



An
Bord
Pleanála

Inspector's Report ABP-317271-23

Question

Whether (a) the use of the dwelling-house and coach house at Ryevale House as long-term private residential accommodation for protected persons is or is not development and; (b) whether certain associated internal works to the dwelling-house and coach house at Ryevale House is or is not development or is or is not exempted development

Location

Ryevale House, Ryevale Lawns,
Leixlip, Co. Kildare

Referral

Referred by

Kildare County Council

Owner/ Occupier

Mé Liberer Limited

Observer(s)

Ryevale Lawn Residents Association

Planning Authority Reference

ED1040

Date of Site Inspection

01st February 2024

Inspector

Clare Clancy

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1.0 Site Location and Description

- 1.1. The referral site is located on the northern side of Leixlip within the established residential area of Ryevale Lawns, Co. Kildare. The site is 0.718 ha in area and comprises of a three-storey detached over basement period house which is a protected structure.
- 1.2. There are a number of outbuildings adjoining the dwelling to the rear and side, referred to collectively as the 'coach house building' on the drawings submitted with the referral. The outbuilding to the rear is 'L' shaped in form creating an enclosed court yard with the existing dwelling at the rear. It is part two storey and three storey in scale. It was noted at time of site inspection that works were being undertaken to the interior of the outbuilding and it was noted that rooms appeared to be occupied with bedroom doors numbered. Rooms were also noted to be lockable with combination locks on each of the doors.
- 1.3. There are 2 other outbuildings adjoining the dwelling to the west which are single storey in scale, of stone wall construction with mono pitch roofs. They form part of a boundary wall creating an enclosed courtyard space at the rear of the dwelling, in conjunction with the adjoining outbuildings to the rear. It was noted at time of site inspection that there is a shed of steel-tech construction adjoining the coach house outbuilding to the northeast.
- 1.4. Extensive ground clearance works have been undertaken within the wider site with the felling of trees. Security cameras are mounted throughout the site, with several mounted on poles that are embedded in pre-cast concrete barrier blocks. There is an existing vehicle access in the southwestern corner of the site and a wooded area known as Squirrel Wood also to the west which is now felled.

2.0 The Question

- 2.1. The following questions are raised:
 - a) Whether the use of the dwelling-house and coach house at Ryevale House as long-term private residential accommodation for protected persons is or is not development and;

b) Whether certain associated internal works to the dwelling-house and coach house at Ryevale House is or is not development and, if those works constitute development, whether those works do or do not constitute exempted development.

2.1.1. The basis for the referral is to obtain a declaration in relation to the use of Ryevale House as private accommodation for people availing of International Protection Accommodation Services (IPAS).

2.1.2. The buildings are used to provide accommodation for 'protected persons' on behalf of the IPAS. A total of 17 no. bedrooms are available, 10 provided for within the existing dwelling and 7 within the existing outbuildings.

2.1.3. From the referral details and the accompanying drawings, the internal works that are carried out relate to the existing dwelling and adjoining coach house outbuilding and are described as follows:

Existing Dwelling

- Repainting of the entire house including fire painting.
- Conversion of existing doors to fire doors.
- New wiring for fire alarm system and installation of wired cctv cameras.
- Installing of emergency lighting system.
- New floor and plumbing where required.

Existing Outbuilding

- Repainting entire structure, including fire painting and ceilings.
- Partitions installed to give corridors a half-hour-rating.
- New lobby rear added to ground floor level.
- New staircase and 2 no. new bedrooms installed.
- Emergency lighting system installed.
- New fire alarm system installed.

3.0 Planning History

3.1. Referral Site

The following planning history relates to the referral site:

- 3.1.1. **P.A. Ref. 23/988, currently on appeal ABP Ref. 319910-24.** Permission sought for perimeter landscaping / planning works and the conversion of 2 no. existing sheds from storage to ancillary residential use. Retention permission sought for works carried out inside Ryevale House.

Split decision issued by Order dated 15th May 2024 as follows:

- Permission granted for perimeter landscaping and planting works on the site, subject to 6 no. conditions.
 - Permission refused for 3 no. reasons in regard to the conversion of 2 no. existing sheds (shed's A and B) from storage to ancillary residential use. Retention permission refused for works carried out internally to the existing dwelling Ryevale house comprising (i) the construction of a new stud wall and door to lower ground floor rear return, (ii) the re-panelling of internal doors to provide fireproofing.
1. *Having regard to the planning history on the site and to the current use of the premises as a center for International Protection Applicants, the Planning Authority considers that the site has been subject to a material change of use, and such is unauthorised. The works for retention within the dwelling, including the provision of new walls and fire doors within Ryevale house are considered to further facilitate the unauthorised use of the structure for the aforementioned purposes. To permit the development as proposed would further compound the unauthorised use of the site, would set an undesirable precedent for similar development of this nature and would therefore be contrary to the proper planning and sustainable development of the area.*
 2. *Having regard to the status of Ryevale House as a protected structure, the planning authority considers that the unauthorized works too Ryevale House, would materially affect the character of the protected structure, will be contrary to the provisions of Section 57 of the Planning and Development Act 2000 as*

amended, would also be contrary to the provisions of Objective AH O21 of the Kildare County Development plan 2023-2029, which seeks to protect the curtilage of protected structures and to refuse planning permission for inappropriate development that would adversely impact on the setting character curtilage, or attendant grounds of a protected structure, cause loss of or damage to the special character of the protected structure and or any structures of architectural heritage value within its curtilage. The development will therefore be contrary to the proper planning and sustainable development of the area.

3. *The public notices refer to Shed A as proposed for conversion from storage to ancillary residential use. On the date of site inspection comma it was noted that Shed A appears to have already been converted from storage use to use as a recreational space for occupants of the dwelling and, in this regard, the public notices are inaccurate. To permit a proposed development where the works have already taken place would therefore be contrary to the proper planning and sustainable development of the areas.*

3.1.2. **P.A. Ref. 07/464. ABP Ref. PL.09.230610** refused permission (05th February 2009) for 40 dwelling units, refurbishment of existing grain store to provide 4 dwelling units, refurbishment of main house to provide 6 dwellings. Refusal on grounds that the proposal would interfere with and seriously detract from architectural and historic heritage of Ryevale house by reason of:

- The subdivision of the house into apartments and the termination of its historic use as a single dwelling,
- The removal of a significant part of the open space and mature trees, which provided an appropriate setting for the house,
- The size and scale and location of the proposed terrace of houses to the front and the apartment building to the side,
- Contravene relevant provision of the Kildare County Development Plan 2005, the Leixlip Local Area Plan 2002.

