

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

Monday, 25 April 2022
[By Hand]

Dear Sir

RE: TO ABP RELATING TO THE AMBASSADOR THEATRE, PARNELL STREET, DUBLIN 1, D01 R243: RESPONSE TO REQUEST BY AN BORD PLEANÁLA (ABP) TO MAKE A SUBMISSION IN RELATION TO DUBLIN CITY COUNCIL'S (DCC) SUBMISSION IN RESPONSE TO A SECTION 5 REFERRAL

Dublin City Council Reference: 0029/22
An Bord Pleanála Reference: 312927-22

1.0 INTRODUCTION

1.1 Response to DCC Submission regarding Section 5 Referral to ABP

Millennium Theatre Company¹ (the Applicant) has retained Tom Phillips + Associates² and Consarc Conservation³ to prepare this Response to the invitation by ABP. It relates to DCC's Submission (dated 25 March 2022; received by ABP on 31 March 2022) regarding a Section 5 Referral to ABP relating to the Ambassador Theatre, Parnell Street, Dublin 1, D01 R243.

For context, our 3 March 2022 Referral to ABP was to seek confirmation from the Board (through the issuing of a Declaration under Section 5 of the *Planning and Development Acts 2000-2022*) that the works detailed in the Referral would not materially affect the character of the structure or any element of that structure.

At the heart of the Referral is the very subject of "works".

Having previously refused to respond to our earlier Section Referral, DCC's response is such that no works can be carried out to the exterior of the Ambassador Theatre without the procurement of permission for development. The Council has refused all aspects of our Section 5 Referral.

At the outset therefore it is useful to set out the wording of each relevant element of the Act, followed by a brief synopsis.

¹ 7 Park Road, Dun Laoghaire, Co. Dublin, A96 KP71.

² 80 Harcourt Street, Dublin 2, D02 F449.

³ 23 South Great George's Street, Dublin 2, D02 AP66.



The respective wordings are set out in Appendix A, with the synopsis set out below:

At the outset, we concur with the references to the buildings' architectural importance.

Whilst all protected structures have equal status in that the former List 1 and List 2 distinctions under the *Local Government (Planning and Development) Acts 1963 - 1999* have been abandoned, we set out in some detail in our submission the building's architectural qualities and recognition, including quotes from Dr Christine Casey's seminal *The Buildings of Ireland: Dublin*.

That quality is not in dispute; rather our referral focuses on Dublin City Council's refusal to acknowledge that any element of "works" as defined by Section 2 of the *Planning and Development Act 2000* (as appended) that we propose constitute exempted development?

1. Section 2 *inter alia* defines "works"

"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.

2. Section 3 *inter alia* defines "development"

"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."

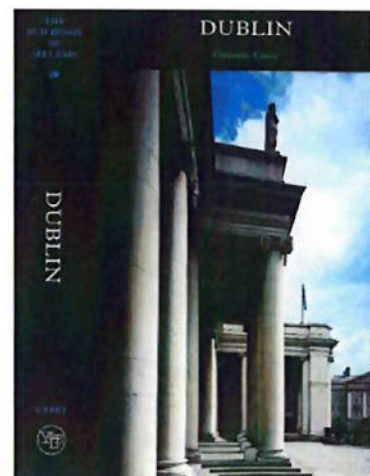
(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or





(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

(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."

3. Section 4(i)(h) states the following is exempted development:

"(h) 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;"

4. Section 5 extract:

"Declaration and referral on development and exempted development.

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.

(2) (a) Subject to F43 [paragraphs (b) and (ba)], a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under subsection (1), and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

(b) A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information..."

5. Section 57:



“Works affecting character of protected structures or proposed protected structures.

57.—(1) F403 [Notwithstanding section 4(1)(a), (h), (i), F404 [(ia)] (j), (k), or (l) and any regulations made under section 4(2),] the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.

(3) Within 12 weeks after receiving a request under subsection (2), or within such other period as may be prescribed, a planning authority shall issue a declaration under this section to the person who made the request.”

6. Section 58 outlines the “Duty of owners and occupiers to protect structures from endangerment” ...



2.0 RESPONSE TO DCC'S SUBMISSION

2.1 In our opinion, the cumulative impact of the works will be immaterial and as such is exempt under Section 4(1)(h) and Section 57 of the *Planning and Development Act* (as amended)

At the outset it is important to outline why we seek the works.

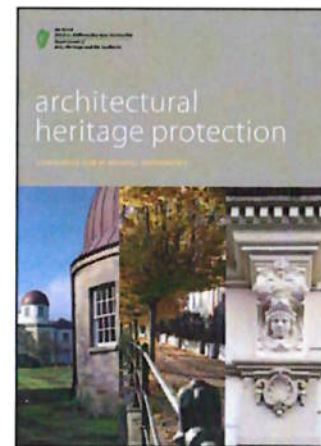
The works are sought to slow the progress of decay so that the structure is protected as required of owners and occupiers of protected structures by section 58 of the *Planning and Development Act 2000* (as amended).

