



Comhairle Cathrach Chorcaí Cork City Council

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

Brian McCutcheon
6 Joyce House
Barrack Street
Ballincollig
Cork



18/12/19

RE Section 5 Declaration – 9 Rossbrook, Model Farm Road, Cork

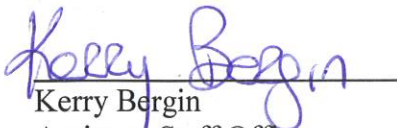
Dear Sir/Madam,

With reference to your request for Declaration under Section 5 of the Planning and Development act 2000 (as amended) please be advised that in order to make such a request the attached application form needs to be submitted with each application

Can you please forward this form in relation to no. 9 Rossbrook, Model Farm Road, Cork and once we receive same we can continue processing this application

Please note that with any future Section 5 applications this form must be completed along with a cover letter and drawings

Yours Faithfully,



Kerry Bergin
Assistant Staff Officer
Development Management Section
Community, Culture and Placemaking Directorate
Cork City Council

*Completed application form
attached*

*Brian McCutcheon
20/12/2019*

COMHAIRLE CATHRACH CHORCAÍ
CORK CITY COUNCIL

Strategic Planning & Economic Development Directorate,
Cork City Council, City Hall, Anglesea Street, Cork.

R-Phost/E-Mail planning@corkcity.ie

Fón/Tel: 021-4924564/4321

Líonra/Web: www.corkcity.ie

SECTION 5 DECLARATION APPLICATION FORM
under Section 5 of the Planning & Development Acts 2000 (as amended)

1. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION IS SOUGHT

9 Rosstown, Model Farm Road, Cork

2. QUESTION/ DECLARATION DETAILS

PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT:

Sample Question: Is the construction of a shed at No 1 Wall St, Cork development and if so, is it exempted development?

Note: only works listed and described under this section will be assessed under the section 5 declaration.

Whether the provision of an overhead rather than
underground ~~connection~~ broadband connection to
No. 9 Rosstown Model Farm Road would contravene
condition No 7 of TP 13908/87 and would therefore
be development and would not be exempted
development under Article 9(1)(a)(i) of the Planning
and Development Regulations 2001 (as amended)

ADDITIONAL DETAILS REGARDING QUESTION/ WORKS/ DEVELOPMENT:

(Use additional sheets if required).

please see attached request

3. APPLICATION DETAILS

Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square meters (sq. M)

| | |
|--|---|
| (a) Floor area of existing/proposed structure/s | <i>not applicable</i> |
| (b) If a domestic extension, have any previous extensions/structures been erected at this location after 1 st October, 1964, (including those for which planning permission has been obtained)? | Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas. (sq m) <i>not applicable</i> |
| (c) If concerning a change of use of land and / or building(s), please state the following: | |
| Existing/ previous use (please circle) | Proposed/existing use (please circle) |
| ----- | <i>not applicable</i> |
| ----- | ----- |
| ----- | ----- |

4. APPLICANT/ CONTACT DETAILS

| | | |
|--|-----------------|---|
| Name of applicant (principal, not agent): | | <i>Bhair + Uare at Cantillon</i> |
| Applicants Address | [REDACTED] | |
| Person/Agent acting on behalf of the Applicant (if any): | Name: | <i>not applicable</i> |
| | Address: | |
| | Telephone: | |
| | Fax: | |
| | E-mail address: | |
| Should all correspondence be sent to the above address? <small>(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)</small> | | Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> |

5. LEGAL INTEREST

| | | |
|---|--|-----------------------------------|
| Please tick appropriate box to show applicant's legal interest in the land or structure | A. Owner <input checked="" type="checkbox"/> | B. Other <input type="checkbox"/> |
| Where legal interest is 'Other', please state your interest in the land/structure in question | | |
| If you are not the legal owner, please state the name and address of the owner if available | | |

6. I / We confirm that the information contained in the application is true and accurate:

Signature: Boin M'Enteehan

Date: 20 December 2019

.....

ADVISORY NOTES:

The application must be accompanied by the required fee of €80

The application should be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.

Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.

