

Daine

Catherine Flynn

From: Simon Bradshaw <simon.bradshaw@rmla.ie>
Sent: Friday 15 August 2025 12:54
To: Appeals2
Subject: Response to Correspondence from An Coimisiún Pleanála on behalf of Microchip Technology Ireland Limited - Ref. No. ABP-322371-25
Attachments: 250815_Final_Microchip Technology Ireland Limited_Response.pdf

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To whom it may concern,

On behalf of our Client, Microchip Technology Ireland Limited, Block W Ground Floor, East Point Business Park, Alfie Byrne Road, Dublin 3, D03Y 564, Ireland, please see attached a submission in response to correspondence from An Coimisiún Pleanála in relation to Ref. No. 322371-25. This correspondence invited a submission/observation from our Client in relation to the subject Section 5 referral.

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 Microchip Technology Ireland Limited.

This submission is made within the stated period on the An Coimisiún Pleanála correspondence i.e. on or before the 18th August 2025 and as noted on the An Coimisiún 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 Coimisiún Pleanála can access the attachment.

We would also request that future correspondence in relation to this matter is sent to RMLA as the agent at the following address: RMLA, Unit 3B, Santry Avenue Industrial Estate, Santry Avenue, Santry, Dublin 9, D09 PH04.

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

Kind regards,

Simon Bradshaw
Associate

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RMLA.

Planning Consultants

The Secretary,
An Bord Pleanála,
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RMLA Limited,
Unit 3B, Santry Avenue Industrial Estate,
Santry Avenue, Santry,
Dublin 9, D09 PH04
Website: www.rmla.ie
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15th August 2025

Dear Sir / Madam,

Re: Submission to An Coimisiún Pleanála in relation to an invitation to make a submission on a Section 5 Referral

An Coimisiún Pleanála Ref. ACP-322371-25

Cork City Council Reference: R91825

Following correspondence from An Coimisiún Pleanála (hereafter ACP) dated 21st July 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, Microchip Technology Ireland Limited, Block W Ground Floor, East Point Business Park, Alfie Byrne Road, Dublin 3, D03Y 564, Ireland. This Report has been prepared to assist ACP 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 ACP has the relevant information required to inform the determination on the Section 5 Referral.

We note that previous correspondence was submitted on behalf of Microchip Technology Ireland Limited by William Fry LLP. Our Client is aware that this Cover Letter and Report will be considered as part of the determination of the subject application, rather than the previous correspondence submitted.

This Response is being submitted within the stated period set out in the abovementioned ACP correspondence, i.e. on or before 18th August 2025. In addition, we would request that ACP issue all co correspondence in relation to his case to RMLA, Unit 3B, Santry Avenue Industrial Estate, Santry Avenue, Santry, Dublin 9, D09 PH04.

Should you have any queries in relation to the above or the attached report, please contact us.

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 An Coimisiún Pleanála in relation to Ref. ACP-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

An Coimisiún Pleanála Ref. ACP-322371-25

Prepared by RMLA Limited

On behalf of Microchip Technology Ireland Limited

August 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 Microchip Technology Ireland Limited following correspondence from An Coimisiún Pleanála (hereafter 'ACP') dated 21st July 2025 requesting submissions/observations in relation to the Section 5 Referral request on The Cube Building, Monahan Road, Ballintemple, Cork (ACP Ref. 322371-25), see Appendix I.
2. Our Client is aware that a Section 5 request related to this matter was made to Cork City Council (R918/25). This has been outlined as part of previous correspondence sent to ACP by William Fry LLP on behalf of Microchip Technology Ireland Limited. As our Client is an occupant of the subject building, they have an interest in the outcome of this Section 5. Our Client welcomes the invitation from ACP to make a submission on this Section 5 Referral, particularly given the potential impact of the proposed development on our Client. This is particularly relevant as the Section 5 Referral outlines the current use of the premises is for Business and Technology purposes. The use of the building is clearly defined in the previous planning permission Reg. Ref. No. 06/30815 and this will be addressed in this submission. In this regard, the invitation to make a submission on the subject Section 5 Referral is welcome given the potential impact on our Clients private property rights.
3. Our Client has practical concerns relating to different uses operating in the building, assuming the proposed development was to proceed. This would namely relate to the operation of the common areas, how business in the building would be affected 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 will be addressed in further detail below.
4. In this regard, while the Section 5 Referral relates to part of the building as outlined in the original question, we would request that ACP consider the effects of the proposed development on the entire building. This Report intends to outline how the proposal is not consistent with the

exempted development provisions of the relevant Planning Legislation and how the change of use would be inappropriate at this location.