3.1.3. **P.A. Ref. 97/1036. ABP Ref. PL 09.105084** First party appeal against planning conditions 9, 17 and 18 included with the final grant issued by Kildare County Council

for change of use of the existing coach house from storage outbuildings to office / studio and conversion of existing grain store to 2 residential units with new vehicular access off Ryevale Lawns. The Board directed the removal of condition no. 9 which related to road improvements to facilitate the proposed development that the planning authority might incur. (23rd April 1998).

3.1.4. **P.A. Ref. 86/613** Kildare County Council granted permission for boundary wall to front of Ryevale House. (29th August 1986).

3.1.5. **Referral History:**

P.A. Ref. ED1021

A third party Section 5 referral application made in the 09th February 2023 by Ryevale Lawns Residents Association (RLRA) sought a declaration on the following question:

“Whether there is a requirement for planning permission for the ongoing works at Ryevale House, Lexlip, and the proposed change of use of the house (a protected structure) and other buildings from private residence to a commercial facility to accommodate persons seeking international protection in Ireland”.

Kildare County Council decided the referral in relation to the following question:

“Whether the change of use from a dwelling house to a centre of accommodation for people seeking international protection is or is not development and is or is not exempted development”.

is development and is not exempted development pursuant to Sections 2, 3, 4, and 5 of the Planning and Development Act 2000 (as amended), and Articles 6, 9, 10 of the Planning and Development Regulations 2001 (as amended) (07th March 2023).

3.1.6. **Enforcement History:**

UD8225 – Enforcement notice issued in regard to the change of use of Ryevale House (Protected Structure) and associated outbuildings from single residential property to a commercial multiple occupancy boarding facility.

4.0 Other Relevant Referrals

The following precedents are considered relevant:

4.1. **ABP Ref. 309922-21 (07th June 2023)**

4.1.1. This precedent is relevant as it addresses the Boards jurisdiction to make a decision on this referral, given that the Board had previously made a determination on a similarly worded Section 5 Referral under ABP Ref. 307077-20 (P.A. Ref. ED19-31) which related to the same site.

4.1.2. The referral posed 4 questions as follows:

- (i) Whether works to complete the then incomplete apartments for use as mere apartments;
- (ii) Whether works to complete the then incomplete apartments for the reception and care of those seeking international protection i.e. protected persons;
- (iii) Whether the use of the completed apartments for the reception and care of protected persons i.e. a material change of use from typical apartments and;
- (iv) The use of the now complete apartments for non-paying tenants together with related facilities e.g. security office, doctors/nurses' station, pharmacy, food store, the ordering of tenants' food by way of food coupons, provision of mental health services and therapy rooms for tenants, transport to/from the Centre acknowledged by the developer to be an Asylum Centre for the reception and care of those seeking International Protection (ors. Protected persons) instead of use as a typical apartment block at The Rock Centre, Ballinamore, Co. Leitrim. Whether works for the completion of apartment to be used for the care of protected persons and all related services / facilities is / is not development or is / is not exempted development.

4.1.3. For the purposes of clarify, question (iv) was recast by the Planning Inspector as follows:

- (a) Whether the use of unit 26 at the Rock Center, Ballinamore as an office security hub is development or is not development or is or is not exempted development.
- (b) Whether the use of unit 26 at the Rock Center, Ballinamore as a medical service station is or is not development or is or is not exempted development.

4.1.4. In the determination, the Board directed that the matters that arose in relation to questions (i), (ii), (iii) of the subject referral were the same or substantially the same and in respect of the same land as the Referral issued under ABP Ref. 307077-20 and

that there was no evidence of any change in the planning facts or the circumstances that underpinned the application. The Board concluded that under such circumstances, that it was precluded under Section 50(2) of the Planning and Development Act 2000 (as amended) from making the determination on items (i), (ii), (iii).

4.1.5. In relation to question (iv), the Board decided:

(a) the use of unit 26 as an office / security services hub did not constitute a material change of use from the permitted office / business use of the unit and was not development.

(b) the provision of a medical services station within unit 26 did not constitute a material change of use from the permitted office / business use and therefore was not development.

(c) the use of the subdivided unit to the rear of the development for use as a foodstore and for medical services was development and was not exempt development.

4.2. ABP Ref. 301055-18 & ABP Ref. 301064-18 (Narconon Trush v An Board Pleanála) (2021) IECA 307.

4.2.1. Reference to this case is made within the referral.

4.2.2. In 2016, Meath County Council issued a Section 5 declaration that the proposed change of use from a nursing home to a residential drug rehabilitation facility was exempted development. The decision of the planning authority was not referred to the Board.

4.2.3. In 2018, two separate parties Ballivor Community Group and Trim Municipal District sought declarations from Meath County Council relating to the same site at Ballivor, Co. Meath, and the same subject matter as the 2016 referral – *“whether the change of use of a permitted nursing home to a residential drug rehabilitation facility, is or is not development, and is or is not exempted development”*.

4.2.4. Meath County Council referred these referrals to the Board and in November 2018 the Board determined on both referrals that the change of use is development and is not exempted development, following which the site owner Narconon Trust initiated judicial review proceedings (Case Ref's. 2020 IEHC5 and 2021 IECA307).

4.2.5. The High Court quashed both determinations and the Board appealed the decisions. In its judgment November 2021, the Court of Appeal found that *“the Board was precluded from determining a Section 5 referral in circumstances where a planning authority has previously determined the same, or substantially the same question in respect of the same land where there is no evidence that there has been a change in the planning facts and circumstances since the planning authority’s determination”*.

