

David Bohan

From: Simon Bradshaw <simon.bradshaw@rmla.ie>
Sent: Friday 23 May 2025 17:02
To: Appeals2
Subject: Response to ABP Correspondence - Ref. No. ABP-322371-25
Attachments: 250523_Dassault Systèmes Response to ABP Correspondence - 322371-25.pdf

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To whom it may concern,

On behalf of our Client Dassault Systèmes, The Cube Building, Monahan Road, Ballintemple, Cork, please see attached a submission in response to correspondence from An Bord Pleanála in relation to Ref. No. ABP-322371-25. This correspondence invited a submission/observation from our Client in relation to the subject Section 5.

This submission has been prepared by RMLA, Unit 3B, Santry Avenue Industrial Estate, Santry Avenue, Santry, Dublin 9, D09 PH04, who are acting on behalf of Dassault Systèmes.

This submission is made within the stated period on the An Bord Pleanála correspondence i.e. on or before the 26th May 2025 and as noted on the An Bord Pleanála correspondence, there is no fee required in this case.

We would request that an email response is provided at your earliest convenience, confirming that this submission has been received. We are aware that a letter will be issued via the post, however, we would be grateful if an email response could also be provided to confirm receipt of the submission as well as confirmation that An Bord Pleanála can access the attachment.

Should you have any queries, please do not hesitate to contact us.

Kind regards,

Simon Bradshaw
Associate

RMLA.
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RMLA.

Planning Consultants

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23rd May 2025

Dear Sir / Madam,

Re: Submission to the Board in relation to an invitation to make a submission on a Section 5 Referral

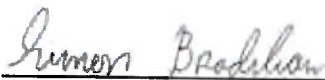
An Bord Pleanála Ref. ABP-322371-25

Cork City Council Reference: R91825

Following correspondence from An Bord Pleanála dated 28th April 2025 requesting submissions/ observations in relation to the Section 5 Referral Request on The Cube Building, Monahan Road, Ballintemple, Cork (see Appendix I of the attached Report), please find attached a Planning Report prepared on behalf of our Client, Dassault Systèmes (referred to as Dassault Systems Limited in the ABP correspondence), The Cube Building, Monahan Road, Ballintemple, Cork. This Report has been prepared to assist the Board with determining this Section 5 case on foot of the referral of the Section 5 case from Cork City Council and seeks to ensure that the Board has the relevant information required to inform the Boards decision on the Section 5 Referral.

This Response is being submitted within the stated period set out in the abovementioned Board correspondence, i.e. on or before 26th May 2025. In addition to issuing all correspondence to our Client, Dassault Systèmes, going forward we would request that a copy of all correspondence in relation to his case also be issued to RMLA at the above address.

Yours sincerely,



Simon Bradshaw

Associate RMLA



RMLA Limited, trading as RMLA is registered in the Republic of Ireland number 720031.
Registered Address: Unit 3B, Santry Avenue Industrial Estate, Santry Avenue, Santry, Dublin 9, D09 PH04
Directors of the Company: Robert McLoughlin, Caoimhe Ní Raghallaigh and Muirenn Duffy

RMLA.

Planning Consultants

Submission to the Board in relation to Board Ref. ABP-322371-25:

‘Whether the temporary change of use of the basement, ground, first, second and third floors of the cube building from office to residential accommodation for International Protection Applicants as per the provisions of class 20f of Part 1 of schedule 2 of the Planning and Development Regulations 2001 (as amended) is development and, if so, is it exempted development.’

The Cube Building, Monahan Road, Ballintemple, Cork

Planning Report

Board Ref. ABP-322371-25

Prepared by RMLA Limited

On behalf of Dassault Systèmes

May 2025

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Appendices:

- Correspondence from An Bord Pleanála
- Planning History

Prepared By: Simon Bradshaw

Contact No.: 086 201 8264

Status: Final

1. Introduction

1. This Report has been prepared by RMLA Limited on behalf of Dassault Systèmes following correspondence from An Bord Pleanála (hereafter 'ABP') dated 28th April 2025 requesting submissions/observations in relation to the Section 5 Referral request on The Cube Building, Monahan Road, Ballintemple, Cork (Board Ref. 322371-25), see Appendix I.

2. Our Client was aware that a Section 5 request related to this matter was made to Cork City Council (R918/25) and as our Client is an occupant of the subject building, they have an interest relating to the Section 5 question that has been submitted. Our Client welcomes the invitation from ABP to make a submission on this Section 5 Referral, particularly given the potential impact on our Client should the proposed development proceed. This is particularly relevant as the Section 5 Referral outlines the current use of the premises is for Business and Technology purposes and our Client had entered into a tenancy agreement for this premises on this basis. The use of the building is clearly defined in the previous planning permissions (Reg. Ref. No. 06/30815), and this will be addressed as part of this Report. In this regard, the invitation to make a submission on the subject Section 5 Referral is welcome given the potential impact on the private property rights of the current occupants as well as any future occupants of the building, no matter what the use of the building is.