2. Site Context

5. The subject site is located in a well-established industrial area in Cork City. Uses in the area include Goulding Soil Nutrition Limited which is a Seveso site, Cirus Factory, Freefoam Building Products and Rehab Recycle. These uses establish the long-term industrial nature of the area, while newer developments such as the 'The Cube' Building are being developed in line with Cork City Council's intention to transform this area over the coming years.

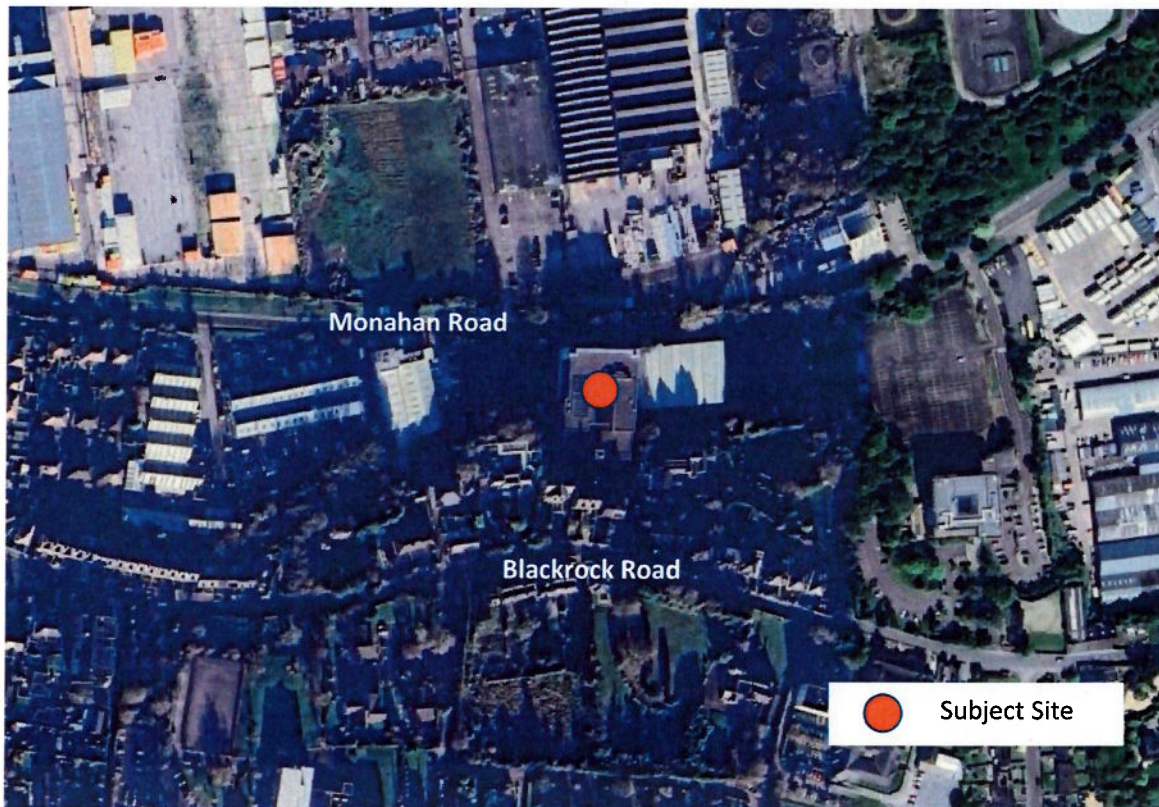


Figure 1: Site Location (Source: Google Maps)

6. Given that the area is primarily made up of industrial uses, there is very few public parking spaces provided 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)

7. 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

8. 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

9. 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.
10. 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.
11. 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 ACP's Assessment

4.1 Introduction

12. As set out previously, this Report has been prepared following correspondence from ACP dated 21st July 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 (ACP Ref. 322371-25). Our Client welcomes the opportunity to engage and 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.

