



An
Bord
Pleanála

Inspector's Report ABP-318455-23

Question

Whether (1) increased occupancy of bedrooms, (2) part use of building for accommodation for those seeking international protection, (3) exempted development status when building under renovations permitted as nursing home is or is not development or is or is not exempted development

Location

Former Great Southern Hotel,
Rosslare Harbour, Co. Wexford.

Declaration

Planning Authority

Wexford County Council

Planning Authority Reg. Ref.

None

Applicant for Declaration

Wexford County Council

Planning Authority Decision

No Decision/ Is the Referrer

Referral

Referred by

Wexford County Council

Owner/ Occupier

Amhola Rosslare Nursing Home
Trading Limited.

Observer(s)	Verona Murphy on behalf of the Ad Hoc, Rosslare Harbour and surrounding areas concerned Residents Group.
Date of Site Inspection	19 th November 2024
Inspector	Catherine Dillon

1.0 Introduction

- 1.1. I would advise the Board there is a current referral submitted by Wexford County Council on foot of a Section 5 declaration sought from the Council on the same subject site ABP Ref: 318709-23 and P.A Ref: EXD01050, on 12th December 2023. Although both referrals relate to the same site, both referrals have been considered separately, as distinct questions have been raised by Wexford County Council in each referral.

2.0 Site Location and Description

- 2.1. The subject site relates to the former Great Southern Hotel, which is located along the cliff top above Rosslare harbour with a frontage onto St.Martins Road. The building is set back from this road and occupied by a large two storey with basement vacant building with two side projections. The central part of the former hotel is currently a shell with the front and rear elevations exposed and partially demolished to the rear. The eastern element of the building is largely intact and appears to have had new windows installed along its eastern elevation but not to the rear. The western element has been substantially renovated with new windows and rendered panelling. The site is currently a construction site and the entrance into the site is enclosed by hoarding and a locked gate.
- 2.2. The former hotel and its entrance is located on the northern side of St. Martin's Road a predominantly residential road. There is a detached bungalow to the south western boundary of the site and a detached boathouse building on the south eastern boundary both fronting St. Martin's Road. To the rear of the boathouse building, is a two storey detached property which was the former coastguard station and is a protected structure (Ref: WCC1381). To the northwest of the subject site is a detached two storey property which was the former lighthouse keeper's house, and it is also a protected structure (Ref: WCC1280). There is a narrow road which extends along the northern boundary of the site which provides an access to the former coastguard station, and forms part of an established cliff walk route.

- 2.3. Rosslare harbour and the Europort railway station are approximately 400m to the north of the site, and the site is located within Rosslare village centre. The site has a stated area of 1.11 hectares.

3.0 The Question

- 3.1. The question posed by Wexford County Council (WCC) to the Board relates to three questions concerning whether the use of the 'west wing' building to the Great Southern Hotel for use for accommodation for persons under international protection is development and is exempted development.
- 3.2. In particular the Council requires the following 3 questions to be addressed:
1. Is the intensification or the increased occupancy of bedrooms covered under Planning & Development (Exempted Development) (No.4) Regulations 2023 (S.I 376/2023), when consent for the nursing home was based on one occupant per room.
 2. Can the use of the building for accommodation for those seeking international protection, which is undergoing renovation for use as a nursing home, be considered exempted development.
 3. Can exempted development status accrue when the building is under extensive renovations commenced under an approval permitted as a nursing home but not complete.

4.0 Planning Authority Declaration

- 4.1. No declaration made by the Planning Authority.

5.0 Planning History

Relevant planning history pertaining to the site:

P.A Ref: 20210283: On 14th July 2021, Wexford County Council granted planning permission to Dormal Developments Limited for the change of use of the former hotel to a 90 bedroom nursing home including dayrooms, offices, meeting rooms, mortuary, laundry, kitchen, dining room, staff rooms, various bathrooms, treatment

room, and ancillary accommodation, 24 one bedroom assisted living apartments and 1 studio apartment (total 25 apartments), 2nd floor extension to existing north and west wings, single storey extensions at south and east of existing building, 2 storey extensions at south and west of existing building, 3 storey extensions to south and west of existing building, alterations to all elevations, external steps and ramps, front boundary wall with railing and gates at St. Martins Road, walled service area, new boundary fencing with gate to northern boundary, ancillary site works and car-parking for 77 cars.

This permission was subject to 16 conditions. I note from the planner's report that development was screened for Appropriate Assessment and an AA was not required and the hotel was vacant at this time.

