

(a) such certificate shall be in the prescribed form and shall contain a statement of the premises to which it relates, the name of the registered proprietor of such premises, and such other matters as shall be required by the prescribed form;

(b) such certificate shall be signed by an officer of the Board authorised in that behalf by the Board;

(c) such certificate shall, save as regards any period when it is returned to the Board in accordance with this Act, be displayed in a prominent position at or near the principal entrance to such premises during the continuance of the registration certified by it;

(d) such certificate shall be returned to the Board immediately after the registration expires or whenever the Board so request.

(4) Whenever the registered proprietor of any registered premises fails to display, in accordance with paragraph (c) of subsection (3) of this section, the registration certificate for the time being in force in respect of such premises, he shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to F33 [a fine not exceeding £200 together with, in the case of a continuing offence, a further fine (not exceeding £200 in all) not exceeding £10 for every day during which the offence continues.]

(5) Whenever a registration certificate is not returned to the Board immediately upon the expiration thereof or at the request of the Board, the person to whom such certificate was given shall be guilty of an offence under this subsection and shall be liable on summary conviction thereof to F34 [a fine not exceeding £50 together with, in the case of a continuing offence, a further fine (not exceeding £200 in all) not exceeding £5 for every day during which the offence continues.]]

Annotations

Amendments:

- F32** Substituted (3.07.1952) by *Tourist Traffic Act 1952* (15/1952), ss. 3(1) and 30, commenced on enactment.
- F33** Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 1, commenced on enactment.
- F34** Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 2, commenced on enactment.

Modifications (not altering text):

- C21** Transfer of certain Board functions under subss. (1), (2) and (3) (b) and (d) effected (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003. Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in *Schedule 2*.

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Editorial Notes:

- E27 Previous affecting provision: subss. (1), (2) and (3)(b) and (d) modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

Amendment of register in certain circumstances.

32.—The Board may, on its own motion or on the application of the registered proprietor, amend the registration of any premises in any respect in which such registration appears to the Board to be erroneous or misleading and may, where appropriate, amend the relevant registration certificate accordingly.

Annotations**Modifications (not altering text):**

- C22 Transfer of certain Board functions under section enabled (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003. Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in *Schedule 2*.

...

Editorial Notes:

- E28 Previous affecting provision: section modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

Restriction on describing premises as a hotel.

33.—(1) It shall not be lawful for the proprietor of any premises to describe or hold out or permit any person to describe or hold out such premises as an hotel unless such premises are registered in the register of hotels and such proprietor is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to F35 [a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.]

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.

Annotations**Amendments:**

- F35 Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 3, commenced on enactment.

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~~Tourist Traffic Act 1939~~ [1939.]

LDG-

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Modifications (not altering text):

C23 Enforcement of section extended (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

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C24 Definition of "proprietor" extended (3.07.1952) by *Tourist Traffic Act 1952* (15/1952), s. 31, commenced on enactment.

Extension of sections 33 to 37 of Act of 1939 to occupiers.

31.—The word "proprietor" shall, wherever it occurs (except as part of the expression "registered proprietor") in sections 33 to 37 of the Act of 1939, be construed as including "occupier".

Editorial Notes:

E29 Power pursuant to section exercised (1.04.1944) by *Tourist Traffic Act, 1939 (Commencement of Sections 33, 34, 35, 36 and 37) Order 1944* (S.I. No. 52 of 1944).

2. The 1st day of April, 1944, is hereby appointed to be the day on which Sections 33, 34, 35, 36 and 37 of the *Tourist Traffic Act, 1939* (No. 24 of 1939), shall come into operation.

E30 Previous affecting provision: subs. (2) amended (17.12.1957) by *Tourist Traffic Act 1957* (27/1957), s. 10(2), commenced on enactment; substituted as per F-note above.

Restriction on describing premises as a guest house.

34.—(1) It shall not be lawful for the proprietor of any premises to describe or hold out or permit any person to describe or hold out such premises as a guest house unless such premises are registered in the register of guest houses and such proprietor is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to F36 [a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.]

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.

Annotations**Amendments:**

F36 Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 4, commenced on enactment.

Modifications (not altering text):

C25 Application of section extended (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

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C26 Definition of "proprietor" extended (15.12.1952) by ~~Tourist Traffic Act 1952 (15/1952)~~, s. 31, commenced on enactment.

Extension of sections 33 to 37 of Act of 1939 to occupiers.

31.—The word "proprietor" shall, wherever it occurs (except as part of the expression "registered proprietor") in sections 33 to 37 of the Act of 1939, be construed as including "occupier".

...

Editorial Notes:

E31 Power pursuant to section exercised (1.04.1944) by *Tourist Traffic Act, 1939 (Commencement of Sections 33, 34, 35, 36 and 37) Order 1944 (S.I. No. 52 of 1944)*.

2. The 1st day of April, 1944, is hereby appointed to be the day on which Sections 33, 34, 35, 36 and 37 of the *Tourist Traffic Act, 1939 (No. 24 of 1939)*, shall come into operation.

E32 Previous affecting provision: subs. (2) amended (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 10(2), commenced on enactment, substituted as per F-note above.

Restriction on describing premises as a holiday hostel, etc.

35.—(1) It shall not be lawful for the proprietor of any premises to describe such premises as a holiday hostel or holiday home or to hold out such premises as a holiday hostel or holiday home or to permit any person to so describe or so hold out such premises unless such premises are registered in the register of holiday hostels and such proprietor is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to F37 [a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.]

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.

Annotations

Amendments:

F37 Substituted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 3 item 5, commenced on enactment.

Modifications (not altering text):

C27 Enforcement of section extended (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

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C28 Definition of "proprietor" extended (3.07.1952) by *Tourist Traffic Act 1952 (15/1952)*, s. 31, commenced on enactment.

Extension of sections 33 to 37 of Act of 1939 to occupiers.

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Tourist Traffic Act 1939

LTR DATED

FROM

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31.—The word “proprietor” shall, wherever it occurs (except as part of the expression “registered proprietor”) in sections 33 to 37 of the Act of 1939, be construed as including “occupier”.

Editorial Notes:

E33 Power pursuant to section exercised (1.04.1944) by *Tourist Traffic Act, 1939 (Commencement of Sections 33, 34, 35, 36 and 37) Order 1944* (S.I. No. 52 of 1944).

2. The 1st day of April, 1944, is hereby appointed to be the day on which Sections 33, 34, 35, 36 and 37 of the *Tourist Traffic Act, 1939* (No. 24 of 1939), shall come into operation.

E34 Previous affecting provision: subs. (2) amended (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 10(2), commenced on enactment; substituted as per F-note above.

Restriction on describing premises as a youth hostel.

36.—(1) It shall not be lawful for the proprietor of any premises to describe or hold out or permit any person to describe or hold out such premises as a youth hostel unless such premises are registered in the register of youth hostels and such proprietor is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to F38[a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.]

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.

Annotations**Amendments:**

F38 Substituted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 3 item 6, commenced on enactment.

C29 Enforcement of section extended (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

...

Modifications (not altering text):

C30 Definition of “proprietor” extended (3.07.1952) by *Tourist Traffic Act 1952 (15/1952)*, s. 31, commenced on enactment.

Extension of sections 33 to 37 of Act of 1939 to occupiers.

31.—The word “proprietor” shall, wherever it occurs (except as part of the expression “registered proprietor”) in sections 33 to 37 of the Act of 1939, be construed as including “occupier”.

Editorial Notes:

E35 Previous affecting provision: subs. (2) amended (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 10(2), commenced on enactment, replaced as per F-note above.

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[No. 24.]

LTR DATED ~~Tourist Traffic Act 1939~~ FROM

[1939.]

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E36 Power pursuant to section exercised (15.02.1944) by *Tourist Traffic Act, 1939 (Commencement of Sections 33, 34, 35, 36 and 37) Order 1944 (S.I. No. 52 of 1944).*

2. The 1st day of April, 1944, is hereby appointed to be the day on which Sections 33, 34, 35, 36 and 37 of the *Tourist Traffic Act, 1939 (No. 24 of 1939)*, shall come into operation.

Restriction on describing premises as a holiday camp.

37.—(1) It shall not be lawful for the proprietor of any premises to describe or hold out or permit any person to describe or hold out such premises as a holiday camp unless such premises are registered in the register of holiday camps and such proprietor is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence under this section and shall be liable on summary conviction thereof to F39 [a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.]

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.

Annotations

Amendments:

F39 Substituted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 3 item 7, commenced on enactment.

Modifications (not altering text):

C31 Enforcement of section extended (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

...

C32 Definition of "proprietor" extended (3.07.1952) by *Tourist Traffic Act 1952 (15/1952)*, s. 31, commenced on enactment.

Extension of sections 33 to 37 of Act of 1939 to occupiers.

31.—The word "proprietor" shall, wherever it occurs (except as part of the expression "registered proprietor") in sections 33 to 37 of the Act of 1939, be construed as including "occupier".

Editorial Notes:

E37 Power pursuant to section exercised (1.04.1944) by *Tourist Traffic Act, 1939 (Commencement of Sections 33, 34, 35, 36 and 37) Order 1944 (S.I. No. 52/1944).*

2. The 1st day of April, 1944, is hereby appointed to be the day on which Sections 33, 34, 35, 36 and 37 of the *Tourist Traffic Act, 1939 (No. 24 of 1939)*, shall come into operation.

E38 Previous affecting provision: subs. (2) amended (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 10(2), commenced on enactment; substituted as per F-note above.

F40[Motor hotels.

37A.—(1) It shall not be lawful for the proprietor or occupier of any premises to describe or hold out or permit any person to describe or hold out such premises

(a) as a motor hotel,

(b) as a motel,

(c) as a coach hotel,

(d) as a motor inn,

(e) as a motor court,

(f) as a tourist court, or

(g) as being of any other description prescribed for the purposes of this section,

unless such premises are registered in the register of motor hotels and such proprietor or occupier is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence and shall be liable on summary conviction thereof to F41[a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.]

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.]



Annotations

Amendments:

- F40 Inserted (17.12.1957) by *Tourist Traffic Act 1957* (27/1957), s. 5(1)(iii), commenced on enactment.
- F41 Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 8, commenced on enactment.

Modifications (not altering text):

- C33 Enforcement of section extended (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

...

Editorial Notes:

- E39 The side-note is taken from the amending section in the absence of one included in the amendment.

F42[Caravan sites and camping sites.

37B. (1) It shall not be lawful for the proprietor or occupier of any premises to describe or hold out or permit any person to describe or hold out such premises as a caravan site, caravan park, caravan camp, caravan centre, caravan estate, caravan court, caravanel, camping site, camping park, camping centre, camping estate, camping court or autocamp or as being of any other description prescribed for the purposes of this section unless the premises are registered in the register of caravan

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sites and camping sites and such proprietor or occupier is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence and shall be liable on summary conviction to F43 [a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.]

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.]

Annotations

Amendments:

- F42** Inserted (8.02.1966) by *Tourist Traffic Act 1966 (3/1966)*, s. 2(1)(e), commenced on enactment.
- F43** Substituted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 3 item 9, commenced on enactment.

Modifications (not altering text):

- C34** Enforcement of section extended (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

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Editorial Notes:

- E40** Power pursuant to section exercised (1.05.1969) by *Tourist Traffic Act, 1939 (Commencement) Order 1969 (S.I. No. 61 of 1969)*.
2. The 1st day of May, 1969, is hereby appointed to be the day on which section 37B (inserted by the *Tourist Traffic Act, 1966 (No. 3 of 1966)*) of the *Tourist Traffic Act, 1939 (No. 24 of 1939)*, shall come into operation.
- E41** The side-note is taken from the amending section in the absence of one included in the amendment.

F44[37C].— (1) It shall not be lawful for the proprietor or occupier of any premises to describe or hold out or permit any person to describe or hold out such premises as an approved holiday cottage, approved holiday house, approved holiday home or approved holiday villa, or as being of any other description prescribed for the purposes of this section, unless the premises are registered in the register of approved holiday cottages and such proprietor or occupier is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence and shall be liable on summary conviction to F45 [a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.]

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.]

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Tourist Traffic Act 1939

[1939.]

LTR DATED _____ FROM _____

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Annotations

Amendments:

- F44 Inserted (5.08.1970) by *Tourist Traffic Act 1970* (16/1970), s. 6(d), commenced on enactment.
- F45 Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 10, commenced on enactment.

Modifications (not altering text):

- C35 Enforcement of section extended (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

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Editorial Notes:

- E42 No side-note was included in the amending provision.

F46[Register of holiday apartments.

37D. (1) It shall not be lawful for the proprietor or occupier of any premises to describe or hold out or permit any person to describe or hold out such premises as a holiday apartment, tourist apartment, apartotel or holiday flat, or as being of any other description prescribed for the purposes of this section, unless the premises are registered in the register of holiday apartments and such proprietor or occupier is registered in that register as the registered proprietor of such premises.

(2) Any person who acts in contravention of this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £500 together with, in the case of a continuing offence, a further fine (not exceeding £300 in all) not exceeding £20 for every day during which the offence is continued.

(3) This section shall come into operation on such day as may be appointed in that behalf by order of the Minister.]

Annotations

Amendments:

- F46 Inserted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 7(4), commenced on enactment.

Modifications (not altering text):

- C36 Enforcement of section extended (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 4, commenced on enactment.

Prohibition by Circuit Court of unauthorised use of titles protected by *Tourist Traffic Acts, 1939 to 1983*.

4.—(1) Where a person is acting in contravention of section 33, 34, 35, 36, 37, 37A, 37B, 37C or 37D of the Principal Act (as amended), the Court may, on the application of the Board, by order prohibit the continuance of the contravention.

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Editorial Notes:

E43 The side-note is taken from the amending section in the absence of one included in the amendment.

Exemptions.

38.—(1) Where the Board is satisfied that any premises are carried on by a charitable organisation, the Board, if in its absolute discretion it so thinks fit, may by order declare that any one of the four preceding sections shall not apply in respect of such premises and, so long as such order remains in force, such section shall not apply in respect of such premises.

(2) The Board may by order revoke any order made under the immediately preceding sub-section of this section.

Grades.

39.—(1) The Board may from time to time grade in such manner as it thinks proper the premises registered in any register.

(2) Where the premises registered in any register have been graded under this section, the Board may at any time, if it so thinks proper, withdraw the grade then allotted to any of such premises and allot a different grade thereto.

(3) Where the premises registered in any register have been graded under this section, it shall not be lawful for the registered proprietor of any of such premises to describe or hold out such premises as being of a grade other than that for the time being allotted thereto.

(4) If the registered proprietor of any registered premises acts in contravention of the immediately preceding sub-section of this section, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to F47[a fine not exceeding £500.]

Annotations**Amendments:**

F47 Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 11, commenced on enactment.

Modifications (not altering text):

C37 Transfer of certain Board functions under subss. (1) and (2) enabled (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003, and subject to the exclusion in subs. (1) of the words: "in such manner as it thinks proper", and in subs. (2) of the words: "if it so thinks proper". Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in Schedule 2.

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Editorial Notes:

E44 Previous affecting provision: subss. (1) and (2) modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch. 2 (repealed (28.05.2003)) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 2, S.I. No. 205 of 2003.

Devolution and transfer of registered premises.

40.—(1) Where the registered proprietor of registered premises dies, the following provisions shall have effect, that is to say:—

- (a) the death of the said registered proprietor shall not of itself terminate the registration of such premises;
- (b) the personal representative of the said deceased registered proprietor or, with the assent of such personal representative, any other person shall be entitled, on application in the prescribed form and manner to the Board, to be registered as the registered proprietor of the said premises;
- (c) from the death of the said deceased registered proprietor until the registration of another person as registered proprietor of the said premises, the person actually carrying on the said premises shall be deemed to be the registered proprietor thereof for the purposes of so much of this Act as relates to things to be done on the said premises or in the course of carrying them on as aforesaid.

(2) Where the registered proprietor (in this sub-section referred to as the transferor) of registered premises transfers, on sale or otherwise, the said premises and the business carried on therein to another person (in this sub-section referred to as the transferee), the following provisions shall have effect, that is to say:—

- (a) the transferee shall be entitled, on application in the prescribed form and manner to the Board and on satisfying the Board that he has become the proprietor of the said premises, to be registered as the registered proprietor of the said premises;
- (b) the transferee shall, on being registered as aforesaid, be entitled to the benefit of any application to the Board made by the transferor in relation to the said premises and then pending and shall be entitled to prosecute such application as if it had been made by him;
- (c) until the transferee is registered as aforesaid, the transferor shall, notwithstanding the said transfer, continue to be for all the purposes of this Act the registered proprietor of the said premises.

(3) The immediately preceding sub-section of this section shall apply in every case where a receiver or manager appointed by a court or a mortgagee goes into possession of registered premises in like manner as if such premises had been transferred by the registered proprietor thereof to such receiver, manager or mortgagee (as the case may be).

Annotations

Modifications (not altering text):

- C38 Transfer of certain Board functions under subss. (1)(b) and (2)(a) and (b) enabled (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003. Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in *Schedule 2*.

...

AN BORD PLEANÁLA

01 APR 2021

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Editorial Notes:

- E45** Previous affecting provision: subss. (1)(b) and (2)(a) and (b) modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

Inspection.

41.—(1) F48[A registration officer] shall be entitled at all reasonable times (subject to the production by him if so required of his appointment in writing as F48[registration officer]) to enter and inspect any registered premises or any premises in respect of which an application for registration has been made, and to require the registered proprietor or the applicant for registration (as the case may be) or any person employed in such premises to furnish to such F48[registration officer] such information in relation to such premises as may be reasonably necessary for the purposes of the administration of this Act.

(2) Every person who—

- (a) obstructs or impedes F48[a registration officer] in the exercise of any of the powers conferred by this section, or
- (b) fails or refuses to give to F48[a registration officer] on demand any information which F48[such registration officer] is entitled to demand under this section, or
- (c) wilfully gives to F48[a registration officer] information which is false or misleading in a material particular,

shall be guilty of an offence under this section and shall be liable on summary conviction thereof to F49[a fine not exceeding £50.]

F50[(3) In this section 'registration officer' means—

- (a) an officer of the Board appointed in writing by the Board, or
- (b) an employee of a contractor appointed in writing by the contractor,

to be a registration officer for the purposes of this section.

(4) A registration officer who is an employee of a contractor shall cease to be a registration officer upon the termination of any contract made between the Board and the contractor who employs the employee.

(5) The Board may, where it considers a registration officer who is an employee of a contractor is not performing the functions of a registration officer in a satisfactory manner, revoke the appointment of the officer.]

Annotations**Amendments:**

- F48** Substituted (17.12.1957) by *Tourist Traffic Act 1957* (27/1957), s. 10(3)(a) and (b), commenced on enactment.
- F49** Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 12, commenced on enactment.
- F50** Substituted and inserted (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 5, commenced on enactment.

AN BORD PLEANÁLA

0 1 APR 2021

LTR DATED _____ FROM _____

Editorial Notes:

- E46 Previous affecting provision: subs. (3) substituted (17.12.1957) by *Tourist Traffic Act 1957 (27/1957)*, s. 10(3)(c); in turn substituted as per F-note above.

Evidence of the contents of registers.

F51[42.—(1) Every register shall be—

(a) deemed to be in the proper custody when in the custody of—

(i) the Board or any officer of the Board authorised in that behalf by the Board, or

(ii) a contractor or any employee of the contractor authorised in that behalf by the contractor, and

(b) admissible in evidence without further proof on production from the proper custody.

(2) *Prima facie* evidence of any entry in any register may be given in any court or in any legal proceedings by the production of a copy of such entry purporting to be certified to be a true copy by an officer of the Board authorised in that behalf by the Board or an employee of a contractor authorised in that behalf by the contractor and it shall not be necessary to prove the signature of such officer or employee or that he was in fact such officer or employee or was in fact so authorised.

(3) A certificate, purporting to be signed by an officer of the Board authorised in that behalf by the Board or an employee of a contractor authorised in that behalf by the contractor that any premises specified in such certificate are not entered in the register specified in such certificate shall be sufficient evidence until the contrary is shown of the matters so certified, and it shall not be necessary to prove the signature of such officer or employee, or that he was in fact such officer or employee, or was in fact so authorised.]

F52[(4) Any person may—

(a) inspect any register on payment of such fee for each inspection as shall be prescribed;

(b) obtain a copy, certified in manner hereinbefore mentioned to be a true copy, of any entry in any register on payment of such fee, for each folio of 72 words of the copy, as shall be prescribed;

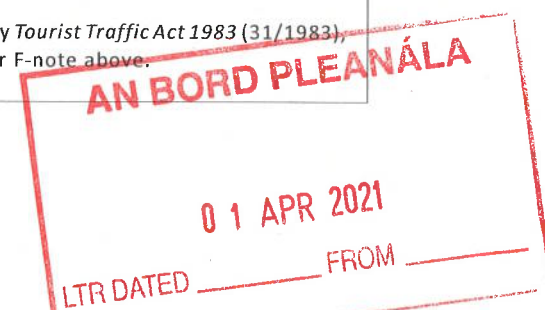
(c) obtain such certificate as is hereinbefore mentioned that any specified premises are not registered in a specified register on payment of such fee for each certificate as shall be prescribed.]

Annotations**Amendments:**

- F51 Substituted (5.07.1995) by *Tourist Traffic Act 1995 (13/1995)*, s. 6, commenced on enactment.
- F52 Substituted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 5(2)(b), commenced on enactment.

Editorial Notes:

- E47 Previous affecting provision: subs. (3) substituted (15.11.1983) by *Tourist Traffic Act 1983 (31/1983)*, s. 5(2)(a), commenced on enactment; in turn substituted as per F-note above.



01 APR 2021

LTR DATED _____ FROM _____

LDG- ~~Tourist Traffic Act 1939~~
ABP- _____

Pr. III S. 43

[No. 24.]

[1939.]

Display of charges.

43.—(1) The Board may require the registered proprietor of registered premises to display in such places in the said premises as it thinks proper such and so many lists in easily legible form as it thinks proper of the charges for the time being current in respect of rooms, meals, or other services provided in the said premises.

