



An
Bord
Pleanála

Inspector's Report ABP-322546-25

Question

Whether a temporary change of use from office use to accommodate or support displaced persons seeking international protection and associated works is or is not development and is or is not exempted development.

Location

33-41 Mount Street Lower, Dublin 2

Declaration

Planning Authority

Dublin City Council

Planning Authority Reg. Ref.

0093/25

Applicant for Declaration

Michael McCann, Mount Street Residents Group

Planning Authority Decision

Is development and is exempted development.

Referral

Referred by

Michael McCann, Mount Street Residents Group

Owner/ Occupier

Lower Mount Street Accommodation Services Limited

Date of Site Inspection

11/08/25

Inspector

Conor McGrath

1.0 Site Location and Description

- 1.1. This referral relates to no. 33 – 41 Mount Street Lower, Dublin, which comprises a five-storey office building, formerly occupied by the Irish league of Credit Unions. The building originally dated from c.1960's but had been modernised in the 1990's. Adjoining buildings to the east and west are occupied by the passport office and a public house and townhouse respectively. There are other government offices on the opposite side of the street. To the rear / south of the site are a number of blocks of two-storey housing. The building has rear access from Verschoyle Place to open and undercroft parking.

2.0 The Question

- 2.1. On 11th March 2025 Michael McCann, of Mount Street Residents Group requested a declaration from Dublin City Council on the following:
- Whether a temporary change of use from office use to accommodate or support displaced persons seeking international protection and associated works is or is not development and is or is not exempted development.

The points raised in the request made to the planning authority generally reflect those raised in this referral to the Commission.

3.0 Planning Authority Declaration

3.1. Declaration

The planning authority issued a declaration on the question on 29/04/2025, as follows:

Having regard to Sections 2, 3 and 4 of the Planning and Development Act, 2000 (as amended) and Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, the planning authority has concluded that:

- (a) The proposed change of use of the office building is development within the meaning of Sections 2 and 3 of the Planning and Development Act, 2000 (as amended);
- (b) The temporary change of use from office use to accommodate or support displaced persons seeking international protection and associated works is exempted development on the grounds that the works fall within the applicable category for Class 20(F) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, and is being carried out on behalf of the Minister for Children, Equality, Disability, Integration and Youth.

Note: In the interests of clarity, this Certification of Exemption relates only to the temporary use of the building as detailed under Class 20F of Schedule 2, Part 1 of the Planning and Development regulations 2001, as amended. No further works or alterations to the buildings can be confirmed under this declaration.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The determination of the planning authority was informed by the report of the Senior Planner dated 23/04/2025. I note the following points from this report:

- The structure was previously in use as an office and therefore qualifies to be considered under Schedule 2 of Part 1 Class 20F.
- Confirmation that the use was proposed by or on behalf of the Minister for Children was not submitted, however, under 0063/25 such information was previously provided and the development was considered to be exempted development under Class 20F.
- The drawings submitted lack existing floor plans or elevations. There is insufficient information to assess whether the proposed works fall under section 4(1)(h) and further detail was required from the applicant for the declaration.
- The applicant advised that they were not in a position to provide this as they were a third party.

- The change of use was, however, considered exempt previously under 0063/25 on the basis that the subject works fall within the applicable category for Class 20(F).
- Consideration of the S.5 application is therefore limited to the principle of the change of use only.
- In the absence of any evidence that works have been or are to be carried out to facilitate this change of use, reference is made back to 00063/25.
- The development was screened out for the purposes of AA and EIA.

4.0 Planning History

PA ref 0063/25: A declaration was sought by Lower Mount Street Accommodation Services Limited as the property owner, as to

Whether the temporary change of use from office use to accommodate or support displaced persons or persons seeking international protection (Class 20F) at 33-42 Mount Street Lower, Dublin 2 is exempted development.

The planning authority determined that the change of use proposal would be exempted development as per Class 20F, Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).

A note of clarification to the determination advised that, in the interests of clarity the declaration relates only to the temporary use of the building and that no further works or alterations to the building can be confirmed under the Declaration.