- 5.1. **P.A Ref: 20220711:** On 22nd August 2022, Wexford County Council granted planning permission to Amhola Rosslare Nursing Home Trading Limited for alterations to the 90 bedroom nursing home scheme permitted by Wexford County Council (Ref: 2021/0283). The proposed works included: 1) The demolition of part of the rear of the hotel building including the existing ESB substation; 2) Modifications to the internal layout of the building; 3) Modifications to the elevations including changes to openings and facade materials and the construction of rooftop plant rooms; 4) The construction of a plant room and waste management enclosure; 5) All associated car parking, landscaping and site development works. Access to the nursing home will be provided via St. Martins Road located to the south.
- 5.2. I note from the planner's report dated 20/7/2022 that a screening report was carried out and an AA was not required and 'construction work has commenced on the derelict building in preparation for works and to ensure compliance with previous orders'.
- 5.3. **P.A Ref: 20240119:** On 12th February 2024 a planning application was withdrawn for permission and retention permission for development consisting of retention of demolition of existing link corridors, two-storey side extension and front projections. Retention of external and internal alterations to existing building which includes replacement windows and windowsills, removal of the rear facade panels to the west and eastern wings and decorative detail at parapet level, repair of roof to western wing of the building, and omission of existing doors on the southern elevation of the

building. The proposed development also includes retention and permission for the completion of alterations to the building including internal and external alterations, replacement link corridors, access ramp, fire escape access steps to serve the west wing building, sub-station, waste management enclosure, internal access road, car parking and all ancillary development necessary to facilitate the development.

Although this application was withdrawn it indicates that works had been carried out and retention was sought for same.

Also of relevance:

5.4. **ABP Ref: 318709-23 & P.A Ref: EXD01050:** There is a current referral submitted by Wexford County Council on the same site which asks whether the proposed use of the buildings/properties/structures for the purposes of accommodating persons seeking international protection is development, and if so, is same exempted development.

5.5. **Commencement Notices relating to the site**

The Council have provided details in their submission of two commencement notices issued for the site.

16th May 2023: A Commencement Notice was received by the Building Control Section of the Council and validated on 16th May 2023 to commence works on the Nursing Home.

4th October 2023: A 7-day Commencement Notice was received by the Council on 4th October 2023 and deemed valid to convert the existing hotel into an emergency accommodation centre. The work will be done in two phases. Phase 1 (the West Wing) for which this application applies is the fit out of the existing West Wing and a small extension which consists of a new stair.

5.6. **Derelict Site/ Dangerous Structure Notices History**

The Council have provided details of various derelict site and building notices issued on the premises and site dated between 2016 and 2020 requiring specified works to be carried out to prevent the premises or site becoming dangerous. The site remains on the derelict sites register.

6.0 Relevant Referrals

- 6.1.1. The following referrals the subject of declarations by the Board are considered relevant:

ABP Ref: 307077-20: The Board determined that the use of apartments for protected persons was not development, as the permitted use of the apartments was not abandoned, and the current use of the premises was as apartments, and therefore no material change of use was involved.

ABP Ref: 309922-21: This referral was connected to the above aforementioned referral; however, it was determined inter alia, that part of this referral referred to similar issues raised previously, and that the Board was precluded under Section 50 (2) of the Planning Act from making a determination on these items.

ABP Ref: 316325-23: In this referral reference is made to *Horne V Freeney* [1982] IEHC 20, whereby for any development to avail of exempted development provisions in terms of Section 4(1)(h) exemptions of the Planning and Development Act, 2000 (as amended) it must have been completed in full in accordance with the planning permission.

ABP Ref: 317271-23: It was determined that the use of a dwelling and coach house as long term private residential accommodation for protected persons constituted works and development as it altered the character of the structures in terms of design and layout and internally and did not come within the scope of 4 (1) (h) or Section 57 (1) of the Planning and Development Act.

7.0 Policy Context

7.1. Development Plan

- 7.1.1. Wexford County Development Plan 2022-2028, Volume 3 Settlement Plans and Specific Objectives.
- 7.1.2. The subject site lies within the Rosslare Harbour and Kilrane Settlement Plan, which is designated as a Level 3(a) Service Settlement in the Core Strategy Settlement Hierarchy. Level 3(a) settlements are important service settlements for their local

communities and their wider rural hinterlands. The subject site lies within Rosslare village centre (VC) on the zoning map for the settlement.