The application should be sent to the following address:

The Development Management Section, Strategic Planning & Economic Development
Directorate, Cork City Council, City Hall, Anglesea Street, Cork.

- The Planning Authority may require further information to be submitted to enable the authority to issue the declaration.
- The Planning Authority may request other person(s) other than the applicant to submit information on the question which has arisen and on which the declaration is sought.
- Any person issued with a declaration may on payment to An Bord Pleanála refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.
- In the event that no declaration is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork City Council for the purpose of advising as to the type information is normally required to enable the Planning Authority to issue a declaration under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations 2001 as amended.

DATA PROTECTION

The use of the personal details of planning applicants, including for marketing purposes, may be unlawful under the Data Protection Act 1988-2003 and may result in action by the Data Protection Commissioner against the sender, including prosecution

| | | |
|----------------------------------|------------------------------|--|
| PLANNER'S REPORT Ref. R559/20 | | Cork City Council Development Management Strategic Planning and Economic Development |
| Application type | Section 5 Declaration | |
| Location | 9 Rossbrook, Model Farm Road | |
| Applicant | Brian and Clare McCutcheon | |
| Date | 11/03/2020 | |

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. REQUIREMENTS FOR A SECTION 5 DECLARATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

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

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the planning authority, the applicant states in Q2 of the application form: *'whether the provision of an overhead rather than underground broadband connection to No. 9 Rossbrook Model Farm Road would contravene condition No. 7 of T.P. 13908/87 and would therefore be development and would not be exempted development under Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended).'*

This may be reworded as follows:

'whether the provision of an overground broadband connection to No. 9 Rossbrook, Model Farm Road is or is not development and is or is not exempted development'.

3. SITE DESCRIPTION

The property in question is a detached two storey house situated within the Rossbrook housing estate located off the Model Farm Road.

4. PLANNING HISTORY

T.P. 12082/84: Outline permission granted for the erection of houses at Cloverfield, Model Farm Road.

T.P.13908/87: Permission granted for the development of a housing estate at Cloverfield, Model Farm Road.

T.P. 14615/88: Permission granted for modification of house design at site No. 9 Rossbrook, Model Farm Road subject to one condition – *'All conditions of 13,908 in so far as they effect (sic) this application shall apply to this permissions.'*

T.P. 14678/88: Permission granted for a change of house type of permitted units and an extension of the housing area into lands to the rear of Melbourne Business Park (additional units).

5. LEGISLATIVE PROVISIONS

5.1 The Act

Section 2(1),

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

'alteration'
includes—

- (a) plastering or painting or the removal of plaster or stucco, or*
 - (b) the replacement of a door, window or roof,*
- that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;*

Section 3(1),

In this Act, "development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

"statutory undertaker" means a person, for the time being, authorised by or under any enactment or instrument under an enactment to—

- (a) construct or operate a railway, canal, inland navigation, dock, harbour or airport;*
- (b) provide, or carry out works for the provision of, gas, electricity or telecommunications services, or*
- (c) provide services connected with, or carry out works for the purposes of the carrying on of the activities of, any public undertaking;*

Section 4(1)(h),

The following shall be exempted developments for the purposes of this Act—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;

Section 4(2),

Section 4(2) provides that the Minister may, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations 2001-2013.

Section 5(1),

(See section 1 of this report)

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

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

5.2 The Regulations

CLASS 31 (excluding (a), (c-l))

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

- (b) overhead telecommunications including the erection of poles or other support structures or the use of existing poles or other support structures,
1. Poles or other support structures carrying overhead lines shall not exceed 12 metres in height.
 2. Poles or other support structures carrying other equipment shall not exceed 12 metres in height and 0.6 metres in diameter measured at the widest point, where "other equipment" means 2 transmitting or receiving dishes (the diameter of which shall not exceed 0.6 metres), or 1 panel antenna (the dimensions of which shall not exceed 0.85 metres in length x 0.65 metres in width x 0.2 metres in depth) used for the provision of a specific telecommunications service and the provision of which would otherwise require an additional pole route carrying overhead wires.
 3. Where a pole or poles or other support structures carry radio transmitting or receiving apparatus, the field strength of the non-ionising radiation emissions from that installation shall not exceed the limits specified by the Commission for Communications Regulation.