13. 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?”

14. 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. It is also considered that 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. 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’).

15. Furthermore, having reviewed the planning history under Section 3 above, this Section seeks to inform ACP 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 ACP 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’

16. It is noted that pursuant to 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.

17. 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;”

18. 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.”

19. There are limitations that apply to this exemption, and these are listed at Column 2 Schedule 2, Part 1, Class 20F. These limitations are addressed further in the following section of this Report.
20. 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 Class 20F of the Planning and Development Regulations 2001, as amended

21. Following on from the above section and having undertaken research with regard to the proposed development, it is noted that the Applicant for the Section 5 Declaration has sought confirmation that the exemption under Class 20F of the Regulations applies to the proposed development, as outlined above. Having reviewed recent exempted development declarations issued by local authorities, it is noted that a recent case determined by Meath County Council, has highlighted the difference between Class 14(h) and Class 20F of Regulations.
22. In this regard, it is noted that Class 20F is specifically linked to the implementation of an EU Directive relating to the influx of displaced persons from Ukraine. The determination of a Section 5 by Meath County Council, File Number KS525033, outlines that the exempted development provisions relating to Class 20F are solely for the purposes of providing accommodation for displaced persons from Ukraine. In relation to the question submitted by the Applicant, it is noted that the proposed use is for International Protection Applicants only and our Client would

request that ACP confirm that should the proposed change of use be implemented it would be limited to being occupied by displaced persons from Ukraine only, in accordance with Class 20F in circumstances where Class 14(h) could not apply to the subject site as it is not currently in residential use and, therefore, could not be occupied by protected persons for the purposes of Class 14(h) .

23. Furthermore, it is noted that as part of Class 20F there is a limitation as to how long the temporary exempted development change of use, as proposed in the subject Section 5 application, can remain in place. The limitation in paragraph 3 outlines that the temporary change of use can only remain in place until the 31st December 2028. Again, we would request that ACP confirm that if the proposed change of use is implemented, it will have to be discontinued by the 31st of December 2028, unless a grant of a planning permission has been issued for a change of use on this site.
24. As is outlined below, our Client is of the view that the proposal does not constitute exempted development, given the restrictions that apply to the subject site. We would, however, request that the above points are addressed as part of the Inspector's Report on this matter. This will ensure that the Section 5 Referral has correctly addressed the precise scope of Class 20F, as well as outlining the restrictions that apply to the proposed use. This distinction between Class 14(h) and Class 20F is important in this context where Class 14(h) could not apply to the subject site, as it is not currently in residential use.

4.4 Restriction of exempted development due to Traffic Hazard

4.3.1 Introduction

25. 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,..."

26. As part of the review of the proposed development, there are 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.
27. 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 use 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.
28. It is acknowledged that Cork City Council, as part of their initial planning report, have not determined that any of the restrictions set out in Article 9 of the Regulations apply in respect of the proposed development. 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 ACP consider this matter *de novo* and give due consideration to the matters highlighted in this Report.

4.3.2 Parking

29. Our Clients concern relates to the uncertainty around how the basement will operate, despite the clarification by the Applicant, 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.
30. 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.
31. 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, 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.
32. 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 Referral. 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.

33. We would also highlight that similar Section 5 cases relating to accommodation for international protection applicants have also been determined not to be exempted development due to the proposed development creating a traffic hazard. The Meath County Council Case Reference TS525058, which also related to Class 20F of the Regulations, was determined to create a traffic hazard and was deemed not to be exempted development. This example demonstrates that our Client's concerns are consistent with issues that have arisen in similar cases and determining that the subject proposal would create a traffic hazard is not an unreasonable conclusion. In this regard, we would request that ACP consider the implications of the proposed development and the traffic hazard that it would create.

4.3.3 Deliveries

34. 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. As noted above, the use of the basement is not changing and as such the application documents 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.

35. Again, as noted above, if it is intended to use the basement, contrary to the application documents, 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. 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.
36. 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

37. 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 having regard to the provisions of Article 9(1)(a)(iii) of the Regulations.