7.1.3. The objective for the VC zoning is 'To provide for an attractive, vibrant village centre which maximises the use of lands and encourages a mix of residential, retail, commercial and civic uses'. The purpose of this zoning is to enhance the vitality and viability of the village centre in Rosslare Harbour through the development of under-utilised and brownfield sites and by encouraging a mix of uses to make the village centre an attractive place to visit and live in. The site lies within Tier 1 lands which are considered fully serviced/'ready-to-go' and are positioned within the existing built-up footprint.

7.1.4. In Section 2.3.8 of this Plan reference is made to the vacancy within the Rosslare Harbour village centre and in particular the former Tuskar House Hotel and the Great Southern Hotel which are both located within the defined Regeneration area. The Plan also states that the 'Great Southern Hotel', which has recently been demolished, formed a significant landmark in this area. Of relevance is the following objective:

Objective RHK14: To examine all lands zoned 'Residential' and 'Regeneration Land' within the boundary of the settlement plan area and enter such lands on the Vacant Sites Register and apply the appropriate levies where it is deemed that criteria laid down by the Urban Regeneration and Housing Act 2015 (as amended) applies.

7.2. Natural Heritage Designations

The nearest Natura 2000 sites to the site are as follows:

- Seas off Wexford SPA (site code: 004237) is approximately 490m from the eastern boundary of the subject site.
- Carnsore Point SAC (site code: 002269) is approximately 838m to the south east of the subject site.
- Long Bank SAC (site code:002161) is approximately 2.6km to the north east of the subject site.

8.0 The Referral

8.1. Referrer's Case

8.1.1. The referrer in this case is Wexford County Council (WCC). The Council are seeking the Boards determination as to whether the use of the western wing to the Great Southern Hotel for accommodation under international protection is development and exempted development. In accordance with the details submitted:

- The development as presented by the Council is to use part of the building (west wing) to house up to 170 individuals in 44 bedrooms to replace 50 bed spaces in the approved 50 bedrooms for the nursing home use.
- The Council considers the intensification of the use of the building would not appear to be covered in S.I 376/2023, and the intensification of the use would have a material impact with regards to refuse storage, water and sewage services and a higher demand on transportation and car and cycle parking
- The building at the time of the submission of the referral was undergoing works for the construction as a nursing home as permitted and that the works to provide accommodation for persons seeking international protection would be completed in advance of the nursing home and would be accommodated on a building site which is contrary to the planning permission. Phase 1 was to convert the hotel to a nursing home and phase 2 related to new build elements. They assert it is not clear if this scenario is covered under the relevant exemptions.
- Note that ABP have determined on a number of cases that exempted development does not apply to developments under construction. WCC contend it is not clear therefore if S.I 376/20223 can be availed of when construction works are still continuing.
- A background planning history of the site is provided, which states the hotel closed and became derelict for a number of years.
- A commencement notice was received by the Building Control section and validated on 16th May 2023 to commence works on the nursing home. A

certificate of completion for the nursing home to date has not been received by the Council.

- A second 7-day commencement notice was received by the Council on 4th October 2023, for the building referred to as the west wing. This section of the building is marked on submitted plans and relates to a structure to the west of the central part of the former hotel.

8.2. Owner/ Occupier's Response

8.2.1. The owners of the property and site, Amhola Rosslare Nursing Home Trading Limited submitted a response to this referral dated 21st December 2023. A legal opinion is attached as an Appendix to this submission which is specific to this referral. The owner's submission is summarised as follows:

- Hotel was a pre-1964 structure and was actively used as a hotel until around 2010. Owners purchased the property in 2022 with the intention to carry out works to convert the existing hotel to a nursing home and received a grant of planning permission.
- Nursing home is not economically viable, and the configuration of the building is not suitable for a nursing home.
- State the use of the building has never changed from that of a hotel, as no subsequent planning permission was activated and therefore the change of use is exempted development.
- Would not require planning permission to open the hotel today in the existing building.
- A commencement notice was submitted in May 2023 for the nursing home , but substantial works were not carried out in relation to the nursing home permission and no certificate of completion has been submitted for the nursing home.
- Following the validation of the 7-day commencement notice (submitted 4th October 2023 to WCC) for works 'to convert the existing hotel into an emergency accommodation centre. The work will be done in two phases, Phase 1 (The west wing) for which the application applies is the fit out of the

existing west wing and a small extension which consists of a new stair.’ These works are now substantially complete to the west wing which is phase 1 of the compliance certificate. A fire certificate was issued in respect of the conversion and the new stair on 20th November 2023 and only a disabled access certificate is pending to allow the certificate of completion to be submitted.