(bb) The attachment to a pole or other support structure referred to in paragraph (b) above of any bracket, clamp or other fixture required for the carrying or support of any cable (including fibre optic cable), wire, tube, pipe, duct or similar thing, or required for the carrying or support of any device containing any such cable, wire, tube, pipe, duct or similar thing, and the attachment to such fixture of—

The dimensions of any such device should not exceed 0.50 cubic metres measured externally.

(i) any cable (including fibre optic

cable), wire, tube, pipe, duct or similar thing (including its casing or coating) or any device containing any of the foregoing,

(ii) any other equipment or apparatus used for telecommunications purposes, which is exempted development for the purposes of Article 6 and this Class,

(bbb) the attachment to any cable (including fibre optic cable), wire, tube, pipe, duct or similar thing of any device containing any such cable, wire, tube, pipe, duct or similar thing, The dimensions of any such device should not exceed 0.25 cubic metres measured externally.

Article 6. (1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 9 (1)

Development to which article 6 relates shall not be exempted development for the purposes of the Act –

(a) (i) if the carrying out of such development would... contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

6. ASSESSMENT

The proposal involves the stringing an overhead fibre optic cable between No. 9 Rossbrook and two other houses (No. 8 and No. 10) as part of the roll out of a new broadband service by SIRO (a JV company between ESB and Vodaphone). The proposal is described by the applicant (owner of No. 9) in the documentation as follows:

- 'Stringing an overhead fibre optic cable between the high points of the ridges of the adjoining houses;*
- Bringing the cable down along the gable fascia, across the front elevation below the eaves line and then back up along the fascia of the other gable to thigh point of the ridge and then crossing to the next house in the row.'*

The applicant also states that 'A connection box would be provided on the front elevation for any house availing of the service.' It is not clear as to whether the owners of No. 9 Rossbrook would be availing of the service but I note that the question does not relate to the placement of the connection box but solely to the provision of the cabling. The box also is not shown on the drawings submitted.

I note from the SIRO website that it is stated that *'SIRO fibre-optic cables are laid alongside the existing electrical line into each home. If the electrical line is overhead, the fibre is strung just underneath it. Where the electrical line is underground, fibre is laid alongside it in the duct.'* The application has not been referred to SIRO for comment due to a request to deal with the application by 20.03.2020.

In determining whether or not a proposal/project falls within the remit of the requirement to obtain planning permission under the scope of Planning and Development legislation two tests must be applied:

1. Is development (as defined under the Planning and Development legislation) involved? If the answer is 'No' then the project/proposal falls outside the remit of the requirement to obtain planning permission. If the answer is 'Yes' then it is necessary to proceed to Test 2.
2. Are there any exemptions provided for in the Act or in the Regulations (that are not otherwise de-exempted) that can be availed of in respect of the development?

'Development' as defined in the Act (3)(1) comprises two possible chief components: *'the carrying out of any works on, in, over or under land', or 'the making of any material change in the use of any structures or other land'*. In order to ascertain whether or not the subject use is considered to be development as so defined, consideration must first be given to whether any works on, in, over or under land have or will be carried out, and secondly to whether any material change in the use of any structures or other land have or will take place.

'Works' is defined in section 2(1) of the Act as *'the carrying out of any works on, in, over, or under land'* including *'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal, and in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.'*

a definition of 'alteration' is provided at Section 2 of the Act, as follows;

"Alteration" includes –

- (a) Plastering or painting or the removal of plaster or stucco, or*
- (b) The replacement of a door, window or roof,*

The stringing of fibre optic cabling, could be said to fall under the definition of works and as such constitutes 'development'.

I note Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) under which provision has been made to exempt such cables and fixings (in this case the house is the support structure). I consider therefore that the works are exempt under Class 31 (as outlined above).

I note the applicant is relying on *Article 9 (1) of the Regulations to claim that the development is de-exempted given Condition 7* attached to T.P. 13908/87. This condition states as follows:

*'All E.S.B., P & T and Cable TV services shall be laid underground.
Reason: In the interests of the amenities of the area.'*

This condition was also attached to T.P. 14678/88 (Condition 5).