3. Whilst our Client welcomes the invitation to make a submission to ABP, it is not however clear that we have received a complete copy of the application documents relating to this Section 5 Referral. In particular, our Client does not appear to have received a copy of the updated application form submitted under cover of letter from McCutcheon Halley dated 3rd April 2025. In the interests of fair procedures, and to afford our Client the opportunity to provide a complete submission, we ask the Board to provide us with any additional application documentation that has not yet been furnished to our Client and give our Client the opportunity to update this submission on foot of such additional documentation, if necessary. A full copy of the documentation received by our Client is included in Appendix I of this Report.

4. The concerns of our Client in relation to this Section 5 Referral, including the matters raised as part of the documents issued from ABP (dated 28th April 2025), will be addressed in turn below. Our Client is committed to its Cork operations, and the planning status and the occupancy of the building is important to the future of the company.
5. Our Client has practical concerns relating to the operation of the building, assuming the proposed development was to proceed. This would namely relate to how the common areas would operate, how could business proceed on a day-to-day basis as well as concerns as to whether health and safety regulations, etc. can be met, should the proposed development take place. Whilst some of these matters may not be relevant planning considerations, it is important that they are highlighted in the context of this Section 5 Referral. This is particularly relevant as there have been landslides to the rear of the property and damage has occurred to the building recently. This will be addressed in further detail below.
6. In this regard, while the Section 5 Referral relates to part of the building as outlined in the original question, we would request that ABP be cognisant of the operation of the entire building when considering if the proposed development is consistent with the exempted development provisions of the relevant Planning Legislation.

2. Site Context

7. The subject site is located in the well-established industrial area in Cork City. This includes uses such as Goulding Soil Nutrition Limited (a Seveso site), Cirus Factory, Freefoam Building Products and Rehab Recycle. These uses demonstrate the long-term industrial nature of the area, while newer developments such as the 'The Cube' Building are being developed, as Cork City Council look to transform this area into a residential and commercial area.

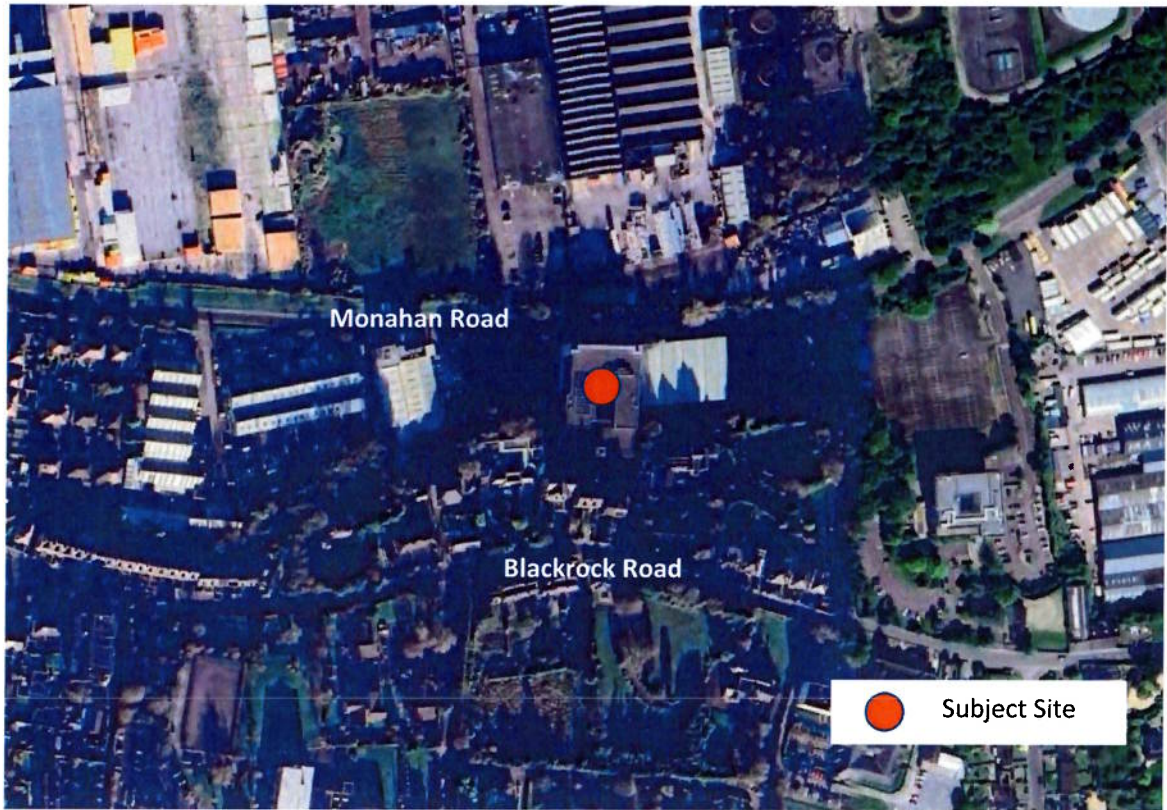


Figure 1: Site Location (Source: Google Maps)

8. Given that the area is primarily made up of industrial uses there is limited public parking in the vicinity of the subject site. The road to the front of the site is a typical two way road that includes a cycle path on the southside of the road, in front of The Cube Building. This is important in the context of the proposed development, subject to this Section 5 Referral, and is indicated in the picture below.



