



An
Bord
Pleanála

Inspector's Report ABP-320219-24

Question

Whether proposed change of use of former medical consulting rooms (now vacant) to a hostel is or is not development or is not exempted development; (2) Whether works consisting of replacement of window with two new windows, blocking up of door, removal of a window and its replacement with a new door is or is not development or is or is not exempted development.

Location

161 Shanakiel, Shanakiel Road, Cork City, T23 V9HR

Declaration

Planning Authority

Cork City Council

Planning Authority Reg. Ref.

R85524

Applicant for Declaration

Thomas J. Carroll

Planning Authority Decision

No declaration

Referral

Referred by	Cork City Council Thomas J. Carroll
Owner/ Occupier	Mekar Ltd.
Date of Site Inspection	16 th October 2024.
Inspector	Sarah O'Mahony

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1.0 Site Location and Description

- 1.1. The 0.1ha site is situated northwest of Cork city centre, 170m north of the River Lee and 190m southwest of the former Cork City Gaol. It has frontage at the north and south to two roads both referred to as Shanakiel Road. Access is provided from the southern road which is a cul-de-sac serving a residential area. Adjoining property to the east and west comprises large, detached dwellings.
- 1.2. The site slopes down from northwest to southeast. This follows the general landform of the area which is elevated above the river to the south and continues to rise to a ridge further north.
- 1.3. There is a two-storey detached structure on the site which resembles a dwelling but is stated to have had a former use as medical consulting rooms. The structure has a large single-storey flat-roof extension to the rear.
- 1.4. I noted the presence of tradespeople during the site inspection and that the property appeared to be nearing completion of a renovation. New windows, rainwater goods and paint were all noticeable on the exterior while many of the rooms had new furniture stored in packaging such as multiples of mattresses and armchairs. I also noted recent works to the boundaries and the entrance including new entrance pillars, a fresh tarmacadam surface, some new footpaths around the perimeter of the structure and new boundary fencing along the western of the site.

2.0 The Question

- 2.1. The question posed is raised in three different documents. The first was in the form of the original Section 5 application for a declaration submitted to Cork City Council by a third party representing the estate of an adjoining property. The Planning Authority referred the question to An Bord Pleanála, without making a determination, and the same third party also subsequently made a referral to An Bord Pleanála.
- 2.2. The Planning Authority reworded the question to read as follows and the third party has no objection to this:
 - Whether proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection is or is not “development” or is or is not exempted development.

- Whether works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door is or is not “development” or is or is not exempted development.

2.3. I note a letter on the file from the Planning Authority acknowledging receipt of a notification made by the owner/occupier of the site, that the site would be used to accommodate or support displaced persons, or persons seeking international protection, under the provisions of S.I. No. 376 of 2023. The Planning Authority’s referral also makes reference to correspondence received from the Department of Children, Equality, Disability, Integration and Youth declaring their interest in the site for persons seeking international protection.

3.0 Planning Authority Declaration

3.1. Declaration

No declaration made by the Planning Authority.

4.0 Planning History

4.1. The following relates to the referral site:

22/41035: Planning permission granted for the material change of use from medical use (currently vacant) to residential use (1 no. dwelling house) of existing detached building formerly known as the Doctors Consulting Rooms located at 161 Shanakiel, Shanakiel Road, Sundays Well, Cork T23V9HR. Proposed works to include: (1) Demolition of existing rear and side single storey structure adjoining two-storey building; (2) Internal alterations and construction of new single storey extension to rear and side of existing two storey building, including minor alterations to existing elevations; (3) All associated site works including new boundary treatment and landscaping.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is governed by the policies and provisions contained in the Cork City Development Plan 2022-2028 hereafter referred to as the Development Plan. The site is zoned ZO 01 for Sustainable Residential Neighbourhoods where the objective is to *protect and provide for residential uses and amenities, local services and community, institutional, educational and civic uses.*
- 5.1.2. The site is also situated in an area of high landscape value and Objective 6.13 applies in this regard which seeks to:

To conserve and enhance the character and visual amenity of Areas of High Landscape Value (AHLV) through the appropriate management of development, in order to retain the existing characteristics of the landscape, and its primary landscape assets. Development will be considered only where it safeguards to the value and sensitivity of the particular landscape.