4.2.6. Other points to note from the Judgement include:

- The Board had jurisdiction to receive the referral and to commence its determination.
- Once it became clear to the Board that the question referred was the same, substantially the same, and in respect of the same land as a previous referral, and that there was no evidence of any change in the planning facts or circumstances, then the Board ought to have concluded that the referral *“amounted to an impermissible attack on the 2016 declaration which in substance amount to questioning the validity of the Section 5 declaration other than by way of S. 50; that such a challenge is prohibited by S. 50(2); and that for the Board to proceed further to determine in the referral on the merits amounted to facilitating a breach of S.50(2) and was accordingly ultra vires”*.

4.3. **ABP Ref. 307077-20 (18th December 2020).**

4.3.1. The following questions arose;

Whether –

- (a) the use of previously incomplete and abandoned apartments, as apartments,
 - (b) the change of use of previously incomplete and abandoned apartments to use for the reception and care of protected persons, and
 - (c) the works to complete the previously incomplete and abandoned apartments, in order to use the apartments for the reception and care of protected persons,
- at The Rock Centre, Ballinamore, County Leitrim, is or is not development or is or is not exempted development.

4.3.2. The Board determined that: -

- the use of previously incomplete and abandoned apartments, as apartments is development and is exempted development,
- the change of use of the then incomplete and abandoned apartments and partly completed on foot of planning permission 04/1546 to 'The Reception and Care of those seeking International Protection' is not development.
- the built works carried out internally and externally at incomplete apartments currently in use as 'The Reception and Care of those seeking International Protection' is not development' are development and are exempted development.

4.3.3. The Board concluded that: -

(a) the provision of works to complete the apartments, included in the relevant permission and which are either necessary for or ancillary or incidental to the use of the building permitted, come within the scope of Section 40 of the Planning and Development Act 2000, as amended, and do not come within the scope of Section 5 of the Planning and Development Act 2000, as amended;

(b) the permitted use of the apartments was not abandoned and the current use of the premises as apartments, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, does not constitute development.

4.3.4. The Board issued a decision by order dated 4th of January 2021 in exercise of the powers conferred on it by Section 5(3) (a) of the 2000 Act, that the use of the premises at The Rock Centre, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons, is not development.

4.4. **ABP Ref. 303989-19 (July 2019)**

4.4.1. With regard to a proposed change of use and internal works carried out to a protected structure, the Board decided that the proposed partial change of use from shop to coffee shop at No. 12 Cross Street Upper, Galway is development and is not exempted development, and the proposed maintenance and conservation works to the upper floor façade at No. 12 Cross Street and No. 1 High Street Galway (protected

structures) is development and is exempted development, pursuant to Sections 4(1)(h) and 57(1) of the Planning and Development Act, 2000, as amended (July 2019).

5.0 Policy Context

5.1. Development Plan

5.1.1. Kildare County Development Plan 2023-2029.

- Appendix 6 Record of Protected Structures identifies Ryevale House, Lexlip as protected structure RPS B11-115.

5.2. Local Area Plan

5.2.1. Leixlip Local Area Plan 2020-2023 (extended to 30th March 2026).

- The referral site is located in the functional area of the Lexlip Local Area Plan 2020-2023 (as extended) and is Zoned Existing / Infill Residential, the objective for which is to protect and enhance the amenity of established residential communities and promote sustainable intensification.
- Table 10-1 Record of Protected Structures identifies Ryevale House as a protected structure, B11-115 refers.

5.3. Natural Heritage Designations

There are no natural heritage designations either within or immediately abutting the referral site. The following sites are the nearest sites:

- SAC Rye Water Valley/Carton (Site Code 001398) – approx. 132 m to the east of the site.
- pNHA Rye Water Valley / Carton (Site Code 001398) – approx. 132 m to the east of the site.
- pNHA Royal Canal (Site Code 002103) – approx. 695 m to the northwest of the site.
- pNHA Liffey Valley (Site Code 000128) – approx. 992 m to the southeast of the site.

5.4. Referrer's Case

5.4.1. The Planning Authority Kildare County Council is the referrer, and the case has been referred under Section 5(4) of the Planning and Development Act 2000 (as amended) to the Board for determination.

The following accompanies the referral:

- A completed application form made by Mé Liberer Limited to the Planning Authority under Section 5.
- Legal opinion provided by Kevin Bell B.L and Jarlath Fitzsimons S.C to address the jurisdiction of Kildare County Council to consider and determine the request for a Section 5 declaration.
- Planning report.

5.4.2. The following is noted from the planning report submitted by the landowner:

- A description of the overall site including a description of the existing dwelling, a protected structure, and coach house outbuilding providing a total of 17 bedrooms which are used to provide accommodation for protected persons on behalf of the International Protection Accommodation Services (IPAS).
- The existing permitted use of the dwelling and outbuilding is for private residential accommodation.
- The basis for the application for a declaration is to seek clarity on the use of Ryevale House as a private accommodation for IPAS services. The Planning Authority's assessment of the third party Section 5 request were based on an inaccurate description of the landowner's proposal.
- Addresses the Third Party Section 5 Declaration ED1021, submitting that the question raised by the third party was flawed and contained a material error in the description of the use of Ryevale House as a 'centre of accommodation'. Also that there is a change in the factual and planning circumstances, which would enable the planning authority to issue a Section 5 declaration, notwithstanding the existence of the previous Section 5

declaration. Reference is made to *Narconon Trust v ABP* [2021] I.E.C.A 307.

- The planning report relating to ED1021 incorrectly described the proposed use as 'a commercial facility' and 'an accommodation centre' and on that basis determined that a change of use has occurred and that the use was not covered by Class 14(h) of the Planning and Development Regulations 2001 (as amended).
- Class 14(h) does not apply to Ryevale house as it has an existing established residential user, and the use of Ryevale House as private residential accommodation does not constitute a material change and is not development, and does not need to avail of exempted development provisions set out in the Planning and Development Regulations 2001 (as amended).
- The planner's assessment appears to be based on the third party's submission that there would be a 'refugee centre' at Ryevale House and the provision of '80 individual bedrooms' which this proposal does not seek to do. The planning assessment was also based on the fact that the proposed use was not covered by Class 14(h) of the Planning and Development Regulations 2001 (as amended).
- The following information is set out in Figure 7.0 and is noted:
 - The subject properties, Ryevale House and its associated outbuilding together comprise of a standard residential dwelling.
 - The subject site provides a total of 17 no. bedrooms between both Ryevale House (10) and the associated coach house outbuilding (7).
 - No food is served on site.
 - A limited number of staff are employed at the site for the purpose of cleaning communal / shared living areas within the buildings.
- The legislation does not define the phrase 'material change of use' as per Section 2(1) of the Act and that in order to determine the materiality of any change, the practical impacts and effects of the proposed change of use must be considered by the planning authority.

