



**Question**

Whether (a) conversion of 12 bedrooms to “recreational suites” (b) construction of car park to former putting green area (c) construction of car park to former tee area is or is not development or is or is not exempted development

**Location**

Charlesland Golf Club, Greystones, Co. Wicklow

**Declaration**

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

62/16

Applicant for Declaration

Clive, Wilson & Lance Evans

Planning Authority Decision

Is not exempted development

**Referral**

**Referred by**

Clive, Wilson & Lance Evans

**Owner/ Occupier**

Clive, Wilson & Lance Evans

**Observer(s)**

None

**Date of Site Inspection**

24<sup>th</sup> February, 10<sup>th</sup> March 2017

**Inspector**

Mary Kennelly

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## **1.0 Site Location and Description**

- 1.1.** The site is located approx. 1km to the south of the built-up area of Greystones. It is accessed by means of the R762 (Mill Road) from Delgany and Killincarrig. There is a new ring road which runs to the east of the R761, which connects Mill Road with Charlesland. This road serves an industrial estate, and some recently constructed residential developments to the west of the site. The Charlesland Golf Club lands are accessed from a minor road off Mill Road, which also serves Wicklow Water Treatment Works and an industrial development. The golf course occupies the lands to the south of the Treatment Works between the ring road and the dart line along the coast.
- 1.2.** The site is located on the eastern side of the road. It comprises a clubhouse building, which has been extended, and a golf course which extends to the north, east and south. There are a number of car parking areas serving the site. The main car park is located to the south-west of the entrance, adjoining the road. There is a gravel surfaced area adjoining the car park to the west, (former putting green), which is also used as a car park. There are some further parking bays laid out adjacent to the entrance to the clubhouse building, and an additional (overflow) car park immediately to the north of the entrance to the site, adjoining the main road.
- 1.3.** The clubhouse building is part two-storeys and part three-storeys in height with two main elements joined together by a central lobby area. There is a masonry set of steps leading to the lobby area. The section to the north of the lobby includes a large 2-storey extension which projects westwards and is clad in red brick on its southern elevation. This section includes the 'recreational suites' referred to in the submissions. The lobby provides access to the golf club changing rooms, golf shop and a restaurant at the northern and eastern end of the building and to a second floor café, (SOBE Café), on the southern side of the building. The Directory in the lobby entrance area indicates that there is a fourth floor.
- 1.4.** There appears to be a wide variety of services within the building including hair dressers, pilates studio, hypnotherapy, treatment rooms, fitness studios, and an architect's office. There is also a 'Kidz Zone' and a Nutritionist service which is accessed directly from the car park.

## **2.0 The Question**

- 2.1.** The question has arisen as to whether (a) conversion of 12 bedrooms to “recreational suites”, (b) construction of a car park to the former putting green area, and (c) construction of a car park to the former tee area is or is not development or is or is not exempted development.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

- 3.1.1.** The P.A. made the following declaration on 2<sup>nd</sup> November 2016

Having regard to

- (a) The details submitted with the Section 5 Declaration, and site inspection.
- (b) Sections 2, 3 and 4(1)(h) of the Planning and Development Act 2000 (as amended).
- (c) PRR 91/6781 permission for golf clubhouse/hotel.
- (d) Article 6, Schedule 2: Part 1: class 34 of the Planning and Development Regulations 2001 (as amended).

The planning authority considers that (i) conversion of 12 no. bedrooms to “recreational suites”, (ii) construction of car park to former putting green area and (iii) construction of car park on former tee area is development but is not exempted development within the meaning of the Planning and Development Acts 2000 (as amended).

### **3.2. Planning Authority Reports**

#### **3.2.1. Conversion of hotel bedrooms to ‘recreational suites’**

- 3.2.2.** The Planning Report noted that the Referring party had submitted that due to the economic downturn, the golf club was unable to sustain the commercial viability of the enterprise and relinquished its lease. Thus the control of the premises reverted back to the owners, who returned the use to a Golf and Country Club type facility. However, following refurbishment in 2015, internal alterations were carried out to the

building which included the conversion of 12 bedrooms into 'suites' for golf members and members of the public.