There will be a presumption against development where it causes significant harm or injury to the intrinsic character of the Area of High Landscape Value and its primary landscape assets, the visual amenity of the landscape; protected views; breaks the existing ridge silhouette; the character and setting of buildings, structures and landmarks; and the ecological and habitat value of the landscape.

5.2. Natural Heritage Designations

- 5.2.1. The site is situated 1.3km northeast of the Lee Valley proposed Natural Heritage Area (pNHA) and 1.4km northwest of the Lough pNHA.
- 5.2.2. The site is situated c.200m north of the River Lee which flows east towards the estuary with Cork Harbour and a number of European Sites. The closest European site in a direct line of sight scenario comprises Cork Harbour Special Protection Area which is situated 4.8km southeast however it is also situated 6.2km downstream from the closest point of the River Lee to the site.

6.0 The Referral

6.1. Two referrals are received, one referral which was not determined by the Planning Authority who have referred it to An Bord Pleanála under Section 5(4) of the Planning and Development Act 2000 (as amended), and one from the third party who sought the original Section 5(1) declaration. As the Planning Authority did not reach a determination, the third party has also referred the question to An Bord Pleanála under Section 5(3)(b). This third party is not the owner/occupier of the site. The following sections 6.2, 6.3 and 6.4 of this report set out:

- The Referrer's case as set out in the original Section 5(1) declaration application,
- Any additional points raised in the referral received from the same individual under Section 5(3)(b) and,
- The Planning Authority's referral under Section 5(4).

6.2. Referrer's Case – Application for Section 5(1) declaration to Cork City Council

6.2.1. The following is the third party's grounds for determining that the change of use is development which is not exempt, and that the works carried out on site are development which are not exempt.

6.2.2. The change of use has a number of aspects as follows:

- The change of use from medical consulting rooms to a hostel is a fundamental change in the character of use of the site, particularly in terms of operating hours, noise, car parking, frequency and number of visitors and private open space leading to an intensification of use. Further, if a planning application was made for the same change of use, the planning issues and topics assessed would be different for a hostel to medical consulting rooms. Therefore, the change is material in nature.
- A hostel falls within Class 6 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) (hereafter referred to as the 2001 Regulations) while '*Use as a health centre or clinic for the provision of any medical or health services*' falls within Class 8. This further demonstrates how the change of use is a material change.

- Class 20F of Part 1 of Schedule 2 of the 2001 Regulations provides for use of a prescribed list of structures to be used for accommodation for a prescribed class of persons. The third party suggests that the former use of the site as medical consulting rooms does not fall within class 20F as the types of structures listed therein imply large buildings with the capacity and capability to accommodate significant numbers of people which is not the case with a structure used for medical consulting rooms.
- The third party highlights how Class 8 is different to the 'medical and other health and social care accommodation' provided for in Class 20F and therefore, the omission of the Class 8 wording and inclusion of 'medical and other health and social care accommodation' in Class 20F further implies the intent of Class 20F to only encompass larger structures capable of human accommodation in significant numbers.
- Proposed use requires additional social, community and public infrastructure.
- The referral also sets out an argument that the 'medical consulting rooms' use no longer exists and should not be referred to for the following reasons:
 - The use was ancillary to the former Shanakiel Hospital which is no longer operational.
 - The use is abandoned as the structure has been vacant for 20 years. There is/was no intention to continue that use whereas the grant of planning permission in 2022 implies an intention to use the site for residential purposes for one single dwelling. Therefore, the site has a nil use and does not fall within the remit of the provisions of Class 20F.
 - There is no planning history authorising its use for medical purposes and therefore there is no right to resume a use which was not legally established in the first place.