- The proposed change of use is considered in Section 5.0 of the planning report and the following is noted:
 - The focus of the Planning Authority's assessment should be on the practical effects of the examined use when determining whether it is materially different from the prior use.
 - Ryevale House and outbuildings have an established pre-1 October 1964 use as private residential accommodation and the current use of the property continues the long-established private residential use with the only alteration to have occurred being an increase in the number of residents accommodated upon the site.
 - There will be no discernible change to the use of the building other than the socio-economic class of the inhabitants occupying it and if a planning application was made in relation to same, the planning authority would not include conditions prohibiting accommodation to a particular socio-economic class or preclude the residential properties to long-term private residents.
 - The continued use of Ryevale House as private residential accommodation will have no material effect on proper planning and sustainable development of the area, therefore no material change of use has occurred and no development has occurred.
 - Intensification of use is also considered and the point is made that any proposed intensification of use of Ryevale is less significant, as the asylum seekers of Ryevale House are accommodated in individual residential apartments with some shared bathroom and kitchen facilities.
 - In considering material considerations such as increased traffic, noise, pressure on infrastructure, visual impact etc, the landowner states that the practical differences in the current use of the entirety of Ryevale House as private accommodation for persons seeking international protection are almost indiscernible from its established use.

5.4.3. The following is noted from the legal opinion submitted in conjunction with the Section 5 referral application form:

- Kildare County Council has the jurisdiction to decide the Section 5 referral for the following reasons:
 - *Narconon v An Bord Pleanála*, the court of appeal determined that a Planning Authority is precluded from determining a Section 5 referral in circumstances where a Planning Authority has previously determined the same, or substantially the same question in respect of the same land where there is no evidence that there has been a change in the planning facts and circumstances since the Planning Authority's determination.
 - Such a preclusion applies where a second (or subsequent) request for a Section 5 declaration invokes the same, or substantially the same question as the previous request for a declaration.
 - The preclusion applies where there is no evidence of a change in planning facts or circumstances. Where there is such a change in planning and / or factual circumstances, then in line with previous judgements of the High Court, a Planning Authority (or subsequently An Bord Pleanála) may consider and determine a second (or subsequent) request for a Section 5 declaration.
 - The example of *Clearly Composting v An Bord Pleanála* [10th July 2017] IEH 458 whereby the High Court considered the interplay between three Section 5 declarations made by Kildare County Council between 2009 and 2011 and three later Section 5 declarations made by the Board between 2013 and 2014. It was held by Baker J. that *'the Board's declarations were made in the light of the evidence before it that the nature and extent of the activity had changed from the subject matter of the earlier declaration made by Kildare County Council'*.
 - The Planning Authority is entitled to consider whether the subject-matter of the request for a Section 5 declaration differs from the subject matter of Section 5 request made previously under reference number ED 1021.

- Even if the Planning Authority did decide that the second question is the same as the first, it is still open to Kildare County Council to both consider and determine the second Section 5 request because of the clear differences in both planning and factual circumstances as between the actual proposed use of the land and the supposed use of the land assumed in the first Section 5 request.
- The Planning Authority would have to consider (i) if the second request was the same as the previous one and (ii) whether the factual and planning circumstances had changed, and
- Unless the Planning Authority concludes both that (i) the second request was in fact the same as the previous one, and (ii) the planning and / or circumstances had not changed between the two requests for a Section 5 declaration, then Kildare County Council has the jurisdiction to consider and determine the intended second request for a Section 5 declaration.

5.4.4. Following a request by An Bord Pleanála on the 08th June 2023, Kildare County Council furnished the file history relating to the previous declaration issued on the site by the Council, P.A. Ref. ED1021 refers. This included the following:

- A cover letter from the referrer Ryevale Lawn Residents Association containing the questions asked for the purposes of the Section 5 referral, in lieu of the Section 5 declaration / application form and supporting documentation including Circular Letter Ref. No. PL10/2022 (DHLGH).
- Legal advice provided by Barrister at law Michael O'Donnell.
- Briefing note for public representatives from the Department of Children, Equality, Disability, Integration and Youth (27/01/2023).
- Conservation Report provided by the Architectural Conservation Officer Kildare County Council.
- The planning report assessment and recommendation of the Section 5 declaration sought dated 07/03/2023.
- Director of Services order no. DO45949 dated 07/03/2023.

- The Section 5 declaration issued to the referrer Ryevale Lawns Residents Association dated 07/03/2023.
- The Section 5 declaration issued to the owner of the property 07/03/2023.
- Confirmation of the owner of the land in question Mé Liberer Limited.
- Confirmation that no declaration was issued in respect of the current referral ED1040.

5.5. Owner / Occupier's response

- 5.5.1. On the 07th June 2023, the Board submitted a copy of the referral to the landowner Mé Liberer Limited in accordance with Section 129 of the Planning and Development Act 2000 (as amended). No observations were made.

5.6. Further Responses

- 5.6.1. John Deignan, Secretary, Ryevale Lawn Residents Association (RLRA) submitted the following observation / submission on the 28th June 2023:
- The planning history of the site, ABP Ref. PL 09.230610 is relevant as it provides a sense of what the dwelling and associated buildings and grounds are like, the property remained largely unchanged until redevelopment commenced in late 2022 / early 2023.
 - Arising from ongoing redevelopment, RLRA submitted a Section 5 referral on the 09th February 2023. The change of use had not commenced at this stage.
 - Enforcement proceedings commenced on the site.
 - Narconon Trust v An Bord Pleanála is relevant in the context of the question(s) referred to the Board by Kildare County Council. It repeats large elements of the questions under Section 5 referral ED1021 and decided by Kildare County Council on the 07th March 2023; there is one property, one round of works (comprising of internal and external works) and one change of use (as it was at that point in time).
 - RLRA are not aware of any evidence of material change in the planning facts or circumstances of this case.

