



Comhairle Cathrach Chorcaí Cork City Council

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

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

19/04/2021

Re: Section 5 – R648/21 Former Ambassador Hotel, Military Road, Cork City

Dear Sir/ Madam,

Please find enclosed a referral under Section 5(4) of the Planning & Development Act 2000 with a cheque for €110.00
The reference number is R648/21

Question Referred

I would like to request a Section 5/Exemption Declaration in relation to the erection of mobile phone antennae to the rear of the property names above – The Address Hotel. The site location is more prominent to Military Road.

Applicant Details

Deborah Murphy
2 Alaxandra Terrace
Military Hill
St Lukes
Cork

Yours faithfully,

Kerry Bergin
Development Management
Cork City Hall

AN BORD PLEANÁLA	
LDG- <u>038884-21</u>	
ABP- _____	
21 APR 2021 SC	
Fee: € <u>110</u>	Type: <u>CHEQUE</u>
Time: _____	By: <u>POST</u>

The Secretary
An Bord Pleanála
64 Marlborough Street
DUBLIN 1
D01 V902

31/03/2021

**SUBMISSION IN RELATION TO GROUNDS OF REFERRAL IN ACCORDANCE WITH SECTION 132
ABP – 308639 – 20 AND CORK CITY COUNCIL REF. NO. R648/21
FORMER AMBASSADOR HOTEL, MILITARY HILL, CORK CITY**

This referral is made under Section 5(4) of the Planning and Development Act, 2000.

This referral is structured as follows:

1. Introduction
2. Background
3. Grounds of Referral
4. Screening for Appropriate Assessment
5. Conclusion

Appendices 1-4

1. INTRODUCTION

1.1 Relevant legislative Provisions

All relevant legislative provisions of the Planning and Development Act, 2000 (as amended) and the Planning and Development Regulations, 2001 (as amended) are included as **Appendix 1** to this referral. In this referral, '*the Act*' means the Planning and Development Act 2000, as amended, and '*the Regulations*' means the Planning and Development Regulations 2001, as amended.

1.2 Particulars of Referral

Various particulars required under Section 127 of the Act are provided with this referral. The subject matter and grounds of the referral and the reasons, considerations and arguments on which they are based are included below in the body of this referral.

Also enclosed is the fee of €110.

The referral is made by:

Community, Culture & PlaceMaking,
Cork City Council,
City Hall,
Cork ,

Telephone: (021) 4924762
Email: michelle_broderick@corkcity.ie

1.3 The Question Referred

In framing the question to the Planning Authority, the applicant states in Q2 of the application form:

'I would like to request a Section 5 / Exemption Declaration in relation to the erection of mobile phone antennae to the rear of the property named above – the Address Hotel. The site location is more prominent to Military Road'.

It is the opinion of the Planning Authority, that the intention of the request is clear, and that it is entirely reasonable to consider the question before the Planning Authority as being:

Whether the erection of mobile phone antennae at the The Address Cork Hotel (the former Ambassador Hotel) is development, and if so is it exempted development?

1.4 The Referral Site

For ease of reference, the lands which are the subject of this referral are referred to as '*the referral site*' in this referral.

The referral site is located at the **The Address Cork Hotel** (the former *Ambassador Hotel*), at Military Hill, St. Lukes, Cork City. It is a 19th Century hotel building of a symmetrical design, free-standing and is South-facing towards the City Centre, with a later extension at the North-Eastern wing added. The main 4-storey listed building on the NIAH under Reg. 20863054. The subject site is not in an Architectural Conservation Area (ACA), however, the Southern site boundary is the edge of the *Wellington Road / St. Lukes ACA*.

Recently, 6 no. antennae and a link dish (no higher than 3 m.) has been erected on top of the 3-storey mansard roof structure at the North-Eastern wing of the hotel close to Military Road side. This North-Western wing was added as a later extension under a 2000 parent permission (see Section 2.2. below for planning history).

A 4 week notification of erection of the antennae / link dish was received in a letter from the statutory undertaker (CK Hutchisons Network) on 25/1/2021. This is attached at **Appendix 2**.

A site location map is included with this referral at **Appendix 3**.

A photograph of the antennae structures / dish is included at **Appendix 4**.

2. BACKGROUND

2.1 General Background

This issue originally arose pursuant to a planning enforcement complaint being received by Cork City Council regarding the erection of the above mentioned antennae. Following due procedure, and under Cork City Council Planning Enforcement reference number **E-8270**, the Planning Authority considered that the subject structure was most likely exempted development under Article 6 and Class 31 (k) of Part 1 of Schedule 2 of the Regulations, and the above-mentioned planning Enforcement File was closed.

Note:

Limitation 5 of the above Exemption Class requires that '*The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least 4 weeks before such attachment*'.