(2) If the registered proprietor of registered premises fails to comply with a requirement under this section, he shall be guilty of an offence under this section and shall be liable on summary conviction thereof to F53[a fine not exceeding £100 together with, in the case of a continuing offence, a further fine (not exceeding £100 in all) not exceeding £10 for every day during which the offence is continued.]

Annotations

Amendments:

F53 Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 13, commenced on enactment.

Editorial Notes:

E48 Previous affecting provision: subs. (1) modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

External signs.

44.—(1) The Board may supply to the registered proprietor of registered premises a sign suitable for display on the outside of such premises and thereupon such registered proprietor shall keep such sign displayed in a prominent position outside and at or near the principal entrance to such premises.

(2) If the registered proprietor of registered premises to whom a sign has been supplied by the Board under this section fails to keep such sign displayed in a prominent position outside and at or near the principal entrance to such premises, such registered proprietor shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to F54[a fine not exceeding £100.]

(3) Save with the consent in writing of the Board, it shall not be lawful for the registered proprietor of registered premises to display outside such premises any sign indicating the standard of such premises other than a sign supplied under this section by the Board

(4) If any person acts in contravention of the immediately preceding sub-section of this section, he shall be guilty of an offence under this sub-section and shall be liable on summary conviction thereof to F55[a fine not exceeding £100.]

(5) A sign supplied under this section may be in such form and contain such information in regard to the premises to which it relates as the Board thinks proper.

Annotations

Amendments:

F54 Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 14, commenced on enactment.

F55 Substituted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 3 item 15, commenced on enactment.

AN BORD PLEANÁLA

Pr. III S. 44

[No. 24.]

~~Tourist Traffic Act 1939~~
01 APR 2021

[1939.]

LTR DATED _____ FROM _____

Modifications (not altering text):

- C39 Transfer of certain Board functions under ~~subss. (1), (3) and (5) enabled (28.05.2003)~~ (establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003. Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a “contractor”) for the performance by that person of the functions of the Authority under the provisions specified in Schedule 2.

...

Editorial Notes:

- E49 Previous affecting provision: subss. (1), (3) and (5) modified by Board’s power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

Annual list of registered premises.

45.—(1) The Board shall publish or cause to be published at least once in every year a list of registered premises arranged so as to show separately premises registered in the register of hotels, premises registered in the register of guest houses, premises registered in the register of holiday hostels, premises registered in the register of youth hostels, F56[premises registered in the register of caravan sites and camping sites,] F57[premises registered in the register of approved holiday cottages,] F58[premises registered in the register of holiday apartments,] F59[premises registered in the register of motor hotels] and premises registered in the register of holiday camps.

(2) Notwithstanding anything contained in the immediately preceding sub-section, where the registered proprietor of any registered premises requests the Board to omit such premises from the list under this section in respect of any year, the Board may omit such premises from the said list if, having regard to all the circumstances of the case, it so thinks proper.

(3) A list under this section may include in respect of any premises mentioned in such list such information as the Board thinks proper in relation to the standard of such premises, the charges made therein, and any other matter of interest to tourists.

Annotations

Amendments:

- F56 Inserted (8.02.1966) by *Tourist Traffic Act 1966* (3/1966), s. 2(1)(f), commenced on enactment.
- F57 Inserted (5.08.1970) by *Tourist Traffic Act 1970* (16/1970), s. 6(e), commenced on enactment.
- F58 Inserted (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 7(3), commenced on enactment.
- F59 Inserted (17.12.1957) by *Tourist Traffic Act 1957* (27/1957), s. 5(1)(iv), commenced on enactment.

Modifications (not altering text):

- C40 Transfer of certain Board functions under section enabled (28.05.2003, establishment day) by *National Tourism Development Authority Act 2003* (10/2003), s. 12(1)-(5) and sch. 2, subject to transitional provision in s. 38, effectively commenced by Establishment Day Order S.I. No. 204 of 2003. Sch. 2 refers to functions performable by contractor.

Agreements for performance of functions of Authority by persons other than Authority.

01 APR 2021

LTR DATED _____ FROM _____
 LDG- Tourist Traffic Act 1939
 ABP- _____

Pt. III S. 45

[No. 24.]

[1939.]

12.—(1) The Authority may enter into an agreement with another person (in this section referred to as a "contractor") for the performance by that person of the functions of the Authority under the provisions specified in Schedule 2.

...

Editorial Notes:

E50 Previous affecting provision: section modified by Board's power to contract out certain functions (5.07.1995) by *Tourist Traffic Act 1995* (13/1995), s. 2 and sch; s. 2 repealed (28.05.2003) by *National Tourism Development Authority Act 2003* (10/2003), s. 5 and sch. 1, S.I. No. 205 of 2003.

Service of notices.

46.—(1) Where a notice is required by this Part of this Act to be served on any applicant for registration or renewal of registration, the notice shall be served in one of the following ways, that is to say:—

- (a) by delivering the notice to the applicant,
- (b) by delivering the notice to any person, of no less than sixteen years of age, who is in the employment of the applicant, and
- (c) by sending the notice by post in a prepaid letter addressed, in the case of an applicant for registration, at the address where he carries on business or at his last known place of abode or, in the case of an applicant for renewal of registration, at the premises in respect of which his application is made.

(2) For the purposes of this section a body corporate registered within the State under the Companies Acts, 1908 to 1924, shall be deemed to carry on business at its registered office, and every other body corporate and every unincorporated body shall be deemed to carry on business at its principal office or place of business within the State.

Offences.

47.—(1) Any offence under any section of this Part of this Act may be prosecuted by, or at the suit of, the Board as prosecutor.

(2) Where an offence under any section of this Act was committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary, or other officer of such body corporate, such director, manager, secretary, or other officer shall also be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

Annotations

Modifications (not altering text):

C41 Application of section extended (15.11.1983) by *Tourist Traffic Act 1983* (31/1983), s. 8(2), commenced on enactment.

Display of certain information.

8.— (1) A registered proprietor shall display in the interior of the registered premises in respect of which he is the registered proprietor such information as may be required in writing from time to time by the Board to be so displayed, and such display shall be made in the manner or place so required.

(2) A registered proprietor who does not comply with a requirement under this section shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding £100, and section 47 of the Principal Act shall apply to such offence as if it were an offence under Part III of that Act.

(3) In this section "registered proprietor" and "registered premises" have the same meanings as in Part III of the Principal Act.

PART IV.

ESTABLISHMENT OF SPECIAL AREAS.

Areas to which this Part of this Act applies.

48.—The Minister may by order, if he so thinks proper on the application of the Board, declare that any area shall be an area to which this Part of this Act applies.

Conferring of powers on the Board in respect of areas to which this Part of this Act applies.

49.—(1) Whenever the Minister by order declares that an area shall be an area to which this Part of this Act applies, he may from time to time, if he so thinks proper on the application of the Board, by order do all or any of the following things, that is to say:—

(a) authorise the Board to keep, in respect of such area, such registers as the Minister shall think proper and shall specify in such order of all or any of the following, that is to say:—

(i) boarding houses and other forms of residential accommodation,

(ii) camping sites,

(iii) restaurants, cafés, and similar establishments,

(iv) cinemas, theatres, sports grounds, band promenades, premises in which games or entertainment are provided for the public, and similar places of public entertainment, and

(v) local transport services;

(b) apply in relation to any register so authorised to be kept by the Board such of the provisions of Part III of this Act as he thinks proper and so apply such provisions either with or without modification;

(c) confer on the Board such powers as he thinks proper for the preservation of the amenities of such area;

(d) confer on the Board such powers as he thinks proper in relation to the provision and control (including licensing) of guides, beach guards, and attendants at parking places in such area;

(e) make such provisions (including provisions creating offences and providing for the prosecution and punishment of offenders) ancillary to or consequential upon the keeping of any register so authorised to be kept by the Board or the exercise of any power so conferred on the Board.

(2) Whenever the Minister confers by order under this section powers on the Board for the preservation of the amenities of an area to which this Part of this Act applies and the said area or any part thereof is or is part of the area to which a planning scheme under the Town and Regional Planning Act, 1934 (No. 22 of 1934) relates, the Minister shall have regard to the provisions of such planning scheme.

Amendment and revocation of orders under this Part of this Act.

50.—The Minister may by order amend or revoke any order (including an order under this section) made by him under this Part of this Act.

Laying of orders under this Part of this Act before Houses of the Oireachtas.

51.—Every order under this Part of this Act shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling such order is passed by either such House within the next subsequent twenty-one days on which such House has sat after such order is laid before it, such order shall be annulled accordingly, but without prejudice to the validity of anything previously done under such order.

PART V.

AMENDMENT OF THE TOURIST TRAFFIC (DEVELOPMENT) ACT, 1931.

Amendment of the Tourist Traffic (Development) Act, 1931.

52.—(1) Section 3 of the Tourist Traffic (Development) Act, 1931 (No. 15 of 1931), shall be construed and have effect as if—

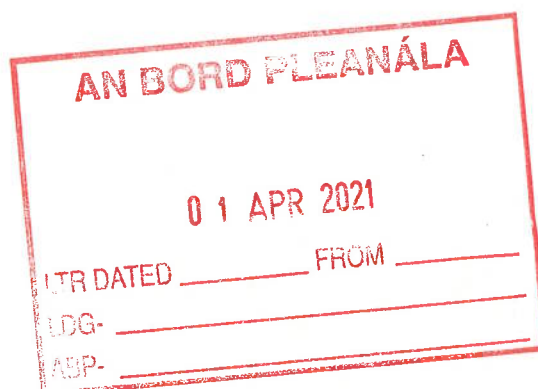
- (i) for the purposes of the application of sub-section (3) thereof to a council of a county borough, the reference in paragraph (a) of the said sub-section (3) to a rate of one penny in the pound on the rateable value of such county borough were a reference to a rate of threepence in the pound on the said rateable value, and
- (ii) the reference in sub-section (8) thereof to the Minister were a reference to the Irish Tourist Board.

(2) The Minister may, on the application of any statutory body, by order declare that such body shall be a local authority for the purposes of the Tourist Traffic (Development) Act, 1931, and thereupon such body shall be a local authority for the purposes of the said Act and the said Act shall apply and have effect accordingly.

Annotations

Editorial Notes:

- E51 *Tourist Traffic (Development) Act 1931* repealed with savings by *Local Government Act 1994* (8/1994), s. 4 and sch. 1, not commenced as of date of revision.





1. *[Faint, illegible text]*

2. *[Faint, illegible text]*

3. *[Faint, illegible text]*

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APPENDIX 4

AN BORD PLEANÁLA

0 1 APR 2021

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TOURIST TRAFFIC ACTS 1939- 2003

Registration and Renewal of Registration Regulations for Guest Houses 2003

AN BORD PLEANÁLA

0 1 APR 2021

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

REGISTRATION AND RENEWAL OF REGISTRATION REGULATIONS FOR GUEST HOUSES 2003

Fáilte Ireland in accordance with the powers conferred on it by the Tourist Traffic Acts 1939 to 2003 hereby with the consent of the Minister for Arts, Sport and Tourism revokes the Registration and Renewal of Registration Regulations for Guest houses 1986 and makes the following regulations:

PART 1

1 CITATION

- 1.1 These Regulations may be cited as the Guest house Registration and Renewal of Registration Regulations, 2003.
- 1.2 "The 1986 Regulations "means the Guest house Registration and renewal of Registration Regulations 1986.

2. COMMENCEMENT

- (i) These Regulations shall come into operation on the 1st day of May 2003 ("the Commencement Date").

3. INTERPRETATION

- (i) "The Board" means Fáilte Ireland and its successors and assigns.
- (ii) "The Contractor" means the contractor appointed by the Board from time to time to carry out inspection and grading of guest houses.
- (iii) Where a particular quality or standard is laid down in these regulations in respect of physical or other aspects of a premises, and no objective quality or standard is specified, the quality or standard in question is one determined in the discretion of the Board

PART II

4. THE PREMISES

The premises shall be constructed or adapted, furnished and equipped for guesthouse purposes.

- 4.1 The premises shall comprise one building or buildings which are on one site and which are linked by well-lit walkways which said buildings shall share common access and egress and the premises shall contain such amounts as determined hereunder of main and secondary entrances, exits, reception areas, dining areas, kitchen and service areas, lounge areas, cloakroom facilities, bathrooms and toilets, guest bedrooms, staff accommodation, storage areas, together with sufficient corridors and stairways to ensure proper circulation of air, proper movement of people and proper access to the various units.

Note: this regulation 4.1 is a new structural requirement. An exemption may be available in accordance with Regulation 21 below.

AN BORD PLEANÁLA

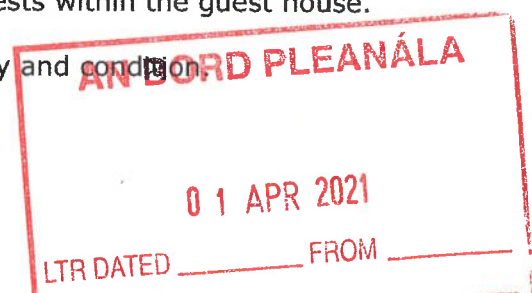
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- 4.2 The premises shall be of substantial and durable construction, structurally safe and in good repair throughout.
- 4.3 The premises, including the exterior and interior, outdoor areas, grounds and car parking areas shall be kept clean and well maintained throughout. Car parks, where provided, to be well lighted and have proper directional signage.
- 4.4 Floors, walls and ceilings throughout the premises shall be of suitable type and design to maintain the highest standards of hygiene.
- 4.5 The premises shall be used primarily for the lodging or sleeping of travellers presenting themselves with or without prior arrangement and for the provision and service to such travellers, at reasonable hours, of breakfast.
- 4.6 The premises shall contain effective means of natural lighting and ventilation.
- 4.7 Sufficient general internal and external lighting shall be provided in all areas and in addition a suitable intensity of local lighting for eating, reading, writing and toilet purposes.
- 4.8 The premises shall have in the public rooms and bedrooms a means of space heating capable of maintaining at all times a room temperature of 18.5 centigrade.
- 4.9 The premises shall have a telephone installation connected with an external telephone system in bedrooms and public areas for use by guests.
- 4.10 Facilities shall be provided for the storage of cleaning materials for each of the various units of the premises and for the storage and airing of necessary stocks including bed linen and blankets.
- 4.11 Where a banqueting area is constructed on the premises after the Commencement Date, the dining area in the said banqueting facility shall have:
- (a) a floor to ceiling height of not less than 2.5 metres, and
 - (b) at least one window to provide natural light and ventilation. Alternatively a climatically controlled air circulation system or a mechanical system of ventilation.
 - (c) Furniture, fittings and equipment of good quality and condition.
 - (d) Adequate toilet facilities for the patron capacity of the banqueting area which shall be well ventilated by natural or mechanical means, be properly supervised and kept in a clean and hygienic condition.
- 4.12 Where a discotheque or similar area is constructed on the premises following the Commencement Date, it shall have:
- (a) its own entrance and exits.
 - (b) adequate insulation to ensure that the noise transmitted therefrom does not interfere with the comfort of other guests within the guest house.
 - (c) furniture, fittings and equipment of good quality and condition.



- (d) Adequate toilet facilities for the patron capacity of the discotheque or similar area which shall be well ventilated by natural or mechanical means, be properly supervised and kept in a clean and hygienic condition.

5 ENTRANCE AND EXITS

- 5.1 The entrance and exits shall be of sufficient size to cater adequately for the overall resident capacity of the premises.
- 5.2 The premises shall contain a guest entrance.
- 5.3 The premises shall contain a service entrance, separate from the guest entrance, and suitably located for the reception of goods necessary for the operation of the premises.
- 5.4 The entrance hall shall:
- a) be of sufficient size to cater adequately for the volume of traffic normally using the premises, and
 - b) be suitably located, laid out and contain furnishings, fittings and equipment of good quality and in good condition.
 - c) be suitably located, laid out and equipped for the proper reception and control of arriving and departing guests.
- 5.5 In the case of premises which apply for initial registration after the Commencement Date but subject to the exemption arrangements below in regulation 21 the following must be provided:

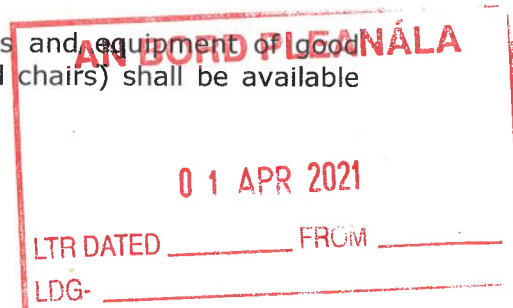
Access for persons with mobility difficulties, including wheelchair users, to the entrance hall, reception, bedrooms and public areas, including bathroom and toilet facilities in accordance with the Building Regulations 2000 Technical Guidance Document M (as the same may subsequently be amended or modified)

In the case of premises registered before the Commencement Date and subject to the exemption arrangements below in Regulation 21 the foregoing shall be provided where feasible and reasonable

Note: this regulation 5.5 is a new structural requirement. An exemption may be available in accordance with Regulation 21 below.

6 DINING AREA

- 6.1 The dining area shall have:
- a) a floor to ceiling height of not less than 2.4 metres, and
 - b) at least one window to provide natural light and ventilation. Alternatively, a climatic controlled air circulation or mechanical system of ventilation.
- 6.2 The dining area shall contain seating furniture, fittings and equipment of good quality and condition. High chairs (or suitably adapted chairs) shall be available for children.



- 6.3 Tables and seating shall be of adequate size to enable the diners to dine in comfort and be capable of easy and flexible arrangement and permit diners and staff to circulate easily in the dining area.
- 6.4 Cutlery, condiments, ash trays, tablecloths, table mats, trays, service trolleys and other necessary table appointments shall be of good quality and in good condition. Napkins (linen, cloth or good quality paper) shall be provided.
- 6.5 Crockery shall be adequate to serve the maximum number of diners capable of being seated in the dining area, be in good condition, of good quality and of uniform design.

7 KITCHEN AND SERVICE AREAS

- 7.1 The kitchen area shall comply with the requirements of the Food Hygiene Regulations 1950-1989 And the EC (Hygiene of Foodstuffs) Regulations 2000 (as may be subsequently amended or modified).
- 7.2 The kitchen shall have direct access to the dining area. Service access to the dining area shall not be through a public area that is normally used by guests as a lounge area and/or a main passageway.
- 7.3 There shall be easy access by means of internal or enclosed corridors and stairways from the kitchen and service areas of the guest house to the public rooms and the bedroom units.
- 7.4 The Board or its Contractor may grant exemption on such terms as it thinks fit, from the provisions of Regulations 7.2 and 7.3 where it is of the opinion that due to structural limitations in buildings of architectural or historic importance, full compliance therewith could not reasonably be achieved.

8 LOUNGES

- 8.1 Lounge space shall be provided in common rooms.
- 8.2 Lounge space of not less than 20 square metres in a communal area shall be provided.

Note: This regulation 8.2 is a new structural requirement. An exemption may be available in accordance with Regulation 21 below.

- 8.3 Each lounge shall have:
- a) a floor to ceiling height of not less than 2.4 metres, and
 - b) at least one window to provide natural light and ventilation. Alternatively, climatic controlled air circulation or mechanical system of ventilation.
- 8.4 Lounge space shall contain furniture, fittings and equipment of good quality and condition. These should be capable of easy and flexible arrangements to cater for individuals and various groups. Such furniture fittings and equipment shall include:
- a) upholstered chairs, armchairs, sofas or settees;

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- b) carpet and/or rugs unless floor surface is of special design or treatment, acceptable to the Board or its contractors.

9 TOILETS

9.1 The following provisions shall only apply in the case of premises:

- a where the resident guest accommodation exceeds 30 persons;
- b where the premises contains a bar or space set aside for the consumption of intoxicating liquor.
- c where the premises contains a public restaurant.

9.2 Toilets for resident and casual patrons shall be provided separately for men and women and shall be located adjacent to, or easily accessible from, the entrance hall and the public rooms.

9.3 Toilets shall contain WC units (in separate compartments) and wash-hand basins of approved manufacture fixed complete with all plumbing for the continuous supply of hot and cold water and the disposal of waste.

9.4 The number and type of sanitary fittings installed shall be calculated in relation to the resident guest capacity of the premises, and including the guest capacity of the registered annexe) as follows:

MEN

Up to 20 persons	1 WC	1 Urinal	1 Wash-hand Basin
20-50 persons	1 WC	2 Urinal	1 Wash-hand Basin
50-100 persons	2 WC	2 Urinal	2 Wash-hand Basin

WOMEN

Up to 20 persons	2 WC	1 Wash-hand Basin
20-50 persons	3 WC	2 Wash-hand Basin
50-100 persons	5 WC	3 Wash-hand Basin

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An exemption from the particular requirements of regulation 9.3 may be granted in the particular circumstances of a given case at the discretion of the Board.

9.5 Cloakrooms and toilets shall have an effective system of natural or mechanical ventilation and shall be equipped with usual accessories (e.g. mirrors, towel rails, clothes hooks, etc.) and a clean and ample supply of toilet requisites (e.g. towels, soaps, toilet paper, sanitary disposal bins, etc.)

10 GUEST BEDROOMS

10.1 There shall be a minimum of seven guest bedrooms with private bathrooms ensuite and no more than 30 guest bedrooms with private bathrooms, all of which shall have separate access to the bedroom corridor.

Note: This regulation 10.1 contains a new structural requirement. An exemption may be available in accordance with Regulation 21 below.

- 10.2 Regulation 10.1 will not apply to any application for Renewal of Registration of a premises which was first registered prior to the Commencement Date of these Regulations and whose registration was not cancelled by the Board under the provisions set out in the Tourist Traffic Acts 1939 - 1998.
- 10.3 Bedrooms, the toilets and bathrooms serving them, and the corridors off which they shall open shall be 'out of view' from the public areas and separated from each other by walls or partitions, floors and ceilings and having an acoustic attenuation of 50 dB.

Note: Regulation 10.3 contains a new structural requirement. An exemption may be available in accordance with Regulation 21 below.