The *Architectural Heritage Protection - Guidelines for Planning Authorities* emphasise the 'honesty of repairs':

"Good conservation practice encourages the honesty of repairs and alterations which may be discernible to the expert eye but not visually obtrusive."

It is always the intention to carry out as much as necessary and as little as possible.

Allowing these works to this Protected Structure will enable the Ambassador Theatre to be restored into a healthier condition and prevent the structure from deteriorating any further.



In our opinion, the works do not require planning permission because they do not materially impact on the character of the protected structure as outlined under section 4(1)(h) and section 57 of the *Planning and Development Acts* (as amended).

We have maintained this stance through 2 No. Section 5 Referrals and 1 No. Section 57 Referral (which DCC refused to accept because the Council *"advised that the Section 57 process was not appropriate for works (as works were being proposed), and that the Section 57 should be withdrawn and that you could return with a full planning application"*) and maintain that stance now with regard to this Appeal/Referral to the Board.

It is important to note that DCC in its Submission states that:

"The appeal submission is not supported by an opinion of the consultant conservation architect on the Planning Authority's declaration as issued".

However, the opinion of Una Ní Mhearain⁴ of Consarc Conservation is as follows as stated on Page 3 of our Referral to the Board:

"In the opinion of Consarc Conservation, the proposed development for the Ambassador Theatre (Protected Structure) will have no material effect to the

⁴ Una Ni Mhearain FRIAI is a Grade 1 Conservation Architect and is an award-winning architect who has over 20 years conservation experience.

She has worked on some of the most important historic buildings in Ireland including, Bank of Ireland, College Green, the former Parliament Building, City Assembly House (RIAI winner 2019) Headfort House, Cashel Palace, Ashford Castle, Adare Manor, O'Brien's Column and many medieval structures.



structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.”

That stance is maintained.

In our professional town planning opinion, the works do not materially impact on the character of the structure because the repairs are minor in nature and will be discernible only on closer inspection.

In our opinion, DCC has not addressed this point that we have made numerous times through Section 5 and 57 Referrals.

The *Architectural Heritage Protection - Guidelines for Planning Authorities* states that:

*“To promote good conservation practice in line with the recommendations of international charters, repairs to a protected building or structure should generally be carried out without attempt at disguise or artificial ageing. This does not mean that the repair should be obtrusive or that inappropriate materials should be used in order to contrast with the historic fabric **A good repair, carried out with skill, leaves an interesting record of works done.** Deliberately obscuring alterations confuses the historical record that is the building. **New repairs should not detract from the visual integrity of the structure but should be discernible on closer inspection.**”*

[Our emphasis.]

As such, we argue repairs can be necessary for the protection of structures and repairs when implemented *“should not detract from the visual integrity of the structure but should be discernible on closer inspection”*.

In our professional town planning opinion, the repairs would not detract from the visual integrity of the structure and are discernible only on closer inspection i.e. will have no material impact to the structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest (the opinion of Consarc Conservation).

Furthermore, DCC states that the proposal is for *“wholesale works”* and implies that the works are not *“modest works of maintenance and repair”*; in our opinion, the works are ‘wholesale’ in that they are far reaching, but at the same time are modest works of maintenance and repair. Having regard to the requirements of Section 4(1)(h) they 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.

DCC has not provided any substantial reasoning for why the works cumulatively will materially impact the structure, but rather simply conclude that the works are wholesale and *ipso facto* will materially impact on the character of the structure.

DCC opine that *“when viewed in combination, [the works] are considered to be substantial in scope and nature”* – we question how?

If the works are declared exempt, the Ambassador Theatre will be repaired so to retain, restore and enhance the integrity and significance of the building within its wider context.



Any works to the site should be carried out in accordance with best conservation practice, as defined by the International Council on Monuments and Sites (ICOMOS) in the *Venice Charter* of 1964 and subsequent charters.

2.2 Specific works do not have the potential to materially affect the character of the structure

To reiterate, the opinion of Consarc Conservation is that the proposed works do not constitute a material alteration and will not adversely affect the character of the structure.

Consarc provided a response to the issues raised by DCC, in both Section 5 Referrals to DCC and ABP, respectively.

