



An
Bord
Pleanála

Inspector's Report ABP-318709-23

Question

Whether the use of premises for the purpose of accommodating persons seeking international protection 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.

EXD01050

Applicant for Declaration

Verona Murphy on behalf of People of
Rosslare Harbour

Planning Authority Decision

No Decision/Is the Referrer

Referral

Referred by

Wexford County Council

Owner/ Occupier

Amhola Rosslare Nursing Home
Trading Limited.

Observer(s)

None

Date of Site Inspection

19th 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 submitted on 13th November 2023 on the same subject site ABP Ref: 318455-23. 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 are 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 to the Board by Wexford County Council (WCC) following the submission of a Section 5 declaration (P.A Ref: EXD01050) by Verona Murphy on behalf of the People of Rosslare Harbour, is as follows:

- Is the proposed use of the buildings/properties/structures located at the Former Great Southern Hotel, for the purposes of accommodating persons seeking international protection development, and if so, is same exempted development.

4.0 Planning Authority Declaration

4.1. Declaration

On the 15th November 2023, a request for a Declaration in accordance with Section 5 (1) of the Planning and Development Act, 2000, as amended, was received by Wexford County Council from Verona Murphy. The Council consider this Section 5 declaration in substance, seeks a determination of similar/related issues to those currently before the Board (ABP Ref: 318455-23).

In accordance with Section 5(4) of the Planning and Development Act, 2000, as amended, the Planning Authority referred the question raised in the referral sought by Verona Murphy to the Board.

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.

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'.

- 5.2. **P.A Ref: 20240119:** On 12th February 2024 a planning application 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:

5.3. **ABP Ref: 318455-23:** There is a current referral submitted by Wexford County Council on the same site which asks the following questions:

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.

5.4. **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.

5.5. **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 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) area 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. Requestor's Case to the Council

8.1.1. The development as presented in the Section 5 to the Council has been submitted by Verona Murphy on behalf of the People of Rosslare Harbour on the following summarised grounds:

- Whether the use of the property for the purposes of accommodating persons seeking international protection, is exempted development.
- Provides the planning history and details of two commencement notices submitted by the developer.
- Developer erroneously believes that the proposed change of use is exempted development, and it is not.
- Contends the character of the intended use of the premises for accommodation for persons seeking international protection involves a fundamental difference in purpose to what has been permitted planning permission, i.e a nursing home.
- The permitted use is a facility for the residential care of elderly people on a medium to long term basis, whereas the intended use would involve providing a different service to a completely different user group, with no significant element of care being provided.
- Proposed use materially contravenes Condition 1 of the relevant planning permissions.
- Planning considerations and standards required to be taken into account with the intended use differs from those required in assessing a nursing home, e.g hours of operations, visitor turnover and parking requirements.
- Considers the proposed change of use of the building is material in nature and constitutes development as defined in the Planning Act.

- Considers Class 20F is not applicable as the premises have **not been used** (requestor's emphasis) as a nursing home or for any other purpose within Class 20F and is therefore not exempt.
- Considers the hotel use has been abandoned and lost its former use rights and any change of use ordinarily exempt will require planning permission, and therefore does not fall with Class 20F. (reference to case law in this regard)

8.2. Referrer's case

- 8.2.1. The referrer in this case is Wexford County Council (WCC). WCC are seeking the Boards view on a Section 5 submission (P.A Ref: EXD01050), which they consider relates to a current referral with the Board, ABP Ref:318455-23. In doing so WCC state they wish to avoid the possibility of conflicting Section 5 determinations which might arise if the planning authority and the Board were simultaneously considering the same development/substantially the same development and similar/related issues at the same site.
- 8.2.2. WCC provided additional information in this referral to that in ABP Ref: 318455-23 which can be summarised as follows:
- Legislative context and the provisions of Part 1 of Schedule 2 Class 20F of the Planning and Development Regulations 2001 as amended.
 - Factual context including planning history of the subject site and commencement notices relating to works at the site, and copies of same.
 - Contend works have commenced and include one wing of the hotel (west wing) at an advanced stage of completion. The central core of the former hotel has been cleared with the main structural elements remaining. The south wing of the building is also under conversion with new windows installed and some works to the external fabric appear to have been carried out. Some small new structures have been added.
 - Sets out the Referrer's case.
 - Council notes that the permitted use as per the planning permissions is as a nursing home.

8.3. Owner/ Occupier's Response

None submitted.

8.4. Further Responses

None submitted.

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,
 - (c) 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.
- '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 4(4) provides that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

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.

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</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>

specified in the said paragraph (h) or (i) or both.	
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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, 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.	<ol style="list-style-type: none"> 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 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.

	<p>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.</p> <p>5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.</p> <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</p>
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	Council Directive 2001/55/EC of 20 July 2001.
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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: 318455-23.

10.1.3. The main parties to this referral are as follows:

- Wexford County Council (WCC) (Referrer)
- Verona Murphy (Requestor)

10.1.4. I consider that the issues raised in the referral can be assessed as follows:

- Whether the proposed use of the buildings/properties/structures at the former Great Southern Hotel for the purposes of accommodating persons seeking international protection, is or is not development, and is or is not exempted development.