3.2.3. The Area Planner pointed out that the original permission for the Golf and Country Club/Hotel (91/6781) included accommodation comprising a total of 12 guest bedrooms, all of which have been converted to various recreational uses, which now operate under the logo of "South Beach Pavilion". It was, therefore, considered that the loss of all of the hotel bedrooms has resulted in a use which can no longer be described as a hotel use. It was further considered that the nature and intensity of the current use is materially different to the uses which would have constituted ancillary uses to the primary use as a clubhouse/hotel. It was concluded that the current use is a "stand alone leisure/commercial facility" which has resulted in a clear change of character and intensity of use and as such, a change of use has occurred. It was also stated that there is no Class set out in Part 4 of the P & D Regulations 2001 (as amended) within which the change of use would fall.

#### 3.2.4 **Construction of car parking on former putting green and tee areas**

It was pointed out that the laying of the golf course was underway at the time of the grant of permission under 91/6781, and that the laying out of a golf course was at that time exempted development, (Class 26 of Local Government (Planning and Development) Regulations 1977). It was also stated that the parking areas provided to serve the clubhouse/hotel were in accordance with the permission under 91/6781. Given that the creation of the car parks as set out in the Section 5 Declaration would have necessitated the removal of soils and the levelling of lands, it was considered that this would constitute 'works' and would come within the scope of the definition of development under Section 3 of the Act.

3.2.5 In response to the referring party's submission relating to Class 34 of the 2001 Regulations, it is stated that this provided for an exemption for works incidental to the maintenance and management of the golf course including alterations to the layout thereof, excluding any extensions to the golf course. However, it is considered that the provision of a car park does not form part of the maintenance/management of the golf course, i.e. management of the greens and fairways. It was, therefore, concluded that it does not come within the scope of Class 34.

## 4.0 Planning History

- 4.1 **91/6781** – Planning permission was granted by the P.A. for a ‘Golf Clubhouse/Hotel’. Permission was granted in July 1991 to Wilson, Lance and C Evans subject to 12 no. conditions. Conditions 1 and 2 related to landscaping. Condition 3 related to archaeology. Condition 4 required details of the entrance from the public road to be submitted and approved. The remaining conditions related to matters such as drainage, water supply and development contributions.

## 5.0 Policy Context

### 5.1. Development Plan

The lands are zoned for Active Open Space in the current Greystones-Delgany & Kilcoole Local Area Plan 2013-2019. The zoning objective is “to provide for active recreational open space”.

### 5.2. Natural Heritage Designations

The Murrough Wetlands SAC approx. 2km to the south

The Murrough SPA approx. 3km to the south

Bray Head SAC approx. 3.5km to the north

## 6.0 The Referral

### 6.1. Referrer’s Case

#### 6.1.1 Conversion of hotel bedrooms to recreational suites –

- The implications of Justice Lynch’s ruling in the Clarence Hotel case were not substantially considered by the Planning Authority. Justice Lynch stated :

*“Prima facie, I am of the view that the planning unit is the whole complex, including bars, restaurants, bedrooms, lounge, television rooms, storerooms, and the garage. Prima Facie, the swapping around or*

*substitution of the use of part of the hotel does not alter the use of the planning unit as a hotel.”*

- Planning unit - The planning unit in this case is considered to be the Golf & Country club complex that was permitted in 1991. Recreational uses within the building complex have been swapped around and therefore the conversion of hotel bedrooms to ‘recreational suites’ does not alter the use of the ‘planning unit’.
- No material change of use - The conversion and refurbishment of hotel bedrooms permitted under Reg. Ref. 91/6781 to recreational suites for use as health, fitness and well-being activities e.g. yoga, pilates, spinning and karate classes does not result in a material change of use or intensification of use.
- Recreational uses ancillary to main use - Recreational uses were permitted in 1991 under the original permission for the development and yoga, bridge and art classes have been taking place on the premises over the lifetime of the facility. These uses are ancillary to the principal use on the site.
- No material impacts from recreational uses – there would be no material impacts in terms of wastewater or in planning terms generally having regard to the nature, scale and context of both the principal and ancillary uses.
- In accordance with LAP – Recreational uses are in accordance with the Greystones, Delgany & Kilcoole LAP zoning as Active Open Space.