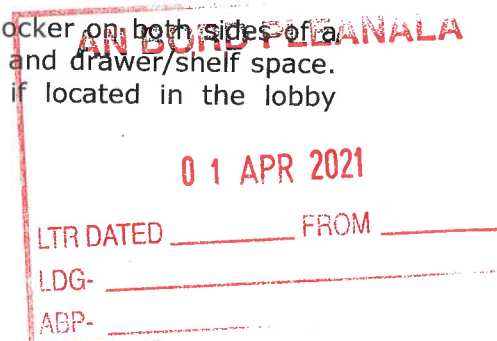
10.4 Each bedroom shall have:

- a) a floor area for single bedrooms of not less than 9.00 square metres; exclusive of private bathroom and lobby area.
- b) a floor area for double/twin bedrooms of not less than 15.00 square metres; exclusive of private bathroom and lobby area.
- c) a floor area for double and single or triple bedrooms of not less than 20 square metres exclusive of private bathroom and lobby area.
- d) a floor to ceiling height of not less than 2.4 metres. An exemption may be granted in the case of historic buildings.
- e) at least one external window with clear glass, to provide natural light and ventilation. The position of the window should be such that at least one third of the glass area is below a level of 1.6m from the floor. Windows to be fitted with child proof locking system.
- f) a double locking device from within and a single locking device from without on the door(s) opening off the bedroom corridor. Room keys should be provided to guests. Proprietor should have master key or duplicate to all rooms in order to service rooms and for emergencies.

Note: Regulation 10.4 contains new structural requirements. Exemptions may be available in accordance with Regulation 21 below.

10.5 Each bedroom shall contain furniture, fittings and equipment of good standard, quality and in good condition, for sleeping and toilet purposes and for the storage, including hanging, of wearing apparel. Such furniture, fittings and equipment shall include:

- a) bed(s) complete with interior sprung mattress(es) or suitable equivalent;
- b) a supply of linen, blankets, pillows and counterpane, mattress and pillow protectors; pillows of a non-allergic filling should be available to guests. Duvets with suitable cover/sheets are acceptable;
- c) loose or built-in unit(s) comprising bedside table/locker on both sides of a double bed, wardrobe, dressing table with mirror, and drawer/shelf space. Open plan clothes hanging space is acceptable if located in the lobby section of the bedroom;



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- d) bedside lights minimum 60 watt (one on either side of a double bed) main lights minimum 120 watt or CFL equivalent;
- e) a chair per person with a minimum of two chairs per double room, luggage racks non flammable waste baskets, ashtray(s) where smoking is permitted and clothes hangers;
- f) carpet or rugs with non-slip backing if floor is of special treatment or design;
- g) window curtains or black out blinds to ensure privacy and exclusion of light;
- h) good quality towels must be provided per person per day, minimum size hand 0.40x0.8m, bath 0.6x1.22m;
- i) printed advice for means of summoning assistance at night. This notice must be in all bedrooms in addition to fire instruction notices and should be in foreign language versions (French and German at minimum) together with English and/or Irish as appropriate
- j) each room to have a telephone connected to an external telephone system.
- 10.6 Bunk beds are not acceptable.
- 10.7 Each bedroom must be specifically identified by name or number on the bedroom door concerned.
- 10.8 Approved prices must be displayed in a prominent position in all standard bedrooms using the certificate provided by the Board or the authorised Contractor. This requirement shall not apply to superior level accommodation within the premises such as suites or semi-suites.
- 10.9 Access to bedrooms is not acceptable through public sitting rooms, dining rooms or kitchen save where any of the latter form part of the same individual lettable suite in which the bedrooms is/are located.
- 10.10 Each private bathroom attached to a bedroom shall have a minimum floor area of 3.5 square metres and 3 square metres where the facility includes a shower unit only rather than a bath and shall contain a bath and/or shower, wash-hand basin and WC of good quality and condition complete with all plumbing for the supply of hot and cold water and the disposal of waste.
- a) a bath or thermostatically controlled shower of good quality and in good condition which shall be fixed complete with all plumbing for the continuous supply of hot and cold water and the disposal of waste.
- b) a toilet and a wash-hand basin of good quality and in good condition which shall be fixed complete with all plumbing for the continuous supply of hot and cold water and the disposal of waste.
- c) bathrooms shall have an effective system of natural or mechanical ventilation and shall be equipped with shelf, mirror, towel rails, clothes hooks, a sanitary disposal bin, bath mat and a clean and ample supply of toilet requisites, including towels, soap and toilet paper.
- d) bathroom shall have a mirror fixed to the wall over the washbasin and shall

have a vanity light.

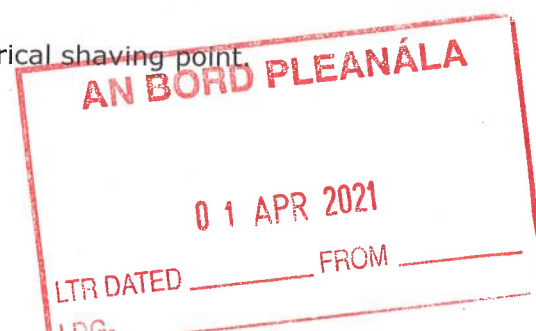
- e) an electric shaver point within easy reach of a suitably lit mirror to be provided with power point(s) for other electrical appliances.

Note: This regulation 10.9 contains new structural requirements. Exemptions may be available in accordance with Regulation 21 below.

THE FOLLOWING REGULATION 11 APPLIES ONLY TO PREMISES REGISTERED PRIOR TO THE COMMENCEMENT DATE OF THE 1986 REGULATIONS

11 BATHROOMS AND TOILETS

- 11.1 To serve bedrooms which do not have private bathrooms attached, each premises shall contain in separate compartments:
 - a) One bathroom for the first fifteen persons or portion thereof.
 - b) Two toilets for the first 20 persons or portion thereof.
 - c) Thereafter one bathroom for every additional fifteen persons or portion thereof and one toilet for every additional ten persons or portion thereof;
 - d) Up to 50% of the additional toilets may be provided in the bathroom compartments;
 - e) Each floor of bedrooms shall have on, or adjacent to it without access through the public areas, the proper ratio of bathrooms and toilets for the guests accommodated thereon.
- 11.2 Each bathroom shall contain a bath (or shower, except in the case of the bathroom serving the first fifteen persons) of good quality and in good condition which shall be fixed complete with all plumbing for the continuous supply of hot and cold water and the disposal of waste.
- 11.3 Each toilet shall contain a WC and a wash-hand basin of good quality and in good condition which shall be fixed complete with all plumbing for the continuous supply of hot and cold water and the disposal of waste.
- 11.4 A wash-hand basin fitted with mirror and facilities for holding toiletries and complete with plumbing for the continuous supply of hot and cold water and disposal of waste together with a clean and ample supply of towels and soap.
- 11.5 Bathrooms/shower rooms and toilets shall have an effective system of natural or mechanical extraction, be properly heated and equipped with the following: shelf for toiletries, mirror, towel rail, soap, clothes hooks, towelling or cotton bath mat, towels, toilet brush and holder, lidded waste bin, toilet paper and holder. Showers should be equipped with soap tray and grab handle.
- 11.6 Bathroom/toilets shall have a vanity light, and an electrical shaving point.



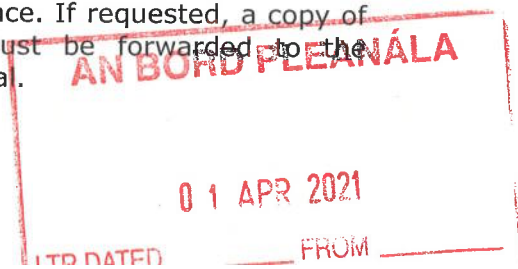
12 ANNEXE ACCOMMODATION

This regulation 12 applies only to annexe accommodation which is constructed on a premises after the Commencement Date

- 12.1 Annexe accommodation for visitors shall be provided in buildings on one site (which site shall also contain the main guesthouse building). These buildings shall comprise of guest bedrooms, with private bath facilities, storage facilities, stairways and corridors, which accord with the requirements as laid down in the preceding paragraphs.
- 12.2 Annexe accommodation shall be operated in conjunction with and under the regular supervision and maintenance of the management and staff of the main guesthouse building.
- 12.3 The above shall only apply when the premises fulfils 4.1 and 10.1 and are on the same site as the registered premises.

13 STATUTORY REQUIREMENTS & SAFETY, ETC

- 13.1 The premises shall comply with and be operated in accordance with all statutory requirements of local and other authorities in relation to planning, food, food hygiene, water supply, sewage disposal, fire precautions and general safety and in particular but without prejudice to the generality of the foregoing shall comply with:
- (i) Local Government (Sanitary Services) Act, 1948 (as may subsequently be amended or modified)
 - (ii) Food Hygiene Regulations, 1950-1989 (as may subsequently be amended or modified)
 - (iii) Local Government (Planning and Development) Acts, 1963-2000 (as may subsequently be amended or modified) and regulations made thereunder.
 - (iv) Building Control Act, 1990 (as may subsequently be amended or modified) and regulations made thereunder.
 - (v) Fire Services Act, 1981 (as may subsequently be amended or modified)
 - (vi) EC (Hygiene of Foodstuffs) Regulations 2000 (as may subsequently be amended or modified)
- 13.2 Where building work has been carried out on the premises since June 1992 which effects a material alteration or material change of use of the premises (as more particularly set out in the Building Regulations) a local authority Fire Safety Certificate and an architect's or engineer's certificate of compliance with the fire safety provisions of the Building Regulations must be produced on initial application for registration hereunder, and, where a material alteration or material change of use occurs subsequently, must be returned with the renewal form due by the next renewal date following the material alteration or material change of use.
- 13.3 All premises must have adequate public liability insurance. If requested, a copy of the current public liability insurance cover note must be forwarded to the contractor upon initial application and upon each renewal.



13.4 Display of prices

The business shall be conducted in accordance with charges not exceeding those specified in the scale of charges which have been duly furnished to the Board or the Board's appointed contractor in accordance with section 26(2)(d) of the Tourist Traffic Act, 1939. The scale of maximum charges shall be displayed in a prominent place in the reception area of the premises and bedrooms in accordance with Section 43 of the said Act together with a copy of the current registration certificate applicable to the premises

14 MANAGEMENT AND STAFF FACILITIES

14.1 The premises shall be under the regular supervision of a person, or persons, trained or experienced in Hotel/Guest house Management and fully capable of operating the premises to the standards set out in these Regulations.

14.2 The premises shall be staffed by persons adequate in number and trained to maintain standards of service set out in these Regulations.

14.3 (a) Sleeping, dining, lounge, bathroom and toilet facilities shall be provided as required for the staff employed in the premises having regard to the nature of their duties (hours of work etc).

14.4 There shall be made available for guests and employees basic first aid equipment.

PART III

15 APPLICATION FOR REGISTRATION

15.1 Every application made under Section 26 of the Tourist Traffic Act, 1939, for registration of any premises in the Board's Register of Guest houses, shall be in writing using the Initial Registration Application Form supplied by the Board or its Contractor and shall, when filled in and completed by, or on behalf of the applicant, for such registration, be sent by post to, or left at the principal office of Fáilte Ireland, or the Board's appointed Contractor and shall be accompanied by:

- a) the application fee as prescribed by the Board
- b) evidence that the premises is registered by the Health Board, in whose functional area the premises is situated, under the Food Hygiene Regulations 1950 to 1989 and the EC (Hygiene of Foodstuffs) Regulations 2000 (as the same may subsequently be amended or modified);
- c) written evidence that the premises complies with Fire Services Act 1981 and/or Building Control Act 1990.
 - (i) written evidence from the Fire Authority for the area where the premises are situate that the said Fire Authority have no objection to the registration of the premises as a guest house or from the applicant's architect/engineer that the premises substantially complies with the Fire Services Act 1981 and/or the Building Control Act 1990.
 - (ii) copy of Fire Safety Certificate to be provided.

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- d) evidence that the premises complies with the Local Government (Planning and Development) Acts, 1963-2000.

16 INITIAL REGISTRATION

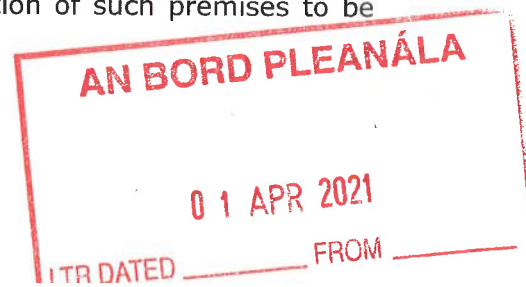
- 16.1 Where the Board is satisfied that an application has been duly made in accordance with Regulation 15 and that the premises in respect of which the said application has been made is eligible for registration in the Board's Register of Guest houses, having regard to the standards and requirements set out in Part 11 of these Regulations, the Board shall cause the premises to be registered in the said Register on payment of the following:
- a) for each visitor's bedroom entered in the Initial Registration Application Form as containing one single bed, the fee as prescribed by the Board;
- 16.2 Where the opinion of the Board that the said premises is eligible for registration in the Board's Register of Guest houses is formed on or after the 1st day of September in any one year, the registration fee to be paid shall be calculated at one-third of the fee prescribed in 16.1 above.

17 APPLICATION FOR RENEWAL OF REGISTRATION

- 17.1 Every application made under Section 29 of the Tourist Traffic Act, 1939 for the Renewal of Registration of any premises in the Board's Register of Guest houses shall be in writing, using the Renewal of Registration Form supplied by the Board or its Contractor and shall, when filled in and completed by, or on behalf of the applicant for the renewal of such registration, be sent by post, to or left at the principal office of, Fáilte Ireland or the Board's appointed Contractor, and shall be accompanied by:
- a) in respect of each visitor's bedroom entered on the Renewal of Registration Form the fee as prescribed by the Board.
- b) evidence that the premises continues to be registered by the Health Board, in whose functional area the premises is situated, under the Food Hygiene Regulations 1950 to 1989 and the EC (Hygiene of Foodstuffs) Regulations 2000 (as may subsequently be amended or modified);
- c) evidence that the premises continues to comply with the Local Government (Planning and Development) Acts, 1963 to 2000;
- d) particulars of any requirements of the Local Fire Authority made under the Fire Services Act 1981, (No. 30 of 1981) and written evidence that these requirements have been or are being complied with.

18 RENEWAL OF REGISTRATION

Where the Board is satisfied that an application has been made in accordance with Regulation 17.1 and that the premises in respect of which such application has been made is eligible for renewal of registration in the Board's Register of Guest houses having regard to the standards and requirements set out in Part 11 of these Regulations, the Board shall cause the registration of such premises to be renewed in the said Register.



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19 PRESCRIBED FEES

All references to prescribed bed fees in Regulations ~~15, 16, and 17~~ of these Regulations relate to fees prescribed by the Board with the consent of the Minister for Arts, Sport and Tourism, under Sections 26(2) (as amended by Section 5(1) of the Tourist Traffic Act, 1983), Section 27(2) and Section 29(2) of the Tourist Traffic Act, 1939.

20 REVOCATION

The Registration and Renewal of Registration Regulations for Guest houses, 1986 are hereby revoked.

21 EXEMPTION ARRANGEMENTS

In this Regulation 21, the following expressions shall have the following meanings:

"New Structural Requirements" means the new structural requirements contained in these Regulations which include but are not limited to regulations 4.1, 5.5, 8.2, 10.1, 10.3, 10.4 and 10.10.

"Year of Registration" means 1st January to 31st December in every year as the same may be adjusted from time to time by the Board.

21.1 Renewals of registration

21.1.1 These regulations shall apply to applications for renewal of registration except that the New Structural Requirements shall not apply to any application for renewal of registration in respect of a premises which was registered under a set of regulations preceding these.

21.1.2 Failure to apply to renew - lapse of over 12 months - New Structural Requirements apply.

The New Structural Requirements shall not apply where a premises which has received its first registration under a set of regulations preceding these fails to apply to renew its registration for a given Year of Registration but subsequently applies to renew within 12 months after the final date for submitting applications for the said given Year of Registration.

21.2 Initial Registrations

These regulations shall apply to initial registration applications save that:

21.2.1 Where, within 24 months prior to the Commencement Date a person has either

- (a) incurred not less than 15 per cent of the total cost of construction or refurbishment of a proposed guesthouse and/or
- (b) the foundations of a premises having structural characteristics which would comply with the 1986 Regulations have been laid,

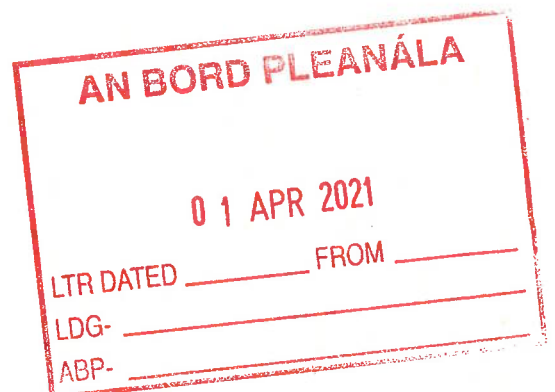
and evidence of this has been provided in the form of a duly qualified auditor's certificate of expenditure or by such other evidence as the Board or its authorised contractor may require,

and

- (c) the applicant has on a date thereafter (which date shall not be more than 24 months after the Commencement Date hereof) sought initial guesthouse registration for the said premises from the Board and the premises does not comply with the New Structural Requirements in these regulations but would comply with the corresponding provisions of the 1986 Regulations as regards these structural requirements,

then, the corresponding provisions of the 1986 Regulations will apply as regards these structural requirements only.

- 21.2.2 For the avoidance of doubt, where the registration of a premises has been cancelled by the Board under the provisions set out in the Tourist Traffic Acts, 1939 - 2003, these regulations shall apply to any subsequent application for registration of the said premises.



APPENDIX 5

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Benedict McGowan, Kieran Marshall, Pdraig Brady, Brian Kelly, Donal Phelan, David McCarthy, Jimmy Lee, Camlin Electric Limited and Cavanty Electrical Limited, Applicants v. The Labour Court, Ireland and The Attorney General, Respondents and The Technical Engineering and Electrical Union, The Association of Electrical Contractors (Ireland), The Electrical Contractors Association and The National Electrical Contractors of Ireland, Notice Parties [2013] IESC 21, [S.C. No. 310 of 2010]

Supreme Court

9th May, 2013

Constitution – Delegated legislation – Statute – Registered employment agreement – Validity – Oireachtas – Exclusive function – Principles and policies test – Joint Industrial Council – Labour Court – Regulation of remuneration and conditions of employment – Whether sufficient principles and policies prescribed to govern exercise of law making power – Whether impermissible delegation of law making power – Industrial Relations Act 1946 (No. 26), ss. 27, 28 and 29 – Constitution of Ireland 1937, Article 15.2.1°.

Courts – Jurisdiction – Supreme Court – Appellate court – Jurisdiction of Supreme Court to consider issues argued in High Court but not decided.

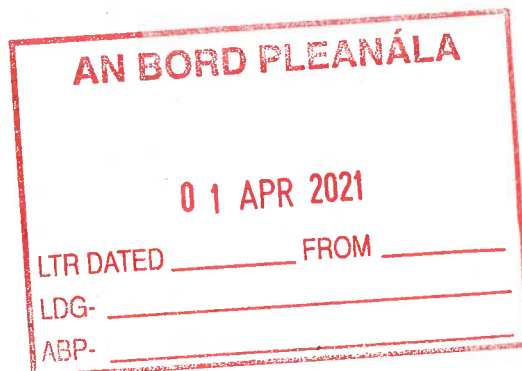
Article 15.2.1° of the Constitution provides:-

“The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.”

Part III of the Industrial Relations Act 1946 provided for the registering by the Labour Court of an employment agreement, made between trade unions and employers or at a meeting of a registered Joint Industrial Council, regulating remuneration and conditions of employment in a particular sector. Once registered, the registered employment agreement (“REA”) became incorporated into employment contracts in the particular sector and was enforceable by criminal prosecution. It applied not just to parties to the REA, but to every worker and employer in that sector.

Under s. 27(3) of the Act of 1946, the Labour Court was obliged to register an REA if it was satisfied:-

- “(a) that, in the case of an agreement to which there are two parties only, both parties consent to its registration and, in the case of an agreement to which there are more than two parties, there is substantial agreement amongst the parties representing the interests of workers and employers, respectively, that it should be registered,



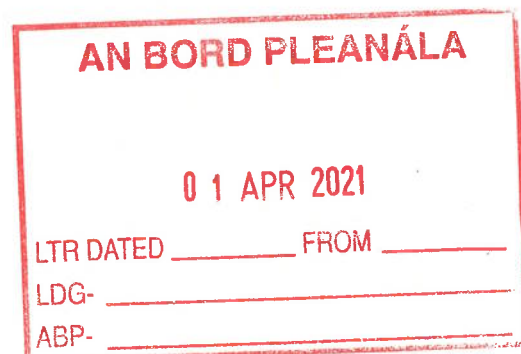
- (b) that the agreement is expressed to apply to all workers of a particular class, type or group and their employers where the Court is satisfied that it is a normal and desirable practice or that it is expedient to have a separate agreement for that class, type or group,
- (c) that the parties to the agreement are substantially representative of such workers and employers,
- (d) that the agreement is not intended to restrict unduly employment generally or the employment of workers of a particular class, type or group or to ensure or protect the retention in use of inefficient or unduly costly machinery or methods of working,
- (e) that the agreement provides that if a trade dispute occurs between workers to whom the agreement relates and their employers a strike or lock-out shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement, and
- (f) that the agreement is in a form suitable for registration.”

Section 28(1) of the Act of 1946 allowed any party to the REA to apply to the Labour Court to vary it. Section 29(2) provided for the cancellation of the REA by the Labour Court where it was “satisfied that there has been such substantial change in the circumstances of the trade or business to which it relates since the registration of the agreement that it is undesirable to maintain registration”.