Figure 2: Site Location (Source: Google Maps)

9. It should also be noted that whilst the site fronts onto Monahan Road and appears level, the ground level at the front of the site along Monahan Road is approximately 13m lower than the ground levels at Blackrock Road to the rear of the site. Our Client has noted this as a relevant point, as there have been works recently undertaken due to landslides at the rear of the site which is associated with the significant level change between Monahan Road and Blackrock Road.

3. Planning History

3.1 Introduction

10. A full planning history for the site has been provided as part of Appendix II of this document. Below we will address the most relevant planning permission for the subject site and the relevance of this permission will be addressed in further detail below.

3.2 Reg. Ref. No. 06/30815

11. The Cube Building on Monahan Road was granted planning permission under Reg. Ref. No 06/30815 for a Business and Technology use, as outlined in the relevant Cork City Development Plan. Planning was granted after further information was submitted twice by the Applicant and the grant of permission was subject to a technical advice being provided by the Health and Safety Authority in connection with a Seveso site.
12. Of note is condition no. 5 which restricts the use of the building to a Business and Technology use as outlined in the Cork City Development Plan 2004. The relevance of this will be discussed later in this Report.
13. There are a number of other permissions relating to the subject building, however, these primarily relate to the undertaking of minor works at the site. Full details of these are included in Appendix II.

4. Planning Review to Inform the Board's Assessment

4.1 Introduction

14. As set out previously, this Report has been prepared following correspondence from the Board dated 28th April 2025, requesting submissions/observations in relation to the Section 5 Referral Request on the use of The Cube Building, for residential accommodation for International Protection Applicants (ABP Ref. 322371-25). Our Client welcomes the opportunity to engage in the process, particularly to have the opportunity to outline how the proposed use is inappropriate in the context of this site, as well as the proposed use being inappropriate in the context of the exempted development provisions, outlined in planning legislation.
15. For the purposes of clarity, we note that the document from Cork City Council states that the referred question is as follows;

“Whether the temporary change of use of the basement, ground, first, second, and third floors of the Cube building from office use to residential accommodation for International Protection Applicants as per the provisions of class 20F of Part 1 of

schedule 2 of the Planning and Development Regulations 2001 (as amended) is development and, if so, is it exempted development?"

16. This Report will focus on a number of issues, including the concern that the carrying out of the proposed development would have the potential to create a traffic hazard or obstruction of road users which would endanger public safety. In addition, the proposed development cannot be considered to be exempted development in circumstances where unauthorised development has been carried out to the structure the subject of the proposed development. Furthermore, the benefit of exempted development is not available in circumstances where the proposed development would contravene a condition attached to a previous planning permission and, in particular, would be inconsistent with the use specified in the planning permission relating to the premises in respect of which the proposed development is to be carried out. As a result of the foregoing, it is our view that the proposed development cannot be exempted development, under Class 20F or otherwise. Restrictions on the application of exempted development are addressed in Article 9 of the Planning and Development Regulations 2001, as amended (hereafter 'the Regulations').
17. Furthermore, having reviewed the planning history under Section 3 above, this Section seeks to inform the Board of the permitted use of the building and other conditions that are relevant to the proposed development. It is submitted that these matters should be considered when ABP is determining if the proposed development is consistent with the provisions of the Article 6 of the Regulations and if any of the restrictions outlined in Article 9 of the Regulations, apply to the proposed development.

4.2 "Development" and "Exempted Development"

18. It is noted that as part of the Planning and Development Act 2000, as amended (hereafter 'the Act'), Section 3(1) defines works as *"the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land...."*. Having reviewed the proposed development, the documents prepared by Cork City Council and the Applicant's planning consultant; we agree that the proposed development constitutes

development in circumstances where it involves the carrying out of works over land and the making of a material change in the use of any land or structures situated on land.

19. In relation to the proposed works required to implement the proposed change of use, it is noted that the Applicant suggests that such works would be considered exempted development pursuant to Section 4(1)(h) of the Act and that the works will only be works to the interior of the subject structure. In this regard Section 4(1)(h) states the following;

“4 - (1) The following shall be exempted developments for the purposes of this Act...