1. Cracking to the Granite Soffit

Consarc Conservation's response was, and is, as follows:

- The exact cause of cracking is unknown. It may be caused by rusting iron fixings, which have expanded and caused cracking. Further investigation is required.
- The client shall engage the services of a conservation structural engineer. He or she can investigate and make an assessment on what if any work is required. If specific opening up work or invasive work is required, then approval will be sought from Dublin City Council.
- An engineer will normally recommend tell-tales to be fixed to establish if the cracking is continuing or historic? A further assessment can be made after a period of time to see if further intervention is required. If not, the cracks will be filled and the area repaired.

In our professional town planning opinion, the existence of cracks, the cause of which is unknown, is not a reason for why the works should not be exempt under Section 4(1)(h) and Section 57.

The reason for the works is to avoid the damaging consequence of allowing the Protected Structure to fall further into disrepair, ultimately materially affecting its character.

2. Coade Stone

Consarc Conservation's response was, and is, as follows:

- Details and methodologies of repair will be sought from a Coade Stone manufacturer, Stoneware Restoration Ltd or equal and approved.

DCC has raised concerns that we have not demonstrated that a specialist with proven experience has been involved. Consarc Conservation are an RIAI Accredited Grade 1 Conservation Architect and have outlined that details and methodologies of repair will be sought from a Coade Stone manufacturer, Stoneware Restoration Ltd or equal and approved.



To reiterate, the reason for the works is to avoid the damaging consequence of allowing the Protected Structure to fall further into disrepair, ultimately materially affecting its character.

3. Cleaning

Consarc Conservation's response was, and is, as follows:

- Low pressure steam cleaning, for example DOFF, has proved to be a safe and effective way to clean historic facades.
- It is important not to over-clean the building and to try to make it look as new. The approach is to clean harmful dirt and vegetation from the façade and lift the appearance without changing it significantly.

Consarc Conservation, an RIAI Accredited Grade 1 Conservation Architect, has stated that the cleaning system proposed to be used has proved to be a safe and effective way to clean historic facades.

To reiterate, the reason for the works is to avoid the damaging consequence of allowing the Protected Structure to fall further into disrepair, ultimately materially affecting its character.

4. Render

Consarc Conservation's response was, and is, as follows:

- Samples of all repairs to mortar shall be approved before any work commences. It often takes several samples before the exact right mix is found.
- The rear elevation has a patchwork of finishes and repairs and in this case a shelter coat is proposed to unify the elevation. This does not harm the substrate and is sacrificial.

Consarc Conservation, an RIAI Accredited Grade 1 Conservation Architect, and is of the opinion that the works will not materially affect the character of the structure.

To reiterate, the reason for the works is to avoid the damaging consequence of allowing the Protected Structure to fall further into disrepair, ultimately materially affecting its character.

2.3 **DCC's refusal to accept a satisfactory and complete Section 57 Referral on 4 October 2021**

With respect, we do not concur with DCC's Rationale to fail to consider our Section 57 Referral, dated 4 October 2021.



DCC asserts that:

“Furthermore, the appellant submits that a written request to the Planning Authority under Section 57 of the Act was submitted on 4th October 2021 for the subject building; the Ambassador Theatre. However, that Section 57 Declaration [sic; meant to read ‘Section 57 Referral’] was not submitted with the City Councils Section 57 Application Form; a matter that was brought to the consultant’s attention.”

We appreciate that An Bord Pleanála’s focus will be on the Section 5 Referral and the external works to the Ambassador Theatre.

However, for the record, DCC has made several statements that in our professional town planning opinion, are factually incorrect.

We lodged a Section 57 Referral to DCC on 4 October 2021 for the same works as are the subject of this Section 5 Referral with the correct Application Form attached.

Following this, Ms Niamh Kiernan, (Acting) Senior Executive Architectural Conservation Officer for DCC, contacted us (Tom Phillips + Associates) by phone sometime after lodgement (from our recollection within one week) asserting that we have misunderstood the scope of works that Planning Authorities can advise on for being deemed exempted development under Section 57 of the Act, and that the Council cannot accept the Section 57 Referral, and that we should submit a Section 5 Referral instead.

We disagreed with her assertion that the Section 57 Referral was unacceptable as it was not declared invalid (i.e. we did not receive a notice letter of invalidation) and as such we fully expected that the Section 57 would be registered – as is legally required – and decided within the 12-week timeline (by our calculations 3 January 2022) by DCC, as required Section 57 of the *Planning and Development Acts* (as amended).

On January 18 2022, we enquired to DCC when we should be expecting a decision on the Section 57 Referral?

We were informed by Ms Kiernan that DCC did not register the Referral and as such no Decision was, nor can be, made.

We still don’t know why the Section 57 Referral was not registered, nor a decision made, as we did not withdraw the Referral nor have it invalidated.