6.2.3. Regarding the works carried out, the third party outlines the following:

- Form AF1 which was affixed to the site entrance stated 'material alterations' were being carried out to the building. Section 4(1)(h) of the Planning and development Act 2000, (as amended) (hereafter referred to as the 2000 Act) provides for exterior works which do not render the appearance inconsistent with the character of the

structure or neighbouring structures. The works and material alterations as described, create an externally noticeable difference as distinct from an insignificant difference and are therefore development which is not exempt.

- The referral highlights a Supreme Court decision (Michael Cronin (Readymix) Ltd V An Bord Pleanála and Others 2017 IESC 36) which interpreted Section 4(1)(h) as referring to a limited category of works which did not intend to render all works as exempt subject to the sole consideration of visual impact.
- Provision of new windows and alterations to doors etc on the external elevations constitutes a significant departure from the established character of the structure which materially affects the external appearance.
- Precedent set by ABP determination on referral case RL2287 where the provision of one window in the gable of a premises was determined to be development which was not exempted development.

6.3. Referrers Case – Third Party Referral as per Section 5(3)(b)

- 6.3.1. This referral is from the same third party and raises the same points as above, but changes references to the use of the site as a hostel to use of the site as an 11-bedroom accommodation facility or dormitory accommodation, to temporarily accommodate displaced persons and/or persons seeking international protection.
- 6.3.2. Class 8 provides for provision of professional services during office hours which reflects the former medical consulting rooms use. No overnight accommodation was provided on the site during its medical use and therefore Class 20F does not apply.
- 6.3.3. The site has been vacant for a minimum of 15 years.

6.4. Planning Authority Referral as per Section 5(4)

- 6.4.1. Cork City Council referred the Section 5 application to An Bord Pleanála for determination. As set out in Section 2.2 above, this referral included a slight alteration to the question posed by the original Referrer and submits three grounds of referral and key questions as follows:
 - Whether the existing use of the referral site, as a medical facility/centre, can be classed as a 'medical accommodation', for which there is no legal definition set out,

- If the existing use of the referral site is 'medical accommodation' has this use been abandoned, and,
- If the existing 'medical accommodation' use has not been abandoned are the temporary change of use, and associated works, exempted development under the provisions of Class 20F, as set out in the Schedule 2 of the Regulations, and section 4(1)(h) of the Act.

6.5. Owner/Occupier Response

- 6.5.1. The Planning Authority's referral included correspondence from the owner/occupier responding to the original Section 5 application. It states that reference to a hostel on the AF1 form erected at the entrance to the site was due to the Fire Department categorising the use as such while processing the Fire Certificate.
- 6.5.2. Considers that the Section 5 declaration refers to a hostel, which is not the proposed use and therefore the outcome of the declaration has no bearing on the proposed temporary change of use of the building in accordance with S.I. No. 376 of 2023.

6.6. Further Responses

- 6.6.1. The third party responded to the Planning Authority's referral under Section 5(4) and all documentation enclosed therein. The response raises the following points:
 - Outlining interactions and intricacies between the planning code and building regulations code and therefore disputing the owner/occupiers case that description of the proposed development as a hostel on the roadside forms is not simply a building regulations matter.
 - Owner/occupier's response is inaccurate where it states that the development 'does not require permission and is exempted development'; Third party highlights a response to this from the Planning Authority which states it is not possible to confirm the exemption until the Section 5 application for declaration is complete and decided.
 - Highlighting how the Planning Authority requested details of the works proposed which have not been provided by the owner/occupier.