6.1.2 **Construction of car park for putting green** – The P.A. did not give substantial consideration to the original permission 91/6781 as the extent of this permitted car parking area includes the area in question that was formerly the putting green. It is submitted that these works are ‘incidental to the maintenance and management of the golf course’.

6.1.3 **Construction of car park on former first tee area** – substantial consideration was not given by the P.A. of the original permission 91/6781 with particular reference to the number of permitted spaces, which totalled 272 spaces. It is submitted that these works are ‘incidental to the maintenance and management of any golf course’.



## 6.2. Planning Authority Response

No response.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

#### 7.1.1 Section 2 (1)

“Works” are defined in this section as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and “use” is defined in the same section as in relation to land does not include the use of the land by the carrying out of any works thereon.

“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,”

**7.1.2 Section 3 (1)** of the Act 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’.

**7.1.3 Section 4** of the Act refers to ‘*Exempted Development*’ and Subsection (1) sets out categories of development that shall be exempted development for the purposes of this Act. Subsection (1) (h) states the following:

‘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’.

In addition to specified exemptions in the Act, Subsection (2) of the Act provides that the Minister may by regulations provide for any class of development being exempted development.

## **7.2. Planning and Development Regulations, 2001**

7.2.1 Article 6 of Part 2 of the Regulations provides that subject to Article 9 (1) (a), development specified in Column 1 of Part 1 of the Second Schedule shall be exempted development for the purposes of the Act subject to the conditions and limitations specified in Column 2. The only class of relevance is Class 34 which refers to works incidental to the maintenance and management of a golf course as follows:

Class 34 Works incidental to the maintenance and management of a golf course or pitch and putt course, including alterations to the layout thereof, excluding any extension to the area of a golf course or pitch and putt course.

There are no conditions of limitations of this class. Article 9 (1) (a) lists the exceptions where development would not be exempted development (by virtue of Article 6).

7.2.2 Part 2 of the Regulations includes the following definitions:-

“Business premises” means

- (a) Any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons,
- (b) A hotel or public house

“Excluded premises” means

- (a) any premises used for purposes of a religious, educational, cultural, recreational or medical character,

(b) any guest house or other premises (not being a hotel) providing overnight guest accommodation, block of flats or apartments, club, boarding house or hostel,

A “Shop” is defined as a structure used for 9 no. specified purposes, where the sale, display or service is principally to visiting members of the public. The specified purposes include the retail sale of goods (a), and for hairdressing (e). However, there are certain purposes which are specifically excluded from the definition of a shop and these include:

- use as a hotel, a restaurant or a public house;
- use for the sale of hot food for consumption off the premises; or
- any use to which class 2 (financial/professional or other services) or class 3 (office) of Part 4 of Schedule 2 applies.

7.2.3 Part 4 of Schedule 2 lists 11 different classes of use.

Class 1 - use as a shop.

Class 2 – use for the provision of (a) financial services, (b) professional services (other than health or medical services) and (c) any other services (including use as a betting shop) where the services are provided principally to visiting members of the public.

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

Class 11 (e) – Use as a skating rink or gymnasium or for other indoor sports or recreation not involving the use of motor vehicles or firearms.

7.2.4 Article 10 (1) of Part 2 provides that development which consists of a change of use *within* any of the classes of use specified in Part 4 of Schedule 2 shall be exempted development provided that it would not involve the carrying out of any works (other than exempted development), contravene a condition of any permission, be inconsistent with any use specified in such a permission, or relate to unauthorised development.

## **8.0 Relevant Board Decisions**

**8.1** The following Board decisions in relation to Section 5 Reference/Referral cases are considered to be of relevance. The Referring Party raised the first two cases.