4.5 Conditions Attached to Previous Permissions

4.5.1 Introduction

38. 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—

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,...”

39. An important part of considering whether development undertaken at a site is exempted development, 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 relevant 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 the restriction provided for in Article 9(1)(a)(i) of the Regulations applies in this case and had not been adequately considered by Cork City Council as part of their initial assessment of the subject proposal.

40. 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

41. 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**)

42. In this regard, it is considered that the planning permission is very clear on the permitted use for the 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 a contravention of 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.
43. 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 change of use to part of the subject building cannot be considered to be exempted development. 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

44. 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 ACP 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

45. 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 the proposed development would result in 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 ACP are unable to make a determination in favour of the Applicant.

46. Having reviewed recent determinations on other referrals, it is noted that ACP 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 ACP in relation to inadequate information, our Client would advocate that there is also a substantial lack of information provided as part of this 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. It is also unclear from the documentation whether the proposed development would be used to accommodate only displaced persons from Ukraine, given the limitations of Class 20F. Given this situation, it is submitted that ACP should determine that due to the lack of information provided, ACP cannot determine that the proposed development constitutes exempted development.

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

4.7 Other matters

4.7.1 Introduction

47. 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

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 ACP 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

48. 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).

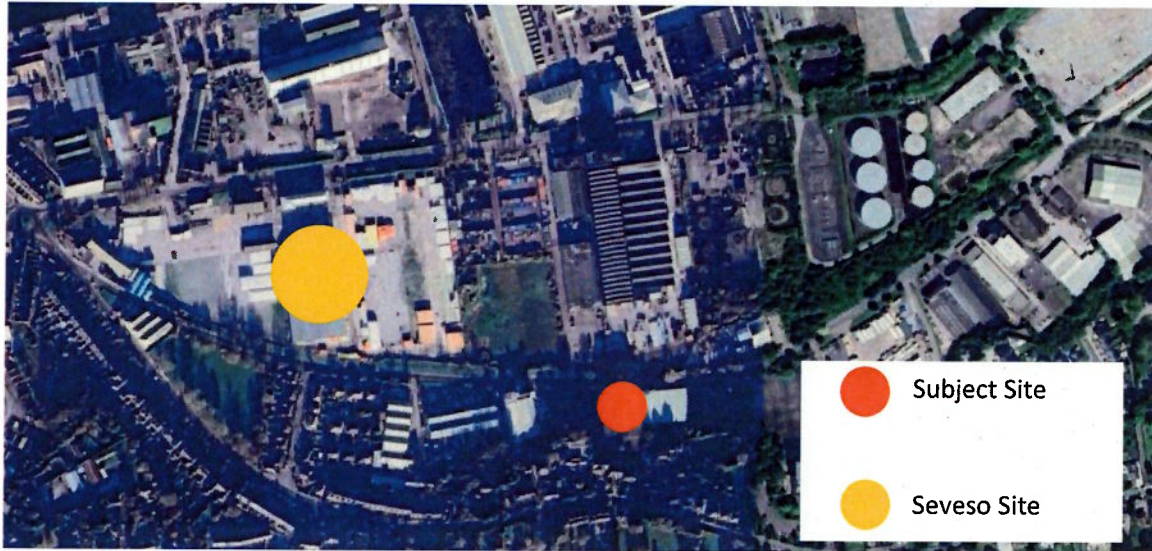


Figure 10: Location of nearby Seveso site (Source: Google Maps)

49. 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.

4.7.4 Unauthorised Development

50. Following a review of the site, it appears that certain works have been carried out which were not part of the original permitted development. These works have not been authorised by way

of a planning permission. This includes the installation of a canopy structure to the front of the building and the carrying out of works to the rear of the site following a recent landslide.