DCC claims that Section 57 Referrals are only for declaring ‘types’ of works exempt, and not ‘specific’ works exempt. We disagree with this claim and assert that ‘types’ of works does not restrict the Council from declaring specific works exempt and at the same time does not limit the Council from only declaring vague types of works exempt.

We draw attention to the *Architectural Heritage Protection - Guidelines for Planning Authorities*, which states in relation to Declarations that:

*“The senior planner for the area and the conservation officer, where available, should agree the **type of works** that would or would not be considered exempted development in respect of the particular protected structure. **Care should be taken to***







ensure that the advice given is unambiguous. It should be set out in a format that is clear to read and easy to understand for people unfamiliar with specialist terminology.”

[Our emphasis.]

As such, we argue that ‘types of works’ include for specific (unambiguous) works.

(In response to the failure to register our Section 57 Referral, we lodged a Section 5 Referral instead.)

DCC is now claiming that no Application Form was submitted with the Section 57 Referral; however, in our opinion, this is incorrect as we have evidence on our internal system that one was prepared (dated 4 October) and as such highly unlikely not to have been submitted with the Referral.

Name	Date modified	Type	Size
 Section_5_Exempted_Development_Appli...	26/01/2022 12:04	Microsoft Word D...	115 KB
 Section_5_Exempted_Development_Appli...	26/01/2022 11:27	Adobe Acrobat D...	98 KB
 section-57-application-form	04/10/2021 16:07	Microsoft Word 9...	2,262 KB
 section-57-application-form	04/10/2021 14:36	Adobe Acrobat D...	38 KB

This issue of an Application Form not being submitted was only raised by DCC on Tuesday, 15 March 2022 (after the date when we appealed the Section 5 Referral to ABP (3 March) and the date when DCC received notification from ABP that we had appealed its Decision (10 March 2022)), when Ms Kiernan emailed Tom Phillips + Associates the following:

“

I draw attention to a recent Section 57 referral for the Ambassador Cinema.
This referral needs to be covered with a Section 57 Application form which is downloadable at the following link:
<https://www.dublincity.ie/residential/planning/archaeology-conservation-heritage/conservation-built-environment/section-57-declaration>
Can you please complete the form and send back to me by email.

Best regards,
Niamh Kiernan

”

(Please see this email correspondence/thread appended to this Response (Appendix B).)

(Please see Appendix C for an unsigned version of our October 2022 Application Form.)

No ‘recent’ Section 57 referral had been lodged by us around the time when we were emailed on 15 March 2022. We only submitted a section 57 Referral on 4 October 2021.



Ms Kiernan confirmed that it was a misunderstanding and that there was no issue regarding any Application Form. As such, we are confused why DCC raised this as an issue in its Submission to the Board?

To conclude:

1. We lodged a Section 57 Referral with the correct Application Form on 4 October 2021;
2. DCC refused to accept it roughly within a week of lodgement (however, we did not withdraw it (or have it invalidated));
3. DCC did not register that the Council had received the Referral nor decide the Referral within the statutory 12-week timeline;
4. In response, we lodged a Section 5 Referral on 26 January 2022, which was refused by DCC on 22 February 2022, and which we referred/appealed to ABP on 3 March 2022;
5. DCC emailed us on 15 March 2022 asserting that we did not include an Application Form with a "*recent Section 57 referral*", which was confirmed on XXX to be a misunderstanding by DCC;
6. DCC made a Submission on 31 March on the Section 5 Reference outlining *inter alia* that we never submitted an Application Form with our Section 57 Referral lodged on 4 October 2021.



3.0 CONCLUSION

We trust that this Submission addresses (and corrects, where appropriate) the statements by Dublin City Council.

In conclusion, DCC's response is to the effect that no external maintenance works can be undertaken to the Ambassador Theatre, as exempted development.

In refusing to undertake an assessment of the legally-made and complete Section 57 Reference, DCC has not outlined what, if any, works can be undertaken.

In conclusion, having regard to the foregoing we seek the following (or variation thereof):

***"WHEREAS** a question has arisen as to whether works to the exterior of the Ambassador Theatre is or is not exempted development.*

***AND WHEREAS** Millennium Theatre Company requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 22 February 2022.*

***AND WHEREAS** the said question was referred to An Bord Pleanála by Millennium Theatre Company on the 3 March 2022.*

***AND WHEREAS** An Bord Pleanála, in considering this referral, had regard particularly to:*

- (a) *Sections 2, 3 4(1)(h) and 57 (1) of the Planning and Development Act, 2000, as amended,*
- (b) *Articles 6 (2) and 9 of the Planning and Development Regulations, 2001, as amended,*
- (c) *Part 2 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,*
- (d) *Relevant case law, and*
- (e) *The planning history of the site and the documentation submitted with the referral.*

***AND WHEREAS** An Bord Pleanála has concluded that –*

- (a) *The proposed works outlined to the exterior of the Ambassador Theatre would comprise development which would come within the meaning of Section 4(1)(h), Section 5 (and Section 57) of the Planning and Development Act 2000 (as amended) and would not materially affect the character of the Protected Structure and therefore would not require planning permission.*



NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act (as amended), hereby decides that:

- (a) *The works proposed to the exterior of the Ambassador Theatre constitutes development that is exempted development."*

In conclusion, we thank the Board for the opportunity for making a detailed response to Dublin City Council's Submission.