(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;”

20. The Applicant suggests that the proposed change of use would be considered exempted development in accordance with Article 6 and Schedule 2, Part 1, Class 20F of the Regulations. This exemption for a change of use states the following at Column 1 of Schedule 2, Part 1, Class 20F;

“CLASS 20F

Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.”

21. There are limitations that apply to this exemption, and these are listed at Column 2 Schedule 2, Part 1, Class 20F. Furthermore, Article 9 of the Regulations sets out a number of restrictions on exemptions under Article 6. The restrictions outlined in Article 9 of the Regulations are relevant in considering this case. In addition, it is our view that the use of part of an office building to accommodate international protection applicants, side-by-side with a continuing office use with existing commercial occupants, such as The Cube, was not envisaged when this provision was included in the legislation. Therefore, it is our submission that Class 20F does not apply to the proposed development.

4.3 Restriction of exempted development due to Traffic Hazard

4.3.1 Introduction

22. In relation to the restrictions on exempted development it is noted that, where the carrying out of the proposed development would create a traffic hazard or obstruction of road users, the proposed development cannot be considered to be exempted development for the purposes of Article 6 of the Regulations. This restriction is addressed in Article 9(1)(a)(iii) of the Regulations which states that;

“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...

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,...”

23. Our Client has reviewed the proposed development and has concerns in relation to how the basement car parking will operate, should the proposed development be implemented as described. As noted in the original request to Cork City Council, it was proposed to include the basement in the proposed residential accommodation for International Protection Applicants. This was clarified by Cork City Council as the details in relation to the basement were unclear in the original documents that were submitted.

24. It is noted that the Applicant for the Section 5 has clarified that whilst the basement is included in the proposed development, there is no intention to use the basement for residential purposes and that the basement will remain in its current i.e. car parking for the Business and Technology use that exists in the building. Despite this clarification, our Client is still concerned that it is not clear how the basement will operate, if our Client will still have access to the parking spaces assigned to them as part of their lease and if this will be able to operate in a manner that is consistent with best practise traffic management.
25. It is acknowledged that Cork City Council, as part of their initial planning report, have not considered that any restrictions to exempted development apply in relation to Article 9 of the Regulations. It is, however, submitted that there was a lack of information submitted with regard to how the basement will operate, even though it is included in the proposed change of use development outlined in the Section 5 application. We would request the ABP consider this matter *de novo* and give due consideration to the matters highlighted in this Report.

4.3.2 Parking

26. Our Clients concern in relation to the uncertainty around how the basement will operate, revolves around the clarification by the Applicant's planning consultants on the 3rd April 2025, that the use of the basement will not be changed. Having reviewed and considered this, it can only be concluded that the proposed residential accommodation for International Protection Applicants will not have access to the parking in the basement of this property, as the use of the basement will remain for Business and Technology purposes as permitted in Planning Reg. Ref. No. 06/90815, outlined above.
27. If this is the approach that is intended, i.e. the use of the basement will only be related to the Business and Technology use that remains in the building, then our Client would query where those residing and operating the residential accommodation for International Protection Applicants will park? It is submitted that the literal interpretation of the clarification, that the use of the basement would not change, leads to a reasonable conclusion the proposed use on the site will not have access to any parking. In this regard, our Client is concerned that if the proposed development will have no access to parking, that this could reasonably lead to illegal

parking in the area that would create a traffic hazard. As noted in the Section 2 of this Report (Site Context) the area is traditionally an industrial area and there is no public parking in the vicinity of the site. As such, it is reasonable to conclude that by not changing the use of the basement or part of the basement, the proposed development will create a traffic hazard due to illegal parking and as such, the proposed development would not be exempted development.

28. Even if the car parking is to be used by the residents and staff of the proposed residential accommodation for International Protection Applicants, contrary to the clarification from the Applicant's planning consultant, then there are still concerns in relation to the operation of the basement. As part of the submitted Section 5 Referral there are no details provided as to the parking requirements or the number of people/staff that would occupy or utilise the proposed development. In this regard, it is unclear if there is sufficient parking on site for the safe operation of the residential accommodation for International Protection Applicants.

29. The only way that such a matter could be considered is through the preparation of a traffic impact assessment, which has not been undertaken as part of the submitted Section 5 documentation. It is further submitted that the preparation and consideration of such an assessment would be most appropriately done as part of a normal planning application procedure rather than a Section 5. While Class 20f of the Regulations allows for the change of use of part of a building for the proposed use, the subject site is not an appropriate example of where this exemption can be utilised, as the parking and surrounding context were never designed for such a use, as has been outlined above. It is for these reasons that our Client is concerned that the proposed development will create a traffic hazard at the subject site, and this has not been adequately addressed as part of the submitted Section 5 documentation.