**8.2 RF0845 – Whether works carried out including replacement of bar, lounge disco by additional bedrooms and use of former hotel as a guesthouse at Perryville house, Kinsale are or are not development and are or are not exempted development.**

The Board concluded (22/7/98) that the said alterations do not result in the making of a material change of use of the premises; that the said alterations involve carrying out works as defined by Section 3 of the 1963 Act; and that the said alterations consist of works which come within the scope of Section 4(1)(g) of the 1963 act. It was therefore concluded that the works were development and were exempted development.

**8.3 RF0857 – whether the internal alteration works to convert the lounge bar and function room at Perryville House, Kinsale into 9 no. additional bedrooms represent either a material change of use or an intensification of the use of Perryville House and as such, are or are not development or are or are not exempted development.**

The Board concluded (22/7/98) that the said alterations do not result in the making of a material change of use of the premises; that the said alterations involve carrying out works as defined by Section 3 of the 1963 Act; and that the said alterations consist of works which come within the scope of Section 4(1)(g) of the 1963 act. It was therefore concluded that the works were development and were exempted development.

**8.4 RL2160 – Whether the change of use of a leisure centre to a night club/functions area at the Landmark Hotel, Carrick-on-Shannon, Co. Leitrim is or is not development or is or is not exempted development.**

The Board (Sept 2004) concluded that the change of use from use as a leisure centre, comprising swimming pools, sauna and steam rooms along with an aerobics/gymnasium area and ancillary facilities, to use as a nightclub/functions area constituted a material change of use in the context of Section 3 of the P & D Act 2000. However, the said change of use was not considered to fall within the scope of any one of the classes of use specified in Part 4 of Schedule 2 to the P & D Regulations 2001. Furthermore, the Board found that the associated alterations to the structure in question, involving the carrying out of works being related to a change of use not being exempted development, would come within the scope of Section 3 of the said Act. The Board thus decided that the change of use was development and was not exempted development.

**8.5 RL2237 – Whether the installation of telecommunications infrastructure at Baldoye United Football Club, Brookstone, Baldoye, Dublin is or is not development or is or is not exempted development.**

The Board (August 2005) concluded that the installation of telecommunications infrastructure constitutes development within the meaning of the P & D Act 2000. It was further found that the clubhouse is a private facility and cannot, therefore, be considered to be a commercial or public building. The Board, therefore, concluded that the installation of the telecommunications equipment did not come within the scope of Class 31(k) of Part 1 of Schedule 2 to the P & D Regulations, 2001, and was, therefore, development and was not exempted development.

**8.6 RL2419 – whether the bar at the Auburn House Hotel Bunnally, Old Dublin Road, Athlone, Co. Westmeath operating independently of the hotel is or is not development or is or is not exempted development.**

The Board (2008) concluded that the bar was permitted under the P & D Acts as a use ancillary to and associated with the hotel use on the site, and that the said operation of the bar, other than as ancillary to or associated with the hotel use, would constitute a material change in use. It was, therefore, found to be development and not exempted development.

**8.7 RL2167 – Whether works carried out on the lands of Doonbeg Golf Club involving the closure of the existing public right of way and the movement and alteration of the natural line of the public vehicular right of way at this location are or are not development or are or not exempted development.**

The Board (Jan. 2005) concluded that the works comprising the laying of gravel paths, construction of a dry stone wall, the raising of ground levels come within the meaning of section 3, but not within the scope of section 4(1)(h) of the P & D Act 2000. However, the laying of grass did not constitute development, not being works within the meaning of section 3 of the said Act. It was found that all of the works (apart from the laying of grass) did not come within the scope of Class 34 of Part 1 of Schedule 2 to the P & D Regulations 2001, not being works incidental to the maintenance or management of the golf course. The works consisting of the construction of the dry stone wall and raising of ground levels were found to come within the restrictions of exemption in Article 9(1)(a)(xi) of the said Regulations in that the works obstructed a right of way. Thus the works in question were considered to be development (apart from the laying of grass) and were not exempted development.