However I note that the condition related to undergrounding of services at the time of building out the housing estate and was complied with at that time. Given the wording of the condition it cannot be said that it was intended to ensure that all future services for the estate would be placed underground (including broadband services which were not available at that time). I note that the condition does not state that *'All future such services shall be laid underground'*. Nowadays where specific exemptions do exist and it is the intention of the Planning Authority to de-exempt same such conditions are normally worded as follows:

No development normally considered exempted development under Class 'x' of the Planning and Development Regulations (or future amendments to same) shall be constructed/erected on site without a prior grant of planning permission.'

7. ENVIRONMENTAL ASSESSMENT

7.1 Screening for Environmental Impact Assessment

Having regard to the contents of Article 103 (as amended by Article 14 of the Planning and Development (Amendment) (No 3) Regulations 2011) and Schedule 7 of the Planning and Development Regulations 2001 (as amended) it is considered that the proposed development by reason of its nature, scale and location would not be likely to have significant effects on the environment. Accordingly it is considered that an environmental impact statement is not required to be submitted.

7.2 Screening for Appropriate Assessment

Section 177U (9) of the Act requires planning authorities to screen applications for a section 5 declaration for appropriate assessment. The provisions of the *Habitats Directive*, the *Appropriate Assessment Guidelines for Planning Authorities 2009* (revised 2010) and the Act are noted. The relevant European sites are the Cork Harbour SPA (site code 004030) and the Great Island Channel cSAC (site code 001058). Having regard to the location of the proposed development site relative to these European sites and related watercourses and to the nature and scale of the proposed development it is considered that the proposed development would not affect the integrity of the European sites referred to above. Accordingly it is considered that appropriate assessment is not required.

8. CONCLUSION & RECOMMENDATION

In view of the above and having regard to:

- The nature of the proposal;
- The definition of works, alteration and development as outlined in Sections 2 and 3(1) of Part 1 the Planning and Development Act 2000 (as amended),
- Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended;
- The wording of Condition 7 attached to 13908/87 and Condition 5 attached to 14678/88 which did not de-exempt the provision of future overground services

it is concluded that the provision of an overground broadband connection to No. 9 Rossbrook, Model Farm Road

'is development' and 'is exempted development'.



Evelyn Mitchell,
Senior Executive Planner.
11.03.2020.



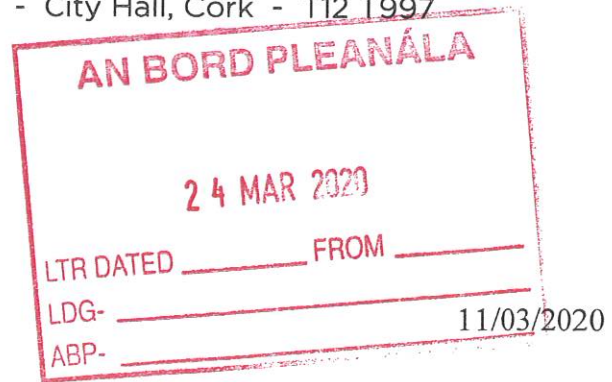
Site Layout Plan



Comhairle Cathrach Chorcaí Cork City Council

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

Brian McCutcheon
9 Rossbrook
Model Farm Road
Cork



RE: Section 5 Declaration R559/20 9 Rossbrook, Model Farm Road, Cork

A Chara,

With reference to your request for a Section 5 Declaration at the above named property, I wish to advise as follows having regard to:

- The nature of the proposal;
- The definition of works, alteration and development as outlined in Sections 2 and 3(1) of Part 1 the Planning and Development Act 2000 (as amended),
- Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended;
- The wording of Condition 7 attached to 13908/87 and Condition 5 attached to 14678/88 which did not de-exempt the provision of future overground services

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Is misa le meas,

Kerry Bergin
Community, Culture and Placemaking Directorate
Cork City Council



We are Cork.