Representatives of electricians employed in the construction sector applied to the Labour Court to vary the REA that applied to their sector. The applicants, electrical contractors, responded by applying to the Labour Court for the cancellation of the REA. At the same time, a District Court prosecution was commenced against the eighth applicant for breach of the REA. The applicants sought an adjournment of the Labour Court proceedings to await the outcome of the prosecution. The Labour Court refused the adjournment. The applicants sought leave to seek judicial review of the Labour Court’s refusal to grant an adjournment. They were granted leave by the High Court, as well as an interim injunction restraining the hearing of the matter by the Labour Court. However, that injunction was subsequently lifted and the Labour Court heard the matter and refused both the application of the employee representatives and the application of the applicants.

Notwithstanding the hearing and determination of the matter in the Labour Court, the judicial review progressed and was heard by the High Court (Hedigan J.), together with a further judicial review action challenging the Labour Court’s refusal to cancel the REA and a case stated from the District Court prosecution. The High Court dismissed the applicants’ claims on all grounds (see [2010] IEHC 501, [2010] E.L.R. 277). In as much as the claim was a challenge to the validity of the REA on non-constitutional grounds, the court held that it was out of time, having been commenced well out of the time permitted to seek judicial review. In respect of the constitutional challenge, the court held that it was also out of time, but in addition refused to rule on it on the ground that it was undesirable that the constitutional challenge should proceed alone in judicial review proceedings and that it ought to be determined in plenary proceedings.

The applicants appealed to the Supreme Court. The parties agreed to narrow the number of issues to two. The first was whether the Supreme Court was entitled to determine the constitutional issue in circumstances where it was raised and argued in



the High Court but not determined by that court. The second issue was the constitutional question itself, namely, whether Part III of the Act of 1946 contravened Article 15.2.1° of the Constitution by delegating the making, variation and cancellation of registered employment agreements to the Labour Court and the parties to such agreements.

Held by the Supreme Court (Denham C.J., Murray, Fennelly, O'Donnell and Clarke JJ.), in allowing the appeal and declaring Part III of the Act of 1946 to be invalid having regard to Article 15.2.1° of the Constitution, 1, that Part III of the Act of 1946 provided for an unlimited grant of law making power in relation to employment terms, made to bodies unidentifiable at the time of the passage of the legislation and without intermediate review or direct statutory guidance in relation to the exercise of the power. Such a far-reaching conferral of law making authority could only be valid if the process of registration by the Labour Court pursuant to s. 27(3) of the Act of 1946 introduced sufficient limitations that the exercise of the power amounted to merely giving effect to principles and policies contained in the statute.

Pigs Marketing Board v. Donnelly (Dublin), Ltd. [1939] I.R. 413 and *Cityview Press v. An Chomhairle Oiliúna* [1980] I.R. 381 followed. *Burke v. Minister for Labour* [1979] I.R. 354, *Laurentiu v. Minister for Justice* [1999] 4 I.R. 26 and *John Grace Fried Chicken Ltd. v. Catering J.L.C.* [2011] IEHC 277, [2011] 3 I.R. 211 considered.

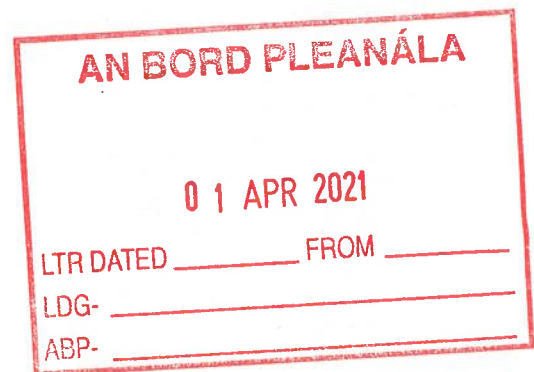
2. That registration by the Labour Court was mandatory subject only to compliance with the requirements of s. 27(3) of the Act of 1946. Paragraphs (a), (b) and (f) of that subsection were procedural and did not provide any principles or policies to guide the exercise of the power of registration. Paragraph (c) did contain a condition, but did not go to the substance of the REA and therefore did not set out any principle or policy in respect of the content of same.

3. That, while s. 27(3)(d) of the Act of 1946 did impose certain limitations of substance upon the registration power, it was not sufficient to render the exercise of the power compatible with the Constitution. In particular, there was no obligation on the Labour Court or the parties to the REA to consider the interests of those who would be bound by it but were not parties to it. Furthermore, there was no guidance or instruction as to how the matters of representativity, restriction on employment, inefficiency and costly methods of work were to be gauged.

4. That, while the REA would be binding on everybody in the sector, it might only be varied under s. 28 of the Act of 1946 on the application of the original parties. Furthermore, the Labour Court's power to cancel the REA was exercisable only if it considered that there had been "such substantial change in the circumstances of the trade or business" that it was no longer desirable to maintain registration. This highlighted, rather than cured, the absence of a similar power of variation.

5. That the Supreme Court could hear and determine an appeal on an issue which, for whatever reason, the High Court had heard but not determined.

Dunnes Stores Ireland Company v. Ryan [2002] 2 I.R. 60 and *A.A. v. Medical Council* [2003] 4 I.R. 302 followed.



Cases mentioned in this report:-

A.A. v. Medical Council [2003] 4 I.R. 302; [2004] 1 I.L.R.M. 372.
Burke v. Minister for Labour [1979] I.R. 354.
Cityview Press v. An Chomhairle Oiliúna [1980] I.R. 381.
Dunnes Stores Ireland Company v. Ryan [2002] 2 I.R. 60.
John Grace Fried Chicken Ltd. v. Catering J.L.C. [2011] IEHC 277,
[2011] 3 I.R. 211; [2012] 1 I.L.R.M. 392.
Laurentiu v. Minister for Justice [1999] 4 I.R. 26; [2000] 1 I.L.R.M. 1.
McGowan v. Labour Court [2010] IEHC 501, [2010] E.L.R. 277.
Pigs Marketing Board v. Donnelly (Dublin), Ltd. [1939] I.R. 413.

Appeal from the High Court

The facts have been summarised in the headnote and are more fully set out in the judgment of the Supreme Court delivered by O'Donnell J., *infra*.

By notice of appeal dated the 17th August, 2010, the applicants appealed to the Supreme Court against the judgment and order of the High Court (Hedigan J.), dated the 30th June and the 14th July, 2010, respectively (see [2010] IEHC 501).

The appeal was heard by the Supreme Court (Denham C.J., Murray, Fennelly, O'Donnell and Clarke JJ.) on the 18th December, 2012.

Nuala Butler S.C. (with her *Helen Callanan*) for the first, second, third, fourth and ninth applicants.

Oisín Quinn S.C. (with him *Eoin Carolan*) for the respondents.

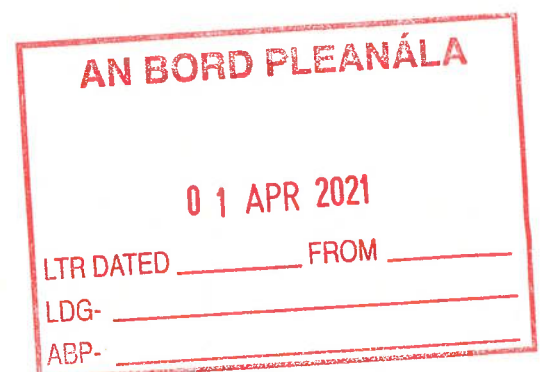
Cur. adv. vult.

In accordance with the provisions of Article 34.4.5° of the Constitution, the decision of the court was pronounced by a single member.

O'Donnell J.

9th May, 2013

[1] It is possible, although not without some difficulty, to detect in these proceedings an important point of constitutional law concerning the Industrial Relations Act 1946 (hereinafter the "Industrial Relations Act", the "Act" or the "Act of 1946"), albeit almost entirely obscured in a thicket of procedural complication and confusion.



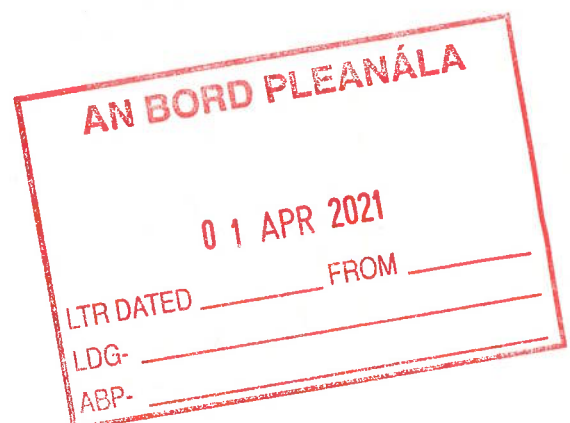
[2] The appellants are, or at least are alleged to be, electrical contractors and, as such, affected by an employment agreement registered by the Labour Court on the 24th September, 1990, pursuant to the provisions of Part III of the Industrial Relations Act 1946 setting out certain terms and conditions of employment of electricians within the construction sector. The operation, effectiveness and validity of that Registered Employment Agreement (hereafter “REA”) has been sought to be challenged in multiple proceedings which have led, by a circuitous route, to this appeal.

[3] It is necessary to explain in some detail the legal operation of registered employment agreements in general, and indeed the wider operation of the Industrial Relations Act 1946, before it is possible to commence the analysis of the constitutional issue raised in these proceedings.

[4] The Act of 1946 contained two mechanisms under which a general sectoral agreement made in respect of terms and conditions of employment in a specified industry or sector of an industry may become legally enforceable both in civil and criminal law. Although this case concerns the provisions of Part III, it is also necessary to have regard to the provisions of Part IV which have been the subject of the case law relied on in this appeal.

[5] Part IV of the Industrial Relations Act (ss. 34 to 58) permitted the Labour Court to establish Joint Labour Committees (“JLCs”) either where there was substantial agreement among groups representing employers and employees, or where it was considered that the existing mechanism for the regulation of remuneration and other conditions made it expedient to establish such a body. A JLC could then make a submission to the Labour Court which, if accepted by the Labour Court, would result in the making of an Employment Regulation Order (“ERO”) giving effect to the proposals of the JLC. The effect of such an ERO was to make its provisions concerning remuneration and conditions of employment part of the contract of employment between an employer and an employee within the sector (whether represented in the JLC or not) and failure to comply with such terms was not only enforceable in civil law, but also gave rise to a criminal offence punishable by a fine. Provision was also made for an inspectorate to assist in the enforcement of the provision.

[6] The provisions of Part IV of the Act can be traced back to the Board of Trades Act 1909 which was part of the reforming labour legislation introduced at that time in response to the growing power of the trade unions. JLCs tended to be utilised in industries with a transient work force and often lower paid employees, and where traditional collective bargaining could not take hold. The perceived benefit of a JLC was that it provided a structure for a form of collective bargaining in such industries which



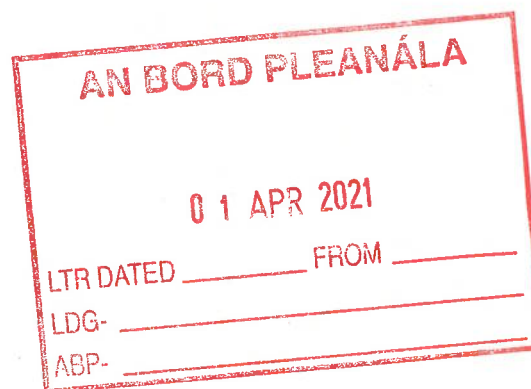
might not otherwise arise naturally because of the structure of the industry and the nature of the workforce.

Part III of the Industrial Relations Act 1946

[7] The provisions of Part III of the Act of 1946 have similarities of structure to those of Part IV. However it appears that Part III is unique to the Irish code of industrial relations and cannot be traced back to any pre-existing body of legislation. Under Part III an employment agreement, defined as an agreement regulating remuneration and conditions of employment of work and made between trade unions and an employer or a group of employers or at a meeting of the registered Joint Industrial Council, may on the application of the parties thereto, be registered by the Labour Court. On any such application the Labour Court is obliged to register the agreement if it is satisfied that the conditions of six paragraphs of s. 27(3) of the Act have been complied with. It will be necessary to return to this section in some detail later in this judgment. Once registered, an REA, like an ERO under Part IV, becomes incorporated in the contract between the employer and employee and is enforceable by criminal prosecution. The agreement may be varied by application brought by the parties to the original agreement, and may be cancelled by the court either on a joint application of the parties, or if the Labour Court is satisfied that there has been substantial change in the trade or business. But most significantly for present purposes, an REA, like an ERO, applies not just to the parties thereto and those they represent, but to every worker and employer in the sector, whether or not they were a party at the original agreement, or represented in the conclusion of the agreement, or were even in existence at the time it was made. Thus, s. 30(1) of the Act of 1946 provides:-

“A registered employment agreement shall, so long as it continues to be registered, apply, for the purposes of this section, to every worker of the class, type or group to which it is expressed to apply, and his employer, notwithstanding that such worker or employer is not a party to the agreement or would not, apart from this subsection, be bound thereby.”

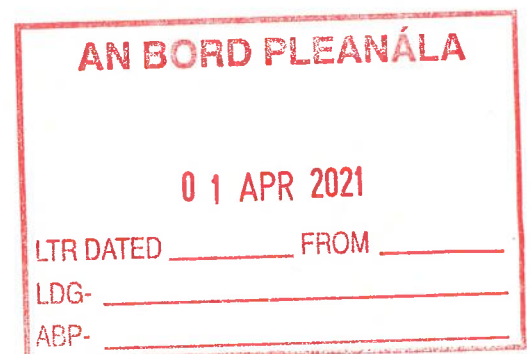
[8] The provisions of Part III appear somewhat anomalous today. In general, collective agreements are considered not to be legally enforceable either by the parties thereto, or the persons represented by the parties to any such agreement. Indeed, in general, the fact that collective agreements exist outside a precise legal framework and are not enforceable by either the



civil or criminal law, is normally seen as a desirable feature in industrial relations. Furthermore, since 1946 there has been considerable further development of statutory regulation of employment but it has been away from private sectoral agreements and towards legislation having general effect imposing obligations such as setting minimum terms and conditions of employment in employment. But the most striking feature of Parts III and IV of the Act of 1946 to modern eyes is the fact that both EROs and REAs are made part of the criminal law and bind everyone who participates in the relevant sector. Furthermore, the relevant provision of the criminal law is made not by the Oireachtas, but rather by private individuals, themselves participants in the industry to be regulated. Not only therefore does the scheme of the Act of 1946 confer a high degree of autonomy on participants to an ERO or an REA, in the sense that they are empowered to make law for themselves, they are also empowered to make law for others giving rise to the prospect of burdensome restraints on competition for prospective employers and intrusive paternalism for prospective employees. Given these unusual features it was perhaps inevitable that this scheme would come under increasing scrutiny.

[9] The first significant challenge arose in the context of Part IV of the Act of 1946 in *Burke v. Minister for Labour* [1979] I.R. 354. That case arose in a narrower context than that which has given rise to the present litigation. In *Burke v. Minister for Labour* an ERO had been made in relation to the hotel industry without regard to submissions made on behalf of the employers. The ERO was challenged on non-constitutional grounds by representatives of the employers and the Supreme Court held that the relevant JLC had failed to comply with fair procedures. In the course of the judgment however, the court took the opportunity to make some pointed observations about the legislation and in particular the extent of the law-making power which appeared to have been conferred on the parties to the JLC, or on those parties and the Labour Court conjointly. Thus, Henchy J. said of Part IV, at pp. 358 and 359:-

“It will be seen, therefore, that the power to make a minimum-remuneration order is a delegated power of a most fundamental, permissive and far-reaching kind. By the above provisions of the Act of 1946 Parliament, without reserving to itself a power of supervision or a power of revocation or cancellation (which would apply if the order had to be laid on the table of either House before it could have statutory effect) has vested in a joint labour committee and the Labour Court the conjoint power to fix minimum rates of remuneration so that non-payment thereof will render employers liable to conviction and fine



and (in the case of conviction) to being made compellable by court order to pay the amount fixed by the order of the Labour Court. Not alone is this power given irrevocably and without parliamentary, or even ministerial, control, but once such an order is made (no matter how erroneous, ill judged or unfair it may be) a joint labour committee is debarred from submitting proposals for revoking or amending it until it has been in force for at least six months. While the parent statute may be amended or repealed at any time, the order, whose authors are not even the direct delegates of Parliament, must stand irrevocably in force for well over six months.”

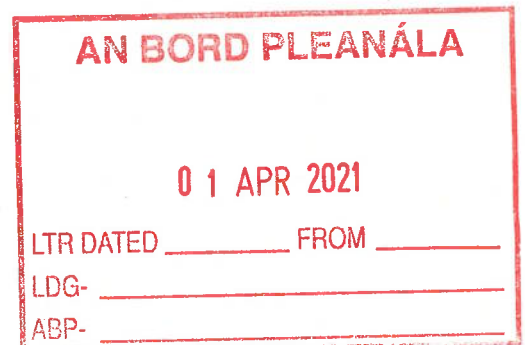
Later in the judgment, at p. 361, he returned to this issue:-

“As I have earlier observed, the delegated power that was vested in the Committee was of the most extensive nature. It enabled the Committee to formulate the proposals for an order fixing minimum rates of remuneration. All the Labour Court was to do was to refer the proposals back to the Committee with observations. The Labour Court is given no power of initiation or amendment. It could but make or refuse to make the order. Essentially, therefore, the order making body was the Committee. Apart from the skeletal provisions in the second schedule of the Act of 1946 as to its constitution, officers and proceedings, the Act of 1946 is silent as to how a committee are to carry out their functions in making orders.”

In the particular case, the court held that, given what was described as the extensive nature of the delegation, it was necessary to conclude that the Oireachtas had intended that the power would be exercised within the terms of the relevant Act and based on fairness and reasonableness and good faith. In the circumstances, the particular order was quashed.

[10] It is clear that the court was considerably exercised by the apparent scope of the law-making power conferred by Part IV. It is perhaps noteworthy that, although reported in different volumes of the Irish Reports, *Burke v. Minister for Labour* [1979] I.R. 354 was argued almost contemporaneously with the landmark case on the validity of subordinate regulation (*Cityview Press v. An Chomhairle Oiliúna* [1980] I.R. 381) and the judgments were delivered within a day of each other. It seems clear therefore that the observations made in *Burke v. Minister for Labour* were influenced by, and reflective of, the consideration the court was giving at the time to the proper limits of the delegation of law-making authority.

[11] Thereafter, a number of challenges were brought to the provisions of Part IV of the Act of 1946 but most of them were compromised or resolved without reaching the issue latent in the observations made in



Burke v. Minister for Labour [1979] I.R. 354. Ultimately, in *John Grace Fried Chicken Ltd. v. Catering J.L.C.* [2011] IEHC 277, [2011] 3 I.R. 211, the matter reached the High Court. Feeney J. held that the Act lacked any principles or policies for the exercise of the power of law-making conferred on JLCs and that, accordingly, the provisions of Part IV were repugnant to the Constitution. That decision was not appealed to this court. Instead the Industrial Relations (Amendment) Act 2012 was introduced. The background to that decision appears to be that the provisions of the Act of 1946 and in particular those establishing the EROs had been under review not least as part of the memorandum of understanding under which structural reforms are to be made in return for funding to this country from the European Union, the European Central Bank and the International Monetary Fund. The Act of 2012 sets out much more elaborate principles and policies and indeed provisions for review and reconsideration by the Minister and the Oireachtas, and thus addresses (and appears to accept as correct) the decision in *John Grace Fried Chicken Ltd. v. Catering J.L.C.* [2011] IEHC 277. Significantly for present purposes, the opportunity was also taken to make wide-ranging changes to Part III to similar effect to the changes introduced in respect of Part IV. This case concerns, however, the provisions of Part III in their unamended form.

These proceedings

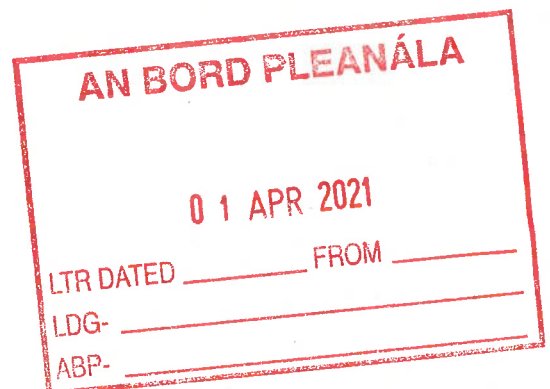
[12] The proceedings involved in this appeal are an amalgam of a series of cases, all of which relate to the provisions of the REA of the 24th September, 1990, made in respect of the electrical trade in the construction sector. That agreement has been the subject of repeated disputes in particular involving complaints by a group of employers organised in the National Electrical Contractors Association, the fourth notice party hereto. They have persistently complained that they have been bound by an agreement to which they were not a party, and in which the employers' interests were represented by parties which they do not consider represent their interests.