**8.8 RL2252 – Whether site excavation works to accommodate regrading and alteration to golf course layout at Narin, Portnoo, Co. Donegal is or is not development and is or is not exempted development.**

The Board (Dec. 2005) concluded that the said works constituted development within the meaning of Section 3 of the P & D Act 2000 and that the works constituted works of alteration which are not incidental to the maintenance and management of the golf course. It was further found that the works of alteration constituted an extension to the area of the golf course. The said works were, therefore, considered to be development and not exempted development.

**8.9 RL2405 – Whether the renovation and alteration of a section of The Curragh Plain, consisting of the relocation of an existing green to a previously unused area for use as part of an existing golf course is or is not development and is or is not exempted development and whether the use is exempted development and whether the change of use is a material change of use requiring planning permission.**

The Board (July 2007) concluded that the works referred to comprise ‘development’ as defined in Section 3 of the P & D Act, although not a material change of use, but that the said works do not come within the scope of S4(1)(h) of the P & D Act. It was decided that the development did, however, come within the scope of Class 34 of Part 1 Schedule 2 to the P & D Regs. 2001, but could not avail of this exemption by reason of Article 9(1)(a)vii) of the said Regulations. This was due to the fact that the entire golf course lies within the Curragh Archaeological complex (RMP KD023-076) and is protected under Objective AH1 of the CDP. Thus it was concluded that the works were considered to be development and not exempted development.

**9.0 Assessment**

The questions arising from this referral fall into three main parts. Firstly, whether the works of conversion of the hotel rooms to recreational suites are development and/or exempted development; secondly, whether there has been a material change of use of the clubhouse building; and thirdly, whether the works to the golf course are development/exempted development. The question to be decided may be summarised as follows:

- Are the works of conversion of the rooms development and if so, are they exempted development under S4(1)(h) of the P & D Act 2000 (as amended)?
- Would the conversion of the 12 hotel bedrooms to “recreational suites” constitute a material change of use amounting to development?

- If development, would the activity/operation be exempted development and if exempted, are there any restrictions on such exemption?
- Are the works to the golf course involving the replacement of the putting green and the tee area with car parking areas development?
- If development, would these works be exempted development under Class 34 of Part 1 of Schedule 2 of the P & D Regulations 2001 (as amended)?

**9.1. Do the works of conversion of rooms to recreational suites constitute development and if so are the works exempted development?**

9.1.1 The Referring party has indicated (10/10/16) that the works of conversion of the hotel rooms was undertaken in 2015 when the building underwent a “large refurbishment consisting of internal alterations.....conversion of 12 bedrooms into ‘recreational suites’ for golf members and members of the public.” The main changes involve the removal of internal partitions and ensuites to provide for larger spaces. It is noted, however, that the internal changes also included the following:

Ground floor – Replacement of ‘Reception’ with ‘Information Point’ and relocation of the golf shop to an area that had been used as an office associated with the reception area, together with removal of internal partitions.

Replacement of ‘Golf Shop’ with ‘Gym Area’.

First floor – Enlargement of ‘Multi-Function Room’ by omitting ‘Board Room’ and ‘store’ with associated removal of partitions.

9.1.2 It is considered that the works carried out to the building come within the scope of the meaning of ‘Development’ under Section 3 of the Planning and Development Act 2000 (as amended). However, as the works affect only the interior of the structure and 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 am satisfied that the works come within the scope of Section 4(1)(h) of the said Act and can be considered to be exempted development.



## **9.2. Does the conversion of the hotel bedrooms to recreational suites constitute a material change of use amounting to development?**

9.2.1 The Referring Party submits that Charlesland Golf Club had commenced as a 'commercial venture' but that the members leased the facility from the owners after a number of years and turned it into a 'member's only' establishment. However, the club had subsequently relinquished its lease (following the onset of the recession) as member numbers declined and it is stated that the owners decided to "revert back to more of a Golf & Country Club type facility". It was subsequent to this, it is stated, that the internal alterations took place, which resulted in the conversion of all of the hotel bedrooms into 'recreational suites'. It is submitted that "it was not viable to provide hotel bedrooms anymore".