- The Planning Authority's referral asks if the proposed change of use is exempted development, effectively skipping the question if it is development or not and therefore implying that the change of use is a material change of use.
- The third party response provides Cambridge English Dictionary definitions for accommodation and consulting rooms and concludes that accommodation in a medical sense comprises a hospital or nursing home while consulting rooms comprises the provision of medical consultancy services with no overnight accommodation, reflecting the former medical consulting rooms use on the site. Therefore, in response to the Planning Authority's first ground of referral which is '*Whether the existing use of the referral site as a medical facility/centre, can be classed as medical accommodation for which there is no legal definition set out*', the response contends that the site does not comprise medical accommodation and therefore does not fall within the provisions of Class 20F.
- The response highlights the description of health centres or clinics provided in Class 8 versus the provision of hospitals and nursing homes as per Class 9. It submits that the individuals involved in drafting Class 20F made a distinction between the two use classes, one providing accommodation and the other providing services, both of which are materially different to each other.
- In response to the Planning Authority's second ground of referral which asks '*If the existing use of the referral site is medical accommodation, has this use been abandoned*', the third party response refers to a previous submission regarding abandonment and disagrees with the wording of 'medical accommodation' utilised.
- Responding to the Planning Authority's third ground of referral which asks '*If the existing medical accommodation use has not been abandoned, are the temporary change of use, and associated works, exempted development under the provisions of class 20F, as set out in Schedule 2 of the Regulations and schedule 4 1 (h) of the Act.*' The response submits that as the answer to the first two questions is 'no' then this question does not arise.

7.0 Case History and Relevant Referrals

- 7.1. [2024] IEHC 233. Leitrim County Council C Dromaprop. The judgement of Humphries J. delivered on Monday 29th day of April states:

29. Non-user can't be equated with an abandonment. Even the risk of neglect and damage to the building doesn't amount to a permanent abandonment of the potential use of the structure or any replacement structure on the site.

30. Shuttering a property doesn't preclude refurbishing or rebuilding it at a later stage. Even allowing a property to fall into disrepair doesn't in itself and in the absence of an intent to abandon its use for legal purposes extinguish the use for planning purposes. Certainly it does not establish a new use.

The old use remains until something unequivocal happens by way of definitive abandonment in the legal sense of the use, surpassing mere neglect and non-operation.

- 7.2. ABP Ref. RL06D.RL2287: In February 2006 the Board decided that the insertion of 1 window at first floor level on the rear gable elevation of a detached dwelling: is development and is not exempted development. The following is an extract from the Board Direction:

"In deciding not to accept the recommendation of the Inspector, the Board considered that insertion of a window into the gable of the dwelling house constitutes a significant departure from the established character of the structure and of the neighbouring structures in terms of design and layout.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000

- 8.1.1. Section 2(1) defines "Works" as follows: 'includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...'.
8.1.2. It further states the following regarding "use": 'in relation to land, does not include the use of the land by the carrying out of any works thereon'

- 8.1.3. Section 3(1)(a) defines “Development” as, ‘except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land’.
- 8.1.4. Section 4 outlines various forms and circumstances in which development is exempted for the purposes of the 2000 Act, including Section 4(1)(h) which refers to works that do not materially affect the external appearance of the structure as to render it inconsistent with the character of the structure or of neighbouring structures.
- 8.1.5. In addition to specified exemptions in the 2000 Act, Subsection 4(2) provides that the Minister may by regulations provide for any class of development being exempted development.

8.2. Planning and Development Regulations, 2001

- 8.2.1. Article 6(2) of the Regulations provides that, subject to Article 9, specific classes of development shall be exempted development, provided that the development complies with any conditions and limitations in set out in column 2 of that relevant class.
- 8.2.2. 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. Class 20F is set out as follows:

Class 20F	Conditions and 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	<p>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> <p>2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in</p>

<p>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</p>	<p>accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001.</p> <p>3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.</p> <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 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 Council Directive 2001/55/EC of 20 July 2001.</p>
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8.2.3. Article 10 legislates for a change of use and article 10(1) states the following:

“Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for

the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.”

8.3. S.I. No. 306/2022 - European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022

“displaced persons” means persons to whom temporary protection applies in accordance with Article 2 of the Council Implementing Decision;

“relevant period” means the period commencing on the making of these Regulations and ending when the temporary protection introduced by the Council Implementing Decision comes to an end in accordance with Article 6 of the Council Directive;

“State authority” means –

(a) a Minister of the Government, or

(b) the Commissioners of Public Works in Ireland;

“temporary protection” has the same meaning as it has in the Council Directive.