Concurrent Planning application:

Web2680/25: Permission sought for the change of use of the existing office building to a family hub to facilitate a short-term emergency accommodation development for homeless families and individuals consisting of 72 no. ensuite bedrooms, communal kitchen/dining area and all associated ancillary development works including bicycle parking and landscaping.

Other planning history relating to the existing office building on the site, not directly relevant to this case, include 0013/96, 2538/96, 0774/97 and 2538/96, and enforcement case E0685/23.

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.

In Leitrim County Council and Dromaprop Ltd. [2024] IEHC 233, the issue of change of use, contravention of condition and internal works were considered. Humphreys J. concluded that the change of use from a hotel to accommodation of protection seekers was clearly exempt under Class 14 (h) and 20F. The change of use was not de-exempted by a condition of a previous permission, as reference to contravention of a condition *“does not include reference to a condition whose only relevance is merely that non-compliance is inherent in the very action being permitted.”*

5.0 Policy Context

5.1. Dublin City Development Plan 2022 - 2028

The subject site is zoned 10: Inner Suburban and Inner City Sustainable Mixed uses – to consolidate and facilitate the development inner city and suburban sits for mixed uses.

Lands to the south are zoned Z1, Sustainable Residential Neighbourhoods.

The purpose of this zoning is to promote mixed-use in order to deliver sustainable patterns of development in line with the principles of the 15-minute city. The concept of mixed-use will be central to the development or redevelopment of these sites and mono uses, either all residential or all employment/office use, shall not generally be permitted.

In order to ensure that a mixed-use philosophy is adhered to on Z10 zoned lands, the focus will be on delivering a mix of residential and commercial uses. There will be a requirement that a range of 30% to 70% of the area of Z10 zoned lands can be given to one particular use, with the remaining portion of the lands to be given over to another use or uses (e.g. residential or office/employment). For very small sites, typically less than 0.5ha, flexibility on mix requirement may be considered on a case-by-case basis, where it can be demonstrated that the proposal would not result in an undue concentration of one particular land-use on the Z10 landholding as a whole.

The primary uses supported in this zone are residential, office and retail, with ancillary uses also facilitated where they deliver on the overall zoning objective.

The site is not a protected structure and is not located within an ACA.

5.2. Natural Heritage Designations

The site is not within or adjacent to any natural heritage site.

6.0 The Referral

6.1. Referrer's Case

Michael McCann of the Mount Street Resident's Group makes the following points in the referral of the planning authority determination in this case:

- A S.5 declaration was issued by the planning authority under ref. 0063/25, which was not referred to ABP.
- This subject referral is therefore a de facto appeal of that previous declaration.

- The planning authority reports acknowledged deficiencies in the documentation with regard to the extent of works proposed to be undertaken.
- It is not clear why further details were sought from the referrer rather than the building owners / occupiers, to address the requirements of s.4(1)(h).
- Class 20F applies only to use and cannot exempt any works. The PA declaration is unclear with regard to the Statement that “*No further works or alterations to the building can be confirmed under the declaration.*”
- Full details of the extent of required works should have been sought.
- The CDP does not permit the use of large-scale properties on Z10 sites for single uses and contains policies to protect employment and office uses in the city.
- The site is in proximity to the Grand Canal which is connected to European sites.
- The proposal would constitute a material change of use and would constitute development.
- Given the lack of information on the file, Article 9 restrictions on exemptions apply.
- The development contravenes permissions relating to office use of the building, because no traffic safety assessment, AA or EIA Screening reports or architectural heritage assessment was provided, the extent of works is unclear or how office use could be continued on the site in line with Development Plan objectives.
- The development would not satisfy article 10 restrictions on change of use as it involves works which are not exempt, is inconsistent with and not incidental to the permitted use.
- With regard to Class 20F, it was noted that the Operator was not the relevant Minister, or had not provide evidence of operating on behalf thereof. The owner / occupier does not have authority to act for or on behalf of the Minister.
- No evidence is provided that the use is temporary or of the Class of persons to be accommodated. The relevant timelines could be altered at any time and the temporary nature of such use is therefore uncertain.