- The ongoing works both internal and external, the change of use which commenced 31st March 2023 constitute development and neither the works or the change of use are exempted development.
- All structures within the curtilage of a protected structure are themselves protected, and any issue arising in relation to one applies to both.
- The use of Ryevale House prior to recent redevelopment works and change of use was that of a dwelling house that was a single family residence.
- A dwelling house is expressly excluded from the range of uses that could be relied upon to deem the use as an accommodation facility exempted development, S.I. 605/2022 refers.
- The wording of the second question posed '*certain associated internal works*' is vague and clarification should be sought.
- There is a presumption against any works to a protected structure having regard to Section 57 of the Act. It would appear that no declaration was issued by the Planning Authority under Section 57(1) in regard to the works carried out within the dwelling.
- It is inconceivable that the extensive construction works necessary to convert the property from a single family residence to a full scale commercial accommodation facility for up to 80 people including fire safety works, the provision of laundry services, meals, a lobby / reception area, could be achieved without any material impact on the character of the property.
- The provision of accommodation for a large number of people under a contract between the owner and the Department is a commercial enterprise that gives rise to a change of use to what is an established private, single-family dwelling.
- As per the planning report submitted by the planning consultant, it is noted from the drawings that the change of use and associated works appear to extend beyond the house and coach house and include the former grain store building. The failure to identify that building in the change of use adds to misleading representation of the scale of redevelopment of both the property and change of use.

- The setting of the house has been destroyed by the levelling of the grounds and the felling of mature trees, repainting of the house.
- Based on the facts evident in the documentation on Ryevale House and on the ground, that post substantial redevelopment, it is clear that capacity has increased materially to multiples of that required for a large Irish family, the vast majority of bed spaces are managed on a commercial basis for the purposes of a contract with IPAS with maintenance and on-site staff provided by the owner. Accommodation facilities have been increased to cater for a high level of occupancy, increased traffic on the main road of Ryevale Lawns including buses, taxis, ambulances, visitors.
- The following references are made in regard to points raised in the planning consultants report:
 - The Molloy v Minister for justice is not relevant on account of the likelihood that use of a residential religious novitiate as an accommodation centre for persons seeking international protection would enjoy exemption under S.I.605 of 2022 from a requirement to obtain planning permission.
 - Use of the site to provide private accommodation to people in the International Protection (asylum) process does not materially contravene the Kildare County Development Plan 2023-2029, while this may be so, planning permission is still required unless an exemption can be identified.
 - The word 'centre' is used in the Department's briefing note (27th January 2023) and the Government website in reference to IPAS stating that accommodation centres provide accommodation for people who have sought International Protection from their home country.
 - There are no proposals to install 80 individual bedrooms. RLRA consider that the likely situation will be to provide dormitory-type accommodation, similar to hostel type accommodation.
 - The third party referral was premised on the basis that a refugee centre would provide cooked meals and other material care and services for residents, this is an inappropriate matter to raise in a planning case and

considerations raised in relation to socio-economic class are not appropriate to planning law.

- Incorrect information, in particular the main house has 6 bedrooms not 10, it is questionable if the coach house has 7 approved bedrooms, it is possible that subdivision of bedrooms in the main house and coach house have taken place.

5.6.2. On the 12th July 2023, the Board furnished a submission received from Ryeval Lawn Residents Association (28th June 2023) to Mé Liberer Limited in accordance with Section 131 of the Planning and Development Act 2000 (as amended), requesting the owners to submit to the Board submissions or observations in relation to the aforementioned submission, as set out in Section 5.6.1 above. In reply, Mé Liberer Limited submitted the following on the 31st July 2023:

- Narconon v An Bord Pleanála, the Board is entitled to decide upon the referral on the basis that the declaration issued by Kildare County Council (07th March 2023) on the basis of an inaccurate description and a number of changes in the planning circumstances since the last declaration issues.
- This referral seeks to examine two issues (a) the current use of Ryevale House as long-term accommodation for persons seeking international protection and (b) the internal works carried out at the property. The referral does not include for any of the external works at Ryevale House and are not relevant to the determination and are a separate planning matter.
- The Ryevale Lawns Residents Association (RLRA) assumption that the commercial leasing of a dwelling for long-term residential use is different (for the purposes of planning considerations) from the occupation of the same dwelling by an owner / occupier and with references to the ‘commercial’ nature of the current use of the house. The fact that the property is being rented out is irrelevant in circumstances where it remains in long-term residential use as the principal private residence of its occupants.
- Reference is made to the private letting of the property as a dwelling to a single family which would be equally commercial in nature to that of the tenure of the current residents also being described as commercial in nature.

- The leasing of the property to a single family by a commercial landlord would not constitute a material change of use.
- The use of a dwelling as a commercial asset rented out for profit cannot of itself constitute such a change of use, so long as it remains in use for long term residential purposes.
- Ryevale House is the principal private residence of its current occupants as it was when it was owner occupied. No change of use has occurred in spite of the change of tenure of the residents.
- S.I. 605/2022 does not mention the use of dwelling houses to accommodate persons seeking international protection.
- S.I. 605/2022 includes many buildings within its scope found within 'an existing residential area' that the Government has expressly deemed to be suitable accommodation for asylum seekers.
- This statutory instrument does not address the matters at issue in this referral is irrelevant to the Board's consideration.
- The works that are the subject matter of the referral are clearly outlined in the original submission, and that the internal works are exempted development pursuant to Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- The works do not detract from the architectural and historical character of the house.
- The external works raised by the RLRA are the subject matter of separate engagement with Kildare County Council and are not relevant to the determination of this referral.
- The external works at Ryevale House including the painting of the exterior do not fall within the scope of this referral.
- There has been an increase in the number of people ordinarily resident in Ryevale House from when it was a large owner occupied dwelling with resident staff. An increase in the number of residents does not constitute a change of

use from the established residential use unless there are accompanying observable impacts on legitimate planning considerations.