[13] The impetus for this latest round of litigation was a proposal made to the Labour Court by the employee representatives to vary the REA and to increase the minimum pay of electricians in the construction sector. At the same time, a District Court prosecution had been commenced against Camlin Electric Ltd., the eighth applicant, for breach of the existing REA. On the 27th May, 2008, those proceedings were adjourned and a consultative case stated prepared for the High Court. The District Court proceedings and case stated did not raise, as they could not, any issue of the

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constitutional validity of Part III. Meanwhile, an application had been made to the Labour Court on the 22nd May, 2008, by, it was said, 500 contractors seeking a cancellation of the REA. Some procedural skirmishing took place and the Labour Court refused the applicant contractors' request for an adjournment to await the outcome of the case stated proceedings. A large number of applicants then sought judicial review of the Labour Court decision and an injunction restraining further hearing. These proceedings (which were then known as the "Sullivan proceedings" after the then first applicant) were commenced and leave to seek judicial review was granted on the 13th June, 2008, together with an interim injunction restraining a further hearing. However, on the 20th October, 2008, the injunction was lifted by O'Keefe J. because, we are informed, of the unwillingness of the applicants to offer an undertaking as to damages, and also because of concerns about the constitution of the applicants. The proceedings nonetheless remained in being. Since there was now no injunction restraining the proceedings, the Labour Court proceeded with an 11 day hearing and on the 26th February, 2009, issued a determination which refused the initial application to vary the agreement by increasing the remuneration, but also refused the application made on behalf of the discontented contractors for a cancellation of the existing REA. Yet again the representatives of the contractors sought judicial review to challenge the decision refusing cancellation and a further set of proceedings ("the Bunclody proceedings") were commenced which ultimately were heard with these proceedings in the High Court. The respondents to these proceedings sought to clarify the identity of the multitude of applicants named, and that they were indeed electrical contractors and were not members of any body which was a party to the 1990 REA. Accordingly they raised this issue by way of particulars. This proved to be anything but a straight forward task. In the end the applicants' response was not to provide particulars but to seek to reduce dramatically the number of named applicants. Even then, of the seven applicants remaining one was not an employer at the time of the institution of the proceedings and three had previously been members of organisations that were party to the REA. One further party, Camlin Electric Ltd. (which as already observed was the party to the case stated), had been struck off. In the High Court ([2010] IEHC 501, [2010] E.L.R. 277, at p. 297, Hedigan J. observed that:-

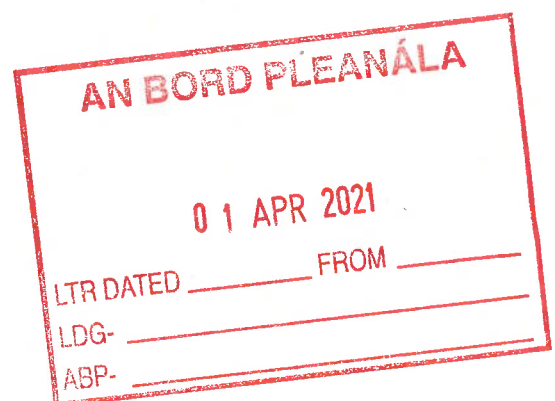
"[10.2] ... it must be noted that throughout the evidence before this court there has been some degree of confusion as to the identity of the applicants. Many of them were alleged not to be employers, thus calling into question their *locus standi* and their representativity. The



drastic reduction in the number of plaintiffs still leaves open this question and it is a very undesirable aspect of this case to date.”

Undesirable is, if anything, a mild adjective in the circumstances. It is of the essence of any litigation, but particularly constitutional litigation, that it be firmly based on the ascertainable facts relating to real persons who can claim to have suffered a measurable and identifiable injury which requires a remedy which may even extend to the striking down of legislation enacted by the Oireachtas. It is the factual matrix of an individual’s situation which gives real focus and reality to a claim of unjust infringement of a constitutional provision and which justifies the court in addressing the validity of legislation of general application which in other circumstances, and for many other citizens, may conceivably be beneficial. A claim is not a classroom hypothetical and the identification of real claimants who have the identified complaint is not an optional extra. It is truly disturbing that a claim initiated in the names of a legion of parties could shrink so dramatically on the simplest inquiry and request for verification. In addition, passage of time and the economic downturn have had their own effect on the proceedings. The party to the case stated, Camlin Electric Ltd., was struck off the register of companies for failing to make returns thus ending those proceedings. Similarly the Bunclody proceedings which were heard with these proceedings in the High Court were struck out in July, 2012 in the Supreme Court following the appointment of a liquidator to the last remaining appellant in that case. The result is that what remains in this appeal is a far reduced number of applicants to the original Sullivan proceedings (now “the McGowan proceedings”) and which retain their original structure as a challenge to the Labour Court commencing a hearing even though in the event the hearing did proceed, and which became the subject of a separate challenge, which, itself although heard in conjunction with the Sullivan/McGowan proceedings, is not now before this court.

[14] The foregoing is a necessarily truncated account of only some of the unsatisfactory aspects of these proceedings. Of even more significance is the fact that the issue which might have been thought to be central to this case, namely the question of alleged unauthorised delegation of legislative power contrary to Article 15 of the Constitution, was by no means central to the argument in the High Court in either the Sullivan/McGowan proceedings, or indeed in the Bunclody proceedings. In the light of the decision in *John Grace Fried Chicken Ltd. v. Catering J.L.C.* [2011] IEHC 277, [2011] 3 I.R. 211 and the apparent acceptance of that decision by the State authorities, that argument has certainly moved centre stage but it



must be said that there was little trace of it in the voluminous pleadings in either the Sullivan or the Bunclody proceedings. What did happen however was that the point was canvassed at some length in very comprehensive submissions exchanged between the parties both at the opening of the High Court case and at its closing. As a result, the position is that the question was undoubtedly argued in the High Court, and in some detail, and was addressed in the High Court judgment.

The judgment of the High Court [2010] IEHC 501

[15] The High Court Judge dismissed the applicants' claim on all grounds (see [2010] IEHC 501, [2010] E.L.R. 277). He held that in so much as the claim was a challenge to the REA on non-constitutional grounds, it was out of time in that the proceedings had not been commenced within three months of the decision of which complaint was made. That decision is not under appeal and accordingly it is not necessary to express any view upon its correctness. The judge also rejected a series of other challenges to the Labour Court decision and which are now not before this court. In respect of the constitutional challenge he said the following, at p. 300:-

"[11.10] This aspect of the case has been brought in judicial review proceedings and I can see no reason why it should not be subject to the same requirement as to time-limits as any other application. That being so, it is brought well outside the period of three months from the date when grounds for the application first arose and for that reason alone ought not to be allowed to proceed. It would also, I think be undesirable that the constitutional challenge should proceed alone in judicial review proceedings. There are many issues concerning the balancing of interests and, as noted above, the identification of the plaintiffs that need much greater elaboration than they have had in these proceedings. I will not therefore proceed to consider the constitutional issues raised herein. They should be brought if the applicants wish to do so by way of plenary proceedings."

This appeal

[16] It may be appreciated that the appeal which arrived in the Supreme Court was one with myriad complications. As a result however of active case management by a member of this court, the parties ultimately agreed to narrow the issues that would be addressed on this appeal to two:-

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- (a) are the appellants entitled to raise the issue at (b) and; is the Supreme Court entitled to determine this issue in circumstances where, although the issue was raised in the proceedings from which the appeal is taken, and argued before the High Court, the High Court Judge expressly did not determine the issue?
- (b) does Part III of the Industrial Relations Act of 1946 or any section thereof contravene Article 15.2.1° of the Constitution by delegating the making, variation and cancellation of registered employment agreements to the Labour Court and the parties to such agreements?

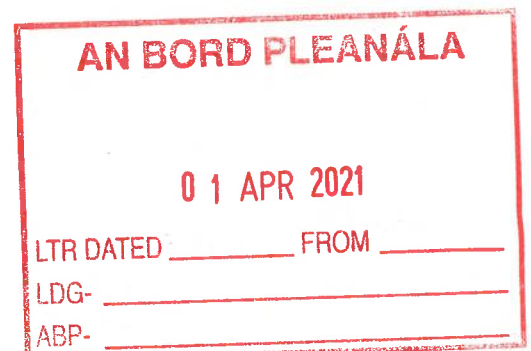
The appellants agreed to abandon all other grounds of appeal and it is apparent from the formulation of issue (a) that the respondents also agreed not to rely on any of the other grounds mentioned in the High Court judgment for declining to hear the constitutional claim. The first issue raised here therefore, is the question of the entitlement of the appellants to argue, and this court to decide, the core constitutional issue as set out at (b) namely, the question of the alleged excessive delegation of legislative powers. Furthermore the issue to be considered is simply whether this court can, and should, hear an issue that was argued but not decided in the High Court.

[17] It is indeed easy to sympathise with the High Court's frustration with the manner in which the case has advanced and its belief that it would be better advanced in plenary proceedings with a full elaboration of facts and argument focussed on this specific issue. However, there is no doubt that the Supreme Court can hear and determine an appeal on an issue that, for whatever reason, the High Court has heard but not determined. The respondents accepted that the views expressed by Keane C.J. in *A.A. v. Medical Council* [2003] 4 I.R. 302, at p. 308, represent a reasonable statement of principle:-

"... the court is not automatically precluded in every case from considering such an issue simply because it has not been subject of a determination by the High Court Judge. Whether a party is to be precluded from advancing again arguments which were relevant to an issue in the case and on which he relied in the High Court must, in the interests of justice, be determined according to the circumstances of the particular appeal before this court."

Keane C.J. also said, at p. 307:-

"This court is a court of appeal only and cannot exercise any jurisdiction other than an appellate jurisdiction, save under Articles 26 and 12.3 of the Constitution and when it is exercising the case stated juris-



diction vested in it pursuant to s. 38 of the Courts of Justice Act 1936 and s. 16 of the Courts of Justice Act 1947. For that reason, this court has consistently declined to consider an issue of constitutional law which, though arising in a case not yet determined by it, has not been fully argued and decided in the High Court, save in the most exceptional circumstances.”

This case, it should be said, is not one where the point was not argued or fully argued. It is one where the point was fully argued, but not decided. Keane C.J. also referred to the observations of Murray J. (with whom Denham and Murphy JJ. concurred) in *Dunnes Stores Ireland Company v. Ryan* [2002] 2 I.R. 60 where he suggested that, rather than remitting it again to the High Court where the common experience is that such issues are almost invariably further appealed to this court for final determination, the Supreme Court ought to have jurisdiction to determine a point which arose for resolution in proceedings but on which no decision on any disputed question of fact is required.

[18] This is a sensible and pragmatic approach. In a perfect world it would undoubtedly be preferable to have meticulous and detailed argument in the High Court followed by a comprehensive judgment and a speedy appeal to this court, further comprehensive argument on the issue as addressed in the judgment of the High Court and, a final, as it is to be hoped, conclusive determination of all issues in this court. But the court cannot ignore the reality that the course of litigation is often very far from the ideal, and indeed this case is one example. Here there are a number of factors which suggest that the point should be considered and determined by this court. The issue is one which has been mooted for a considerable time, since at least the judgment in *Burke v. Minister for Labour* [1979] I.R. 354. The relevant REA is still in full force and effect. Indeed, the third named appellant has been the subject of a District Court prosecution which was commenced in 2008 and which is awaiting the outcome of this decision. The REA will continue to have effect therefore and the uncertainty over its validity and indeed the validity of the underlying statutory scheme is undesirable. There have been three separate pieces of litigation in relation to this REA alone and a lengthy hearing both in the Labour Court and in the High Court. Considerable costs have been incurred on all sides. The point was fully argued and it was not adjudicated on not because, as sometimes occurs, the trial court had decided the case in the plaintiffs’ favour on non-constitutional grounds but rather because the court considered that it was preferable that the case be brought by plenary procedure. It is not at all clear that this is a valid ground for declining to

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address a point otherwise properly before the court. To decline to hear and determine this issue would mean requiring the parties to incur substantial costs without the issues between the parties being resolved, and exposing the plaintiffs to the possibility of ongoing criminal prosecution and a choice between having to recommence proceedings or submitting themselves to a regime which they consider unconstitutional. Such an outcome would not be consistent with the administration of justice. Accordingly, albeit reluctantly, the court considers it necessary to address the central issue raised in this appeal.

Article 15.2.1° of the Constitution

[19] Article 15.2.1° of the Constitution is in very clear terms:-

“The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.”

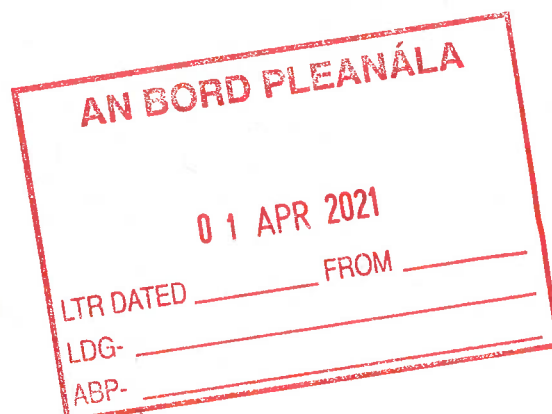
This Article, while striking and emphatic, might appear almost tautologous. If the “sole and exclusive power” for making laws is vested in the Oireachtas, then it follows that no other body has power to make laws for the State. The interesting historical background to this Article, and its predecessor in article 12 of the Constitution of Saorstát Éireann 1922, is set out both in Morgan, *The Separation of Powers in the Irish Constitution* (Dublin, Round Hall, 1997), at p. 261, and Hogan, *The Origins of the Irish Constitution: 1928-1941* (Dublin, Royal Irish Academy, 2012), at pp. 335 to 339 (hereinafter “*The Origins*”). As Keane C.J. observed in *Laurentiu v. Minister for Justice* [1999] 4 I.R. 26, at p. 83:-

“Historically, this Article can be seen as an uncompromising reassertion of the freedom from legislative control by the Imperial Parliament at Westminster of the new State.”

It is also (and perhaps in part for the same historical reason) an assertion of a core democratic principle. Since all power comes from the People, the only body with power to make legislation binding on the People, is the Oireachtas containing as it does the chosen representatives of the People. As Keane C.J. continued, at p. 83:-

“But it [Article 15] is also an essential component in the tripartite separation of powers which is the most important feature of our constitutional architecture and which is enshrined in general terms in Article 6.”

As recorded in Hogan, *The Origins*, a specific question was raised by Gavan Duffy J. at the time of the drafting of the Constitution as to the



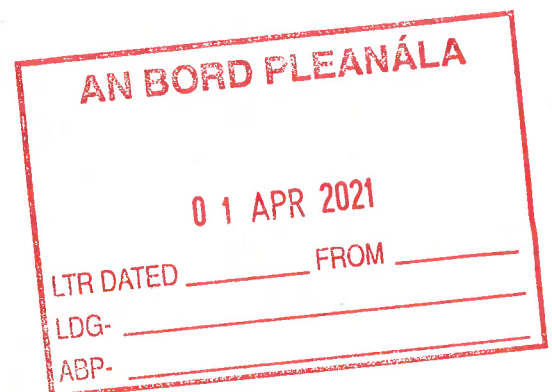
necessity to include in Article 15.2.1° some saver in respect of statutory instruments and orders. The view was taken in a memo produced by Philip O'Donoghue, legal assistant to the Attorney General, one the principal drafters of the new Constitution, and which received the express agreement of the Attorney General, Patrick Lynch, however, that such rules and orders were not "laws" within the meaning of the Article. Such rules and orders were:-

"... intimately related with legislative enactments. They are considered part of the law and have the force of the law but alone do not constitute legislation. They must always be referred back to the enabling statute under which they are made. Very little consideration will indicate the abuses which will grow up if the legislature contented itself with an enacting loose and indefinite principles adding that the Minister could give effect to such principles by rules and regulations."

Indeed the position in Ireland was contrasted favourably with the position in the United Kingdom where attention was drawn to the views of the then Lord Chief Justice Sir Gordon Hewart who in his book, *The New Despotism* (London, 1929), had recently expressed the view, trenchantly and possibly intemperately, that the proliferation of delegated legislation was a threat to democracy.

[20] The understanding of Article 15.2.1° and the place of subordinate regulation within the constitutional scheme was illustrated by the thoughtful judgment of Hanna J. in an early case that arose after the coming into force of the Constitution, *Pigs Marketing Board v. Donnelly (Dublin), Ltd.* [1939] I.R. 413. There a challenge was made to the price fixing function which had been delegated to the board by the Pigs and Bacon Acts 1935 and 1937. In rejecting that claim Hanna J. said, at pp. 421 and 422:-

"It is axiomatic that powers conferred upon the Legislature to make laws cannot be delegated to any other body or authority. The Oireachtas is the only constitutional agency by which laws can be made. But the Legislature may, it has always been conceded, delegate to subordinate bodies or departments not only the making of administrative rules and regulations, but the power to exercise, within the principles laid down by the Legislature, the powers so delegated and the manner in which the statutory provisions shall be carried out. The functions of every Government are now so numerous and complex that of necessity a wider sphere has been recognised for subordinate agencies such as boards and commissions. This has been specially so in this State in matters of industry and commerce. Such bodies are not law makers; they put into execution the laws as made by the governing

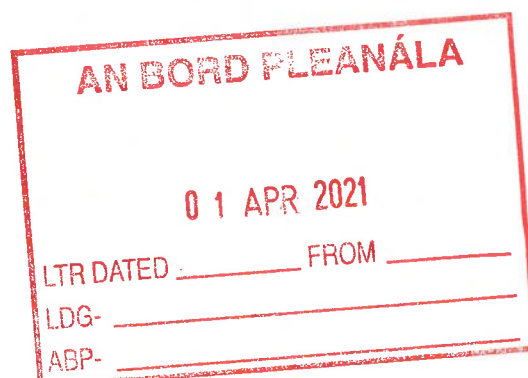


authority and strictly in pursuance therewith, so as to bring about, not their own views, but the result directed by the Government.

Now, what is the complaint here? What is the legislative power which it is suggested the Pigs Marketing Board exercises? It is the fixing of the hypothetical price. It has been submitted that, when the Pigs Marketing Board has constitutional power to fix the appointed price because they are directed to consider certain matters in determining it, as there is no schedule of topics to be considered by the Pigs Marketing Board in fixing the hypothetical price, they are in a position of legislators in that respect. But I cannot accept this view of the duties of the Pigs Marketing Board in reference to the hypothetical price, where the Legislature has directed them to fix, not any price, but the price which, in their opinion, would be the proper price under normal conditions. That is a statutory direction. It is a matter of such detail and upon which such expert knowledge is necessarily required, that the Legislature, being unable to fix such a price itself, is entitled to say: 'We shall leave this to a body of experts in the trade who shall in the first place determine what the normal conditions in the trade would be apart from the abnormal conditions prescribed by the statute, and then form an opinion as to what the proper price in pounds, shillings and pence would be under such normal conditions.' The Pigs Marketing Board, in doing so, is not making a new law; it is giving effect to the statutory provisions as to how they should determine that price."

[21] The judgment in *Pigs Marketing Board v. Donnelly (Dublin), Ltd.* [1939] I.R. 413 is an early and sophisticated analysis of the issue. The leading modern authority is *Cityview Press v. An Chomhairle Oiliúna* [1980] I.R. 381. There the plaintiff challenged s. 21 of the Industrial Training Act 1967 which empowered the defendant, An Chomhairle Oiliúna, to make a levy order fixing the amount of the levy to be collected from each enterprise in a specified industry and used for training recruits to that industry. The Levy Order for the printing industry which the plaintiff was refusing to pay imposed a levy of 1% of total emoluments on all employees less £20,000. The argument was that the Act did not provide the defendant body with any precise guidelines as to the basis on which the levy should be made, *i.e.* whether by reference to turnover, total salaries and wages profits, or some other basis. This argument was rejected both in the High Court and Supreme Court. The test to be applied was identified in the judgment of O'Higgins C.J., at p. 399:-

"In the view of this Court, the test is whether that which is challenged as an unauthorised delegation of parliamentary power is more



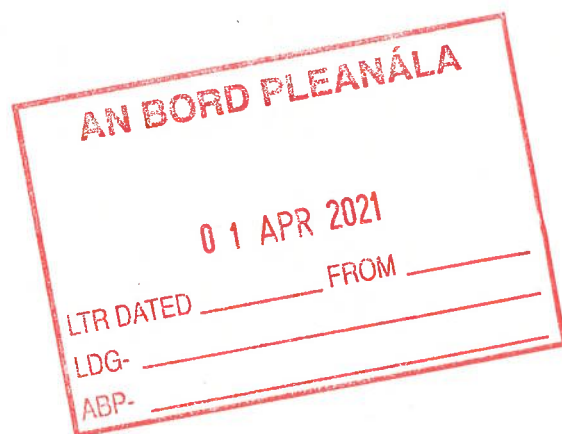
than a mere giving effect to principles and policies which are contained in the statute itself. If it be, then it is not authorised; for such would constitute a purported exercise of legislative power by an authority which is not permitted to do so under the Constitution. On the other hand, if it be within the permitted limits – if the law is laid down in the statute and details only are filled in or completed by the designated Minister or subordinate body – there is no unauthorised delegation of legislative power.”

The principle has been stated by Casey, *Constitutional Law in Ireland* (3rd ed., London, 2000), at p. 255:-

“The Oireachtas, it seems, may delegate a power to put flesh on the bones of an Act; but anything going beyond this will be constitutionally suspect.”

[22] It is said that the differences between those cases in which there has been held to be a breach of Article 15.2.1^o and cases in which it is accepted that there has been no such breach is largely one of degree and that it is difficult to detect a precise dividing line between what is permissible and impermissible. That may be so on a case by case basis although there is a clear principle as set out above. However, it seems that the difference in this case is not just one of degree, rather it is structural in nature. In that respect it is instructive to compare the extensive area and nature of authorisation involved here with that in *Cityview Press v. An Chomhairle Oiliúna* [1980] I.R. 381, itself considered by some commentators to be close to the limits of permissible rule making.

[23] In *Cityview Press v. An Chomhairle Oiliúna* [1980] I.R. 381, the delegation or authorisation under s. 21 of the Industrial Training Act 1967 may be said by some to be vague, but a number of important features were identified, particularly in contrast to the position that applies under the Industrial Relations Act 1964. The area of authorisation was narrow. It was the power to fix the amount of the levy, the Oireachtas having already made the decision that An Chomhairle Oiliúna was to be funded by a levy on the relevant designated industrial activity. The body that was authorised to fix the levy was itself a public law body exercising powers constrained by statute. Accordingly any order made would be subject to consultation with the relevant industrial training committee (s. 21(3)), review and approval by the Minister (s. 21(4)) and laid before each house of the Oireachtas, either of which was entitled to annul it within 21 days (s. 21(6)). Furthermore, as McMahon J. in the High Court observed, at p. 391:-

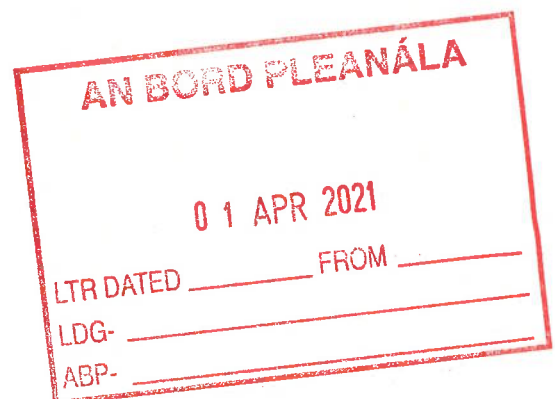


“There can be no doubt that s. 21 is so expressed as to as to confine the use of any money raised by a levy ordered to meeting any expense of AnCo in relation to the performance of its functions under the Act in respect of the designated industrial activity in respect of which the levy order was made.”