- Article 10 restricts exemptions on changes of use.
- S.4(1)(h) applies to the existing use of a building and do not extend to the scope of works required for the proposed use.
- The Planning Authority determination fails to adequately consider the question of works. Inadequate details were provided to conclude on s.4(1)(h), regardless of Class 20F.

6.2. Planning Authority Response

No response was received from Dublin city Council.

6.3. Owner/ occupier's response

Lower Mount Street Accommodation Services Limited make the following comments on the referral:

- This referral relates to Class 20F.
- A s.5 declaration on this matter has already been received by the owner / occupier under 0063/25, which confirmed that the use was exempt.
- This referral is an attempt to disrupt the planning process.
- Article 10 refers only to changes of use within the classes specified in Part 4 Schedule 2, and does not relate to the change of use under Class 20F.
- Office use is the permitted use of the building, identified under Class 20F as a use that can avail of the exemption. Article 9(i) does not therefore apply in this case.
- The change of use complies with the provisions of article 9(1)(a)(ii) – (xii).
- Works to facilitate the temporary use fall within s.4(1)(h), being “or other alteration of any structure which affect only the interior of the structure or which do not materially affect the external appearance of the structure.....”

- Should the building owners wish to confirm the extent of internal works which are exempt, a separate declaration could be sought. The referral before the Board (sic) relates only to the change of use.
- The temporary exemption under Class 20F expires on 31st December 2028.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

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

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 shall 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.

7.1.2. Section 3(1) states that:

- ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land’.

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

s.4(1)(h) “development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.”

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

7.1.5. Section 181 of the Act was updated in 2022 to include specified class or classes of exempted development for temporary accommodation for displaced persons from Ukraine, carried out on or behalf of a State Authority under section 181 of the Act.

181.—(1) (a) The Minister may, by regulations, provide that, except for this section [and sections 181A to 181C], the provisions of this Act shall not apply to any specified class or classes of development by or on behalf of a State authority where the development is, in the opinion of the Minister, in connection with or for the purposes of public safety or order, the administration of justice or national security or defence and, for so long as the regulations are in force, the provisions of this Act shall not apply to the specified class or classes of development.

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

(1) In these Regulations –

“Act of 2000” means the Planning and Development Act 2000 (No. 30 of 2000).

“Council Directive” means Council Directive 2001/55/EC of 20th July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

“Council Implementing Decision” means Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and having the effect of introducing temporary protection.

“development” has the same meaning as it has in the Act of 2000.

“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 Minister of the Government, or 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.

3(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 – Classes of Development - 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.

7.2. Planning and Development Regulations, 2001, as amended

Article 6(1) provide that ‘subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.

7.2.1. **Article 9 (1)(a)** states that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would, inter alia:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof

or beyond a line determined as the building line in a development plan for the area,

- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area,
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area,
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save under a licence,
- (viiB) comprise development which would be likely to have a significant effect on the integrity of a European site,
- (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- (viii) 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,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan,
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the,

Article 10 (1) states that 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, 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 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.

Part 1 of Schedule 2 of the Regulations set out the classes of exempted development, including **Class 20F**:

| CLASS 20F | |
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| 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, | <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 accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001².</p> |

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| <p>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>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</p> |
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| | Article 2 of Council Directive 2001/55/EC of 20 July 2001. |
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For the purposes of Schedule 2, the Regulations provide the following definition of a “protected person”: -

A person who has made an application to the minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013).

A person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or a programme refugee within the meaning of s.24 of the refugee Act of 1996.

Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022

This sets out that ‘displaced persons’ means people displaced from Ukraine as a result of the military invasion by Russia.

International Protection Act 2015 (No. 66 of 2015)

This sets out that ‘International Protection’ means status in the State either—

- (a) as a refugee, on the basis of a refugee declaration, or
- (b) as a person eligible for subsidiary protection, on the basis of a subsidiary protection declaration;

“person eligible for subsidiary protection” means a person—

- a) who is not a national of a Member State of the European Union,
- b) who does not qualify as a refugee,
- c) in respect of whom substantial grounds have been shown for believing that he or she, if returned to his or her country of origin, would face a real risk of suffering serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country, and
- d) who is not excluded under [section 12](#) from being eligible for subsidiary protection;

Article 2 of Council Directive 2001/55/EC of 20 July 2001

This sets out that ‘temporary protection’ means a procedure of exceptional character to provide immediate and temporary protection to displaced persons in the event of a mass influx of such persons.