Contrary to the *Architectural Heritage Guidelines*, DCC did not seek Further Information from the Applicant and we suggest that the Board may give consideration to holding an Orla Hearing as provided for in Section 134 of the *Planning and Development Act 2000* (as amended).

Yours faithfully

Tom Phillips
Managing Director
Tom Phillips + Associates

Encl.



APPENDIX A – SYNOPSIS OF SECTION 5 AND SECTION 57

Section 5

Declaration and referral on development and exempted development:

“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.

(2) (a) Subject to F43 [paragraphs (b) and (ba)], a planning authority shall issue the declaration on the question that has arisen and the main reasons and considerations on which its decision is based to the person who made the request under subsection (1), and, where appropriate, the owner and occupier of the land in question, within 4 weeks of the receipt of the request.

(b) A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question and, where further information is received under this paragraph, the planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information.

F44 [(ba)(i) Subject to subparagraph (ii) , a planning authority shall not be required to comply with paragraph (a) within the period referred to in that paragraph where it appears to the planning authority that it would not be possible or appropriate, because of the exceptional circumstances of the development or proposed development (including in relation to the nature, complexity, location or size of such development) identified in the request under subsection (1) to do so.

(ii) Where subparagraph (i) applies, the planning authority shall, by notice in writing served on —

(I) the person who made the request under subsection (1) , and

(II) each person to whom a request has been made under paragraph (c) ,

before the expiration of the period referred to in paragraph (a) , inform him or her of the reasons why it would not be possible or appropriate to comply with that paragraph within that period and shall specify the date before which the authority intends that the declaration concerned shall be made.]



(c) A planning authority may also request persons in addition to those referred to in paragraph (b) to submit information in order to enable the authority to issue the declaration on the question.

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

(b) Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2).

(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.

(5) The details of any declaration issued by a planning authority or of a decision by the Board on a referral under this section shall be entered in the register.

(6) (a) The Board shall keep a record of any decision made by it on a referral under this section and the main reasons and considerations on which its decision is based and shall make it available for purchase and inspection.

(b) The Board may charge a specified fee, not exceeding the cost of making the copy, for the purchase of a copy of the record referred to in paragraph (a).

(c) The Board shall, from time to time and at least once a year, forward to each planning authority a copy of the record referred to in paragraph (a).

(d) A copy of the said record shall, at the request of a member of a planning authority, be given to that member by the F45 [chief executive] of the planning authority concerned.

(7) A planning authority, before making a declaration under this section, shall consider the record forwarded to it in accordance with subsection (6)(c).

F46 [(7A) A planning authority or the Board, as the case may be, shall, in respect of a development or proposed development specified in Part 2 of Schedule 5 to the Planning and Development Regulations 2001, specify in its declaration or decision, as the case may be, whether the development or proposed development identified in the request



under subsection (1) or in the referral under subsection (3) or (4), as the case may be, would be likely to have significant effects on the environment by virtue, at the least, of the nature, size or location of such development and require an environmental impact assessment.

(7B)(a) Where the planning authority issues its declaration on a request under subsection (1) or the Board makes its decision on a referral under subsection (3) or (4), as the case may be, the following documents shall, within 3 working days, be placed on the planning authority ' s or Board ' s, as the case may be, website for inspection and be made available for inspection and purchase by members of the public during office hours at the offices of the authority or Board, as the case may be, for at least the minimum period referred to in paragraph (b):

(i) a copy of the question arising as to what is or is not development or is or is not exempted development within the meaning of this Act and any information, particulars, evidence, written study or further information received or obtained from any of the following:

(I) the person making the request or referral, as the case may be;

(II) the owner or occupier of the land in question;

(III) any other person;

(ii) a copy of any submissions or observations in relation to the question arising as to what is or is not development or is or is not exempted development within the meaning of this Act;

(iii) a copy of any report prepared by or for the authority or the Board, as the case may be, in relation to the request or referral;

(iv) a copy of the declaration of the authority or the decision of the Board, as the case may be, in respect of the question identified in the request under subsection (1) or in the referral under subsection (3) or (4), as the case may be.