9.2.2 The main grounds for the referral appear to be that the 'planning unit' is considered to be the entire "Golf and Country Club complex that was permitted in 1991", that the complex has always included 'recreational uses' involving health, fitness and well-being type activities (eg. yoga, bridge, art), and that the conversion of hotel bedrooms to recreational suites merely swaps uses around and does not alter the 'planning unit'. In order to assess the merits of these arguments, it is necessary to firstly examine what was the 'planning unit' as permitted under 91/6781 and to compare it to the use that is currently operating at the site.

### **9.2.3 The nature of the permitted use**

9.2.3.1 The permitted development was for a "Golf clubhouse/hotel". The permitted layout shows a standard type golf clubhouse, (with a restaurant, bar, 2 no. function rooms and changing rooms), with a modest element of overnight guest accommodation (just 12 rooms). The guest accommodation was located in a separate section of the building but appeared to be an integral part of the overall use. There is no indication that the permitted use included any other recreational uses. The P.A. has pointed out that at the time that the permission was granted, the laying out of a golf course was underway and that this was exempted development under the 1977 LG(P&D) Regs. (Class 26). It is considered, therefore, that the permitted use is as a club house associated with a golf course with a modest level of overnight guest accommodation.

9.2.3.2 It is noted that there are no definitions in the legislation of what constitutes a 'club', a 'clubhouse' or a 'golf and country club'. There is a distinction drawn in the use classes listed in Part 4 of the Second Schedule of the P & D Regs. between a 'Residential Club' (Class 6) and a 'Non-Residential Club' (Class 10(f)). Otherwise, the only other reference that I can find is in the definition of 'Business Premises' in Part 2 of the Regulations, (Interpretations in respect of Exempted Development) – see 7.2.2 above. Whilst a 'Business premises' includes a hotel and a professional/commercial/industrial undertaking for the provision of services to the public, it specifically excludes a club and a guest house (which is not a hotel), amongst other similar uses.

9.2.3.3 The issue of whether a clubhouse is a public or commercial building was considered by the Board in RL2237. The referring party in that case had argued that the clubhouse was a public building as it came within the definition of a 'public place' (S2 of P & D Act 2000, as amended), in that the 'public have access by permission, free or at a charge'. However, the Inspector considered that "the clubhouse is potentially a different animal in that it is a more exclusive and controlled facility catering more specifically and directly for its private members". The Board agreed and considered that the clubhouse in question was a private facility.

9.2.3.4 It is acknowledged that the information currently before the Board regarding the membership and operation of the Charlesland establishment, particularly prior to the recent introduction of the 'SOBE' element, is not entirely clear or substantiated by any evidence. The submissions suggest that the public/private nature of the use has varied somewhat over the years. However, they also indicate that the use was primarily a golf club which operated as a 'members only' establishment for many years, if not for most of its existence. It is unclear when the owners decided to lease the facilities or when they decided to "revert back to a more Golf and Country Club type facility", or what such a facility entails. Although it is stated that "in the early days [it] had a roaring trade in Sunday lunch, Friday night entertainment and functions for both members and the general public", no evidence to substantiate this has been provided. Based on the information provided and on the planning permission details, I do not accept that the permitted use was as a "country club".

The Referrer seems to rely on a Wikipedia definition (letter of 10/10/16) which refers to a private members club offering a variety of sports and recreational facilities for dining and entertaining. I would agree with the P.A. that the permitted use was as a golf club which may have incorporated some ancillary activities as part of the use.

#### **9.2.4 The planning unit**

9.2.4.1 The Board has previously considered the issue of what constitutes 'the planning unit' in RL2160 and RL2419 (see 8.4 and 8.6 above). Reference was made in each of the Inspector's reports to both the book 'Key Issues in Planning and Environmental Law' (by John Gore Grimes) and to a legal case in the UK (Burdle –v- Secretary of State for the Environment [1972] 1 WLR 1207), in which the principles for the determination of the proper 'planning unit' are set out. These are summarised below:-

1. Whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.
2. It may be equally apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuated in their intensity from time to time, but the different activities are not confined within the separate and physically distinct areas of land.
3. It may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for different and related purposes. In such a case, each area used for a different main purpose, together with its incidental and ancillary activities, ought to be considered as a separate planning unit.