3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.

(2) A reference to “proposed development” in sections 181A to 181C of the Act of 2000 shall include a reference to development of a class specified in the Schedule to which section 181A(1) of the Act of 2000 would apply if it was development of a class specified in regulations made under section 181(1)(a) of the Act of 2000.

SCHEDULE

Article 3

1. Reception and integration facilities.
2. Residential accommodation, including ancillary recreational and sporting facilities.
3. Medical and other health and social care accommodation.
4. Education and childcare facilities, including ancillary recreational and sporting facilities.
5. Emergency management coordination facilities.
6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.
7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

8.4. **Appropriate Assessment**

- 8.4.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 8.4.2. The site is not situated within or adjacent to any European Site. The site is situated c.200m north of the River Lee which flows east towards the estuary with Cork Harbour and a number of European Sites. The closest European site in a direct line of sight scenario comprises Cork Harbour Special Protection Area which is situated 4.8km southeast however it is also situated 6.2km downstream from the closest point of the River Lee to the site.
- 8.4.3. The proposed development is set out previously in this report in more detail but in summary comprises a temporary change of use for residential purposes and some elevational alterations.
- 8.4.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The small scale and domestic nature of the proposed development in a serviced urban area,
- The distance from European sites and the urban nature of intervening habitats with an absence of ecological pathways to any European sites and
- The screening determination made by Cork City Council,

8.4.5. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

8.5. **Environmental Impact Assessment**

8.5.1. See EIA Pre-Screening Form 1 in Appendix 1. The proposed change of use does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. Refer to Form 1 in Appendix 1 of report.

8.5.2. The works however proposed as part of this development constitute a project but one which 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.

9.0 **Assessment**

9.1. Introduction

9.1.1. 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.

9.1.2. As stated previously there is correspondence on the file between the Planning Authority and the owner of the site which categorises the future occupiers of the site

as displaced persons or persons seeking international protection, under the provisions of S.I. No. 376 of 2023. Therefore, Class 20F of Part 1 of Schedule 2 of the 2001 Regulations and S.I. No. 306/2022 are the relevant exemption classes applicable.

9.2. Question 1: Whether proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection is or is not “development” or is or is not exempted development.

9.2.1. The site comprises a detached two storey structure which strongly resembles a dwelling of early to mid-20th century design. There does not appear to be any grant of permission associated with erecting the dwelling or its subsequent medical use however I suspect the medical use may have commenced prior to the 1964 Act as the structure situated opposite the site is the former Shanakiel Hospital which operated from the early 20th century until its closure in 2012. Nonetheless, the accepted facts from all parties are that:

- The last established use is the medical use;
- The site is vacant since the medical use ceased. Documents in this referral variously state that the medical use ceased 15 or 20 years ago, or that it ceased in conjunction with closure of the hospital in 2012; and
- Class 20F refers to a temporary use only and likewise, the only correspondence from the Owner/Occupier refers to a temporary use.

9.2.2. The third party considers that the use is now abandoned and that the concept of abandonment is well established in Irish Planning Law and refers to ‘David Browne – Simons on Planning Law 3rd Edition’. They also refer to a supreme court ruling (Dublin County Council V Tallaght Block Company Limited) and summarise the findings into three tests applicable in this case as follows:

- The considerable time of vacancy and abandonment cannot be described as being suspended.
- The evidence presented demonstrates an intent not to resume the medical use.
- Taking into accounts these two facts, a reasonable objective view is that the medical consultancy use has been abandoned.