For that reason, and indeed for more general reasons of public law, there could be no question of the money raised being used for any other activity or, for example, as a form of taxation or covert revenue raising. The area of decision making accorded therefore to An Chomhairle Oiliúna under s. 21 was limited in a number of respects. Its power to fix the quantum of the levy was restricted by the object for which the levy was to be fixed. It retained a discretion as to the precise manner in which the levy should be raised as indeed was argued, whether by reference to turnover, profits, or otherwise. But, given the broader constraints just identified, that is a very limited power and furthermore raises no obvious issues of policy. It was argued that this was still an excessive delegation but it was accepted by the court that this was akin to the price fixing function upheld in *Pigs Marketing Board v. Donnelly (Dublin), Ltd.* [1939] I.R. 413. For present purposes however, it is only necessary to identify the significantly limited scope of authorisation that was in issue in that case.

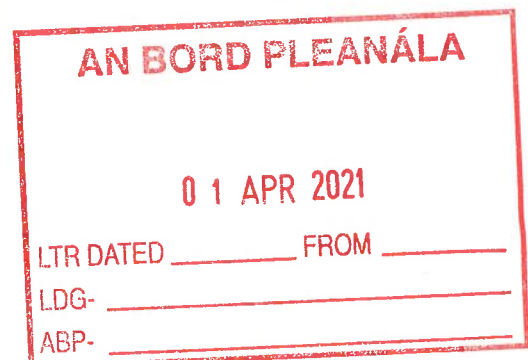
[24] The contrast with the scope of power afforded under the Act of 1946 is instructive. If the Act of 1946 conformed to the same pattern as that established in the Industrial Training Act 1967, then the relevant terms would be set by the Labour Court perhaps after consultation with other public bodies and subject to ministerial approval and Oireachtas review. Even if such a structure were in place the breadth of the power afforded would still be telling. A REA can make provision not merely for remuneration, as was the case in *Burke v. Minister for Labour* [1979] I.R. 354, but can make provision for any matter that may be regulated by a contract of employment. Thus, it can determine wages, pensions, pension contributions, hours of work, health insurance, grievance procedures, discipline procedures, staffing levels, production procedures, approved machinery or equipment, and anything else in the employment relationship. It is in the words of Henchy J. in *Burke v. Minister for Labour* at p. 358, a delegation of a “most fundamental ... and far-reaching kind”. It involves a fundamental part of the person’s life (if an employee), and their business (if an employer).

[25] The extent of the delegation is also of significance. What is unusual and possibly unique is that the law making power granted under the Act of 1946 is granted over a broad area of human activity to private



persons, themselves unidentified and unidentifiable at the time of the passage of the legislation. When an employer such as the third appellant is the subject of prosecution for breach of a registered employment agreement, that amounts to a clear allegation that a part of the law of the State has been breached. In such a case the particular provision which it is alleged has been breached has been made by the private parties to the employment agreement which has been registered by the Labour Court. The Labour Court itself has no power of consultation or even (as is the case of an ERO made under Part IV of the Act of 1946) a power to comment and return the proposed order to the joint industrial council. Therefore, it is clear that this specific provision is being made, not by a subordinate public body governed by public law, but by participants in the industry who were empowered to make regulations for themselves and for all others within that industry who may be competitors and whose interests may not be aligned with the makers of the REA. This is not a grant of a power to make regulations over a limited area subject to explicit or implicit guidance and review. It is an unlimited grant of power in relation to employment terms, made to bodies unidentifiable at the time of the passage of the legislation and without intermediate review. On its surface therefore, this appears to be a facial breach of Article 15.2.1°. "Law" is undoubtedly being made for the State, and by persons other than the Oireachtas. No direct statutory guidance is given for the exercise of the power. On its face, the Act of 1946 does not define who might be parties to the agreement, or impose any limitation on the content of such agreement other than that it should relate to the conditions of employment. Such a far-reaching conferral of law making authority can only be valid if it can be brought within the test outlined in *Cityview Press v. An Chomhairle Oiliúna* [1980] I.R. 381. In the context of this case that can only be achieved if the process of registration by the Labour Court (which is essential to give statutory effect to an employment agreement) introduces sufficient limitation on the regulation making power granted by the statute to render that regulation no more than the filling in of gaps in a scheme established by the parent statute.

[26] From a structural analysis of the Act, it is firstly significant that the power of approval and registration is itself delegated to an intermediate body, in this case the Labour Court. The degree of autonomy and discretion afforded to that body and the lack of a mechanism for appeal or review on the merits means that any control of the exercise of the regulation making power is necessarily attenuated. A further noteworthy feature of s. 27 is that the only limitation imposed upon the regulating power is limited, indirect and negative. The structure of the section is such that registration is

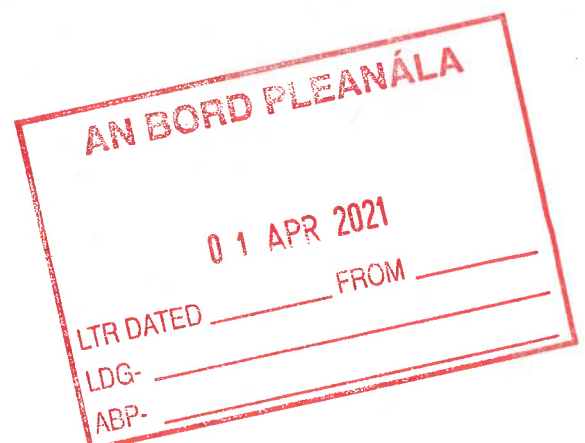


mandatory subject only to compliance with the subheadings of s. 27. Section 27(3) provides that on an application being made to the Labour Court, that body “shall, subject to the provisions of this section, register the agreement” (emphasis added). There is therefore almost a double delegation: first of the power to set the terms; and second of the power to control those terms by refusing registration. Given the scope of any possible regulation, it is particularly significant that the power of the Labour Court in this regard is essentially limited and negative.

[27] Thus the restrictions imposed by s. 27 are critical if the scope of the power conferred by s. 27 is to be brought within constitutional boundaries. However no express guidance is given to the Labour Court as to how it should exercise its powers, and any implicit guidance to be deduced from the provisions of s. 27 is necessarily limited. Section 27(3) provides as follows:-

“Where an application is duly made to the Court to register in the register an employment agreement, the Court shall, subject to the provisions of this section, register the agreement in the register if it is satisfied—

- (a) that, in the case of an agreement to which there are two parties only, both parties consent to its registration and, in the case of an agreement to which there are more than two parties, there is substantial agreement amongst the parties representing the interests of workers and employers, respectively, that it should be registered.
- (b) that the agreement is expressed to apply to all workers of a particular class, type or group and their employers where the Court is satisfied that it is a normal and desirable practice or that it is expedient to have a separate agreement for that class, type or group,
- (c) that the parties to the agreement are substantially representative of such workers and employers,
- (d) that the agreement is not intended to restrict unduly employment generally or the employment of workers of a particular class, type or group or to ensure or protect the retention in use of inefficient or unduly costly machinery or methods of working,
- (e) that the agreement provides that if a trade dispute occurs between workers to whom the agreement relates and their employers a strike or lockout shall not take place until the dispute

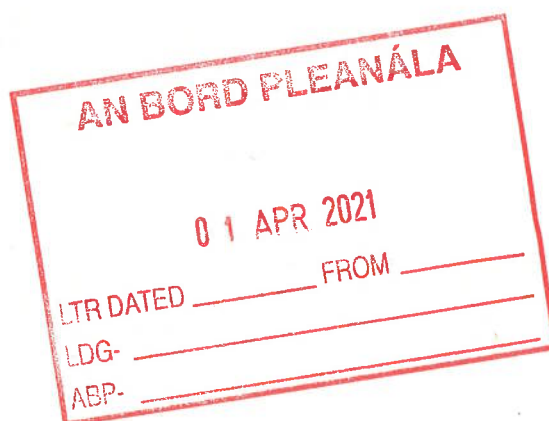


has been submitted for settlement by negotiation in the manner specified in the agreement, and

(f) that the agreement is in a form suitable for registration.”

Subparagraphs (a), (b), and (f) are essentially procedural and formal in nature and clearly therefore do not provide any principles or policies to guide the exercise of the power of registration by the Labour Court, still less the power to make the relevant agreement by the parties in question. While subpara. (e) is a matter going to the substance of the agreement, it provides no limitation on, or guidance for, the exercise of the power by the regulation making parties. Instead, it imposes a statutory requirement as a condition of registration. Subparagraph (c) does contain a condition, but it does not go to the substance of the agreement and is not itself guidance and does not set out any principle or policy for the content of that agreement. While it is directed towards the Labour Court, it provides no guidance on something which might be considered fundamental, being the representative nature of an agreement which will have the effect of binding persons who are not parties to it. Accordingly, most attention on this appeal was directed towards the requirements imposed by s. 27(3)(d). There is no doubt that it imposes certain limitations of substance upon the Labour Court's power to register an agreement, and therefore can indirectly be said to give guidance to the parties to the agreement as to the content thereof. The question is, however, whether in the light of the extensive scope of the power conferred, such guidance is sufficient.

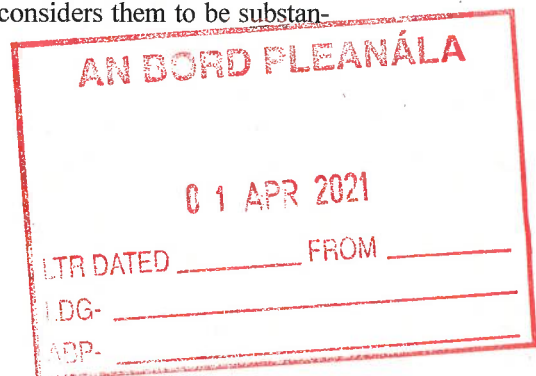
[28] It is plain however that s. 27(3)(d) is not adequate to provide sufficient limitation on the regulation making power of the parties to an agreement, the registration of which is sought pursuant to s. 27 to render that exercise of power compatible with Article 15.2.1°. It was sought to be argued on behalf of the respondents that the word “intended” should not be given its natural and ordinary meaning and that the Labour Court was empowered to refuse to register an agreement which it considered would have any of the effects set out in s. 27(3)(d). There is no reason however to give a broad and artificial meaning to the phrase for the purposes of giving greater restrictive capacity to a section which is in its content extremely permissive. While the promotion of employment, and the avoidance of inefficiency and costly machinery, are laudable and desirable objectives, they do not constitute a sufficient restriction on an otherwise unlimited power of regulation to bring the power conferred by s. 27 within the constitutional limits. In particular, there is no guidance given in relation to the concept of representativity. There is no obligation on the Labour Court or the parties to the agreement to consider the interests of those who will be



bound by it and who are not parties to it. Furthermore, while the agreement once registered is binding on everyone in the sector, it may only be varied on the application of the original parties.

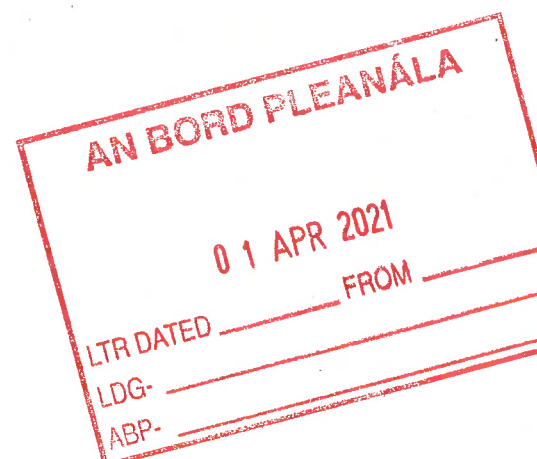
[29] The provisions of s. 28 relating to variation of an REA are a further illustration of what is absent from the scheme. Because the regulation made by the parties to the agreement is, and retains its character as, an agreement between private parties, s. 28 is at least consistent in limiting the power of variation of the agreement to the original parties thereto. The logic of this position however ignores the fact that, by registration, the agreement becomes part of the law binding on all present and future employers and employees within the sector. Parties who were not represented at the time of the making of the agreement are nevertheless at risk of enforcement by prosecution or civil claim, but cannot seek a variation of the agreement. Nor can the Labour Court itself initiate any process of variation even if that court considered that the agreement had *become* unduly restrictive of employment or *now* involves an inefficient and unduly costly machinery or mechanism of work, or was otherwise generally undesirable. The Oireachtas cannot vary the provision or direct that variation be considered. It was argued that the Labour Court had power to cancel the agreement and that non-parties to the agreement could invite the Labour Court to invoke the power of cancellation under s. 29(2). It appears the Labour Court now takes the view that cancellation is not limited to the parties. Even if that is correct, that power is limited, and only exercisable if the Labour Court considers that there has been “such substantial change” in the circumstances of the trade or business that it is now undesirable to maintain registration. Even this power of cancellation highlights therefore rather than cures the absence of a similar power of variation.

[30] There can be little doubt therefore that Part III of the Act of 1946 raises serious issues of compatibility with Article 15.2.1°. What appears to be law is being made by persons other than the Oireachtas. But this case does not really raise the troublesome questions of detail and degree that can sometimes arise in this area. There is not here a grant of a limited power to a subordinate body subject to review as there was for example in *Cityview Press v. An Chomhairle Oiliúna* [1980] I.R. 381. Instead there is a wholesale grant, indeed abdication, of law making power to private persons unidentified and unidentifiable at the time of grant to make law in respect of a broad and important area of human activity and subject only to a limited power of veto by a subordinate body. In effect, Part III allows the parties to an employment agreement to make any law they wish in relation to employment so long as the Labour Court considers them to be substan-



tially representative of workers and employees in the sector, and does not consider the agreement itself to be unduly restrictive of employment or make provision for unduly costly or inefficient methods of work or machinery, and otherwise complies with the formal requirements of s. 27. No guidance or instruction is given to the Labour Court as to how the matters of representativity or restriction on employment or inefficiency or costly methods of work, are to be gauged. The process permitted by Part III cannot be said to be merely the filling in of gaps in a scheme already established by the Oireachtas: in truth the Oireachtas which enacted the Act of 1946 could have no idea of even those areas which may be subject to regulation in an employment agreement sought to be registered under the Act, and no conception still less control of the possible range of regulation that might be made in respect of each such matter. Nor did the Oireachtas retain any capacity for review either by the Oireachtas or by a member of the Executive responsible to it, of the agreements actually made. Whatever may be thought of a scheme which permits parties to an agreement to clothe that agreement with certain legal consequences including the possibility of enforcement by criminal proceedings, once such an agreement purports to become binding on non-parties pursuant to s. 30 of the Act, it passes unmistakably into the field of legislation which by Article 15 is the sole and exclusive preserve of the Oireachtas. The limited and essentially negative limitations imposed by s. 27(3)(d) of the Act of 1946 are plainly inadequate to bring the exercise of such power within constitutional limits.

[31] Finally, it may be worth considering the use of terminology in this area. The term “delegated legislation” is, as a description, perhaps unexceptional. It has entered our law from the law of the neighbouring jurisdiction. In a constitutional regime where a parliament is supreme, any provision may be made including presumably the delegation to others of part of its law making function. But it is worth recalling however, that in the constitutional dispensation created in 1922 and extended in 1937, the position is somewhat different. As Hanna J. observed in *Pigs Marketing Board v. Donnelly (Dublin), Ltd.* [1939] I.R. 413 and as the Gavan Duffy J., O’Donoghue, and Lynch exchange in 1937 illustrates, if in truth any piece of regulation amounted to truly delegated *legislation*, it would offend Article 15, since it is plain from the very language thereof, and indeed the constitutional structure, that the function of legislation is one that cannot be delegated by the Oireachtas to any other body. Indeed the case law since that time can be understood as an attempt to seek to delineate the boundary between permissible subordinate regulation, and the abdication, whether by



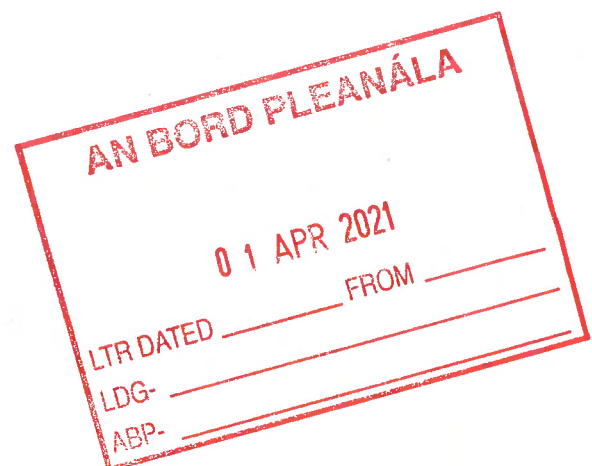
delegation or otherwise, of the law making authority conferred on the Oireachtas by the People, through the Constitution.

[32] Accordingly, this appeal will be allowed, and the court will make a declaration that the provisions of Part III of the Industrial Relations Act 1946 are invalid having regard to the provisions of Article 15.2.1° of the Constitution of Ireland.

Solicitors for the first, second, third, fourth and ninth applicants:
Sheehan Ryan & Co.

Solicitor for the respondents: *The Chief State Solicitor.*

Conor Feeney, Barrister



APPENDIX 6

AN BORD PLEANÁLA
01 APR 2021
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

**MINIMUM REQUIREMENTS AND CLASSIFICATION MATRIX
FOR APPROVED IRISH HOME BED & BREAKFAST**

TOWN HOUSES

COUNTRY HOUSES

FARMHOUSES

AN BORD PLEANÁLA
0 1 APR 2021
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

February 2013: V2

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- 2.1. Minimum Requirements

3. THE BENEFITS OF APPROVAL AND CLASSIFICATION

4. CONDITIONS FOR PARTICIPATION

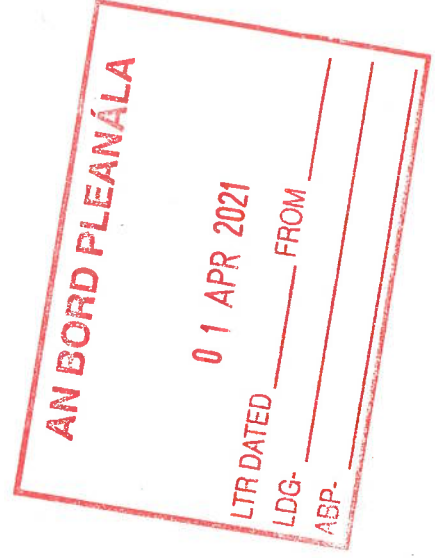
5. THE APPLICATION PROCESS

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1. INTRODUCTION

1.1. Fáilte Ireland

Fáilte Ireland, the National Tourism Development Authority was established under the National Tourism Development Authority Act, 2003 to guide and promote tourism as a leading indigenous component of the Irish economy. The organisation provides strategic and practical support to develop and sustain Ireland as a high quality and competitive tourist destination. In this context, our mission is broadly:

"To increase the contribution of tourism to the economy by facilitating the development of a competitive and profitable tourism industry"

Fáilte Ireland works in strategic partnership with tourism interests to support the industry in its efforts to be more competitive and more profitable and to help individual enterprises to enhance their performance.

1.2. Quality Assurance

The registration and classification responsibilities of Fáilte Ireland cover accommodation legislation, monitoring of product quality, customer relations and in particular the management of appointed sub-contractors for the inspection and assessment of various accommodation categories.

Under the Tourist Traffic Acts 1939-2003, Fáilte Ireland has specific powers and functions in relation to the registration, approval and grading of tourist accommodation. We carry out this function by setting the requirements for the various categories of accommodation and through processes for the regular monitoring of the standards in all forms of approved accommodation.

These schemes provide assurance to visitors and encourage higher standards of product amongst the industry in Ireland. Today's visitors have high expectations and that's why we have put such emphasis on our various quality assurance schemes.

01 APR 2021

LTR DATED _____ FROM _____

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2. BED & BREAKFAST APPROVAL & CLASSIFICATION SCHEME

All Bed & Breakfast properties must attain the Approved minimum entry level requirements in order to participate in the Fáilte Ireland Irish Home Bed & Breakfast Approval and Classification scheme. The new scheme was developed in close consultation with the Bed & Breakfast representative groups, and incorporates all star rated categories, which endeavours to meet and exceed consumer expectations.

Fáilte Ireland believes we have developed a robust system of classification to cater for the needs of today's consumers. The classification process introduces a streamlined and consistent approach for the approval and marketing of Bed & Breakfast properties and will facilitate Fáilte Ireland to focus on supporting the sector through marketing efforts and product development.

The objective of the scheme is to inform consumers to recognise quality and to differentiate levels of facilities and services, which as potential guests they can expect. This offers far greater information and transparency to the consumer. Our aim for these revised quality standards is to work continually with the industry and to strive together to raise quality standards in line with the ever-evolving expectations of consumers.

2.1. Minimum Requirements

There are four levels of classification ranging from Approved* to Five stars in the Bed & Breakfast sector.

All Bed & Breakfast properties must attain the Approved minimum entry level requirements in order to be approved by Fáilte Ireland. To obtain a higher star rating, a progressively higher quality and range of services and physical facilities must be provided across all areas.

The assessment is divided up into "quality areas" that represent aspects of the business that contribute to the quality of the guest experience. Each quality area contains a series of minimum requirements. These are aspects of the facility and service that must be in place in order to meet visitors' fundamental requirements. These minimum requirements must be met to ensure eligibility for a star grade.