- The commencement notice related to the change of use of the property for IPAS accommodation and this commencement notice referred to the ‘existing hotel’.
- Planning permission was not sought for the works to use the property for the purposes of IPAS accommodation as it is not required.
- The works have been carried out with the intention of providing accommodation for 443 individuals in 113 rooms on a staggered basis.
- External works are being hindered at the entrance into the hotel.
- Owners entered into negotiations with the Department of Children, Equality, Disability, Integration and Youth (Dept. CEDY) and expressed an interest to use the property as an International Protection Accommodation Service (IPAS) centre and envisaged commencement of the occupation of the premises in December 2023.
- On 21st November 2023, the Minister wrote to James Browne TD, noting that planning matters had been referred to the Board and stated that while the International Protection Procurement Service (IPPS) was still considering the offer of accommodation by the owner made in respect of the property, the Dept., would not enter into a contract for the property until planning matters have been concluded. (Copy of letter not attached)
- Contend that the conversion of the existing use of the building as a hotel, (and other facilities which provide overnight accommodation), to emergency accommodation is exempted development under Class 14(h) and (i) of the 2001 Regulations as amended.

8.3. Observer

8.3.1. A submission was received from Verona Murphy TD on behalf of the Ad Hoc Rosslare Harbour and surrounding Concerned Residents Group to the referral. This submission was accompanied by 137 signatures (no addresses). This submission is summarised as follows:

- Consider the hotel use has been abandoned and reference is made to case law which determined what is classified as abandonment and several tests applied to confirm abandonment, e.g. physical condition of the premises, length of time of abandonment and, intention to resume the former use.
- Documentation which accompanied the 2017 planning application stated the former hotel was derelict in 2007.
- Consider the Council have not asked the correct question, and the change of use from a nursing home to an IPAS centre is a fundamental change of use.
- No evidence that it was ever intended to resume the hotel use and therefore at the time of the grant of permission for use as a nursing home the building had a 'nil' use.
- Wexford County Council consider the proposed use is an intensification of the nursing home use. Proposed change of use from a nursing home to an IPAS centre is a material change of use and is not exempt development.
- A nursing home is not specified under any of the categories in Class 20F of S.I 376/2023.
- The Board have determined that developments under construction were not exempt development.

8.4. Further Responses

Observer response to landowner submission

8.4.1. A further response was received from Verona Murphy TD dated 23rd February 2024 which submits the former Great Southern Hotel has abandoned its former permitted use to operate as a hotel as it ceased operation in 2010. This submission applied 4 tests applied by the Courts to assess abandonment.

- 8.4.2. This submission is accompanied by detailed legal opinion regarding primarily the functions of a Planning Authority to deal with a Section 5.
- 8.4.3. A signed affidavit is attached to this submission dated 18th January 2024 from an owner/occupier of a property adjacent to the former Great Southern Hotel since 2005. This affidavit states the hotel ceased operating and closed in 2010 and became a derelict building within a year. An extract of a copy from the Independent Newspaper dated 1st November 2011 is attached as an exhibit with refers to the hotel attracting anti-social behaviour and lying idle.

Wexford County Council

- 8.4.4. WCC submitted a further response dated 26th February 2024 referencing this referral and the referral made by Rosslare residents ABP Ref: 318709-23. This submission details the planning history of the site from 1989 to 2021 and provides copies of statutory notices which have been issued by the Council in respect of the premises relating to dangerous structure notices and derelict site notices to provide a factual context which may be relevant to the issue of abandonment.
- 8.4.5. This submission refers to the issue of abandonment raised by the observer and references case law in this regard and 4 criteria in which to assess abandonment.

9.0 Statutory Provisions

9.1. Planning and Development Act, 2000 as amended

9.1.1. Section 2(1)-Interpretation

- '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.
- 'development' has the meaning assigned to it by Section 3 and may be construed accordingly.

- ‘exempted development’ has the meaning specified in section 4.
- ‘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.
- “use”, in relation to land, does not include the use of the land by the carrying out of any works thereon.
- ‘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.

9.1.2. Section 3(1) – Development

In this Act, except where the context otherwise requires, “development” means –

- (a) 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.

9.1.3. Section 4 – Exempted Development

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) providing for the carrying out of works for the maintenance, improvement or alteration of any structure that only affect the interior of the structure, or which do not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.

9.1.4. Section 4 (2) (a) of the Act provides that the Minister may, by regulations provide for any class of development to be exempted development for the purposes of this Act.

9.1.5. Section 40 of the Act places limits on the duration of a planning permission.

9.2. **Planning and Development Regulations, 2001 as amended**

9.2.1. Article 6 (1) –Exempted Development

'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.'