(b) The minimum period for the purposes of paragraph (a) is 8 weeks from the date of the issue of the declaration by the planning authority or the date of the decision of the Board, as the case may be.

(7C) For the purposes of subsection (7A), the Minister may, by regulations, provide for additional, consequential or supplementary matters as regards procedures in respect of a



request under subsection (1) or a referral under subsection (3) or (4), as the case may be, in relation to —

(a) the submission of information to the planning authority or the Board for those purposes,

(b) time limits within which such information shall be so submitted,

(c) notifications to persons concerned with the declaration or decision, as the case may be, referred to in that subsection,

(d) steps to be taken (including matters which must be regarded) in the course of the making of such declaration or decision, or

(e) the publication of such declaration or decision.]

F47 [(8)(a) The Minister for Arts, Heritage and the Gaeltacht may apply to the Board under this subsection, without charge, for a determination as to whether an activity requiring the consent of that Minister —

*(i) F48 [pursuant to a notification under Regulation 4(2) of the European Communities (Natural Habitats) Regulations 1997 (S.I. No. 94 of 1997) or pursuant to a direction under Regulation 28(1) or 29(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011)] or under regulations made under the **European Communities Act 1972** for the purpose of giving further effect to the Birds Directive or the Habitats Directive by designating a site as a special area of conservation or as a special protection area, or*

*(ii) under **section 19 of the Wildlife (Amendment) Act 2000,***

comprises development which is not exempted development, and the Board shall make such determination as soon as may be and shall inform that Minister of its determination and the reasons for the determination.

(b) An application from the Minister for Arts, Heritage and the Gaeltacht under this subsection shall include the following:

(i) a copy of the application for consent;

(ii) any other relevant information submitted with the application for consent;

(iii) the reasons why that Minister considers that the activity may not be exempted development;



(iv) the opinion of that Minister as to whether an appropriate assessment is required, and the reasons for that opinion;

*(v) the opinion of that Minister as to whether the development is likely to have significant effects on a European site or an area designated as a Natural Heritage Area under **section 18 of the Wildlife (Amendment) Act 2000**, and the reasons for that opinion, having regard to the purposes for which the site was designated.*

(c) The Board may seek additional information from —

(i) the applicant for consent, or

(ii) the Minister for Arts, Heritage and the Gaeltacht,

and where this is not provided within the period specified, or any further period as may be specified by the Board, the Board shall not make a determination on the matter and the application of that Minister under this subsection shall be deemed to be withdrawn and the Board shall inform that Minister accordingly.

(d) In paragraph (a)(i) “special area of conservation” and “special protection area” have the same meaning as they have in section 177R .]”

Section 57

Works affecting character of protected structures or proposed protected structures:

“57.—(1) F403 [Notwithstanding section 4(1)(a) , (h) , (i) , F404 [(ia)] (j) , (k) , or (l) and any regulations made under section 4(2) ,] the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.



(3) Within 12 weeks after receiving a request under *subsection (2)*, or within such other period as may be prescribed, a planning authority shall issue a declaration under this section to the person who made the request.

(4) Before issuing a declaration under this section, a planning authority F405 [or the Board] shall have regard to—

(a) any guidelines issued under *section 52*, and

(b) any recommendations made to the authority under *section 53*.

(5) If the declaration relates to a protected structure that is regularly used as a place of public worship, the planning authority F405 [or the Board]

(a) in addition to having regard to the guidelines and recommendations referred to in *subsection (4)*, shall respect liturgical requirements, and

(b) for the purpose of ascertaining those requirements shall—

(i) comply with any guidelines concerning consultation which may be issued by the Minister for Arts, Heritage, Gaeltacht and the Islands, or

(ii) if no such guidelines are issued, consult with such person or body as the planning authority F405 [or the Board] considers appropriate.

(6) When considering an application for permission for the development of land under *section 34* which—

(a) relates to the interior of a protected structure, and

(b) is regularly used as a place of public worship,

the planning authority, and the Board on appeal, shall, in addition to any other requirements of the Act, respect liturgical requirements.

(7) A planning authority may at any time review a declaration issued under this section but the review shall not affect any works carried out in reliance on the declaration prior to the review.

F406 [(8) Any person to whom a declaration under *subsection (3)*, or a declaration reviewed under *subsection (7)* has been issued, may, on payment to the Board of such fee as may be prescribed, refer the declaration for review by the Board within 4 weeks



from the date of the issuing of the declaration, or the declaration as reviewed, as the case may be.

(9) A planning authority shall cause —

(a) the details of any declaration issued by that authority, or of a decision by the Board on a referral, to be entered on the register kept by the authority under *section 7* , and

(b) a copy of the declaration or decision, as appropriate, to be made available for inspection by members of the public, during office hours, at the office of the authority, following the issue of the declaration or decision.]