8.0 Assessment

It should be noted 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.

The question which has been referred to the Commission is:

Whether a temporary change of use from office use to accommodate or support displaced persons seeking international protection and associated works is or is not development and is or is not exempted development.

The question refers both to use of the building and to works associated with such use.

8.1. Scope of the Question:

I firstly note an issue in the wording of the question put to the planning authority and referred to the Commission. The question refers to use to accommodate or support “*displaced persons seeking international protection*”.

Based on the legislative provisions outlined above, I note that “displaced persons” and “persons seeking international protection” are different categories of persons and that there are some differences in the exemptions available. For clarity, there is no category of “displaced persons seeking international protection” within the relevant legislation.

As worded, the question does not have sufficient exactness and I consider that this is an error in the wording rather than an intentional use of wording. I consider that the correct wording should be as follows:

Whether a temporary change of use from office use to accommodate or support displaced persons **or persons** seeking international protection and associated works is or is not development and is or is not exempted development.

In this regard I note that this reflects the previous declaration of the planning authority under PA ref. 0063/25 and I consider that it reflects the comments set out in the referrer's submission.

I therefore recommend that the Commission adopt this revised wording.

8.2. Is or is not development

8.2.1. Change of Use

The permitted and established use of the building as offices is not in dispute. The proposed use to accommodate either displaced persons or persons seeking international protection would constitute a material change in the use of the building and would therefore constitute development. This is not disputed by any party to the referral.

8.2.2. Associated Works

I note that the section 5 request made to the Planning Authority included a set of drawings comprising location maps and floor plans for the subject property. The floor plans include a schedule of floorareas and identify proposed modifications to the existing building, generally comprising removal or provision of internal walls / partitions. I note that these drawings reflect those which accompanied a previous S.5 request made to the planning authority under ref. 0063/25. Having regard to the definitions set out in section 2 of the Act of 2000, as amended, I consider that the modifications described in these drawings would constitute works and would constitute development, for the purposes of the Act.

8.3. Is or is not exempted development

8.3.1. Change of use

The planning authority declaration has considered the change use under Class 20F, which refers to accommodation for both displaced persons and persons seeking international protection. The declaration does not consider whether other exemptions are applicable under s.181(1) of the Act.

(i) Class 20F

In April of this year, the planning authority determined that the temporary change of use of no.'s 33-42 Mount Street Lower from office use to accommodate or support displaced persons or persons seeking international protection (Class 20F) is exempted development. That request by the owner occupier was accompanied by floor plans which reflect those accompanying the current referral.

I note that there is no evidence of a material change in the planning facts and circumstances in relation to this change of use since that determination. The current and proposed uses of the subject property remain the same, and no new information in respect of such use has been provided. That determination was not subject to any legal challenge. In this regard, the Commission is precluded from determining a S.5 referral in circumstances where a PA or Commission has previously determined the same, or substantially the same, question, in respect of the same land. Contrary to the referrer's statements, it is not correct that this referral is effectively an appeal of the previous declaration of the planning authority.

The current referral is by a third party, not the owner or occupier. Under 0063/25, the owner occupier was the referrer and provided confirmation to the planning authority that the use would be undertaken for / on behalf of the relevant Minister. While such confirmation was not provided in respect of this referral, there is no basis to conclude that the previous conclusion of the planning authority in this regard was incorrect.

(ii) S.181(1) Displaced Persons

I note that the previous planning authority declaration did not conclude on exemptions under S.181(1), in respect of displaced persons, and in this regard the Commission may not consider themselves restricted to considering this part of the question.

S.I. No. 306/20S22, (the EU (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations, provides that development of a class specified in the accompanying Schedule would be exempted development. This includes Class 2 Residential accommodation and Class 7 Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6. I consider that the subject use would be considered to fall within this Class.