As noted above, this letter was received by the Planning Authority on 25/2/2021, and is attached in **Appendix 2**.

Following the case closure of Enforcement File E-8270 (details at Section 2.3 below), the complainant / applicant requested a Section 5 declaration from the Planning Authority on the question to which this referral relates, under Cork City Council reference R 648/21.

2.2 Relevant Planning History

- TP 08/33223** *Permission granted for the construction of a 142sq.m single storey extension to the western side of the hotel to include: 1) increasing the size of the existing restaurant 2) additional kitchen storage space, 3) a new fire escape door formed in the existing boundary wall flanking military hill, & 4) all associated alterations and site work.*
- TP 08/33171** *Permission granted for alterations to conditions No. 3 of a previously approved Permission Reg. No. TP 24534/00 to allow music and dancing to take place in function room No. 1.*
- TP 08/32971** *PERMISSION REFUSED for alterations to conditions No. 3 of a previously approved Permission Reg. No. TP 24534/00 to allow music and dancing to take place in function room No. 1.*
- TP 00/24534** *Retention permission granted to retain a single storey office, demolish the existing conference room and related ancillary accommodation, the link connecting the existing buildings and a section of the two-storey bedroom block and adjoining Alexandra Road / Military road, to undertake minor alterations to the existing buildings and to construct a part single storey, part two-storey block to the North of the main four storey building accommodating two function rooms, a gym, a new link between existing buildings and ancillary accommodation and to replace the existing pitched and flat roofs over the two-storey bedroom block accommodating an additional floor of bedrooms increasing the total number of bedrooms from sixty to sixty-nine.*
- This application was appealed to **ABP (PL 28.124974)** and subsequently granted.
 - **Condition No. 3** attached to the permission states the following:

'Function Room No. 1 shall not be used for any musical / dancing activities'.
- TP 96/20173** *Permission granted for a change of use (and minor alterations) from a nursing home to a hotel at the former St. Lukes Home (now the Ambassador Hotel).*

2.3 Enforcement History

Enforcement File E-827 related to the subject antennae structures, and the Planning Authority closed the file in February 2021, as the view was taken that the structure is exempted development. No Warning letter was sent.

2.4 Land-Use Zoning and Development Objectives

2015-2021 Cork City Development Plan

The referral site is zoned 'ZO 4 Residential, Local Services and Institutional Uses' with the objective 'to protect and provide for residential uses, local services, institutional uses, and civic uses, having regard to employment policies outlined in Chapter 3'.

Paragraph 15.10 of the Plan elaborates on this zoning objective, and states,

15.10 The provision and protection of residential uses and residential amenity is a central objective of this zoning, which covers much of the land in the suburban area. However other uses, including small scale local services, institutional uses and civic uses and provision of public infrastructure and utilities are permitted, provided they do not detract from residential amenity and do not conflict with the employment use policies in Chapter 3 and related zoning objectives. Small scale 'corner shops' and other local services such as local medical services, will be open for consideration. Schools, third level education institutes, and major established health facilities are located within this zone and appropriate expansion of these facilities will be acceptable in principle. The employment policies in Chapter 3 designate particular locations for offices, office based industry, major retailing development and these uses are not generally permitted in this zone (Chapter 3: Enterprise and Employment). New local and neighbourhood centres or expansion of same are open for consideration in this zone provided they meet the criteria for such centres set out in Chapter 4.

Telecommunications

16.101 In evaluating application for telecommunications installations, Cork City Council will have regard to "Telecommunications Antennae & Support Structures Guidelines for Planning Authorities (1996)". Co-location of such facilities on the same mast or cabinets by different operators is favoured to discourage a proliferation.

9.3 National Inventory of Architectural History (NIAH)

The building is listed on the NIAH register as: Reg.20863054.

Categories of Special Interest - **Architectural, Artistic, Historical, Social**

Chapter 9 of the CCCDP 2015-2021 deals with Built Heritage and Archaeology

3. GROUNDS OF REFERRAL

3.1 Grounds of Referral

The Planning Authority contends that the subject antennae to which this referral relates **appears to be exempted development** under Article 6 and Class 31 (k) of Part 1 of Schedule 2 of the Regulations, being the carrying out by a statutory undertaker to provide a telecommunications service of development consisting of the provision of works under this Class.

Furthermore, the Planning Authority is satisfied that:

- (i) The erection of antennae structures is **development**, having regard to the definitions of 'works' in Section 2(1) and 'development' in Section 3(1) of the Act.

However, in the interests of fairness to the applicant for the declaration requested under **R648-21** and any third parties that may have an interest in this matter, and given the main hotel building's NIAH status, the Board is hereby requested to consider and determine the question set out in Section 1.3 of this referral above.