51. The canopy structure located at the front of the premises, is not considered exempted development. The installation of a new canopy does not fall within the parameters of exempted development under Planning Legislation, which is limited for commercial buildings. Our Client is, therefore, concerned that these works constitute unauthorised development.
52. Furthermore, and as referenced previously, there is a substantial difference in ground levels between Monahan Road, to the front of the site, and Blackrock Road, to the rear of the site. There have been a number of landslides at the rear of the property and these events have caused dislodged rocks to impact The Cube building. There is an ongoing risk of further landslides, posing a potential safety hazard, irrespective of whether the proposed development proceeds. However, the likelihood of injury increases in the event that the site is used for residential accommodation, particularly for International Protection Applicants.
53. Works have been undertaken at the rear of The Cube building to address the impact of the landslides and associated structural damage. These works appear to exceed what could reasonably be considered exempt under Section 4(1)(h) of the Act and our Client is concerned that these works would constitute unauthorised development.
54. Our Client is concerned not only about the ongoing risk of injury from further landslides, but also about the extent of unauthorised development that has taken place. In view of Article 9(1)(a)(viii) of the Regulations, the proposed development cannot be considered exempted development due to the unauthorised development that has taken place at the subject site, as outlined above and this issue should be addressed in the context of the Section 5 Referral.
55. It is submitted that both the erection of the canopy structure and the remedial works undertaken following the landslides constitute development that is not exempt under Planning Legislation.

5. Conclusion

56. As set out above, this Report has been prepared to inform the assessment of the Section 5 Declaration Request before ACP, 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. This is supported by recent determinations on Section 5 applications for the same use in other counties, which were determined to create a traffic hazard and were determined not to be exempted development.
- 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 ACP should determine that the proposed development is not exempted development due to the information on file not being sufficient for ACP 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.

57. 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 ACP.
58. 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.
59. Our Client appreciates the opportunity to comment on this Section 5 Referral and looks forward to reviewing the decision of ACP on this matter. Should ACP require any clarification on the above please do not hesitate to contact us.

**Appendix I – Correspondence from An Bord Pleanála dated
21st July 2025**

Our Case Number: ABP-322371-25

Planning Authority Reference Number: R91825

Your Reference: Microchip Technology Ireland Ltd



**An
Coimisiún
Pleanála**

William Fry LLP
2 Grand Canal Square
Dublin 2
D02 A342



Date: 21 July 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,

Please note this correspondence supercedes correspondence dated 17th June 2025.

In accordance with section 129 of the Planning and Development Act, 2000, (as amended), you may make submissions or observations in writing to the Commission 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 Commission outside of that period shall not be considered and where none have been validly received, the Commission 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.

Please note that as your original submission dated 25th June 2025 was received before you were invited to make a submission it cannot be considered and was previously returned to you.

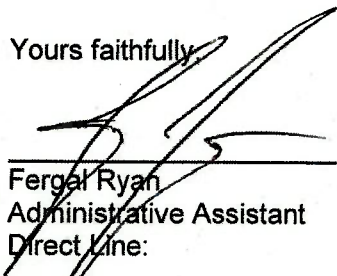
| | | |
|--------------------|---------|--|
| Teil | Tel | (01) 858 8100 |
| Glaó Áitiúil | LoCall | 1800 275 175 |
| Facs | Fax | (01) 872 2684 |
| Láithreán Gréasáin | Website | www.pleanala.ie |
| Ríomhphost | Email | communications@pleanala.ie |

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Please quote the above referral number in any further correspondence.

Yours faithfully,



Fergal Ryan
Administrative Assistant
Direct Line:

BPRL05

Tel
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Appendix II – Planning History

Planning History

| Planning Reg. Ref No. | Development Description | Grant or Refuse |
|------------------------------|---|------------------------|
| 20/39182 | Permission for the alteration of south elevation by the inclusion of new windows at first floor level, and associated works. | Grant |
| 19/38678 | Permission for the provision of solar panels on the roof, the provision of illuminated signage to West Elevation and associated site works. | Grant |
| 16/37179 | Alteration of west elevation by the inclusion of new windows, door and associated works | Grant |
| 08/33194 | For construction of ESB Substation and Switch Room to service Business and Technology building granted under Reg. No. 06/30815 | Grant |
| 06/30815 | Demolish existing warehouses and construction of business and technology building comprising of a single level basement carpark, 5 storey building for office use with central courtyard, 2 no. vehicle access points, drop off layby and associated site works | Grant |

RMLA.

Planning Consultants

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Santry Avenue,
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Dublin 9,
D09 PH04