I note that in the recent referral case under PA ref. 0063/25, the relevant Department provided evidence of their interest in use of the subject property for the accommodation of International Protection applicants. There is no similar evidence available with regard to use on behalf of the State in respect of Displaced Persons. That use has not commenced on the site and I do not consider that such evidence is required to determine that, where undertaken on behalf of the State, such use would be exempted development having regard to s.181(1) of the P&D Act 2000, as amended, and section 3(1) and 3(2) of the EU (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022).

8.3.2. **Associated Works**

The previous referral under PA ref. 0063/25 referred to the use of the property and the question did not expressly refer to works associated with that use. The planning authority declaration referred specifically to the change of use and advised that further works or alterations were not confirmed under the declaration.

In the current case, the question includes the change of use “and associated works”, and this is a material change from the question previously asked. I note that the planning authority report considered that the drawings submitted lacked sufficient detail to reach a determination with regard to s.4(1)(h).

The wording of the declaration lacks clarity, however, whereby part (b) indicates that the temporary change of use and associated works is exempted development on the grounds that the works fall within the applicable category for Class 20(F), however, the accompanying clarification states that the declaration relates only to the use of the building and would appear to exclude the associated works. The meaning of the phrase “further works or alterations” is unclear.

Notwithstanding this lack of clarity, I note that the referrers argue that Class 20F refers to use only, that the associated works cannot be exempt under s.4(1)(h) and that such works are a necessary part of the change of use. I concur with the referrers that Class 20F refers only to the temporary change of use of a structure, and does not itself provide an exemption for any associated or related works. I do not concur with regard their arguments with respect to s.4(1)(h), however..

S.4(1)(h) provides an exemption in respect 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.

I have reviewed the drawings provided with the referral and I have visited the site. I am of the view that these drawings sufficiently describe the nature of the work proposed. The works described have not yet been undertaken on the site. I do not concur with the planning authority reports regarding the materiality of deficiencies in the drawings. In particular, I consider that it can be clearly concluded that the works:

- Constitute “*or other alteration of a structure.*”
- Are internal in nature.
- Will not impact the external envelope of the building and will not materially affect the external appearance of the structure so as to be inconsistent with its own character or that of neighbouring structures.

In this regard, I am of the view that the associated works can be considered to be exempted development under s.4(1)(h).

Further, I consider that where the works are undertaken in association with or ancillary to the provision of residential accommodation for displaced persons, they may available of the exemption under Class 7 of the Schedule under article 3 of SI 306 of 2022, being *Infrastructure and other works ancillary to development referred not paragraphs 1 to 6.*

8.4. Restrictions on exempted development

I have already concluded that the previous declaration of the planning authority in respect of the temporary change of use cannot be revisited.

I am of the view that the restrictions on exempted development under article 9 would not apply in respect of the change of use or associated works. In reaching this conclusion I have had regard to the referrers case and note in particular that the proposed use and associated works:

- (i) would not contravene any condition attached to a permission or be inconsistent with any use specified in a permission under the Act.
- (iii) would not endanger public safety by reason of traffic hazard or obstruction of road users,
- (viiB) would not require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- (viiC) would not be likely to have an adverse impact on an area designated as a natural heritage area.
- (ix) would not preclude or restrict the continuance of an existing use of a building or other structure whose continued availability for such use is an objective of the planning authority specified in a development plan for the area. The subject site is zoned Z10, which provides for mixed uses including residential uses in this area. There are no specific objectives relating to the continuance of office uses in this area generally or specifically relating to this building / site. The proposed use is temporary in nature and the associated works would not preclude any future office use thereof.
- (xii) the site is not located within an architectural conservation area.

Notwithstanding the referrer's arguments, the restrictions under article 10 only refer to changes of use within any one of the classes of use specified in Part 4 of Schedule 2, and do not apply to the exemptions under Class 20F.

9.0 AA Screening:

I have considered the subject development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The subject site is located on Lower Mount Street, within the inner urban area of the site. The site is not located within or adjacent to any European site. The closest sites are South Dublin Bay SAC and the South Dublin Bay and River Tolka Estuary SPA. The Grand Canal is located c.150m southeast of the site, which discharges to the Liffey and thereafter to Dublin Bay.

