

An Bord Pleanála
64 Marlborough Street,
Dublin 1,
D01 V902

BY EMAIL

26 May 2021

Re: ABP Case Number: ABP-309893-21
Whether the relocation of ESB Substation is or is not development or is or is not
exempted development -
The Dean Hotel, No. 80 Prospect Hill, No. 82, 84 & 86 Bohermore, Galway City.

Dear Sir/ Madam,

On behalf of the applicant, Advanced Vision Limited, we wish to respond to Boards letter dated 6th May 2021, which invited comments on the written Observation made by residents of Forster Court. We wish to respond to each of the relevant concerns below.

Introduction:

As part of the submission, the observers have confirmed that the position of the existing sub-station was permitted as part of Fire Certificate Reference FSC 122/18. It is also noted that Condition No. 1 of the latter Fire Cert was appealed to An Bord Pleanala and the Board decided to amend condition No. 1 under ABP-304155-19.

As previously explained in our Referral to the Board, it was necessary to relocate the ESB Substation to facilitate Fire Tender Emergency Access to the Hotel. Accordingly, the subject development can avail of the Class 41(e) Exemption as set out in the Planning and Development Regulations 2001 (as amended). This provides *"The carrying out of development with a condition or conditions attached to a fire safety certificate granted in accordance with part III of the Building Control Regulations, 1997 other than the construction or erection of an external fire escape or water tank."*

By way of background the observers state that *"This site was previously occupied by Shannon Dry Cleaners which burnt down in around 2016. This Dry Cleaners building was located further to the west from Forster Court Phase 1 and the fire nearly travelled to Forster Court which was very traumatic for the residents at the time."* We empathise with the Observers experience of the fire which occurred prior to the current ownership of the site. However, the sub-station has been relocated purely to facilitate fire brigade access and to ensure that in the event of a future fire, the risk of the spread of fire to Forster Court can be readily controlled and prevented.

Contravention of Condition:

Contrary to the assertions of the Observers, we are of the opinion that the subject works do not Contravene Condition No. 1 of Pl. Ref. No. 17/41.

Moreover, the provisions of Condition No. 1 are broad and generic in its scope, and has not been so specifically worded or phrased to prevent the suite of exemptions set out in the Planning Regulations from being availed of. If the observers view is taken literally, it would mean that where a Planning Authority grants permission *"in accordance with documents lodged"*, all relevant exemptions should be disregarded. Such an interpretation is illogical and should be dismissed. For example, in the case of a permission for a detached house in the countryside, such an interpretation of a standard condition No. 1, would prevent a 40sqm rear extension from being availed of. In the case of the subject hotel site (defined as a business premises in the Planning Regulations), it would mean the applicant could never avail of the following exemptions;

- Part 1 Class 2(e) *"The installation or erection on a business premises or light industrial building, or any ancillary buildings within the curtilage of such premises or buildings, of solar thermal collector panels."*
- Part 1 Class 55 *"The erection on or within the curtilage of a business premises, of a dish type antenna used for the receiving and transmitting of signals from satellites."*



- Part 2 Class 3 "Advertisements displayed within a business premises and which are not visible from outside the premises."

The generality of Condition No. 1 never envisaged such restrictions, and to interpret it as such would be entirely unreasonable. In this regard, the provisions of the exemption set out under Class 41(e) of the Planning Regulations can be considered.

Similarly, the validation requirements for drawings as set out under Article 23(1)(f) of the Planning Regulations, were not designed to prevent the exemptions provided in the same Planning Regulations, from being availed of.

Car Parking:

The provision of car parking on site is governed by Condition No. 14 of Pl. Ref. No. 17/41. Since the issuing of Fire Cert Ref. FS 112/18 and Fire Cert Ref FS 2020/102 (currently pending), parking provision on site can be agreed in writing with the Planning Authority prior to the occupation of the development. In this regard condition No. 14 requires that "prior to the occupation of any of the development, the access road and the car park shall be constructed to an acceptable standard and provided with a suitable surface. Car parking spaces and pedestrian crossing points shall be adequately delineated." Therefore, discretion is available with respect to car parking on site.

Case Law:

We continue to submit that the decision of *Marry v Connaughton*, is relevant to the assessment of this case.

The observers consider the Decision of *Horne v Freaney* to be relevant. This decision held that a planning permission granted was indivisible and it authorised the carrying out of the totality of the works for which permission was granted and not some of them only. We do not consider the latter case to be relevant as the applicant is carrying out the totality of the permission granted, including the provision of an ESB substation.

The observers again refer to the provisions of Article 23(1)(f) of the Planning & Development Regulations. The latter part of the regulations requires principal dimensions to be provided at planning application stage. The provision of Article 23(1)(f) of the regs were never designed to prevent prospective applicants from availing of other exemptions contained within the regulations, including Class 41(e).

The observers refer to Referral Case Ref RL2632. This related to a rural one off house which was constructed 7-11m from its permitted location. This is not comparable to the subject site as the latter case referred to a rural house in the open countryside, which would have a much greater visual impact compared to the subject substation on an urban infill commercial hotel site within a city centre context.

We would be of the opinion that the subject substation, which forms an ancillary part of the hotel structure can avail of the exemption available under Section 4(1)(h) of the Planning & Development Act 2000 (as amended). This provides that the following shall be exempted developments for the purposes of this act "development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures." Given that the sub-station, does not materially affect the external appearance of the Hotel complex and is not inconsistent with the overall appearance of the Hotel, it can be considered exempted development.

The observers also refer to the Inspectors Report on ABP Case Reference 302356-18 (an extension to a Hotel at Kentfield, Co. Galway). We do not consider the latter case to be relevant as it relates to a planning application rather than a Section 5 exemption case. In the latter case, the inspector noted that "it is not accepted that there are no alternative option to ensure consistency with minimum standards". As can be seen from the autotrack analysis which accompanied the Referral to the Board, aside from the current location, there are virtually no alternative location available to locate the ESB substation, within this confined city centre site.

The site is currently a construction site, therefore the Inspector is advised to contact this office in advance of the site inspection to arrange access.

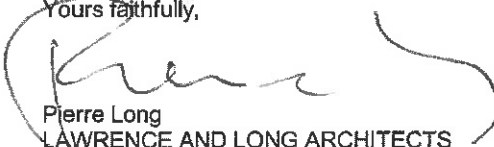
We now look forward to the decision of An Bord Pleanala.



LAWRENCE & LONG

If you require any clarification in relation to the documentation enclosed, please do not hesitate to contact the undersigned.

Yours faithfully,



Pierre Long
LAWRENCE AND LONG ARCHITECTS