***Approved replacing Two star rating**

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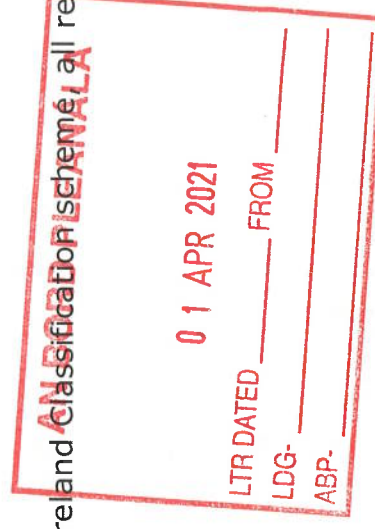
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3. WHAT ARE THE BENEFITS OF APPROVAL & CLASSIFICATION

The Fáilte Ireland B&B Classification scheme offers many benefits:

- **Signage*** will be supplied to all approved participants. The new shamrock quality assurance sign will be backed by an extensive awareness campaign.
- **Association with the Fáilte Ireland Brand name** – seen as a guarantee of quality for visitors in Ireland.
- **International recognition** – Eligible to use the term “Approved to Fáilte Ireland Standards” in all promotional material and on websites.
- **Quality Assessment** - an independent assessment carried out by experienced professionals which will provide an indication of where your business is, relative to the required standards.
- **A listing** on www.discoverireland.ie which promotes Ireland to approximately 2.7 Irish visitors per year with where to stay amongst the most visited pages.
- **A listing** on www.ireland.com link to 47 different country websites, including over 19 foreign languages versions, attracting over 1 million visitors every month.
- **Discover Ireland Centres** promotion of your of your B&B in tourist offices nationwide.
- Access to **marketing opportunities** offered by regions, destinations, Fáilte Ireland and Tourism Ireland to quality assessed operations only.

*Where a B&B, for whatever reason, ceases to participate in the Fáilte Ireland B&B Classification scheme, all relevant display signs, print material and web content must be removed.



4. CONDITIONS FOR PARTICIPATION

All establishments are required to:

- Meet or exceed the Fáilte Ireland minimum entry requirements for classification purposes.
- Observe all of the requirements set out in the Minimum Requirements for Approved Irish Home B&B 2010.
- Be assessed bi-annually, and in the event of complaints, by authorised contractors of Fáilte Ireland.
- Pay an annual approval fee.
- Complete an annual information collection questionnaire either online or by post, as required.
- Maintain appropriate standards of guest care, cleanliness and service.
- Describe accurately in any advertisement, brochure or other printed or electronic media, the facilities and services provided.
- Remove all relevant display signs, print material and web content, where an establishment, for whatever reason, ceases to participate in the Fáilte Ireland Approval Scheme or falls out of approval.

NOTE: If the principal requirements are met but not of sufficient quality or cleanliness the property will not be classified.

AN BORD PLEANÁLA	
LTR DATED	01 APR 2021
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5. THE APPLICATION PROCESS

5.1 Application For Listing

Every application made for listing of any premises in the Fáilte Ireland List of Irish Home Bed & Breakfasts, shall be in writing using the Initial Application Form supplied by our appointed Contractor and shall, when filled in and completed by, or on behalf of the applicant, for such approval, be sent by post to, or left at the principal office of our appointed Contractor and shall be accompanied by:

- a) The application fee authorised by Fáilte Ireland.
- b) Evidence that the premises is registered by the Health Board, in whose functional area the premises is situated, under the Food Hygiene Regulations 1950-1989 and the EC (Hygiene of Foodstuffs) Regulations 2000 (as the same may subsequently be amended or modified).
- c) Written evidence that the premises complies with Fire Services Act 1981 and/or Building Control Act 1990.
 - (i) Written evidence from the Fire Authority for the area where the premises are situate that the said Fire Authority have no objection to the registration of the premises as an Irish Home B&B or from the applicant's architect/engineer that the premises substantially complies with the Fire Services Act 1981 and/or the Building Control Act 1990.
 - (ii) Copy of Fire Safety Certificate to be provided.
- d) Evidence that the premises complies with the Local Government (Planning and Development) Acts, 1963-2000.

5.2 Initial Listing

Where the Contractor is satisfied that an application has been duly made in accordance with Fáilte Ireland's Requirements and that the premises in respect of which the said application has been made is approved for listing, the premises will be listed in the said List on payment of the fees authorised by Fáilte Ireland.

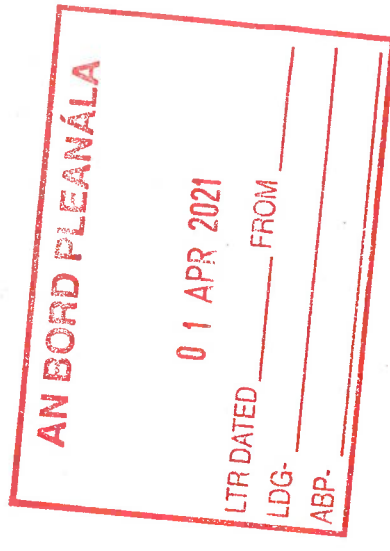
AN BORD PLEANÁLA

01 APR 2021

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5.3 Renewal of Listing

Every application made for the annual renewal of listing in the sector must be made in writing on the official Renewal Form and shall, when filled in and completed by the applicant for the renewal of such listing, be sent by post or left at the office of the Appointed Contractor.



6. TO APPLY FOR APPROVAL AND CLASSIFICATION

Please contact our dedicated service provider at P.O. Box 51, Clonakilty, Co Cork

Tel: 1890 697000

Email: qualityassurance@failteireland.ie

For purposes of clarity and transparency, the operator will initially complete an assessment form for their particular classification. **This will then be verified by Fáilte Ireland's contractors following a visit to the premises and only then can a classification be awarded.**

An appeal procedure will also be put in place, with the decision of the Appeal Board being final. However, as the rating procedure will be demonstrably objective and transparent, it is not envisaged that a substantial demand for appeals will emerge. All guidance notes and assessment forms for classification for each grade are available to download from the Fáilte Ireland website: www.failteireland.ie

- Legend:**
- ✓ This symbol means that the service or facility listed is required.
 - X This symbol means that the service or facility listed is not required.
 - This symbol means that the service or facilities marked in this way are ones which have already been dealt with through another requirement.

7. Minimum Requirements for Approved Irish Home B&B Approved to Fáilte Ireland Standards

Commencements:

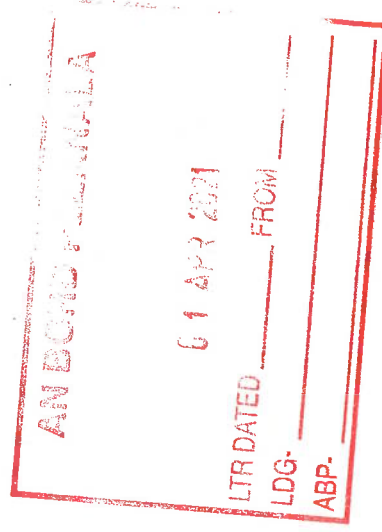
These requirements shall come into operation on the 18th day of January 2010 (the commencement date).

Suppliers of Approved Bed and Breakfast Accommodation are listed by the Appointed Contractor under contract from Fáilte Ireland on the basis that they provide visitors with the opportunity to share some time with people in their own homes.

The requirements in this section of the document are the minimum requirements for listing as an approved Bed and Breakfast home. The Appointed Contractor reserves the right to refuse to list or remove any property from the listing which, in their opinion does not conform to the image, standard or quality of service required from an approved bed and breakfast home, whether or not the property complies with the minimum requirements set out in the following pages.

Any advertising undertaken by listed premises whether broadcast, print, outdoor, or any electronic media should not describe the premises in any terms other than as a Fáilte Ireland Approved Irish Home B&B.

Note: When a premises changes ownership, the new proprietor may apply to the Appointed Contractor for approval and must comply with Fáilte Ireland's current minimum requirement.



Definitions

(i) The "Authority" means Fáilte Ireland.

(ii) "The Contractor" means the contractor appointed by the Authority to carry out inspection and approval services for the Approved Irish Home B&B Accommodation sector.

(iii) **Town Home: A House in a City, Town or Village**

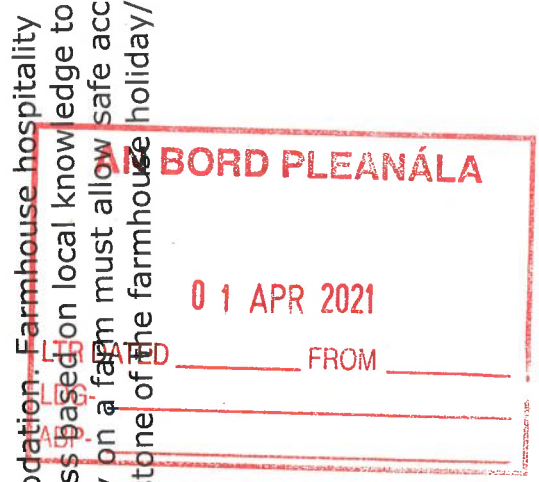
The choice of town house runs from detached and semi-detached to large period houses. Many are in an ideal location for city visits and shopping, they are often close to train and bus services, convenient and comfortable accommodation in a personal and homely atmosphere.

(iv) **Country Home: A House in a Rural Setting**

Country homes offer a wide selection of premises such as Georgian residences, modern bungalows and traditional Irish homes - all with modern amenities and facilities and all with an adequate garden and green surrounds. The guest will find homes relaxing and ideal for getting to know the host.

(v) **Farmhouse: A House on a Working Farm**

The Farmhouse product is expected to provide quality accommodation. Farmhouse hospitality encompasses warmth, sensitivity, time for guests and willingness to share local knowledge to provide information and directions. Any home offering a holiday on a farm must allow safe access to the farm. Environmentally responsible practices are the cornerstone of the farmhouse holiday/bed and breakfast operation.



MINIMUM REQUIREMENTS LEGEND:

- ✓ This symbol means that the service or facility listed is required.
 X This symbol means that the service or facility listed is not required.
 App. Approved rating (replacing 2*)

1	THE PREMISES	App.	3*	4*	5*
1	The premises shall be a private domestic dwelling, the primary home of the operator who must reside in same, the dwelling concerned must be of substantial and durable construction, structurally safe and in good repair throughout.	✓	✓	✓	✓
2	The premises shall comply and operate in accordance with all statutory requirements of local and other authorities and to the use thereto in relation to planning, fire precautions, health, water supply, sewage disposal and general safety. It is the responsibility of the proprietor to ensure that these conditions are fulfilled.	✓	✓	✓	✓
3	Wherever possible, access should be provided for persons with mobility difficulties, including wheelchair users, to the entrance hall, reception, bedrooms and including bathroom and toilet facilities in accordance with the Building Regulations 2000 Technical Guidance Document M (as may subsequently be amended or modified).	✓	✓	✓	✓
4	The premises must carry fire, public and where relevant, employers' liability insurance.	✓	✓	✓	✓
5	The premises shall contain in ONE building accessible from within such amounts as determined hereunder, of entrances, dining room, kitchen and utility areas, sitting room / lounge, bathrooms and toilets, guest bedrooms, owner's accommodation, storage areas, together with sufficient corridors and stairways to ensure proper circulation and access to the various rooms.	✓	✓	✓	✓
6	The premises shall contain effective means of natural lighting and ventilation and have a means of heating capable of maintaining, when required, a room temperature of 20 degrees Celsius. Appropriate outdoor lighting must be provided throughout darkness.	✓	✓	✓	✓
7	The premises shall have a telephone installation connected to a national telephone system available for guest use.	✓	✓	✓	✓

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8	The premises shall make available for guests and employees basic first aid equipment.	✓	✓	✓	✓	✓
9	Smoke alarms must be fitted and fire evacuation advice must be provided in each bedroom.	✓	✓	✓	✓	✓
10	The exterior and interior, outdoor areas, grounds and car parking areas, shall be kept clean and well maintained throughout and in good decorative order to the satisfaction of the Contractor.	✓	✓	✓	✓	✓
11	It is the owner's responsibility to provide adequate car parking facilities for their guests, where possible.	✓	✓	✓	✓	✓
12	When the premises is listed as open, it must be operated by the proprietor (s) trained or experienced in home hospitality, and must be available for viewing by the Advisor without previous appointment.	✓	✓	✓	✓	✓
13	Approval ceases on change of ownership and the Fáilte Ireland Shamrock Sign must be removed and returned to the agreed location before the sale of the house has been completed.	✓	✓	✓	✓	✓
14	Upon completion of the sale, the new proprietor may seek approval (in their own right) by applying to the Contractor and must comply with the current minimum requirements.	✓	✓	✓	✓	✓
15	Approval will be removed if one complaint of a serious nature is received and found to be justified. When three or more unfavourable reports of a premises or proprietor occur, a review may lead to the cancellation of the premises pending an investigation of complaints. Approval may also be deferred while a complaint is being investigated.	✓	✓	✓	✓	✓
16	The premises shall have appropriate flooring throughout.	✓	✓	✓	✓	✓
17	Room keys should be provided to guests. Proprietor should have a master key or duplicate key to all rooms in order to service rooms and for emergencies.	✓	✓	✓	✓	✓
18	Domestic pets are not allowed in dining room, kitchen or any guest area.	✓	✓	✓	✓	✓

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		App.	3*	4*	5*
19	ENTRANCE				
19.1	The entrance hall shall be of sufficient size to cater adequately for the volume of traffic normally using the premises.	✓	✓	✓	✓
20	DINING ROOM				
	The dining room must contain good quality dining room furniture, including a sideboard, and be sufficient for the resident capacity of the house, and must provide;				
	(a) minimum dining space of not less than 12 sq. m.				
	(b) a floor to ceiling height of not less than 2.4 m.				
	(c) at least one window to provide natural light and ventilation.				
	(d) a combined sitting / dining room / kitchen is acceptable provided the area is at least 30 sq. m and adequate visual separation is provided between the kitchen and dining areas.	✓	✓	✓	✓
20.1	(e) tables and seating shall be of adequate size to enable the guests to dine in comfort and be capable of easy and flexible arrangement and permit guests to circulate easily in the dining area.				
	(f) cutlery, condiments, tablecloths, table mats, trays, service trolleys and other necessary table appointments shall be of good quality and in good condition. Napkins (linen, cloth or good quality paper) shall be provided.				
	(g) crockery shall be adequate to serve the maximum number of guests capable of being seated in the dining room, be in good condition, of good quality and of uniform design.				

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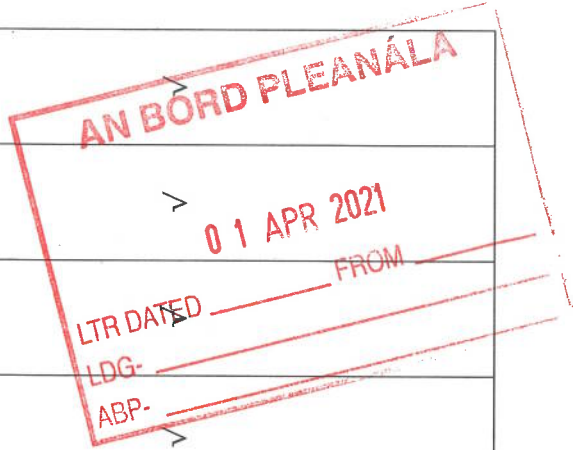
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21	DINING ROOM	App.	3*	4*	5*
21.2	<p>The following are not acceptable:</p> <ul style="list-style-type: none"> (a) sole access to dining room and / or sitting room through the kitchen. (b) oil-fired or solid fuel cooker in the guest dining room and/or sitting room (an oil-fired or solid fuel stove is permissible). (c) smoking must not be allowed in the dining-room, or in any other area accessible to all guests. At least 50% of bedrooms should be designated non-smoking. 	✓	✓	✓	✓
22	KITCHEN	App.	3*	4*	5*
22.1	<p>The kitchen shall be adequate in size to service the resident capacity of the house located adjacent to or easily accessible to the dining room and shall contain facilities, equipment and fittings of good quality and condition for the storage and cleaning of utensils used for these purposes. (Minimum size 7.5 sq. m).</p>	✓	✓	✓	✓
22.2	<p>Generally, such facilities, equipment and fittings shall include:</p> <ul style="list-style-type: none"> (a) refrigerators (of an adequate size for the maximum number of guests and family catered for) for meat, fish, dairy products and other perishable commodities. (b) food preparation tables or units. (c) cooking equipment for boiling, roasting, baking, grilling, steaming, etc of food as required. (d) dishwasher and sink unit(s) complete with all necessary plumbing. (e) clothes washing and drying machines must be installed in utility room or similar area but not in the kitchen. (f) at least one external window to provide natural light and ventilation, plus mechanical extraction. (g) fire blanket and fire extinguisher must be installed in close proximity to cooking area. (h) covered garbage disposal unit (garbage bin). 	✓	✓	✓	✓



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23 SITTING ROOM		App.	3*	4*	5*
23.1	Access through sitting room to guest bedrooms is not acceptable and guest bedrooms must not open directly into the sitting room.	✓	✓	✓	✓
	Sitting room shall contain furniture, fittings and equipment of good taste, quality, condition, and shall be provided in relation to the resident guest capacity of the premises and shall have: <ul style="list-style-type: none"> i. minimum floor area of not less than 12 sq. m. ii. floor to ceiling height of not less than 2.4 m. iii. at least one window to provide natural light and ventilation, iv. windows at first floor level or higher must have child proof locks. v. television to be provided in sitting room in cases where no television is available in the bedroom(s). vi. local guides and other suitable reading material available. 	✓	✓	✓	✓
23.2					
24 GUEST BEDROOMS		App.	3*	4*	5*
24.1	There must be at least two and no more than six guest bedrooms, none of which must have access through another room. The maximum number of bedrooms in the house shall not exceed nine, including proprietors' family bedrooms. If more than four guest bedrooms are provided, planning permission for bed and breakfast use is necessary (See requirement 2). Bedrooms, the toilets and bathrooms serving them, and the corridors off which they shall open shall be "out of view" from the entrance or other public areas. 24.1(a) each bedroom must be specifically identified by name or number. 24.1(b) each bedroom shall be serviced daily.				

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24	GUEST BEDROOMS				App.	3*	4*	5*
24.2	Annex accommodation; is generally not acceptable. However in rural locations where out-buildings are of historical importance or architectural merit, a derogation may be given in relation to annex accommodation provided that all other bedroom regulations are complied with.	√	√	√	√	√	√	√
24.3	Each bedroom shall have: (a) a floor area for single bedrooms of not less than 7.5 sq. m. (b) a floor area for twin/double bedrooms of not less than 12 sq. m. (c) floor areas for treble bedrooms of not less than 16 sq. m.	√	√	√	√	√	√	X
24.4	Each bedroom shall have: (d) a floor to ceiling height of not less than 2.4m. (e) at least one external window with clear glass, to provide natural light and ventilation. The position of the window should be such that at least one third of the glass area is below a level of 1.6 m from the floor. Windows at first floor level or higher must have child proof locks. (f) en-suite bathroom (where provided) shall contain a bath and/or shower with grab handles, wash-hand basin and WC of good quality and condition complete with all plumbing for the supply of hot and cold water and the disposal of waste. Wash-hand basins in en-suite bathrooms must be normal size - see 24.4(m). Each bathroom shall have washable floors and provide a non-slip bath mat where a bath is provided.	√	√	√	√	√	√	√
24.5	(g) Each en-suite bathroom attached to a bedroom shall have a minimum floor area of 3.5 sq.m. and 3 sq.m. where the facility includes a shower unit only.	√	√	√	√	√	√	X

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Each bedroom shall contain furniture, fittings and equipment of good taste, quality and condition, for sleeping and toilet purposes and for the storage including hanging of clothes. Generally, such furniture, fittings and equipment shall include:

- (a) bed(s) complete with sprung interior, foam or orthopaedic mattress (es) minimum bed sizes - single 189cm X 91cm (3' by 6'3") double 189cm X 135cm (4'6" by 6'3"). 190 X 120cm (4' by 6'3") beds will not be approved as doubles. Double beds must be accessible from both sides. Bedheads must not be positioned under windows.
- (b) each bed(s) to include wipe clean headboard. Fabric headboards are not acceptable.
- (c) good quality blankets/duvets and 2 pillows per person. Extra pillows and blankets available on request. Duvets with suitable cover/sheets are acceptable. Chopped foam-filled pillows are not acceptable. Pillows of a non-allergenic filling must also be available for guests.
- (d) good quality mattress and pillow protectors must be used. The use of plastic based or other non breathable material will not be acceptable.
- (e) sheets and pillow cases of cotton, linen or cotton/polyester blends and of good standard. Nylon sheets and pillow cases are not acceptable. All bedclothes including spare linen and towels must be available for inspection. Change of linen; minimum once every three nights (per stay).
- (f) loose or built-in unit(s) comprising bedside table/locker on both sides of a double bed, wardrobe, dressing table with mirror, and drawer/shelf space. Open plan clothes hanging space is acceptable if located in the lobby section of the bedroom.