The subject referral relates to the temporary change of use of the premises and associated works.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

The reason for this conclusion is as follows:

- The nature of the proposed use and the limited scale of internal works proposed.
- The separation from any European site and the absence of any direct connection thereto.
- Taking into account the screening determination of the planning authority.

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

10.0 EIA Screening

The subject referral relates to a temporary change of use of an existing office building to accommodate or support displaced persons or persons seeking international protection and associated works. The proposed temporary change of use does not constitute a project for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings.

The works associated with such temporary change of use are 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 (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination.

Please refer to Form 1 Pre-Screening, attached to this report.

11.0 Recommendation

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

WHEREAS a question has arisen as to whether a temporary change of use from office use to accommodate or support displaced persons or persons seeking international protection and associated works is or is not development and is or is not exempted development.:

AND WHEREAS Michael McCann, of Mount Street Residents Group requested a declaration on this question from Dublin City Council and the Council issued a declaration on the 29th day of April 2025⁶ stating that the proposed change of use was development and was exempted development.

AND WHEREAS Michael McCann, Mount Street Residents Group referred this declaration for review to An Bord Pleanála on the 16th day of May 2025:

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, as amended,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 181(1) of the Planning and Development Act, 2000, as amended,
- (e) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Class 20F of Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) Article 3(1) and 3(2) of the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022), and associated Schedule,
- (h) The previous section 5 declaration by the planning authority in respect of the same land under register reference 0063/25.
- (i) The nature of the current use on the site.
- (j) The submissions of the referrer and other parties.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) Part of the referral is the same, or substantially the same, and in respect of the same land as the declaration under planning register reference 0063/25 issued by Dublin City Council on 01/04/2025. There is no evidence of any material change in the planning facts or circumstances in this case, and in such circumstance the Commission is precluded from making a determination on whether a temporary change of use from office use to accommodate or support displaced persons or persons seeking international protection is or is not development and is or is not exempted development.

- (b) That such previous declaration did not consider additional exemptions in relation to residential accommodation for displaced persons and ancillary infrastructure and works under S.I. No. 306/2022, which would apply to the proposed temporary use and associated works.
- (c) That the temporary use of the subject property by, or on behalf of, a State authority during the relevant period, for the purposes of providing residential accommodation to displaced persons, and infrastructure and other works ancillary to such use, would be exempted development under s.181(1)(A) of the planning and Development Act 2000, as amended.
- (d) That based on the documentation presented on the file, including the submitted floor plans, the associated works would nonetheless constitute alterations of a structure which are internal in nature and which will not materially affect the external appearance of the structure so as to be inconsistent with its own character or that of neighbouring structures and would therefore be exempted development under s.4(1)(h).

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that

- a) the temporary change of use from office use to accommodate or support displaced persons or persons seeking international protection is development and is exempted development, and
- b) and the associated works are development and are exempted development.

Conor McGrath

ADP

27/08/2025

Form 1 - EIA Pre-Screening

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| Case Reference | |
| Proposed Development Summary | |
| Development Address | |
| | In all cases check box /or leave blank |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources) | <input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. Proposed COU is not a project Associated works are a project |
| | <input type="checkbox"/> No, No further action required. |
| 2. Is the proposed development of a CLASS specified in <u>Part 1</u>, Schedule 5 of the Planning and Development Regulations 2001 (as amended)? | |
| <input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP. | State the Class here |
| <input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3 | |
| 3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds? | |
| <input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 | 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 (or Part V of the 1994 Roads Regulations). 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. |

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| <p>of the Roads Regulations, 1994.</p> <p>No Screening required.</p> | |
| <p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p> | <p>State the Class and state the relevant threshold</p> |
| <p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p> | <p>State the Class and state the relevant threshold</p> |

| | |
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| <p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p> | |
| <p>Yes <input type="checkbox"/></p> | <p>Screening Determination required (Complete Form 3)</p> |
| <p>No <input checked="" type="checkbox"/></p> | <p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p> |