4.3.3 Deliveries

30. Furthermore, it is our understanding that the operation of a direct provision centre will require regular deliveries due to the residents in such accommodation being provided with meals and other essential provisions. This would also include the delivery of cleaning supplies/equipment, etc. It is once again noted that the use of the car park as stated by the Applicant's planning consultant is not changing from the Business and Technology use that was permitted as part

of the original permission on site. As such this seems to clearly indicate that there is no intention for delivery vehicles to use the basement. If this is the case, it is unclear how deliveries will be undertaken, as the cycle lane in front of the building does not provide a safe location to load/unload from the street and there are no loading bays in the vicinity of the subject premises. Similar to the parking matters noted above, this is considered to generate a traffic hazard that has not been addressed as part of the subject Section 5 documentation.

31. Again, as noted above, if it is intended to use the basement, contrary to the clarification of the Applicant's planning consultant, then our Client would have a concern that the volume of delivery units would create a traffic hazard due to the number of deliveries that the proposed development would require. Furthermore, the access to the car park in The Cube building has a height restriction (2.2 metres) and would mean that larger delivery vehicles would be unable to access the car park due to this height restriction, as illustrated in the images below. If the car park is to be used for deliveries, this would require smaller vehicles to deliver, which would increase the number traffic movements and increase the risk of a traffic hazard being created.



Figure 3: Car Park Entrance



Figure 4: Height Restriction

32. It is again noted that there have been no details provided as to how the deliveries will be facilitated should the proposed development proceed and that there has been no consideration in relation to potential impacts, if any, on existing tenants, or to the potential traffic hazard from the proposed development.

4.3.4 Conclusions

33. In conclusion, it is considered that the documentation provided as part of the Section 5 Referral has failed to consider how traffic to and from the site will safely park at the site or how deliveries will occur in a safe manner. Given the context of the site where there are no nearby loading bays or public car parks and no hardstanding areas surrounding the property that would be appropriate for such purposes, it is submitted that the change of use outlined as part of the proposed development would not be exempted development due to the provisions of Article 9(1)(a)(iii) of the Regulations.

4.4 Unauthorised Development

4.4.1 Introduction

34. Having undertaken a review of the site, it has been noted that there are elements of the building that do not appear to have been permitted as part of the original planning permission and does not accord with an exempted development provision outlined in planning legislation.
35. Given the provisions of Article 9(1)(a)(viii), it is noted that the exemption relied upon in respect of the proposed development does not apply in circumstances where unauthorised development has been carried out at the subject site and, in particular, unauthorised works have been carried out to the structure the subject of the proposed development. In this regard, Article 9(1)(a)(viii) states the following;

“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...

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,...”

36. Having reviewed the subject site, it is considered that works have been undertaken that were not part of the original development, that are not permitted by a planning permission and would

be considered unauthorised. This includes the provision of a canopy area at the front of the premises as well as the undertaking of works to the rear of the site after a recent landslide.

4.4.2 Canopy Structure

37. The canopy structure at the front of the premises is outlined in Figure 5 below. When it comes to undertaking works as part of a commercial structure it is noted that there are very few exempted development provisions that allow for works, unless it is the maintenance, improvement or other alterations of a structure in accordance with Section 4(1)(h) of the Act. In this regard, it submitted the provision of the canopy structure has been unauthorised works and therefore, renders the structure unauthorised, and, therefore, the proposed development cannot be considered to be exempted development as per Article 9(1)(a)(viii) of the Regulations.



Figure 5: Canopy Structure

4.4.3 Repair works after landslide

38. As noted earlier in this Report, the level change between Monahan Road at the front of the site and Blackrock Road to the rear of the site is significant. It is in this context that our Client has noted recent landslides. There have been 3 no. landslides in the last twelve months, and these have led to the building being damaged.



Figure 6: Damage to the Building

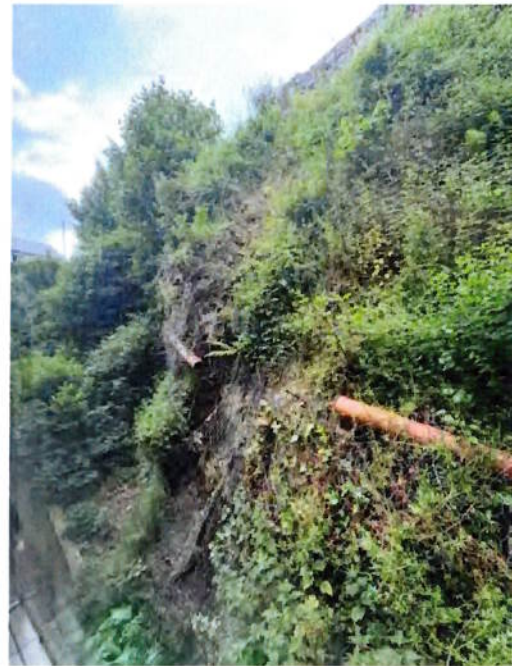


Figure 7: Level change at rear of site

39. These loose rocks/landslides have led to damage to the building as is shown in Figure 6 in the image above. There is a concern that the loose rocks/landslides could lead to a person being injured and this is a concern whether the proposed development proceeds or not. It is, however, noted that the use of the site for residential accommodation is likely to lead to more people being near the area where the loose rocks/landslides occur. Whilst this may not be a planning concern, it demonstrates that the subject site is unsuitable for residential accommodation for International Protection Applicants.
40. In terms of planning concerns, it should be noted that works have been undertaken at the rear of the site in relation to these landslides and associated damage to the building. There is a