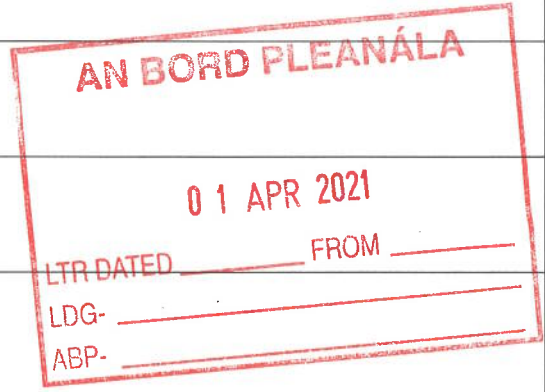
24.6

✓

✓

✓

✓



(g)	a bedside light per person controllable from the bed, minimum 60 watt (one on either side of a double bed) main lights minimum 100 watt or CFL equivalent.							
(h)	a minimum of one chair per bedroom, non flammable waste basket, ashtray(s) where smoking is permitted.							
(i)	carpet or rugs with non-slip backing if floor is of special design or treatment.							
(j)	window curtains or black out blinds to ensure privacy and exclusion of light.							
(k)	good quality towels must be provided per person per day, minimum size hand 0.4 by 0.8m, bath 0.6 by 1 mm.	✓	✓	✓	✓	✓	✓	✓
(l)	one drinking glass per bed space.							
(m)	where a bedroom does not have a private bathroom attached; a normal size wash-hand basin (0.56cm) by (0.40cm), complete with plumbing for the continuous supply of hot and cold water, fitted with mirror, wash light, shaving socket, vanity shelf, and accessories for holding toilet equipment. Soap dispenser or individually wrapped soaps available for washing hands.							
(n)	printed advice for means of summoning assistance at night. This notice must be in all bedrooms in addition to fire instruction notices.							
24.8	Bunk beds are not acceptable.	✓						✓
24.9	Access to bedrooms is not acceptable through dining room or kitchen.	✓						✓

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25	BATHROOMS AND TOILETS				5*
	App.	3*	4*	5*	
25.1	✓	✓	✓	✓	✓
25.2	✓	✓	✓	✓	✓
25.3					✓
25.4	✓	✓	✓	✓	✓

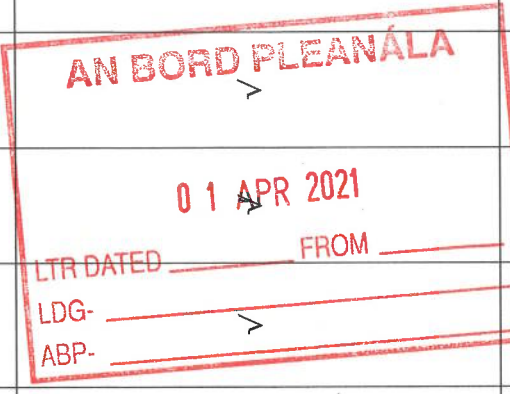
In the case of houses with guest bedrooms, which do not have private bathrooms attached, such houses must have one bath and one shower (the shower may be separate or fitted over the bath) for the first 6 persons accommodated including the owner's family. A second bath/shower for every additional 4 persons must also be provided.

All bathrooms shall have a bath or thermostatically controlled shower of good quality and in good condition which shall be fixed complete with all plumbing for the continuous supply of hot and cold water and the disposal of waste and shall have an effective system of direct or mechanical ventilation. Safety grab rail must be provided. All bathrooms shall have good quality shower curtains or splash screens, and shall be equipped with shelf, towel rails, clothes hooks, non-slip bath mat, soap tray, toilet brush and holder, sanitary bin or disposal bag and a clean and ample supply of toilet requisites, including towels, soap and toilet paper. The bathroom shall have a mirror fixed to the wall over the wash-hand basin and shall have a vanity light, electric shaver point.

Each premises which does not have all its guestrooms with en-suite facilities shall contain two toilets for the first 6 persons accommodated including family, and one toilet for every additional 6 persons.

- (a) toilets and bathrooms located off the kitchen must be suitably lobbied and ventilated. These are not suitable for guest use and are for family use only.
- (b) bathrooms / shower rooms and toilets must be adjacent to, and on the same level as guest bedrooms.
- (c) in the case of en-suite bathrooms, the wash-hand basin may be omitted if a similar unit is installed in the bedroom.

Stand-alone shower units in bedrooms, either cabinet or built-in, are not acceptable.



OWNERS ACCOMMODATION		App.	3*	4*	5*
26					
26.1	Suitable sleeping, dining, lounge, bathroom, and toilet facilities shall be provided in the premises relative to the number of family members living on the premises. Family bedrooms adjacent to the kitchen must be suitably lobbied.	✓	✓	✓	✓
26.2	The whole house, including owner's accommodation, must be available for viewing by the Quality Adviser(s). This is necessary to ensure that the premises complies with the requirements in relation to the number of guestrooms and the number of family rooms.	✓	✓	✓	✓
26.3	Proprietor(s) and assistant(s) must be cleanly attired at all times with particular attention to personal hygiene.	✓	✓	✓	✓
27					
	STORAGE	App.	3*	4*	5*
	Facilities shall be provided for the storage of cleaning materials, etc. for each of the various units of the house and for the storage and airing of necessary stocks of bed linen, blankets, etc. Suitable refuse bins to be provided. Provision shall be made for the collection, removal of garbage and disposal in a suitable manner.	✓	✓	✓	✓
	MATERIAL CHANGES	App.	3*	4*	5*
	Any material change made to the premises affecting room profile etc. must be notified to the Appointed Contractor as soon as possible.	✓	✓	✓	✓

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8. KEY REQUIREMENTS AT EACH CLASSIFICATION LEVEL

There are four levels of classification ranging from Approved to Five stars in the Bed & Breakfast sector. All Bed & Breakfast properties must attain the Approved minimum entry level requirements in order to be approved by Fáilte Ireland.

To obtain a higher star rating, a progressively higher quality and range of services and physical facilities must be provided across all areas. These additional requirements are set out in checklist format on the following pages.

Premises and Grounds		3*	4*	5*
	The premises including the exterior and interior, outdoor areas, grounds and car parking areas shall be kept clean and well maintained throughout. Car parks, where provided, to be well lighted and have proper directional signage.	✓	✓	✓
	Signs maintained in good condition, where displayed.	✓	✓	✓
	The premises shall make available for guests basic first aid equipment.	✓	✓	✓
	Guests should have access to the premises and their bedrooms at all times.	✓	✓	✓
	Refuse bins and storage areas kept discreetly positioned.	✓	✓	✓
	High standards of maintenance in the garden. Tidy flowerbeds/pathways/hedges etc.	✓	x	x
	The entrance and building are well maintained.	✓	✓	✓
	Landscaped, well maintained gardens.	✓	✓	✓
	The provision of garden furniture, where appropriate.	✓	✓	✓
	Evidence that the building and grounds are well maintained and that Health & Safety standards and practices are demonstrated within the buildings and the surrounding environment.	x	x	✓
	Welcoming and impressive surroundings upon arrival.	x	x	✓

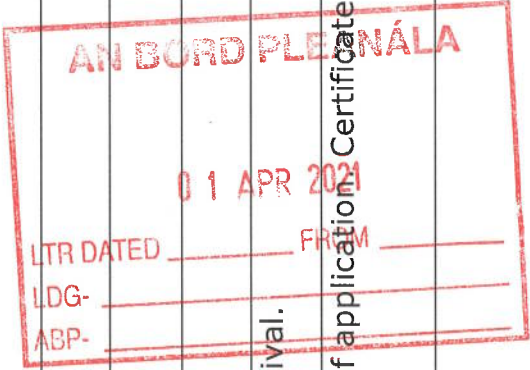
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Arrival / Greeting		3*	4*	5*
	Offer of refreshments on arrival.	✓	X	X
	Guests directed to their rooms.	✓	X	X
	All guests required to sign-in on arrival.	✓	✓	✓
	Proprietor and/or staff available for guests' arrival, departure and at all meal times.	✓	✓	✓
	Clear visible directional signage on the approach to the property, where possible.	✓	✓	✓
	Reception equipped for arrival / departure of guests.	✓	✓	✓
	Local information at reception / hall area.	✓	✓	✓
	Guest comment book at reception area.	✓	✓	✓
	Early morning calls available on request or an alarm clock provided.	✓	✓	✓
	Guests escorted to the bedrooms with the offer of luggage assistance.	X	✓	✓
	Safe available for storage of guests' valuables.	X	✓	✓
	Offer of tea / coffee and homemade scones / soda bread or cake on arrival.	X	✓	✓
	Appropriate Customer Care Programme undertaken within 12 months of application display.	X	✓	✓
	Information on the following to be available:			
	<ul style="list-style-type: none"> • Restaurant Booking • Car Hire/Taxi/Local Bus Services • Theatre Bookings (where applicable) 	X	✓	✓

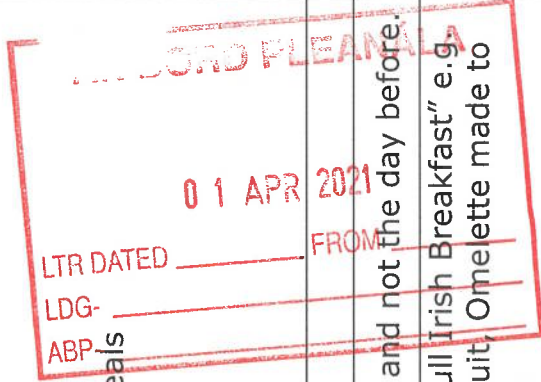


Reservations / Departure		3*	4*	5*
	On line reservation and booking confirmation available where appropriate.	✓	✓	✓
	Call forwarding or answering service at all times.	✓	✓	✓
	Guests made aware of any access restrictions and parking availability when booking.	✓	✓	✓
	Directions to property including street maps available in hard copy and on the internet.	✓	✓	✓
	Booking policy and room guarantee explained. Estimate of arrival time established.	✓	✓	✓
	Detailed bill available for guests on departure.	✓	✓	✓
	Satisfaction with stay checked.	✓	✓	✓
	Electronic payment facility available for cards and at least 2 major credit cards accepted.	X	✓	✓
	Structure in place for dealing with guest enquiries, reservations, correspondence, complaints etc.	✓	✓	✓
	Guest satisfaction regularly monitored.	✓	✓	✓
	Comprehensive booking procedure to include documenting guest requirements, if any.	X	✓	✓
	Confirmation letter and directions sent by post/fax/email.	X	✓	✓
	Offer of assistance with luggage, and offer of directions to next destination.	X	✓	✓
	Bill prepared in advance of guests' departure.	X	✓	✓
	Each property will have their own dedicated brochure website to promote their business. Website should include images of the property, bedrooms and other facilities, sample breakfast menu, directions to the property, map, and product description.	X	✓	✓
	Message service available and messages should be delivered promptly to the guest.	X	X	✓
	Usually no more than five rings before telephone is answered.	X	X	✓

Operational		3*	4*	5*
	Attentive, more personalised service with very good levels of customer care such as use of guest's name.	✓	✓	✓
	All rooms vacuumed daily.	✓	✓	✓
	Soft furnishings and carpets well-maintained.	✓	✓	✓
	Proactive offer of additional services e.g. warming/lighting a bedroom where necessary before guest arrives.	✓	✓	✓
	Strong awareness and anticipation of individual guest's needs.	✓	✓	✓
	Proprietor or nominated person on duty, and / or contactable 24 hours a day.	✓	✓	✓
	Selection of teas and herbal teas or coffee available on request or by self service or available in a designated area on the landing or in the lounge area or conservatory.	x	✓	✓
	Additional services offered spontaneously such as, use of telephone, information on the locality, recommendations for eating out etc.	x	✓	✓
	Excellent, well positioned lighting and signage.	x	✓	✓
	Clear evidence of exceptional and innovative guest services and guests relations demonstrated.	x	x	✓
	Sufficient professional staff available to ensure guests needs are provided and attended to at all times.	x	x	✓

Dining Room	3*	4*	5*
Adjustable lighting to provide required levels for daytime/evening service and daily cleaning.	✓	✓	✓
Quality light fittings and shades.	X	✓	✓
Good quality furniture in excellent condition.	X	✓	✓
Cloth napkin or top quality paper napkin provided for all meals.	X	✓	✓
A number of dining tables to be available for guest use. Individual guests should have the choice to dine alone or within a group sitting.	X	✓	✓
Linen / High quality cloth tablecloths and coordinated tableware.	X	X	✓
Breakfast	3*	4*	5*
Choice of a minimum of two other cooked options e.g. scrambled egg and smoked salmon, omelette or kippers, besides "Full Irish Breakfast".	✓	✓	X
Minimum availability time of one and a half hours with service up to at least 10.00 a.m.	✓	✓	✓
The following food items are to be provided for breakfast: selection of cereals, fruit juices, fresh fruit, yogurt, bacon, eggs, sausages, tomatoes, brown and white bread, toast, preserves, butter, tea and coffee and a minimum of 1 herbal tea.	✓	X	X
If breakfast buffet provided, items to be kept topped up and chilled as appropriate.	✓	✓	✓
Additional hot drinks, toast and breads to be made available, i.e. regular top ups. Dietary requirements catered for.	✓	✓	✓

Breakfast	3*	4*	5*
Breakfast Tray available for early departures.	✓	✓	✓
Special dietary requirements determined at time of booking or at registration.	✓	✓	✓
Where breakfast items are required to be chosen the night before a professional Breakfast Menu Card should be provided in all rooms.	✓	X	X
A minimum of continental breakfast available for early departures.	X	✓	✓
The following food items are to be provided for breakfast: <ul style="list-style-type: none"> Freshly squeezed fruit juices Extensive range of breakfast cereals to include bran-based cereals Selection of fresh fruit and yogurt Selection of cold meats and / or local cheese Selection of homemade bread, scones, butter and preserves Tea, coffee and a minimum of one herbal tea. 	X	✓	✓
Highly attentive service with the offer of fresh hot drinks, toast etc.	X	✓	✓
Orders for breakfast should be taken at the breakfast table in the morning and not the day before.	X	✓	✓
Choice of a minimum of four cooked seasonal breakfast options besides "Full Irish Breakfast" e.g Porridge with a choice of toppings, Pancakes with maple syrup and fresh fruit, Omelette made to order, Scrambled Eggs with Smoked Salmon, Eggs Benedict, fresh fish etc.	X	X	✓
Selection of fresh fish available.	X	X	✓
Afternoon Tea	3*	4*	5*
Complimentary Afternoon Tea available to guests. Afternoon tea to include a choice of homemade scones, cake or a selection of sandwiches.	X	X	✓



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Food and Service		3*	4*	5*
	Prompt table clearing and satisfaction checks.	✓	✓	✓
	Food served at the correct temperature, on a hot or cold plate as appropriate.	✓	✓	✓
	Other meals (if provided); hours of opening must be stated and adhered to.	✓	✓	✓
	Help is provided, on request, to find an alternative place to eat/drink within the area.	✓	✓	✓
	Well-presented food freshly cooked from good quality, local and seasonal ingredients, where practical.	✓	✓	✓
	Particular attention to food quality rather than an extensive choice.	✓	✓	✓
	Menus professionally presented.	✓	✓	✓
	Condiments to be frequently replenished.	✓	✓	✓
	Table setting to be of the highest standard, including quality accessories and glassware.	✓	✓	✓
	Presence of high quality table enhancements e.g. candles or fresh flowers.	x	✓	✓
	Excellent cooking with an emphasis on fresh, seasonal, locally sourced produce.	x	✓	✓
	Reasonable food and drink knowledge, i.e. where produce is sourced etc.	x	✓	✓
	Comprehensive description of items on menu, creating awareness of local produce, where possible.	x	✓	✓
	All breads to be home baked with the exception of toasting bread.	x	✓	✓

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	Dinner, if provided	3*	4*	5*
	Fixed price menu or individually priced dishes made available.	X	X	✓
	Proprietors and staff to provide guests with advice and recommendations regarding menu.	X	X	✓
	If wine provided correct red and white wine glasses to be available.	X	X	✓
	If wine provided a representative and well balanced wine list to be available.	X	X	✓
	Sitting Room	3*	4*	5*
	Selection of local newspapers and magazines available.	✓	✓	✓
	Plain walls to be decorated with framed pictures or prints.	✓	✓	✓
	Tea / Coffee facilities available all day.	✓	✓	✓
	Lounge Area containing lounge furniture for resident's use.	X	✓	✓
	Internet connection including Wi-Fi available throughout the premises, unless geographically restricted.	X	✓	✓
	One daily national newspaper, where practical and a selection of magazines available.	X	✓	✓
	Fresh floral or plant arrangements.	X	X	✓
	Access to a computer or laptop with internet access available, where infrastructure exists.	X	X	✓

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Guest Bedrooms		3*	4*	5*
	Cots available, if requested at the time of booking.	✓	✓	✓
	Hangers available for clothes - minimum four per person provided.	✓	✓	x
	Ample socket provision for all equipment provided.	✓	✓	✓
	One bedside locker per bed (min 2). Family rooms must have a minimum of two bedside lockers.	✓	✓	✓
	Individual control of heating by guest.	✓	✓	x
	A minimum of one chair per bedroom.	✓	x	x
	Guest directory available in all bedrooms to include: mobile number for proprietor, doctor, taxis, restaurants and details of local church and visitor attractions. Details of emergency exits and telephone numbers. Information on how to access Wi-Fi etc.	✓	✓	✓
	Plug adaptor available on request.	✓	✓	✓
	Standard/reading lamp provided in each room.	✓	✓	✓
	Iron and ironing board available on request.	✓	✓	✓
	Change of linen every three days.	✓	x	x
	Automatically change towels every day unless requested not to or by linen card.	✓	✓	✓
	TV with remote control available in all bedrooms. *In the case of a historic house, an exemption can be made however bedroom should be wired for television and available at all times upon request.	✓	✓	✓
	TV visible from sitting area or bed.	✓	✓	✓

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Guest Bedrooms		3*	4*	5*
	Hair dryer available in all rooms.	✓	✓	✓
	A means of securing bedroom doors from inside and out.	✓	✓	✓
	Alarm clock available on request.	✓	✓	✓
	Minimum Floor Area (excluding private bathrooms) Single; 9 sq. m.			
	Minimum Floor Area (excluding private bathrooms) Double; 14 sq. m.	X	✓	X
	Minimum Floor Area (excluding private bathrooms) Double/Single; 18 sq. m.			
	Generous access to both sides of double bed.	X	✓	✓
	Supplementary heating available at no extra charge, on request.	X	✓	✓
	100% bedrooms en-suite.	X	✓	✓
	Daily change of linen, on request. Otherwise every second day.	X	✓	✓
	Coordinated and crisply laundered linen with choice of high quality bedding available.	X	✓	✓
	Luggage stand/holder/rack in each room.	X	✓	✓
	Occasional table provided in every bedroom.	X	✓	✓
	Full length mirror in each room.	X	✓	✓
	Radio available on request.	X	✓	✓
	Writing paper and envelopes available on request.	X	✓	✓
	Tea / Coffee available on request.	X	✓	✓

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Guest Bedrooms		3*	4*	5*
	Co-ordination of interior design and soft furnishings.	X	✓	✓
	Complimentary mineral water supplied.	X	✓	X
	A minimum of one comfortable upholstered armchair per bedroom.	X	✓	✓
	High quality coordinated lighting and soft furnishings.	X	✓	✓
	Minimum Floor Area (excluding private bathrooms) Single; 12 sq. m. Minimum Floor Area (excluding private bathrooms) Double; 18 sq. m. Minimum Floor Area (excluding private bathrooms) Double/Single; 20 sq. m.	X	X	✓
	Quality light fittings. Shades to match overall theme of decoration.	X	X	✓
	Wardrobe or clothes hanging area: minimum 6 hangers (not wire variety).	X	X	✓
	At least two electrical 13 amp outlets suitable for the attachment of electrical equipment.	X	X	✓
	High quality linen or high grade cotton.	X	X	✓
	Antique or very high quality modern furnishings in all bedrooms.	X	X	✓
	Wine glasses and bottle opener available on request.	X	X	✓
	Individual heating control by guest to specific temperature by thermostat.	X	X	✓
	Complimentary bottled water supplied.	X	X	✓

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Bathrooms, En-suites and Toilets		3*	4*	5*
	Soap dispenser or individually wrapped soaps available for washing hands.	✓	✓	✓
	Plenty of hot water available at all times.	✓	✓	✓
	All bathrooms must have an effective system of direct or mechanical ventilation.	✓	✓	✓
	Where flooring is tiled, grouting and sealant to be in excellent order.	✓	✓	✓
	A minimum of shampoo and shower gel available for guest use.	✓	X	X
	Extra towels available on request.	✓	✓	✓
	High quality washable flooring throughout. (No carpets).	✓	✓	✓
	Lidded waste bin in all bathrooms / en-suite.	✓	✓	✓
	An internal lock / bolt on bathroom door.	✓	✓	✓
	Each bathroom should be equipped with a good quality toilet brush and holder.	✓	✓	✓
	Well positioned, good quality lights giving good levels of illumination for various purposes, e.g. shaving, applying make-up etc.	X	✓	✓
	Automatically change towels every day unless requested not to or by linen card.	X	✓	✓
	Automatic or thermostatically controlled heating.	X	✓	✓
	All bathrooms equipped to an excellent standard.	X	✓	✓
	Heated Towel rail, radiator or wall mounted heater available in all en-suites.	X	✓	✓
	A selection of good quality towels to include a minimum of a hand towel and bath towel per person. Bath/shower mat should also be supplied.	X	✓	✓

Bathrooms, En-suites and Toilets		3*	4*	5*
	A range of high quality guest toiletries provided, to include: <ul style="list-style-type: none"> • Bath foam/shower gel. • Shampoo. • Tissues. 	X	✓	✓
	Private bathrooms must have a minimum floor area of: 3.8 sq metres where facilities include a bath/shower. 3.5 sq metres where facilities include a shower unit only.	X	X	✓
	Additional range of quality body care/toiletry products to include a minimum of four of the following: Cotton wool, tissues, cotton buds, shower cap, body lotion, vanity set, shaving foam etc.	X	X	✓
	Ample space for laying out toiletries, shaving equipment etc.	X	X	✓
	Face cloths available - one per person.	X	X	✓

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Environment		3*	4*	5*
	Recommend a code of best practice to be developed and displayed which would encourage B&B to be more environmentally friendly.	✓	✓	✓
	Double Glazed Windows (for new builds only).	✓	✓	✓
	Draft excluders around external doors.	✓	✓	✓
	Fit lagging jacket around immersion tank.	✓	✓	✓
	Specific green information for customers to be included in Guest Directory, e.g. towel policy.	✓	✓	✓
	Enhanced loft and wall insulation, where possible.	X	✓	✓
	Use of Energy Saving Bulbs, where possible.	X	✓	✓
	Introduce reduce, reuse and recycle waste minimisation system.	X	✓	✓
	Facilitate waste separation, e.g. plastics, paper, glass.	X	✓	✓
	Use of "A" graded domestic electrical appliances, on replacement.	X	✓	✓
	Environmental Awareness & Energy & Water Management Programme	X	✓	✓
	The operator shall include an environmental statement in the guest directory to include information on the following, where applicable: Waste Separation; Use of Renewable energy; Water Management; Use of locally sourced products; Use of recycled products; Public transport available, Walking & Cycling Routes, etc.; A "Help Us To Help The Environment" Statement.			
		X	✓	✓

APPENDIX 7

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