EIA Pre-screening – EIAR Not Submitted

An Bord Pleanála Case Reference	ABP-309893-21
Development Summary	Whether the relocation of ESB substation isor is not development or isor is not exempted development

1. Does the proposed development constitute an EIA project? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	✓
	No	

2. If YES, does the proposed development, or any part of it, fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations?

	Tick	Threshold	Comment (if relevant)	Conclusion
No	✓	N/A		No EIAR or Preliminary Examination required
Yes		If YES, tick one of the following:		
		Exceeds / Is equal to / No Threshold		EIAR required
		Sub threshold		Preliminary Examination required (Issue letter to EPA if IED/ IPC/ Waste licence)

3. If Preliminary Examination is required, has Schedule 7A information been submitted?	Yes (No) N/A

EO/ SEO Conor Jaegen Date: 28/4/21.

LAWRENCE + LONG

AN BORD PLEANÁLA
LDG- 038304-21
ABP-
07 APR 2021
Fee: € 220 Type: cheque
Time: 11:35 By: hand

BY HAND

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

07 April 2021

Re: Section 5 Referral with respect to Section 5 Declaration Ref. P/DC/3/3/21 Relocation of ESB Substation at 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, with an address at First Floor, 55 Percy Place, Dublin 4 (the owners of The Dean Hotel), we hereby submit a Section 5 Referral to An Bord Pleanala. On 12th February 2021 a Section 5 Declaration application was made to Galway City Council (Ref. P/DC/3/3/21) with respect to a question as to whether the relocation of an ESB substation (permitted under Pl. Ref. No. 17/41) can be considered exempted development. On 11th March 2021 Galway City Council issued a decision stating that *"The works comprising the relocation of the ESB Substation are therefore development and are not exempted development and planning permission is therefore required."* The relevant Referral Fee of €220 is attached.

The rationale behind the Planning Authority's consideration that the development is *"not exempted development"* can be gleaned from the *"Section 5 Declaration Report"*.

This referral seeks to explain the background to the relocation of the ESB substation and respond to each of the relevant concerns raised by the Planning Authority.

Compliance with Fire Safety Requirements:

At the early stages of construction, it was identified that the position of the permitted ESB substation could interfere with Fire Tender emergency access. This was investigated by way of a Autotrack Analysis, prepared by a suitably qualified Traffic Consultant. This proved that the location of the permitted ESB sub-station would interfere with required fire access. A copy of this autotrack drawing accompanied this Section 5 application. In this situation, this necessitated the slight relocation of the ESB substation further to the south-east of the site. This also prompted the preparation of a revision to the original Fire Safety Certificate application (Ref. No. FS 2020/202) which is currently being assessed by the fire office. We request that the Board seek the outcome of the latter Fire Cert application before issuing its decision on this Referral case.

We would submit that the relocation of the ESB substation as a result of fire access requirements, means that this amendment can be considered under "Class 41(e) of the Planning and Development Regulations 2001 (as amended), which provides that the following category of development can be considered exempted development *"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."*

On the basis that the new Fire Cert is granted, we would submit that the relocation of the ESB Substation can avail of the Class 41(e) exemption.

Minor nature of development:

The minor nature of the subject ESB substation building relocation (deviation) is clearly indicated on the associated drawings submitted to the Council. We would be of the opinion that the subject relocation of this minor ancillary structure on a significant hotel site, can be considered trivial or De Minimis. In this regard, we refer to the publication entitled *"Planning and Environmental Law in Ireland"* (John Gore Grimes 2011). This refers to the case of "Marry v Connaughton" (1984, IEHC 74, O' Hanlon J.) and states that "*the case made by the applicant that a permission did not authorize the development as the plans submitted did not precisely correspond with the actual location of the houses. The claim was dismissed on the basis that the dwellings were in substantial compliance with those shown on the plans and any deviation was de minimis."* In response, we would be of the opinion that similar discretion is available in this instance, and that the minor deviation between the permitted and existing location of the substation is de minimis.

Landscaping along south-eastern boundary

As part of the Section 5 application, a landscaping layout was submitted to the Council. The planning officers report expressed dissatisfaction with same and stated that *"It is also noted that the revised site layout has re-arranged the parking spaces at the rear and omitted some of the tree planting screen along the south eastern boundary backing onto Forster Court. These works would therefore appear to contravene Condition 1 of the planning permission Reference 17/41 granted on 19th September 2017 and are therefore de-exempted under Article 9(1)(aa) (i) of the Planning and Development Regulations."*

We would submit that the associated revisions to the site layout along the south-eastern boundary of the site are not material changes to the established planning permission on site. However, in order to respond to the stated concerns of the Planning Authority with respect to the tree planting screen, we refer to that updated layout for this part of the site (See Drawing No. ABP.01). This provides for adequate boundary screening consisting of an extended *"Bamboo planted screen"* and a tree screen in *"planter boxes"* at this location.

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

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

Encls.