9.2.2. Article 9 (1) – Restrictions on Exemption

Development to which article 6 relates shall not be exempted development for the purposes of the Act under certain circumstances and the restrictions and limitations are outlined in this Article of relevance:

(a) if the carrying out of such development would

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

9.2.3. **Class 14 (h) - (i)**

Statutory Instrument 582 of 2015 titled Planning and Development (Exempted Development) (No. 4) Regulations 2015 is an amendment to the 2001 Regulations which inserted 4 new classes of exempted development to Class 14 of Part 1 of Schedule 2 of the 2001 Regulations on 17th December 2015 is set out as follows:

Class 14 – Change of use	Conditions & Limitations
<p>Development consisting of a change of use-</p> <p>(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;</p>	

<p>(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</p> <p>(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.</p>	<p>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.</p>
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9.2.4. **Class 20F –**

Statutory Instrument 376 of 2023 titled Planning and Development (Exempted Development) (No. 4) Regulations 2023 is an amendment to the 2001 Regulations which inserted a new Class 20F to Part 1 of Schedule 2 of the 2001 Regulations on 19th July 2023. Class 20F is set out as follows:

Class 20F	Conditions & Limitations
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,	1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.

<p>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.</p>	<ol style="list-style-type: none"> 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 4th March 2022 comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001. 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 protection 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.
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	<p>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.</p> <p>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).</p> <p>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.</p>
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9.3. **Derelict Sites Act 1990**

A “derelict site” is defined broadly in section 3 of the Derelict Sites Act 1990 as any land which detracts, or is likely to detract, to a material degree, from the amenity, character or appearance of land in the neighbourhood of the land in question because of:

- (a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition;
- (b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question; or
- (c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results in the exercise of a right conferred by or under statute or by common law.

10.0 Assessment

10.1. Introduction

- 10.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the temporary accommodation use and associated building alterations 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. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Board.
- 10.1.2. In assessing the merits of this case, I have reviewed all documentation on file and inspected the site. I have also considered previous relevant declarations made by the Board and I am cognisant of the current referral with the Board on the same site ABP Ref: 318709-23.
- 10.1.3. The main parties to this referral are as follows:
- Wexford County Council (WCC) (the referrer)
 - Mr. Aidan Gallagher (Director of Ambola Rosslare Nursing Home Trading Ltd the owners of the site)
 - Observer (Verona Murphy TD on behalf of residents in the area)
- 10.1.4. The referral refers to a building known as the former Great Southern Hotel and in particular to the western wing of the building. From the OSI historic maps which dates from 1863-1924 the hotel post-dates the coastguard building, the lighthouse keepers dwelling and boat house building but there is evidence it existed on the site in 1995 in its current form.
- 10.1.5. As stated previously the owner of the site in correspondence on the file considers the conversion of the building to emergency accommodation for protected persons is exempted development under Class 14(h) and (i) of the Planning and Development Regulations 2001 as amended, as the established use of the building is a hotel and this use did not cease.

- 10.1.6. The observer on the other hand considers the hotel use on the site has been abandoned and has a 'nil' use and therefore there are no exemptions for the change of use of the premises to be used for displaced persons or persons seeking international protection, under the provisions of S.I. No. 376 of 2023 under Class 20F.
- 10.1.7. Wexford County Council, the referrer in this case, are seeking the Board to determine primarily whether the use of the 'west wing' of the building which it is proposed to be used for accommodation for international protection is development and exempted development.
- 10.1.8. Having reviewed the documentation from all parties to this referral submitted by Wexford County Council, I consider the first issue is to determine whether a material change of use has occurred at the subject site.
- 10.1.9. There is no disputing by any party that the hotel use ceased operation some time between 2007- 2010, and that the site was the subject of a number of derelict site notices in the intervening years. Between 2021 and 2022, several planning applications were submitted and granted to change the hotel to a nursing home. I note the observer refers to the hotel being described as 'disused' and they consider it abandoned. I consider there was no intervening use at the premises since the hotel use ceased operation, and subject to there being a change of use at the premises planning permission would not have been required to use the building as a hotel but may have been required for any alterations or works to renovate and refurbish the existing hotel building to bring it up to a certain standard.
- 10.1.10. However, I consider when the commencement notice submitted by the owners on 16th May 2023, it was the owner's intention to commence the change of use of the premises from a hotel to a nursing home by the deliberate act of development associated with the commencement notice for the nursing home use. I therefore consider a permitted material change of use occurred at this time at the site from an hotel use to a nursing home use.
- 10.1.11 I also note the planning officer's report for the most recent nursing home application P.A Ref: 20220711, dated 20/7/2022 states that *'It is also noted that construction work had commenced on the derelict building in preparation for works and to ensure compliance with previous orders'*. This statement coupled with photographs of the

site within this report and in P.A Ref: 20210283 indicate works to the former hotel building had commenced to implement the nursing home use at that time.