concern that these works have been so extensive such that they could not be exempted pursuant to Section 4(1)(h) of the Act.

41. These ongoing works include covering the windows on the ground floor as well as restricting access to certain areas of the site due to these works. These works are indicated in the images below.



Figure 8: Covered Windows



Figure 9: Restricted Access

42. In this regard, our Client is concerned that not only will the landslides/loose rocks lead to an injury, but it is also considered that unauthorised development has taken place on the site. Therefore, the proposed development cannot be considered to be exempted development in light of Article 9(1)(a)(viii) of the Regulations and should be considered as part of the determination of the Section 5 Referral.

4.4.4 Conclusion

43. It is considered that the provision of the canopy structure as well as the works to repair the damage from the landslides, are works that could not be considered to be exempted development under planning legislation. In this regard it is submitted that unauthorised development has been undertaken on the site (and particularly to the structure the subject of the proposed development) and as such this restricts the application of article 6 of the

Regulations to the structure in question. Having regard to the unauthorised works that have been undertaken to the structure in question and on the site, and to the restrictions set out in Article (9)(1)(a)(viii) of the Regulations, it is submitted that the proposed development should be determined as being development and not exempted development.

4.5 Conditions Attached to Previous Permissions

4.5.1 Introduction

44. An important part of considering if exempted development can be undertaken on a site, is the consideration of the planning history of the development. As outlined above, a planning history review has been undertaken, and our Client is concerned that the proposed development would contravene conditions attached to the grants of permission and would be inconsistent with the use specified in the grants of permission in respect of the subject site. It is our Client's concern that such a restriction applies in this case and had not been adequately considered by Cork City Council as part of their initial assessment of the subject proposal.
45. Article 9 of the Regulations places clear restrictions on the application of the planning exemptions provided at Article 6 of the Regulations. The benefit of exempted development is not available if the proposed development would contravene a condition attached to a planning permission or would be inconsistent with any use specified in a planning permission. This provision states the following;

"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—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act, ..."

46. It is noted that the restrictions as per Article 10 of the Regulations would not be relevant in relation to the proposed exempted development. This is because restrictions under Article 10

only apply where there is a change of use within use classes specified in Part 4 of Schedule 2 of the Regulations, and that is not the case with the subject Section 5 Referral.

4.5.2 Conditions attached to Planning Permissions

47. Having reviewed the planning history for the site it is noted that Planning Reg. Ref. No. 06/30815 granted permission for the demolition of the warehouse on this site and the development of the 5 storey building on the site. As part of the grant of permission Cork City Council attached condition no. 5 which states the following;

*"5. The proposed commercial uses shall be **restricted** to Business and Technology uses as defined in paragraph 10.6 of the Cork City Development Plan 2004 and subject to the agreement of the Planning Authority.*

***Reason:** In the interest of proper planning and sustainable development." (**Emphasis Added**)*

48. In this regard, it is considered that the planning permission is very clear on the permitted use for building as being for "Business and Technology" uses, as outlined in the relevant Development Plan. In this regard, it is considered that the use of the subject site for residential accommodation of any form, would be contrary to condition no. 5 outlined above, and, in particular, would be entirely inconsistent with the specified use in the planning permission which applies to this site. In this regard, we would note that that the permitted use would be considered as being a Class 3 use as defined under Article 10, Part 4 of Schedule 2 of the Regulations. As part of the same Part 4 of the Regulations, the proposed use would be more consistent with Class 9 for Residential Institution uses. In this regard, the Regulations note a distinct difference between the existing and proposed use in this case.
49. Given the restrictions of Article 9 of the Regulations noted above, it is our contention that as the permitted use for the building is Business and Technology uses and the fact that the condition restricts the use of the building to this purpose, the proposed exempted development change of use, to part of the subject building cannot occur. In addition, the proposed use would be inconsistent with the use specified in the planning permission and as such the proposed

development cannot be exempted development based on the restrictions of Article 9 of the Regulations.