(10) (a) For the avoidance of doubt, it is hereby declared that a planning authority or the Board on appeal—

(i) in considering any application for permission in relation to a protected structure, shall have regard to the protected status of the structure, or

(ii) in considering any application for permission in relation to a proposed protected structure, shall have regard to the fact that it is proposed to add the structure to a record of protected structures.

(b) A planning authority, or the Board on appeal, shall not grant permission for the demolition of a protected structure or proposed protected structure, save in exceptional circumstances.

Development:

“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.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(a) where any structure or other land or any tree or other object on land becomes used for the exhibition of advertisements, or

(b) where land becomes used for any of the following purposes—



(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

(ii) the storage of caravans or tents, or

(iii) the deposit of vehicles whether or not usable for the purpose for which they were constructed or last used, old metal, mining or industrial waste, builders' waste, rubbish or debris,

the use of the land shall be taken as having materially changed.

(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."



APPENDIX B – EMAIL FROM MS NIAMH KIERNAN DCC TO TPA, DATED 15/16 MARCH 2022

From: Niamh Kiernan <niamh.kiernan@dublincity.ie>
Sent: Tuesday 15 March 2022 15:13
To: Hugh Kelly <hugh@tpa.ie>
Cc: Tom Phillips & Associates <info@tpa.ie>
Subject: Section 57 Referral for the Ambassador Cinema

Dear Hugh,

I draw attention to a recent Section 57 referral for the Ambassador Cinema. This referral needs to be covered with a Section 57 Application form which is downloadable at the following link: <https://www.dublincity.ie/residential/planning/archaeology-conservation-heritage/conservation-built-environment/section-57-declaration>. Can you please complete the form and send back to me by email.

Best regards,
Niamh Kiernan

Niamh Kiernan | T:222 6563 M. 087 738 2654
BArch, MSc, MRIA, RIAI Grade 1 Conservation Architect
Senior Executive Architectural Conservation Officer (Acting)
Oifigeach Feidhmíocháin Sínearach um Caomhantais Ailtreacha (Gníomhach)

Seandálaíocht, Caomhantais & Oidhreacht | Roinn Pleanála & Forbairt Maoinne |
Oifigí na Cathrach | An Ché Adhmaid | Baile Átha Cliath 8.

Archaeology, Conservation & Heritage | Planning & Property Development Department |
Block 3, Floor 3 | Civic Offices | Wood Quay | Dublin 8



From: Hugh Kelly <hugh@tpa.ie>
Sent: 16 March 2022 12:02
To: Niamh Kiernan <niamh.kiernan@dublincity.ie>
Cc: Tom Phillips & Associates <info@tpa.ie>
Subject: RE: Section 57 Referral for the Ambassador Cinema

Hi Niamh,

What Section 57 referral is this? We have lodged one in recent weeks so a bit confused about this request?

Regards,

Hugh Kelly
Planner

Tel: 087 669 4946

Tom Phillips + Associates
Town Planning Consultants

From: Niamh Kiernan <niamh.kiernan@dublincity.ie>
Sent: Wednesday 16 March 2022 12:44
To: Hugh Kelly <hugh@tpa.ie>
Cc: Tom Phillips & Associates <info@tpa.ie>
Subject: RE: Section 57 Referral for the Ambassador Cinema

Dear Hugh,

The application for the Section 57 referral that I received did not have an application form. I only received an A3 package of information. In order to process the Section 57 referral, can you please complete the application form (that you can find in the link attached to the email yesterday) so that I can set up a reference number and process the Section 57.

Best Regards,
Niamh



From: Hugh Kelly <hugh@tpa.ie>
Sent: 16 March 2022 14:24
To: Niamh Kiernan <niamh.kiernan@dublincity.ie>
Cc: Tom Phillips & Associates <info@tpa.ie>
Subject: RE: Section 57 Referral for the Ambassador Cinema

Niamh,

Is this from the October Section 57?

Regards,

Hugh Kelly
Planner

Tel: 087 669 4946

Tom Phillips + Associates
Town Planning Consultants

From: Niamh Kiernan <niamh.kiernan@dublincity.ie>
Sent: Wednesday 16 March 2022 14:58
To: Hugh Kelly <hugh@tpa.ie>
Cc: Tom Phillips & Associates <info@tpa.ie>
Subject: RE: Section 57 Referral for the Ambassador Cinema

Hugh,

This is for a Section 57 application that we received by post a week or so ago. I am afraid I was not given a cover letter, just an A3 booklet.
Is this the same documentation that was submitted in October 2021?