10.1.12 As a certificate of compliance had not been received to date by the Council works are outstanding for the completion of the nursing home. During my site inspection I noted that development and demolition works have occurred on the site and the owner has confirmed works have been carried out on the building known as the 'west wing' and that these works are substantially completed. These works which include the recladding and alterations to the main fabric of the west wing building make this element of the building out of character with the remaining building. I also consider the works carried out on this section of the building are similar to, but not entirely compliant with, the planning permission for the nursing home.

10.1.13 The planning authority, and the owner refer to a 7-day commencement notice issued to the Council on 4th October 2023, proposing to convert the existing hotel (west wing) into an emergency accommodations centre. This commencement notice was received after the first commencement notice to convert the hotel to a nursing home, and after works had already commenced at the building, to convert it into a nursing home. I note the owner in their submission state the 7 day commencement notice referred to the converting the existing hotel use, however from the works carried out at the site to date which include demolition of existing link corridors and rear extensions and external alterations to the building etc., that works had commenced to implement the nursing home permission.

10.1.14 I am of therefore of the opinion that works commenced on the hotel building to change it to a nursing home in May 2023, prior to the 7-day commencement notice of 4th October 2023, and this would concur with the Planning Authority's view based on their proposed questions in this referral and the planning officer's report dated 20th July 2022. I therefore do not consider Class 14 (h) and (i) of the Planning and Development Regulations is applicable in this instance as stated by the owner, as the change of use of the premises to a nursing home had already commenced prior to the October commencement notice, and by commencing the nursing home development, the whole building was no longer in use as a hotel to which Class 14 (h) and (i) refers. A nursing home is not a use under Class 14 (h) or (i).

10.1.15 The observer cites a High Court Case Dublin Co.Co v Tallaght Block Company Limited wherein if there is no evidence of resuming a use, that use has been abandoned. Although I note all fixtures and fittings had been removed from the hotel, I consider the building for the most part remained intact, and the existing use of the site remained as a hotel use, until such time as the works commenced for the nursing home. I therefore do not consider the case cited by the observer is relevant in this instance.

10.1.16 In conclusion, I consider there are two critical dates concerning the site which relate to the two commencement notices received by WCC; one received on 16th May 2023 to commence works on the nursing home and the second 7-day commencement notice dated 4th October 2023 to 'fit out' the existing west wing. I am of the opinion that works to the hotel building commenced to change it to a nursing home use by virtue of the original commencement notice in May 2023, and that partial works associated with the nursing home planning permission were carried out before/and or after this time to the former hotel building, and these works predated the 7-day commencement notice. This resulted in a material change of use at the site from an hotel to a nursing home use by virtue of the works carried out.

10.1.17 I will now address the questions raised by the Referrer.

10.2. Question 1:

Is the intensification or increased occupancy of bedrooms covered under Planning and Development (Exempted Development) (No.4) Regulations 2023 (S.I.376/2023) when consent for the nursing home was based on one occupant per room.

10.1.18 The referrer cites S.I 376/2023 which applies to Class 20F of the Planning and Development Regulations 2001 as amended. I consider the nursing home use has been activated by virtue of the works carried out to date in the building and in the building indicated by the planning authority on the submitted plan (west wing). Class 20F would cover a change of use for a nursing home use subject to the nursing home use being operational.

10.2.1. I have not been provided with a layout of the internal works to this building and could not access it during my site inspection. However, given the site is not accessible

from a safety aspect, I consider it is reasonable to assume it is currently unoccupied, and the owner has not submitted any evidence that would contradict my assumption in this regard.

- 10.2.2. The Planning Authority considers the development to be an intensification of use of the building to house up to 170 individuals in 44 bedrooms is significant compared to the 50 approved rooms in the nursing home development, and would have an impact on refuse storage, disposal of water and public sewage services, social infrastructure and car and cycle parking. However, Class 20F of the Planning and Development Regulations permits the temporary use by or on behalf of the relevant Minister to accommodate or support displaced persons or persons seeking international protection within certain types and uses of structures. There are no limitations or restrictions on the numbers of persons occupying such a building.
- 10.2.3. In conclusion, I do not consider the intensification of the subject building for up to 170 individuals is a consideration in this referral as there are no conditions or limitations applied to Class 20F in this regard.