10.2. Is or is not development

10.2.1. Section 3(1)(a) of the Act defines development as the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land and in effect relates to both works and the material change in the use of land or structures.

10.2.2. The hotel use ceased operation sometime between 2007- 2010, and from the information submitted by WCC the site was the subject of several derelict site notices in the intervening years. I consider there was no intervening use at the premises since the hotel use ceased operation, and the right to resume such a use would not be lost because the use ceased. Several planning applications were submitted and granted to change the hotel to a nursing home in July 2021 and August 2022. I also note in the planner's report dated 20/7/2022 (P.A Ref: 20220711) for modifications for the granted nursing home that 'construction work has commenced on the derelict building in preparation for works and to ensure compliance with previous orders'. I consider when the commencement notice was submitted and validated 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 works associated with the commencement notice for the nursing home use. I therefore consider a material change of use occurred at this time at the site, when works commenced to change the hotel to a nursing home use.

10.2.3. I noted during my site inspection that development has occurred on the site and particularly on the element of the structure known as the 'west wing', which includes

the recladding and alterations to the main fabric of the west wing structure. Further works to the main building include demolition works and the alteration of windows to the eastern structure of the former hotel. The extent of works carried out to the buildings on site, could not be considered in my opinion, as minor alterations for the maintenance of the hotel building and are extensive in nature.

- 10.2.4. In conclusion based on the above definitions, by virtue of works commencing to the property and on site for the permitted nursing home use, a material change of use occurred at the property and site, from that of a hotel to a nursing home, and both the change of use and the external and internal works constitute 'works' and are 'development'.

10.3. Is or is not exempt development

- 10.3.1. Having established that the referenced use is development, it is necessary to consider whether it is or is not exempted development.
- 10.3.2. Section 4 (1) of the Act outlines exempted development and Section 4 (2) provides for the making of regulations for any class of development to be exempted development for the purposes of this Act and there are conditions and limitations stated in relation to development to be considered exempted development.
- 10.3.3. 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. In accordance with the Horne V Freeney judgement 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.
- 10.3.4. Class 20 F of Part 1 of Schedule 2 of the Planning and Development Regulations of the 2001 as amended, 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.

10.3.5. However, to meet the criteria of Class 20F the structures must be used for the classes specified in Class 20F to accommodate displaced persons or persons seeking international protection. I am of the opinion as the owner of the site implemented in part the nursing home permission, that the use of the building as an hotel use ceased at that time. However, as the nursing home development has not been completed in accordance with the nursing home planning permission the building has not been used as a nursing home. Therefore, the use of the premises for the purpose of accommodating persons seeking international protection is not exempted development by virtue of Class 20F as specified above.

10.3.6. Furthermore I do not consider Class 14(h)& (i) of Part 1 of Schedule 2 of the Planning and Development Regulations of the 2001 as amended, is applicable in this instance as the property does not fall within the uses specified within this class including a hotel or residential institution.

10.3.7. In conclusion, I consider the nursing home use has commenced at the site but has not been completed in its entirety as permitted, and therefore the proposed use of the buildings/properties/structures located at the Former Great Southern hotel to accommodate persons seeking international protection is development and is not exempted development.

10.4. Restrictions on exempted development

10.4.1. 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).
- 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 90 bedroom 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 the premises to accommodate persons seeking international protection.
- 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 of the site.
 - 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 proposed use of the buildings/properties/structures located at the Former Great Southern Hotel, Rosslare Harbour, County Wexford, for the purposes of accommodating persons seeking international protection is or is not development, or is or is not, exempted development:

AND WHEREAS Verona Murphy requested a declaration on this question from Wexford County Council and the Council did not make a Declaration in this instance.

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 including the relevant conditions and limitations,
- (c) Part 1 of Schedule 2 Classes 20F and 14 (h)-(i) 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, and the requestor Verona Murphy,
- (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 works to the Former Great Southern Hotel, to implement planning permission P.A Ref: 20220711 for a nursing home on the site, a material change of use occurred at the site, and the use of the site as an hotel is no longer extant.
- (b) The use of the buildings/properties/structures to accommodate or support displaced persons or persons seeking international protection is not exempt development as it does not come within the scope of Classes 20F or 14 (h)-(i) of the Planning and Development Regulations 2001 as amended by S.I 376/2023.
- (c) The use of the buildings/properties/structures located at the Former Great Southern Hotel for the purposes of accommodating or supporting displaced persons or persons seeking international protection 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

buildings/properties/structures located at the Former Great Southern Hotel for the purposes of accommodating 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: 318709-23		
Proposed Development Summary	Whether the use of buildings/properties/structures for the purpose of accommodating persons seeking international protection is or is not development or is or is not exempted development.		
Development Address	Former 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	✓		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	✓	Screening determination remains as above (Q1 to Q4)	
Yes		Pre-screening Determination required	

Inspector: _____ **Date:** _____