AN BORD PLEANÁLA

24 MAR 2020

| | | |
|----------------------------------|------------------------------|---|
| PLANNER'S REPORT Ref. R559/20 | LTR DATED | Cork City Council |
| | LDG- | Development |
| | ABP- | Management |
| | | Strategic Planning and Economic Development |
| Application type | Section 5 Declaration | |
| Location | 9 Rossbrook, Model Farm Road | |
| Applicant | Brian and Clare McCutcheon | |
| Date | 11/03/2020 | |

In this report 'the Act' means the Planning and Development Act 2000 (as amended) and 'the Regulations' means the Planning and Development Regulations 2001 (as amended), unless otherwise indicated.

1. REQUIREMENTS FOR A SECTION 5 DECLARATION

Section 5(1) of the Planning and Development Act 2000 as amended states,

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

The requirements for making a section 5 declaration are set out in the Act.

2. THE QUESTION BEFORE THE PLANNING AUTHORITY

In framing the question to the planning authority, the applicant states in Q2 of the application form: *'whether the provision of an overhead rather than underground broadband connection to No. 9 Rossbrook Model Farm Road would contravene condition No. 7 of T.P. 13908/87 and would therefore be development and would not be exempted development under Article 9(1)(a) of the Planning and Development Regulations 2001 (as amended).'*

This may be reworded as follows:

'whether the provision of an overground broadband connection to No. 9 Rossbrook, Model Farm Road is or is not development and is or is not exempted development'.

3. SITE DESCRIPTION

The property in question is a detached two storey house situated within the Rossbrook housing estate located off the Model Farm Road.

4. PLANNING HISTORY

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24 MAR 2017

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Section 5(1),
(See section 1 of this report)

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

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

5.2 The Regulations

CLASS 31 (excluding (a), (c-l))

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(b) overhead telecommunications including the erection of poles or other support structures or the use of existing poles or other support structures,

1. Poles or other support structures carrying overhead lines shall not exceed 12 metres in height.

2. Poles or other support structures carrying other equipment shall not exceed 12 metres in height and 0.6 metres in diameter measured at the widest point, where "other equipment" means 2 transmitting or receiving dishes (the diameter of which shall not exceed 0.6 metres), or 1 panel antenna (the dimensions of which shall not exceed 0.85 metres in length x 0.65 metres in width x 0.2 metres in depth) used for the provision of a specific telecommunications service and the provision of which would otherwise require an additional pole route carrying overhead wires.

3. Where a pole or poles or other support structures carry radio transmitting or receiving apparatus, the field strength of the non-ionising radiation emissions from that installation shall not exceed the limits specified by the Commission for Communications Regulation.

(bb) The attachment to a pole or other support structure referred to in paragraph (b) above of any bracket, clamp or other fixture required for the carrying or support of any cable (including fibre optic cable), wire, tube, pipe, duct or similar thing, or required for the carrying or support of any device containing any such cable, wire, tube, pipe, duct or similar thing, and the attachment to such fixture of—

The dimensions of any such device should not exceed 0.50 cubic metres measured externally.

(i) any cable (including fibre optic

I note from the SÍRO website that it is stated that *'SÍRO fibre-optic cables are laid alongside the existing electrical line into each home. If the electrical line is overhead, the fibre is strung just underneath it. Where the electrical line is underground, fibre is laid alongside it in the duct.'* The application has not been referred to SÍRO for comment due to a request to deal with the application by 20.03.2020.

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a definition of 'alteration' is provided at Section 2 of the Act, as follows;
"Alteration" includes –

- (a) *Plastering or painting or the removal of plaster or stucco, or*
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The stringing of fibre optic cabling, could be said to fall under the definition of works and as such constitutes 'development'.

I note Class 31 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) under which provision has been made to exempt such cables and fixings (in this case the house is the support structure). I consider therefore that the works are exempt under Class 31 (as outlined above).

I note the applicant is relying on Article 9 (1) of the Regulations to claim that the development is de-exempted given Condition 7 attached to T.P. 13908/87. This condition states as follows:

*'All E.S.B., P & T and Cable TV services shall be laid underground.
Reason: In the interests of the amenities of the area.'*

This condition was also attached to T.P. 14678/88 (Condition 5).