10.3. **Question 2:**

Can the part use of the building for accommodation for those seeking international protection, which is undergoing renovation for use as a nursing home be considered exempt development?

- 10.3.1. I have established above that I consider the nursing home use has commenced and has been partially implemented by virtue of the commencement notice and by virtue of the works carried out to date. The works have not been completed in accordance with the most recent planning application P.A Ref: 2022071 which sought modifications, to P.A Ref: 20210283 and the development is not therefore in compliance with Condition 1 of this permission- i.e carried out in accordance with all plans and particulars as submitted. Nevertheless, I acknowledge the applicant has 5 years in which to complete the permission as granted.
- 10.3.2. However, as established in *Horne V Freeney* ([1982] IEHC 20, a developer cannot elect to implement only part of the approved plans as no part of the development is given for the part as distinct from the whole. I therefore consider by implementing in part the permission for the nursing home the works have not been completed in

accordance with the planning permission and therefore the development cannot avail of the exemption under Class 20F for change of use for displaced persons or persons seeking international protection, under the provisions of S.I. No. 376 of 2023.

10.3.3. In conclusion, I consider the hotel use has ceased and the nursing home use has commenced at the site, but has not been completed in its entirety as permitted, and therefore cannot avail of any exemptions within the Planning and Development Regulations 2001 as amended. I would also be of the opinion the 'works' carried out externally to the said building are development and are not exempt development by virtue of Section 4(1)(h) of the Planning and Development Act as they materially affect the external appearance so as to render the west wing building inconsistent with the character of the adjoining structures and is not exempt development.

10.3.4. However, if the Board decide that the established and current use of the site is a hotel, then the use of the building for displaced persons or persons seeking international protection, is not a change of use and is exempt by virtue of Classes 14 (h) and (i) and 20F of the Planning and Development Regulations 2001 which places no limitation on occupancy.

10.4. **Question 3:**

Can exempted development status accrue when the building is under extensive renovations commenced under an approval permitted as a nursing home but not completed.

10.4.1. This question is similar to question 2 as submitted by the referrer. The Board have determined in the past for a development to avail of exempted development the development must be completed in its entirety. The building known as the 'west wing' forms part of the development permitted in P.A Ref: 20220711 and therefore has not been completed in accordance with the permission. I am of the opinion based on past Board determinations the development has to be completed and occupied before it can avail of the exemptions outlined in Class 20F.

10.5. **Is or is not development:**

- 10.5.1. Based on the above it is necessary to determine whether that part of the building known as the 'west wing' that has been partially commenced in accordance with P.A Ref: 20220711 constitutes development within the meaning of the Act.
- 10.5.2. Section 2(1) of the Planning and Development Act 2000, as amended, defines 'works' as including 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.'
- 10.5.3. Section 3 of the Act, defines 'development' as 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'.
- 10.5.4. In conclusion based on the above definitions, I am satisfied that a material change of use has occurred at the site from an hotel to a nursing home, and is development.

10.6. **Is or is not exempted development:**

- 10.6.1. Having established that the referenced works are development, it is necessary to consider whether they are or are not exempted development.
- 10.6.2. Based on the information submitted by the referrer, this referral should be assessed in accordance with S.I. No. 376/2023 Regulations 2023, Class 20F. The development consists of the change of use of the former hotel use from a nursing home use for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.
- 10.6.3. Class 20 F of the said Regulations permits the following structures to be used for accommodating displaced persons or persons seeking international protection for the following:
- 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.

- 10.6.4. Works have commenced by virtue of the commencement notice dated 16th May 2023 for the building to be used as a nursing home, but these works are not completed. Although a change of use has occurred by virtue of the commencement works the structures would not fall within the criteria outlined in Class 20F as the building is not currently used as a nursing home.
- 10.6.5. I note the owner refers to a letter from the Minister from the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) issued to James Browne TD dated 21st November 2023, regarding the subject site. This letter was not included within the file documentation.
- 10.6.6. Section 4 (1) (h) of the Act states that 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 is exempted development. However, the works carried out to the external west wing building do not fall within Section 4 (1) (h) of the Act.render the appearance of this structure inconsistent with the attached structures.
- 10.6.7. In conclusion having considered the provisions as set out in S.I. No. 376/2023, I consider the building known as the 'west wing' does not fall within the type of structure permitted in Class 20F for accommodating displaced persons or persons seeking international protection as set out in S.I No. 376/2023 Regulations 2023. I also consider the 'works' carried out to the west wing building do not fall within the exemption allowed in Section 4(1)(h) of the Act.