4.5.3 Conclusion

50. It is considered that the use of the building for residential accommodation for International Protection Applicants is inappropriate given the restricted permitted use of the building for Business and Technology purposes only. As such, it is submitted that the proposed use as outlined in the Section 5 application would contravene the restrictions imposed by condition no. 5 attached to Planning Reg. Ref. No. 06/30815. The proposed use is entirely inconsistent with the permitted use under Planning Reg. Ref. 06/30815. Given this provision, it is submitted that ABP should determine that the proposed development is development and is not exempted development given that the only way a residential development could be appropriate in light of the restrictive conditions attached to the building, would be through the standard Section 34 planning application process. Given the restrictive condition attached, which specifies the use of the building, the proposed development could not be considered to be exempted development, having regard to Article 9(1)(a) of the Regulations.

4.6 Lack of information

51. As outlined above, it is submitted that the information provided as part of the Section 5 documentation does not provide sufficient detail in relation to the operation of the proposed use on the subject site and leads to the conclusion that there is a traffic hazard or obstruction of road users as well as a conflict with the permitted use of the site. It is considered that as necessary information is not available, it may be the case that ABP are unable to make a determination in favour of the Applicant.

52. Having reviewed recent determinations by ABP, it is noted that the Board have outlined in other cases that there is not the “...totality of information on file...¹” to determine an element of a case. Similar to the recent conclusion by the Board in relation to inadequate information, our Client would advocate that there is also a substantial lack of information provided as part of this

¹ Board Oder, PI. Ref. No. ABP-318832-24.

Section 5 Referral, and this results in our Client, a tenant of the subject building, being unaware of how the building will operate (particularly in relation to traffic and the operation of the basement car park) and if their private property rights will be infringed. Given this situation, it is submitted that ABP should determine that due to the lack of information provided, the Board cannot determine that the proposed development constitutes exempted development.

4.7 Other matters

4.7.1 Introduction

53. Our Client is aware that it is necessary to develop residential accommodation for International Protection Applicants across the State as part of Ireland's role in addressing the numerous humanitarian crises and conflicts across the world. Our Client, however, has concerns in relation to the part change of use of this building, which would be shared with a number of existing companies. Given that both the residents of the proposed development and our Client's staff would be using the same common areas including the one set of lifts that are available in the building, it is unclear how the GDPR rights of all involved will be maintained and how the duty of care for both residents and staff will be delivered. Whilst this matter falls outside of the restrictions of planning legislation as addressed above, it further demonstrates the inappropriateness of this building for this use.

4.7.2 Intention of the Legislation

54. While the provisions of Class 20f allow for part of a building to be used for the purpose outlined in the Section 5 documentation, it is considered that the use of part of an office building, with existing commercial occupants, such as The Cube, was not envisaged or intended when this provision was included in the legislation. The part of use of a building for residential accommodation for International Protection Applicants is appropriate where the building is clearly divisible such as there being two different wings of an office building, hotel, etc. Notwithstanding the planning concerns raised in this report, the concept of vulnerable people (i.e. the proposed International Protection Applicants) sharing lifts, common areas, etc, with an unrelated office use is simply not practical and is fraught with issues such as those outlined above. We trust that ABP will be cognisant of these concerns when determining if the proposed

development is consistent with the exempted development provisions outlined in the planning legislation.

4.7.3 Nearby Seveso site

55. Having reviewed the planning history for the site, it should be highlighted that the subject site is proximate to a Seveso site relating to Goulding's Chemicals Ltd., the proximity to same was an important consideration in the original grant of planning permission (Planning Reg. Ref. No. 06/30815).

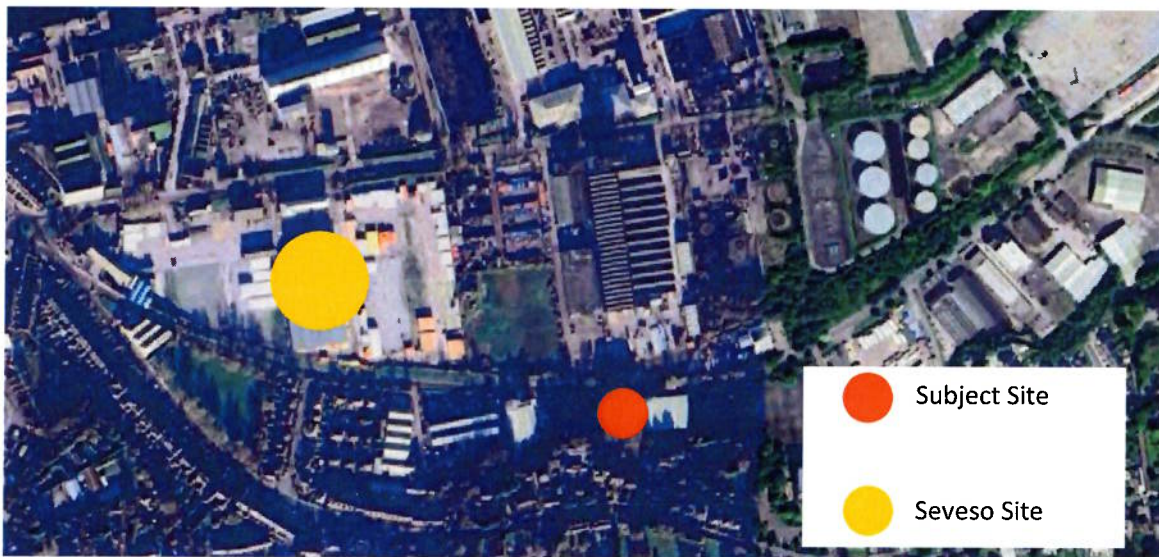


Figure 10: Location of nearby Seveso site (Source: Google Maps)