We have had numerous discussions about the October Section 57 application from October 2021 to January 2022, when I advised that the Section 57 process was not appropriate for works (as works were being proposed), and that the Section 57 should be withdrawn and that you could return with a full planning application. You confirmed to me that this would be withdrawn and that you would be submitting a Section 5 application, to which I responded that the same application had already been determined as requiring planning permission (DCC Reg. Ref.0186/19). I since understand that the second Section 5 application has also been refused. (DCC Reg. Ref.0029/22) You told me, when you agreed to withdraw the October 2021 Section 57 application that your client did not want to proceed with a planning application, and I responded that as the works are relatively modest and have been scheduled by a Grade 1 Conservation Architect, and would be considered to be a positive for the building and the local area and that planning was the most appropriate and straightforward route to take.

If you wish to proceed with a Section 57, please complete the application form, but please note that what you will receive with a Section 57 will be very minor and will most likely not cover the works that formed part of the previously refused Section 5 submissions.

Best Regards,
Niamh

From: Hugh Kelly <hugh@tpa.ie>
Sent: 16 March 2022 15:03
To: Niamh Kiernan <niamh.kiernan@dublincity.ie>
Cc: Tom Phillips & Associates <info@tpa.ie>
Subject: RE: Section 57 Referral for the Ambassador Cinema

Niamh,

Understood, but we didn't submit a section 57 a week or so ago to my knowledge, so I am just confused?

Regards,

Hugh Kelly
Planner

Tel: 087 669 4946

Tom Phillips + Associates
Town Planning Consultants

Thank you Hugh.

Now I understand. Thank you for clarifying. I am afraid then, I do not know why we received this A3 package of information.
Could you please check with your director, Tom Phillips, to find out if he sent it through and why, seeing as it had already been agreed to withdraw the October 2021 S57 submission.

Best regards,
Niamh



**APPENDIX C – SUBMITTED APPLICATION FORM WITH THE SECTION 57 REFERRAL OCTOBER 2021
(UNSIGNED VERSION)**

PLANNING AND DEVELOPMENT ACT, 2000



Dublin City Council
Comhairle Cathrach Bhaile Átha Cliath

SECTION 57 APPLICATION FORM

The above Act provides that any works which would affect the character of the protected structure, or a proposed protected structure will require planning permission, even where those works would normally be exempted under Section 4(1)(h) of the 2000 Act.

As an owner or occupier of a protected structure you are entitled under the above Act to request the City Council to issue a declaration as to the type of works which may or may not be permitted in the structure. In order to issue this declaration, you should supply the following information:

Address of Protected Structure

The Ambassador Theatre, Parnell Street, Dublin 1, D01 R243

Name of Applicant

Millennium Theatre Company

Address for Correspondence *(if different from above)*

Tom Phillips + Associates, 80 Harcourt Street, Dublin 2, D02 F449

Is the structure owner occupied/rented? *(If rented, state name and address of the owner)*

Rotunda Hospital, Parnell Street, Dublin 1, D01 P5W9

Are you aware of any enforcement proceedings or previous planning application/s connected to this site? *(If so, please supply detail):*

Planning Application: 3092/98: Change of use and ancillary works to the basement level, from wine cellars to changing rooms, toilets, cloakroom, bar, storage and kitchens. (Permission granted.)

Section 5 Ref: 0180/12: Levelling of the balcony at first floor level and the installation of a freestanding lift to provide disabled access to first floor level. (Exemption granted.)

Section 5 Ref: 0186/19: (Internal works granted exemption, external not. See case for full details of works.)

Section 5 Ref: 0494/19: (Works declared not exempt. Same works as the subject Application.)

E1275/01: New roller shutter to front entrance use of roller to side for storage of kegs. (Not expedient to take action.)

E0776/10: Alleged evidence of water ingress. (Resolved.)

E0814/12: Work to Protected Structure. (Exempted Development.)

E0118/18: Unauthorised signage and dinosaur structure on roof. (Duplicate file. This file has been merged with file E0223/19.)

E0223/19: Unauthorised cleaning of front facade & possible unauthorised works.

We wish to apply for a declaration from Dublin City Council as to the type of works which would need permission in above named protected structure.

Signed _____ Date 1/10/2021

Daytime contact number (01) 478 6055

NOTES

Application shall be accompanied by 1 copy of site location map to the scale of 1:1000 clearly identifying the structure and boundaries to which the application refers (subject structure to be outlined in red, overall land holding to be outlined in blue).

It should be noted that the section 57 requires a detailed survey of the internal and external features of the structure.

Please return completed application forms to: Conservation Section, Planning and Economic Development Department, Dublin City Council, Block 3, Floor 3, Civic Offices, Wood Quay, Dublin 8. Tel: 01-2223927/2225093 Fax: 01-2222271 Email: conservation@dublincity.ie