4. SCREENING FOR APPROPRIATE ASSESSMENT

Section 177U (9) of the Act requires planning authorities and the Board to screen declarations or referrals under section 5 of the Act for appropriate assessment. The provisions of the Habitats

Directive, the Appropriate Assessment Guidelines for Planning Authorities 2009 (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the referral site relative to these European sites and related watercourses and to the nature and scale of the development concerned it is considered that the development concerned would not affect the integrity of the European sites referred to above. Accordingly, it is considered that appropriate assessment is not required.

5. CONCLUSION

The Planning Authority seeks the Board's consideration and determination of this referral. Please contact this office should any further information be required.

COMMUNITY CULTURE AND PLACEMAKING CORK CITY COUNCIL

encl.

Appendix 1 Legislative Provisions

Appendix 2 Notification from Statutory Undertaker

Appendix 3 Site Location Map

Appendix 4 Photograph

Fee € 110

6. APPENDICES

A P P E N D I X 1

LEGISLATIVE PROVISIONS

PLANNING AND DEVELOPMENT ACT, 2000 (AS AMENDED)

Section 2(1),

2.—(1) "structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*;

"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.

Section 3(1),

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.

Section 2(2),

“Statutory Undertaker” means a person, for the time being, authorised by or under any enactment or instrument under an enactment to – (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport, (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking”.

Section 4(2),

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

Section 5(1),

5.—(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Section 5(4),

5.—(4) Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

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

177U.—(9) In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.

PLANNING AND DEVELOPMENT REGULATIONS, 2001 (AS AMENDED)

Part 2 – Exempted Development

Article 5(1)

5.—(1) In this Part –

“hotel” means any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons.

a structure (not being a shop, or a structure in or adjacent to and belonging to a quarry or mine) used for the carrying on of any industrial process;

Article 6 (1)

6.—(1) Subject to article 7, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1) (a) (viii)

9.—(1) Development to which article 6 relates shall not be exempted development for the

purposes of the Act—

(a) if the carrying out of such development would—

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

Article 6 and Class 31 (k) of Part 1 of Schedule 2 of the Planning Regulations:

Column 1

Description of Development

Column 2

Conditions and Limitations

CLASS 31

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

(k) antennae, including small cell antennae, attached to the following existing structures—

(i) public or commercial buildings (other than education facilities, childcare facilities or hospitals) by way of attachment to roofs, facades, chimneys, chimney pots or vent pipes;

(ii) electricity pylons;

(iii) agricultural storage buildings;

(iv) water towers.

1. The antenna shall be attached directly to the structure (other than a structure with a flat roof) and not by way of a supporting fixture.

2. In the case of a structure with a flat roof, a supporting fixture may be used provided that—

(a) the fixture does not exceed the height of any existing parapet or railing on the roof by more than 3 metres, and

(b) access to the roof is not available to any person other than a person authorised by the statutory undertaker.

3. Where an antenna is attached to the façade of a building or the exterior of a chimney or vent, the colour of the antenna shall match and blend with the colour of such façade, chimney or vent pipe.

4. Where the antenna is hidden inside a chimney pot the existing chimney pot may be replaced by a chimney pot in a suitable material which shall be the same colour, size and shape as the replaced pot, and the antenna shall not protrude beyond the top of the chimney pot.

5. The planning authority in whose functional area the structure on which the antennae will be attached is situated shall be notified by the statutory undertaker in writing of the proposed location of any such structure at least 4 weeks before

such attachment.

6. The field strength of any such antenna shall not result in the field strength of the non-ionising radiation emission from the radio installations on the site exceeding the limits specified by the Commission for Communications Regulation.

APPENDIX 2

NOTIFICATION FROM UNDERTAKER



Cork City Council,
Planning Dept.,
City Hall,
Anglesea Street,
Cork.

27th November 2020

Notification under Exempted Development provision, Class 31 (k)
Part One, Second Schedule, Planning & Development Regulations, 2001 (as amended).

As part of the exemption under Class 31(k) (i), the installation must comply with certain conditions and limitations. This installation meets these requirements as the antenna height will be kept within the required limitations.

- Limitation no.1: Not applicable.
- Limitation no. 2 (a): The antennas will be attached to a support pole no higher than 3m above the rooftop.
- Limitation no. 2 (b): Access only available to telecommunications operators.
- Limitation no. 3: Not applicable.
- Limitation no. 4: Not applicable.
- This letter is notification of the development as required under Limitation No. 5.
- The field strength of this installation will not exceed the limits specified by Communications Regulator as required by Limitation No. 6.

Construction of the installation will commence following the expiration of a 4-week period from this notice as required under Class 31(k) (5).

If you require any further information, please do not hesitate to contact me.
Yours sincerely,


Rianne Byrne
Planning & Estates

Email: Rianne.Byrne3@three.ie

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