- In relation to *Molloy v Minister for Justice* it is submitted that the judgement is authority for the proposition that the use of a previous residential building for asylum seeker accommodation may only constitute a change of use if there are observable, practical impacts on planning considerations arising from the new use.
- The landowner relies on the case law cited in their original submission, i.e. the application of the test for whether intensification constituting a material change of use has occurred is assessed by reference to planning criteria. Given the lack of any changes at Ryevale House, there has been no intensification constituting a material change of use.
- There are 10 bedrooms in the house, 7 in the coach house.
- The planning history of the site indicates that the site has been used for residential use.
- The first Section 5 referral was decided by Kildare County Council on the basis of a fundamental misdescription of the development at issue and was informed by the description of the development set out in the accompanying documentation which was submitted to Kildare County Council by the RLRA and that there were '80 self-contained bedrooms' on site.
- The use of Ryevale House as long-term accommodation for persons seeking international protection has led to two differences from its previous use as an owner occupied dwelling; (i) the number of persons residing there, (ii) the socio-economic class of the new residents.
- The socio-economic class of the residents in occupation is not a factor to be considered when determining the Section 5 referral.
- The determination of the first Section 5 referral by Kildare County Council was decided based on a misdescription of the development at issue and that the Board is within its jurisdiction to determine this referral.

6.0 Statutory Provisions

6.1. Planning and Development Act, 2000

6.1.1. Section 2(1) of the Act states the following:

- 'development' has the meaning assigned to it by Section 3.
- 'protected structure' means –
 - (a) a structure, or
 - (b) a specified part of a structure,which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition.
- 'structure' means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and –
 - (a) Where the context so admits, includes the land on, in or under which the structure is situate, and
 - (b) In relation to a protected structure or proposed protected structure, includes-
 - (i) the interior of the structure,
 - (ii) the land lying within the curtilage of the structure,
 - (iii) any other structures lying within that curtilage and their interiors, and
 - (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i) or (iii)*.
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

6.1.2. Section 3(1) of the Act states that:

'development' In this Act, except where the context otherwise requires, "development" means –

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.

6.1.3. Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including:

- Section 4(1)(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;

6.1.4. Section 57(1) of the Act sets out the following in relation to works affecting the character of protected structures or proposed protected structures:

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

(a) the structure, or

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

6.1.5. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001-2020.

6.1.6. Section 50(2) Judicial review of appeals, referrals and other matters, provides that –

A person shall not question the validity of –

(a) a decision of a Planning Authority

(i) on an application for a permission under this Part, or

(ii) under section 179,

(b) a decision of the Board-

- (i) on any appeal or referral,
- (ii) under subsection 175 or
- (iii) under Part XIV,

otherwise than by way of an application for judicial review under order 84 of the rules of the superior courts (S.I No. 15 of 986) (“the Order”).

6.2. Planning and Development Regulations, 2001 (as amended)

6.2.1. Part 2 Exempted Development

6.2.2. Article 6(1) states:

Provides that ‘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.

6.2.3. Article 9(1) Restrictions on Exemption

Provides that 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, inter alia; 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,
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorized structure or a structure the use of which is an unauthorized use.

6.2.4. Article 10 (1) Changes of Use

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted to development for the purposes of the Act, provided that the development, if carried out would not –

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the act,

- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorized use, save where such change of use consists of the resumption of a use which is not unauthorized and which has not been abandoned.

6.2.5. Part 1 of Schedule 2 sets out exempted development to which Article (1) refers:

“Exempted Development – General”

This sets out the classes of exempted development, including Class 14 allowing for ‘development consisting of a change of use’;

- (g) from use as a hotel, to use as a hostel (other than a hostel where care is provided),
- (h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,
- (i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons, and
- (j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both.

- Conditions and Limitations

Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.

“Temporary Structures and Uses”

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.

- Conditions and Limitations

1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.
2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001².
3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.
4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class.
5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.

6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.
7. 'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015).
8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.

The following notes are included with Class 20F:

Commented [i787]: Class 20F is inserted by article 2 of S.I. No. 605 Planning and Development (Amendment)(No. 4) Regulations 2022.

Commented [i788]: Class 20F is substituted by article 2 of S.I. No. 376/2023 Planning and Development (Exempted Development) (No. 4) Regulations 2023.

Note:

- *Footnote No. 1 in condition no. 2 of Class 20F is referenced in article 2 of S.I. 376/2023 as OJ No. L 71, 04.03.2022, p. 1.*
- *Footnote No. 2 in condition no. 2 in Class 20F is referenced in article 2 of S.I. 376/2023 as OJ No. L 212, 07.08.2001, p. 12.*

6.2.6. Part 4 of Schedule 2

“Exempted Development – Classes of Use”

Class 6 – Use as a residential club, guest house or a hostel (other than a hostel where care is provided).

Class 9(a) – Use for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose).

7.0 Assessment

7.1. Introduction

- 7.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area but rather, whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development within the meaning of the relevant legislation.
- 7.1.2. Prior to this referral being made, Kildare County Council issued a declaration on the 07th March 2023 in relation to the same site, P.A. Ref. ED1021 refers. I note that this was a third party Section 5 Declaration.
- 7.1.3. A declaration (P.A. Ref. ED1040) was further sought by Mé Liberer Limited (landowners of the site) on the 10th May 2023 from Kildare County Council. No declaration was issued by Kildare County Council and consequently the matter was referred to the Board.
- 7.1.4. I note from the details contained on the referral in particular the planning report submitted by the landowner, that the basis for the application of this current referral is that the first Section 5 declaration sought by third parties was misleading in the information provided, and that there are new circumstances which now prevail.

7.2. The Board's Jurisdiction to Determine the Referral

- 7.2.1. Having regard to the planning history of the site and the details contained on the referral file, I consider that a key issue which arises is in relation to the Board's jurisdiction to make a decision on this referral. In this regard, Section 50(2) of the Planning and Development Act 2000 (as amended) and *Narconon Trust v An Bord Pleanála* (2021, IECA 307) is relevant to this assessment and which is set out in Section 4.0 above.
- 7.2.2. Kildare County Council (KCC) issued a determination under ED1021 in relation to the following question;

‘Whether the change of use from a dwelling house to a centre of accommodation for people seeking international protection is or is not development and, is or is not exempted development’.

I note from the details on the file that it was stated that the existing dwelling and adjoining outbuildings within the site were intended for use to provide accommodation for persons seeking international protection in Ireland.

KCC determined that the change of use from a dwelling to a centre of accommodation for people seeking international protection *is development and is not exempted development*, pursuant to Sections 2, 3, 4, and 5 of the Planning and Development Act 2000 (as amended) and Articles 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended).