- Cheque to An Bord Pleanála €220
- Copy of Section 5 Decision by Planning Authority
- Copy of Section 5 Declaration Report
- Drawing No. ABP.01 prepared by Lawrence and Long Architect

AN BORD PLEANÁLA

07 APR 2021

LTR DATED _____ FROM _____
LDG- _____
ABP- _____

Comhairle Cathrach na Gaillimhe
Galway City Council

Halla na Cathrach
Bóthar an Choláiste
Gaillimh
H91 X4K8

City Hall
College Road
Galway
H91 X4K8

Advanced Vision Ltd
c/o Lawrence and Long Architects,
23 Mespil Road,
Dublin 4.

Our Ref: P/DC/3/3/21 **11th March, 2021.**

Planning Declaration under Section 5 of the Planning & Development Act, 2000 (as amended).

Applicant: **Advanced Vision Ltd c/o Lawrence and Long Architects**
Site Address: **The Dean Hotel, Bohermore, Galway**
Description: **Relocation of Electricity Substation.**

A Chara,

I refer to your recent application for a declaration of exempted development in relation to the above and I wish to inform you that a declaration of exempted development is refused for the following reason:-

A Declaration under Section 5 of the Planning and Development Act 2000 should issue advising that the works to relocate the substation are not exempt development for the following reasons:

1. The revised site layout has re-arranged the parking spaces at the rear and omitted some of the tree planting screen along the south eastern boundary backing onto Forster Court. These works would therefore contravene Condition 1 of the planning permission Reference 17/41 granted on 19th September 2017 and are therefore de-exempted under Article 9(1) (a) (i) of the Planning and Development Regulations 2001 (as amended).

2. The applicants have indicated that they have resubmitted a Fire Safety Certificate in regard to the relocation of the substation and have requested that this referral not be considered until after the decision on this certificate on 26th March 2021.
However while Class 41(e) of the Planning and Development Regulations (2001 as amended) exempts *"The carrying out of development in compliance 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"*.

The works have clearly been carried out in advance of the determination of the Fire Safety Certificate (which is not due until 26th March 2021) and the applicant is advised that this exemption would **not** apply retrospectively to the development.

3. In addition and notwithstanding the difficulties the previous location presented to the movements of a fire tender it is not clear whether this exemption allows the relocation of the substation to a location on the site where it has an overbearing impact on the adjoining bungalow in Forster Court, notwithstanding the proposed planting.

The works comprising the relocation of the electricity substation are therefore development and are not exempted development and planning permission is therefore required.

Mise le Meas,

Director of Services,
Transportation, Planning, Physical Development and Human Resources.

AN BORD PLEANÁLA

07 APR 2021

LTR DATED _____ FROM _____
LDG- _____
ABP- _____

.on 5 Declaration Report - Ref P/DC/3/3/21

Applicant: Lawrence and Long Architects

Site Address: The Dean Hotel, Bohermore, Galway

Description: Relocation of Electricity Substation

No. 80 Prospect Hill (known as Shannon Dry Cleaners), No. 82 Bohermore, No. 84 Bohermore, No. 86 Bohermore, and including part of the former railway tunnel (to Clifden), Galway.

Relevant Planning History:

17/41 - Description:

Permission Granted for development for the construction of a hotel, on an overall site of 0.29 ha (0.73 acres). The development will consist of the: demolition of the existing single-storey commercial building at No. 80 Prospect Hill; demolition of the existing two-storey dwelling at No. 84 Bohermore; demolition of the existing part-single, part two-storey rear extension to No. 86 Bohermore (a Protected Structure, Ref. No. 1201) and associated garden shed; construction of a part-two, part-three, part-four storey hotel over lower ground (with fourth floor level setbacks to the south-east) in 2 No. blocks (the north-western block fronting Prospect Hill/Bohermore) and the south-eastern block (located to the rear of the site) connected at all floor levels comprising 139 No. bedrooms and related hotel facilities (including: reception area; lounge area; dining area; 2 No. bars; storage; associated signage; administration and staff facilities; plant (including substation with associated switch room); waste storage area; and delivery and dispatch area), with a total gross floor area of 5,310 sq m (including lower ground level of 1,269 sq m). The development includes works to protect and conserve the older elements of No. 86 Bohermore and also the existing former railway tunnel (located beneath No. 80 Prospect Hill) that will be integrated into the overall proposal, which includes for a change of use of these areas from residential use and infrastructural use to hotel use, respectively. The development will also include the provision of: vehicular and pedestrian access via Prospect Hill; 11 No. car parking spaces; associated lighting; associated site servicing (foul and surface water drainage and water supply); SUDs measures, including attenuation tank and sedum roofs; and gardens and courtyards. The scheme also includes: all hard and soft landscaping; boundary treatments; changes in level; and all other associated site excavation and site development works above and below ground.