10.7. Restrictions on exempted development

- 10.7.1. As set out above, it is my opinion that the hotel use has ceased at the site and by virtue of commencing the works for the nursing home a material change of use has occurred in the building, and that element of the building referred to as the 'west wing' and is not exempted development.

10.7.2. The development must now be considered in light of the statutory restrictions set out under Section 4(4) of the Act and under Article 9(1)(a) of the Regulations 2001. Section 4(4) de-exempts any development where Appropriate Assessment (AA) or Environmental Impact Assessment (EIA) is required. A similar de-exemption is provided for under Article 9(1)(a)(viiB) in respect of AA only. The following paragraphs set out my assessment of the relevant provisions under Section 4(4) of the PDA 2000 and Article 9(1)(a) of the Regulations 2001.

11.0 Environmental Impact Assessment (EIA)

11.1. Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development under Section 4(4) of the Planning and Development Act 2000 (as amended). I note the owner of the site in their submission indicates it is intended to provide accommodation for 443 individuals in 113 rooms on a phased basis, but having regard to the referral's submission and the building in question the proposal relates to the use of a single structure to accommodate up to 170 individuals in 44 bedrooms referred to as the 'west wing' of the former Great Southern Hotel.

11.2. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended. No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

12.0 Appropriate Assessment

12.1.1. No details are provided for the services for the building the subject of this referral, but I note in the planning permission for the nursing home it was proposed to connect to the existing public drainage system. I have considered the proposal as described by the Planning Authority to use part of the building to house up to 170 individuals in 44 bedrooms to replace 50 bedspaces in the approved planning permission for a nursing home.

12.1.2. The nearest European site is the Seas off Wexford SPA (site code: 04237) and Carnsore Point SAC (site code: 002269) approximately 490m and 838m respectively

from the east and south east boundaries of the site. There is no evidence of a direct hydrological pathway to either European site from the subject site.

12.1.3. Having regard to the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European site. The reason for this conclusion is as follows:

- Planning history on the lands.
- The distance to the nearest European sites, and the absence of any hydrological or other pathway connections.
- The nature and extent of intervening lands.
- Standard pollution controls that would be employed regardless of proximity to a European site.

12.1.4. I conclude on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

12.1.5. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000, as amended, is not required.

12.1.6. No mitigation measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

13.0 Recommendation

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

WHEREAS a question has arisen as to whether the use of a building known as the 'west wing' at the former Great Southern Hotel to accommodate displaced persons or for the purposes of accommodating persons seeking international protection is or is not development, or is or is not, exempted development:

AND WHEREAS Wexford County Council requested a declaration on this question from the Board on the 13th November 2023:

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6(1) and 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Part 1 of Schedule 2 Classes 14 (h) and (i) and 20F of the Planning and Regulations 2001 as amended, and S.I No. 376/2023,
- (d) The documentation on file, including submissions on behalf of the referrer, Wexford County Council, the observer Verona Murphy TD and the owner of the property, Mr. A. Gallagher,
- (e) Relevant precedent referrals and judgements,
- (f) Planning History, and
- (g) Pattern of development in the area.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) By commencing the planning application P.A Ref: 20220711 for a nursing home on the site, a material change of use occurred at the site and premises and the use of the site and premises as an hotel is no longer extant.
- (b) The use of the to accommodate or support displaced persons or persons seeking international protection is development and is not exempt development as it does not come within the scope of Class 14 (h) - (i) or Class 20F of the Planning and Development Regulations 2001 as amended by S.I 376/2023.

(c) The use and works carried out to the structure known as the 'west wing' constitutes development as defined under Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended).

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (1) of the 2000 Act, hereby decides that the use of the building known as the 'west wing' to accommodate persons or persons seeking international protection 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.

Catherine Dillon
Planning Inspector

15th January 2025

14.0 Appendix 1

Form 1 EIA Pre-Screening

An Bord Pleanála Case Reference	ABP Ref: 318455-23		
Proposed Development Summary	(1) Whether increased occupancy of bedrooms, (2) part use of building accommodation for those seeking international protection, (3) exempted development status when building under renovation permitted as nursing home is or is not development or is not exempted development.		
Development Address	Great Southern Hotel, Rosslare Harbour, Co.Wexford.		
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)?			
Yes			Proceed to Q3
No	✓	The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended	No further action required
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA mandatory EIAR required
No			Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			

Yes			Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			
No	✓	Pre-screening determination remains as above (Q1 to Q4)	
Yes		Pre-screening Determination required	

Inspector: _____ Date: _____