7.2.3. Arising from the judgement of *Narconon Trust v An Bord Pleanála*, the Board is required to consider two issues prior to a determination being made;

(i) Is the question referred the same, or substantially the same, and in respect of the same land, and

(ii) has there been any change in the planning facts or circumstances since the previous determination was made.

7.2.4. There are 2 questions posed in this referral:

a) Whether the use of the dwelling-house and coach house at Ryevale House as long-term private residential accommodation for protected persons is or is not development and;

b) Whether certain associated internal works to the dwelling-house and coach house at Ryevale House is or is not development and, if those works constitute development, whether those works do or do not constitute exempted development.

7.2.5. **1) Is the question referred the same, or substantially the same, and in respect of the same land?**

- I note that this referral relates to the same site as that of the previously determined referral by KCC.

- There are two questions posed in this referral. The first question relates to the use of the existing dwelling and coach house, and the second question relates to internal works carried out to the dwelling and its associated coach house.
- I note from the details contained on the file that the landowner has acknowledged that the buildings are currently being used to provide accommodation for protected persons on behalf of the International Protection Accommodation Services (IPAS) and that a contract is in place between the landowner and IPAS to use the property as a long-term residential building for people in the International Protections asylum process.
- I note that the question decided by the Planning Authority under ED1021 related to the change of use of Ryevale House, a domestic dwelling, to a centre of accommodation for people seeking international protection.
- I note the reference to coach house in the current referral which was referred to as an outbuilding in the first referral (ED1021), and accordingly it will be dealt with as such for the purposes of this referral, as no argument has been made that the coach house was not covered by that Section 5 declaration.
- It is my consideration that the question posed in relation to whether the use of the existing dwelling-house Ryevale House and its associated coach house outbuilding, as long-term private residential accommodation for protected persons is or is not development, is substantially the same as that determined by Kildare County Council under P.A. Ref. ED1021.

7.2.6. 2) Has there been any change in the planning facts or circumstances since the previous determination was made?

- Having regard to the details contained on the file, the planning history of the referral site, in particular the declaration issued by KCC under P.A. Ref. ED1021, I have sought to identify if there are any new or changed planning facts or circumstances arising.
- The questions referred for declaration under ED1021 related to use and works, but a declaration issued only in respect of use. The second question posed in this referral seeks to ascertain if internal works to the use of the dwelling house

and its associated outbuilding is or is not development and is or is not exempted development, which I propose to consider separately later in the report.

- In relation to the existing dwelling and its associated outbuilding, I consider that the circumstances relating to the use of the dwelling has not changed since the last determination was made, and as already noted above, the landowner has confirmed that the dwelling and the associated outbuilding are currently being used to provide accommodation for persons seeking International Protection, which I confirmed from my site inspection.
- It is therefore my view that there has been no change to the circumstances relating to the use of the dwelling and outbuilding in the interim period since the previous determination was made, and the landowner has not identified any material changes.
- Having regard to the foregoing, it is my consideration that in the context of *Narconon Trust v An Bord Pleanála* judgement, that the first referral ED1021 relating to this use was clearly adjudicated upon in the declaration issued by Kildare County Council on the 07th March 2023. It is therefore my conclusion that the Board is precluded from making a determination in relation to the question posed:

“Whether the use of the dwelling house and coach house at Ryevale House as long-term private residential accommodation for protected persons is or is not development”.

Kildare County Council has previously made a determination in regard to the same question, therefore it is not within the Board’s jurisdiction to revisit this determination, where there has been no material change in the planning facts or circumstances.

Internal Works

7.3. Is or Is Not Development

- 7.3.1. The internal works referred to in the second question posed comprise of works carried out within the existing dwelling and associated outbuilding. Ryevale House is included on Kildare County Council's Record of Protected Structures. I note that the declaration of the Council (ED1021) did not deal with internal works, albeit the report of the planning officer did. Given that the declaration did not explicitly deal with the works, they therefore remain open to be determined by the Board.
- 7.3.2. The internal works carried out comprise of repainting including fire-painting, conversion of existing doors to fire doors, new wiring and installation of wired cameras, emergency lighting and directional signage and specifically in relation to the outbuilding, the installation of partitions to give corridors half-hour-rating corridors, new staircase and 2 new bathrooms.
- 7.3.3. It is submitted that the works were carried out for the maintenance and improvement of the structures, and have not affected the character of Ryevale House or its outbuildings, or any element of the structures which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, as per Section 57 of the Planning and Development Act 2000 (as amended).
- 7.3.4. I consider that the works as described in the referral and noted at time of site inspection constitute "*works*" and "*development*" within the scope of Section 2(1) and Section 3(1) of the Act.

7.4. Is or Is Not Exempted Development

- 7.4.1. It is necessary to determine whether the works carried out are exempted development. The landowner states that the works were carried out for the maintenance and improvement of the structures and come within the scope of Section 4(1)(h) of the Act.
- 7.4.2. As Ryevale House is a protected structure, this includes for features within its attendant grounds, and in accordance with the meaning of "*structure*" as set out in Section 2(1) of the Act, this includes the interior of the structure and any other structures lying within the curtilage, and their interiors. The works in this instance are

stated to only affect the interior of the structures and ordinarily may be exempt under the provisions of Section 4(1)(h) of the Act. As the building is listed as a protected structure, requirements under the provision of Section 57(1) (as amended) would also apply to the structure. The works were being undertaken at the time of my site inspection. I note that no request was made to the Planning Authority for a Section 57(2) Declaration in relation to the internal works.

7.4.3. The following list of works that have been carried out to the existing dwelling is provided in the referral which include for the following for both the existing dwelling and outbuilding:

- Repainting of entire structures including fire painting of ceilings.
- All doors converted into fire doors with door closers attached and appropriate fire-painting.
- Basement level kitchen replaced.
- Installation of new fire alarm system and cctv cameras.
- Installation of emergency lighting system.
- New flooring where required.
- All plumbing works repaired / serviced.
- New staircase, 2 new bathrooms installed (relates to outbuilding).
- Partitions installed to give corridors a half-hour-rating (relates to outbuilding).
- New lobby area added to ground floor level (relates to outbuilding).