Previous Section 5 Declaration Report - Ref P/DC/3/20/2020 – 18th December 2020

Ruled that the proposed relocation of the Substation was not exempt for the following reason

The works comprising the relocation of the ESB Substation would materially impact on the amenities of adjoining properties and would contravene condition 1 of Planning permission 17/41 dated 19th September 2017. The works are not exempted under Section 4 1(h) of the Planning and Development Act 2000 (as amended) and Planning permission is therefore required for the above works

Policy

The Galway City Council Development Plan (2017-2023) policy objectives for built heritage seek to ensure that new development enhances the character and setting of Protected Structures (Policy No. 7.2 - Built Heritage). The Development Plan also seeks to ensure and promote the amenity as well as the vibrancy of Galway City Centre, and the objectives for the City Centre recognise the need to ensure that the urban form and design of the City Centre is respected in any new development proposal.

Planning Appraisal:

On this revised Section 5 declaration form the agent has asked whether the relocation of an ESB Substation can be considered Exempted Development. The Substation has been relocated from the south west of the vehicular ramp to adjacent to the rear south western boundary of the site, and backing onto the rear of the Forster Court Development.

The relocated substation would have a width of 7.675m and a depth of 4.43m and a height above ground level of 3.214. However this is the height when measured from the Dean Hotel side, because of the 2.5m drop in levels on the Forster Court side the height will result in an increase of 2.8m over the existing 5.5m high wall 7.65m wide positioned only some 7.2n from the side wall of No 6 Forster Court, which is a single storey structure.

Revised Section 5 Referral

The applicant has provided additional information from Alan Lipscombe Traffic Consultant stating that the permitted location for the substation would have interfered with the required fire access to the rear of the site and has provided an "autotrack" drawing showing this

In addition further information has been provided
"noting that the southern boundary of the ESB substation will be supplemented by Landscaping/ Screening, in order to allay any perceived negative impact on neighbouring amenities. In this regard, the Planners Report was concerned that there would be insufficient space behind the sub-station, to provide for adequate screening onto Forster Court. The report states that this confined space would not appear suitable for significant tree growth of the height necessary to screen the substation which itself rises 2.8m above the existing rear wall." In response, we refer to the updated landscaping proposals prepared by "Thirtythreetrees Ltd" Landscape Architects. It is considered that these proposals will sufficiently address any concerns in relation to the perceived impact on the amenities of the adjoining property.

They also add that *"the location of the existing ESB substation, vis-a-vis the residential property to the south-east, would not generate any adverse overshadowing impacts. This is because any shadows associated with the structure would project in a northerly direction onto the Hotel site itself. In these circumstances, we are of the opinion that the location and modest scale of the ESB substation, within the context of a new multi storey and vibrant Hotel complex, would not adversely affect the amenities of adjoining property.*

It is also noted that the revised site layout has re-arranged the parking spaces at the rear and omitted some of the tree planting screen along the south eastern boundary backing onto Forster Court. These works would therefore appear to contravene Condition 1 of the planning permission Reference 17/41 granted on 19th September 2017 and are therefore de-exempted under Article 9(1) (a) (i) of the Planning and Development Regulations

The applicants also advise that they have resubmitted a Fire Safety Certificate in regard to the relocation of the substation and have requested that this referral not be considered until after the decision on this certificate - which is due on 26th March 2021

Class 41(e) of the Planning and Development Regulations 2001 as amended exempts

> *"The carrying out of development in compliance 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".*

Even if this exemption were to apply, this exemption could not apply retrospectively as the works to relocate the substation were carried out prior to the imposition of the condition. In addition it is not clear whether this exemption allows the relocation of the substation within the site where it has an overbearing impact on the adjoining bungalow in Forster Court

In view of the above it is considered that a declaration under Section 5 should issue to the applicant advising the works are not exempt.

Recommendation

A Declaration under Section 5 of the Planning and Development Act 2000 should issue advising that the works to relocate the substation are not exempt development for the following reasons:

1. The revised site layout has re-arranged the parking spaces at the rear and omitted some of the tree planting screen along the south eastern boundary backing onto Forster Court. These works would therefore contravene Condition 1 of the planning permission Reference 17/41 granted on 19th September 2017 and are therefore de-exempted under Article 9(1) (a) (i) of the Planning and Development Regulations 2001 (as amended).

2. The applicants have indicated that they have resubmitted a Fire Safety Certificate in regard to the relocation of the substation and have requested that this referral not be considered until after the decision on this certificate on 26th March 2021.
However while Class 41(e) of the Planning and Development Regulations (2001 as amended) exempts *"The carrying out of development in compliance 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"*. the works have clearly been carried out in advance of the determination of the Fire Safety Certificate (which is not due until 26th March 2021) and the applicant is advised that this exemption would **not** apply retrospectively to the development.

3. In addition and notwithstanding the difficulties the previous location presented to the movements of a fire tender is not clear whether this exemption allows the relocation of the substation to a location on the site where it has an overbearing impact on the adjoining bungalow in Forster Court, canotwithstanding the proposed planting.

The works comprising the relocation of the electricity substation are therefore development and are not exempted development and planning permission is therefore required.

Liam Blake
Senior Executive Planner
11th March 2021

11/3/21

AN BORD PLEANÁLA

07 APR 2021

LTR DATED _____ FROM _____
LDG- _____
ABP- _____