56. Given the location of the proposed development in close proximity to an operational Seveso site, our Client would question if it is an appropriate location for the provision of residential accommodation for International Protection Applicants. It is noted that the Applicant's planning consultant has contacted the Health and Safety Authority on this matter, however, no response from the Health and Safety Authority is provided as to the appropriateness of the subject site for residential accommodation. This concern once again raises the question as to whether this location, which is currently surrounded by predominantly industrial developments, in an appropriate location for any form of residential accommodation.

5. Conclusion

57. As set out above, this Report has been prepared to inform the assessment of the Section 5 Declaration Request before the Board, as referred by Cork City Council. The main points of this Report, as set out in detail above, can be summarised as follows:

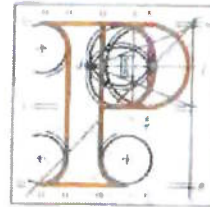
- The documentation as submitted, has failed to demonstrate that there will be no traffic hazard or obstruction of road users at this location, should the proposed development be carried out. In this regard, it is noted that no provision has been made for parking or deliveries for the proposed development. Furthermore, no operational or traffic management details have been included in the submitted documentation. The proposed development therefore cannot be considered to be exempted development, having regard to Article 9(1)(a)(iii) of the Regulations.
- The proposed development would be contrary to condition no. 5 of Planning Reg. Ref. No. 06/30815 as the use is specified as Business and Technology and the condition notes that the use of the building shall be restricted to such a use. The proposed development is entirely inconsistent with the use specified in the planning permission. In this regard the proposed development cannot be considered to be exempted development, having regard to Article 9(1)(a)(i).
- Due to the unauthorised development on site (and particularly, unauthorised works carried out to the structure the subject of the proposed development), the proposed development would not have the benefit of an exemption under Article 6 of the Regulations, having regard to Article 9(1)(a)(viii).
- There is a lack of information provided as part of the Section 5 documentation and as such it is submitted that ABP should determine that the proposed development is not exempted development due to the information on file not being sufficient for the Board to make a reasoned determination that the proposed development is exempted development.

- The subject site is proximate to an operating Seveso site and as such it should be questioned if the site is suitable for residential accommodation of any form.
 - The proposed use is generally unsuitable for such a building where the common areas will be used by International Protection Applicants and staff of a commercial company. In this regard it is unclear how privacy and the duty of care to all the occupants of the building will be maintained if the proposed development proceeds. It is further submitted that the use of a building such as this, where there is a continuing office use proposed to operate alongside accommodation for International Protection Applicants, was not envisaged or intended by the legislation and the practical issues and site context result in the site being generally unsuitable for this use.
58. Our Client welcomes the invitation to participate in this process and is providing this Report to ensure that the proposed development is appropriately considered by the Board.
59. We are confident that this Report has outlined relevant information in relation to the exempted development status of the proposed development, as well as how the building is generally unsuitable for such a use.
60. Our Client appreciates the opportunity to comment on this Section 5 Referral and looks forward to reviewing the decision of the Board on this matter. Should the Board require any clarification on the above please do not hesitate to contact us.

Appendix I – Correspondence from An Bord Pleanála dated 28th April 2025

Case Number: ABP-322371-25

Planning Authority Reference Number: R91825



An
Bord
Pleanála

Kevin O'Leary
Dassault Systems Limited
The Cube
Monahan Road
Ballintemple
Co. Cork
T12H1XY

Date: 28 April 2025

Re: Whether the temporary change of use of the basement, ground, first, second and third floors of the cube building from office to residential accommodation for International Protection Applicants as per the provisions of class 20f of Part 1 of schedule 2 of the Planning and Development Regulations 2001 (as amended) is development and, if so, is it exempted development.
The Cube Building, Monahan Road, Ballintemple, Cork

Dear Sir / Madam,

Enclosed is a copy of a referral under the Planning and Development Act, 2000, (as amended).

In accordance with section 129 of the Planning and Development Act, 2000, (as amended), you may make submissions or observations in writing to the Board in relation to the referral within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the referral without further notice to you.

Please note when making a response/submission only to the referral it may be emailed to appeals@pleanala.ie and there is no fee required.

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