- 9.2.3. I note there is no legal definition for abandonment in the 2000 Act or 2001 Regulations.
- 9.2.4. In terms of the vacant structure, I note the judgement of Humphreys J. in [2024] IEHC 233 in April 2024 and have extracted a relevant passage in paragraph 7.1 of this report. In summary it states that '*Non-user can't be equated with an abandonment*' and I therefore consider that the long term vacancy does not equate to abandonment.
- 9.2.5. The third party's second point refers to evidence and intent to abandon the use. There is a grant of planning permission on the site (ref. 22/41035) to change its use from 'medical use' to use as a single residence. That permission has not been enacted or commenced.
- 9.2.6. The Applicant who sought that permission has a different name to the current Owner/Occupier and no property folio information is provided with this referral to demonstrate a connection between those two parties. In other words, I consider that it cannot be established through the information presented in the referral if the current owner intends, or had an intent, to implement reg. ref. 22/41035, thereby permanently changing the use to a single residential unit.
- 9.2.7. In my opinion, a reasonable person looking at the case objectively would consider the current use to be categorised as the former medical use as no other use has been taken up in the interim. Further, the character of the building and site in the period between the last active medical use and the present day was not altered or intensified to any degree which would lead to the conclusion that the use had changed.
- 9.2.8. Substantive evidence to demonstrate that the owner/occupier intended to abandon the medical use of the site on a permanent basis has not been provided.
- 9.2.9. Having inspected the site I consider that the external alterations carried out would not restrict resumption of the medical use.
- 9.2.10. In conclusion, I consider that the medical use of the site has not been abandoned and that the current use is classified as a medical use. The next part of the assessment is to determine if the change of use is development or not.

9.2.11. In order for a change of use to be considered development, it must be a material change in the use as per the definition of development provided in Section 3(1)(a) of the 2000 Act. I consider that the nature and characteristics of a medical centre are materially different to those of a hostel, having regard to items such as operating hours, noise and traffic generation. It is my opinion therefore that the change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection is a material change of use which constitutes development.

9.2.12. Finally, this section of the report will determine if that development is exempt development or not. There are two classes of development to assess as set out previously, Class 20F and S.I. No. 306/2022.

Class 20F

9.2.13. I note the third party's argument on nuances in the 2001 regulations which subcategorise different medical uses such as Class 8 of Part 4 of Schedule 2 which refers to a health centre or clinic versus Class 9 which refers to human accommodation such as hospitals and nursing homes.

9.2.14. The third party contends that the intent of Class 20F when it was written was to encompass large buildings such as warehouses and hospitals to accommodate large numbers of persons for habitation. The referral submits that the wording of Class 20F which states '*medical and other health and social care accommodation*' does not encompass smaller medical related uses such as health centres or clinics which better reflect the former use of the site.

9.2.15. I consider that the language used in Class 20F does not specify any size of structure. It simply refers to '*medical and other health and social care accommodation*' which I submit includes the subject site and its use as medical consulting rooms or a medical centre as variously referred to in the referrals.

9.2.16. I have assessed the development against the conditions and limitations applying to Class 20F and consider that the proposal complies with each item. I have also assessed the development against the provisions of Article 10(1) and consider that the development complies with each item.

9.2.17. Lastly and in relation to Article 9 restrictions, I consider that the development is not restricted by any item. I particularly note the provisions of article 9(1)(vi) and 9(1)(viii) as follows:

- Article 9(1)(vi) provides that development would not be exempt if it would interfere with the character of a landscape, the preservation of which is an objective of a development plan for the area. I note the site is situated in an Areas of High Landscape Value (AHLV) and that Objective 6.13 seeks to *conserve and enhance the character and visual amenity of AHLV*. I consider that the works are all minor, do not provide any additional floorspace or alter the public elevations of the structure and therefore in my opinion the works would not alter the character of the AHLV and that the proposal complies with the requirements of article 9(1)(vi).
- Article 9(1)(viii) provides that development would not be exempt if it would consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use. The existing medical use has not been deemed unauthorised by the Planning Authority and is the accepted last known use on the site. While it has not been demonstrated that the medical use does definitely benefit from planning permission, conversely it also has not been demonstrated that the medical use was unauthorised.