7.4.4. As the current use of the existing dwelling and associated outbuilding is for the provision of long-term accommodation for protected persons on behalf of the International Protection Accommodation Services (IPAS) I note that the requirement for some of the works described above are necessary to meet fire safety standards and regulations, and accessibility to the building, which is a requirement of the service provider in the provision of such accommodation.

7.4.5. Having inspected the dwelling, I noted that the layout of the dwelling is relatively the same. It was observed that there is an office / reception area operating within the dwelling and that job interviews were taking place at time of site inspection. It was observed that additional bed spaces are provided in the form of bunk beds within the

bedrooms thereby increasing the occupancy of the bedrooms and overall accommodation capacity of the existing dwelling. All the original doors are replaced with fire doors.

- 7.4.6. I refer the Board to the drawings provided in Figure 3.0 of the Planning Report accompanying the referral and also the supplementary drawings. In relation to the lower ground floor of the dwelling, it was noted at time of site inspection that the layout of the existing '1 hour' wall / partition appeared to differ on the ground from the layout illustrated on the plans provided with the referral. The ceiling in this area also appeared of more recent construction to that of the original ceiling. This relates to the area identified as the 'boiler room' on the plans provided. It also appeared that in addition to new fire doors, new architraves had been installed. Cctv, fire alarm systems and emergency directional signage were installed throughout the dwelling.
- 7.4.7. In relation to the outbuilding which comprises part of the curtilage of the Protected Structure, it was evident that works carried out at ground floor and first floor levels provide for habitable and living accommodation. At ground floor level, it appeared that a new w.c. and shower room and stairs had been constructed. It appears that a new bedroom (no. 3) is provided for that includes for partitions constructed to accommodate corridor access to a new shared ensuite and a w.c. It appeared that a new door way was opened up between one end of the building and the other (at ground floor level) to provide access from bedroom 1 into the shared ensuite and w.c. At first floor level, 2 bedrooms are provided. Fire safety doors, cctv cameras, emergency lighting and directional signage are mounted throughout in the interior of the structure. Cctv and emergency lighting was noted be mounted on the façade also.
- 7.4.8. Having regard to the foregoing, I consider that the works carried out to the overall dwelling and outbuilding are extensive alterations which have altered the character of the structures in terms of design and layout internally. The works are required to facilitate a change of use which has previously been determined to not be exempted development. I therefore do not consider that these internal works carried out to the Protected Structure come within the scope of Section 4(1)(h) or Section 57(1) of the Act, and I therefore conclude that the works carried out are not exempted development.

7.5. Restrictions on Exempted Development

- 7.5.1. The restrictions provided in Article 9 of the Planning and Development Regulations, 2001 (as amended) relate exclusively to Article 6 of the Planning and Development Regulations 2001 (as amended) which refers to classes of development specified in Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended). Therefore it is not applicable in this case and I would also note that the internal works carried out are not exempted development. Having regard to the foregoing, I conclude that the provisions of Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and Article 6 of the Planning and Development Regulations 2001 (as amended) do not apply in this case.

7.6. Appropriate Assessment – Screening

- 7.6.1. Having regard to the nature and limited scale of the works which relate to works carried out to the interior of the existing dwelling house and associated outbuilding on a serviced site, the developed nature of the landscape between the site and European sites, and the lack of a hydrological or other pathway between the site and European sites, it is considered that no Appropriate Assessment issues raised and that the works which are the subject of this referral would not be likely to have a significant effect either individually or in combination with other plans or projects on any European site.

7.7. EIA – Screening

- 7.7.1. The works which are the subject of this referral do not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended) and therefore is not subject to EIA requirements.

8.0 Recommendation

- 8.1. I recommend that the Board should decide this referral in accordance with the following draft order:

WHEREAS a question has arisen as follows:

- (a) Whether the use of the dwelling-house and coach house at Ryevale House as long-term private residential accommodation for protected persons is or is not development and;
- (b) Whether certain associated internal works to the dwelling-house and coach house at Ryevale House is or is not development and, if those works constitute development, whether those works do or do not constitute exempted development.

AND WHEREAS Mé Liberer Limited the landowner, requested a declaration on the questions from Kildare County Council and the Council did not issue a declaration on the matter:

AND WHEREAS Kildare County Council referred this declaration for review to An Bord Pleanála on the 02nd day of June, 2023, under Section 5(4) of the Planning and Development Act 2000, as amended:

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

- (a) Section 2(1), 3(1), 4(1) 57(1) of the Planning and Development Act, 2000, as amended,
- (b) Article 6 and Article 9 of the Planning and Development Regulations, 2001, as amended,
- (c) the planning history of the site,
- (d) the previous Section 5 referral determined by the Planning Authority in respect of the same land under referral P.A. Ref. ED1021,
- (e) the judgement of the Court of Appeal in Narconon Trust v An Bord Pleanála & Others (2021) IECA 307,
- (f) the nature of the current use of the site,
- (g) the submissions of the Referrer and other parties,

AND WHEREAS An Bord Pleanála has concluded that:

Part a) of the Referral Question, is the same, or substantially the same, and in respect of the same land as the Referral ED1021 issued by Kildare County Council on the 07th day of March 2023, and there is no evidence of any change in the planning facts or circumstances underpinning the application. In these circumstances, the Board is precluded under Section 50(2) of the Planning and Development Act 2000 (as amended), from making a determination on Part a) of the Question which seeks a declaration on whether the use of the dwelling-house and associated coach house outbuilding as long-term private residential accommodation for protected persons is or is not development.

Part b) of the Referral Question, that certain internal works carried out to the dwelling-house and its associated coach house outbuilding at Ryevale House is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Clare Clancy
Planning Inspector

21st October 2024

Appendix 1 – Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-317271-23		
Proposed Development Summary	Whether certain internal works carried out to the existing dwelling-house and associated coach house outbuilding at Ryevale House is or is not development and, if those works constitute development, whether those works do or do not constitute exempted development.		
Development Address	Ryevale House, Ryevale Lawns, Leixlip, Co. Kildare.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	✓
		No	No further action required
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			
No	✓		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No	✓	N/A	No EIAR or Preliminary Examination required
Yes			Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ **Date:** _____