9.2.18. I therefore consider that the proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection is development which is exempt development under Class 20F.

S.I. No. 306/2022.

9.2.19. This legislation provides for the non-application of the Planning and Development Act 2000 (as amended) for certain classes of development including Article 3, class 2 which provides for development comprising residential accommodation, for displaced persons.

9.2.20. The proposed development comprises residential accommodation for both displaced persons and persons seeking International Protection.

9.2.21. I therefore consider that the proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons (or persons seeking

international protection) is development which is exempt development under S.I. 306/2022.

9.3. Question 2: Whether works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door is or is not “development” or is or is not exempted development.

- 9.3.1. The alterations carried out are highlighted above and all relate to either the eastern side or northern rear elevations. None of the alterations are visible from the front elevation or the public realm. The alterations all relate to changes to doors and windows, and I noted during the site inspection that the changes are carried out, but they are not immediately obvious. They match the size and scale of surrounding opes on the structure and are all situated in the same location as previous opes, in that no new opes were created. One door on the rear elevation was blocked up and rendered over however effectively removing the ope from the elevation.
- 9.3.2. I consider that the alterations carried out involved works within the meaning of Section 3 of the Act. As such it constitutes development.
- 9.3.3. I note a reference in the third-party referral to ABP referral case no. RL2287 which determined that insertion of a first-floor window on the rear gable elevation of a bungalow is development which is not exempted development as it constitutes a significant departure from the established character of the structure and of the neighbouring structures in terms of design and layout. I consider however that this subject case is an entirely different scenario as the works undertaken on this site constitute alterations to existing opes, and not the creation of any new ones. Further, those works do not alter the residential amenity of any adjoining property and are not visible from any adjoining public or private property due to the presence of strong boundary screening whereas the referenced referral raised concerns regarding overlooking and visual impact.
- 9.3.4. I conclude that the works undertaken do materially affect the external appearance of the structure concerned, however they do not render its appearance inconsistent with the character of the structure nor of neighbouring structures. Hence the works consisting of; replacement of a window with two new windows, blocking up of a door,

removal of a window and its replacement with a new door come within the scope of Section 4(1)(h) of the 2000 Act and is exempted development.

- 9.3.5. S.I. No. 306/2022 also provides an exemption for all development associated with provision of residential accommodation for displaced persons including any associated works and in this regard the works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door are also considered development which is exempted development.

10.0 Recommendation

- 10.1. 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 change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection is or is not development or is or is not exempted development and works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door is or is not development or is or is not exempted development:

AND WHEREAS Thomas J. Carroll requested a declaration on this question from Cork City Council and the Council did not issue a declaration;

AND WHEREAS Cork City Council referred this declaration for review to An Bord Pleanála on the 18th day of July, 2024:

AND WHEREAS Thomas J. Carroll referred this declaration for review to An Bord Pleanála on the 29th day of July, 2024:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 181 of the Planning and Development Act, 2000, as amended, and SI 306/2022 ‘European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022’
- (e) article 6(1), article 9(1) and article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Class 20F of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the planning history of the site,
- (h) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the proposed change of use from the former use as medical consulting rooms to temporary use to accommodate displaced persons and/or persons seeking International Protection is development which is exempted development, and
- (b) works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door is development which is exempt development:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) and section 5 (4) of the 2000 Act, hereby decides

that the proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection is development and is exempted development and works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door is development which is exempt 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.

Sarah O'Mahony
Planning Inspector

12th November 2024

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

An Bord Pleanála Case Reference	320219-24			
Referral Question	Whether proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection; (2) Whether works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door is or is not development or is or is not exempted development.			
Development Address	161 Shanakiel, Shanakiel Road, Cork City, T23 V9HR			
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	X The proposed change of use is not a project however the works are development which is a project.	
		No		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes				
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No	X	N/A		No EIAR or Preliminary Examination required
Yes				

4. Has Schedule 7A information been submitted?		
No	X	
Yes		

Inspector: _____

Date: 12th November 2024