9.2.4.2 In my opinion, the facts of the current case that have been put before the Board indicate that the permitted use most closely resembles the first example set out above, and the current use resembles that of the third example. It is clear that the major refurbishment works which resulted in the conversion of the hotel bedrooms to

'recreational suites', were undertaken in 2015, and that this element is currently operated by South Beach Pavilion (SOBE). It is further stated (10/10/16)

“ the reason for using the SOBE brand is to try and encourage members of the public back into the building and undo some of the 'members only' reputation that had developed since the facilities were leased. The business is not viable as a 'members only club and this was never the designed use of the building day one. The remodelled bedrooms to health, fitness and well-being 'recreational suites' are operated by SOBE, which is the management company that runs the clubhouse controlled by the Evans family. These facilities are provided as part of membership packages and to members of the public playing golf (or otherwise) as per any normal golf and country club service.”

9.2.4.3 Having viewed the submitted drawings and documents and inspected the site, I have formed the opinion that the use at present is being operated as two physically distinct areas and occupied for two different, (yet sport-related), purposes, independently of each other. Part of the premises is being operated as a golf club with golf club changing rooms, function rooms and a golf shop and the other part of the premises is being operated by SOBE as a health and fitness/gymnasium establishment with suites for classes (eg. pilates and yoga), a hairdressers, a nutritionist together with a further function room space and changing areas. The café (labelled 'restaurant' on the drawings) appears to be operated by SOBE and is open to the public. Thus I am of the opinion that there are currently two separate planning units operating from the site, whereas the original use operated as one unit. The introduction of an additional planning unit could be regarded as a material change of use.

9.2.4.4 The Referring Party had relied on the findings of the Clarence Hotel case (Carroll and Colley v Brushfield Ltd.) and on two reference cases decided by the Board in 1998 in respect of Perryville House Hotel in Kinsale (RF0845/0857 - see 8.2 and 8.3 above). In the High Court case, a hotel garage was converted to a 'temporary bar' during the course of building renovation works at the hotel. Lynch J. decided that the change of use was not material as the development merely involve 'swapping around' of ancillary uses within the hotel and that the entire premises was

considered to be a single planning unit. Similar arguments were accepted by the Board in the Perryville House cases which involved 'swapping' around hotel-related uses within the building. However, in the current case, it is considered that whilst there may have been some recreational uses within the original golf club/hotel use, these would have been very limited and purely ancillary to the main use. The current recreational uses are much more substantial and could not, in my opinion, be considered to be ancillary to the main use. The recreational use is operated by SOBE, independently of the golf club. I would also draw the Board's attention to the previous Board decision in respect of Auburn House, Athlone (RL2419) in which it was found that the operation of a bar other than as an ancillary use to the hotel use amounted to a material change of use. A similar finding was made in respect of RL2160 (Landmark Hotel Carrick-on-Shannon).

### **9.2.5 Material change of use – class of use**

9.2.5.1 In terms of the use classes set out in Part 4 of Schedule 2 of the P & D Regs. 2001, (as amended), it is considered that the nature of the use as permitted (under 91/6781) falls within either Class 6 – use as a residential club, a guest house or a hostel or Class 10(f) – use as a social centre, community centre or non-residential club, or possibly a combination of the two. In my opinion, part of the current use falls within Class 10(f) (the golf club) and the other part of the use (SOBE) falls within Class 11(e) – a skating rink or gymnasium or for other indoor sports or recreation not involving use of motor vehicles or firearms. Class 14 of Part 1 of Schedule 2 of the 2001 Regulations sets out the changes between the classes of use which are exempted development. However, none of the changes of use listed therein are applicable to the current case. Thus there is no exemption for a change of use from Class 6 (and Class 10(f)) to Class 11(e) (and Class 10(f)).

### **9.2.6 Intensification of use**

9.2.6.1 The determination of the materiality of a change of use would also include consideration of the external effects of the use. Barron J. held (*Galway County v Lackagh Rock*, [1985], IR 120) that it was not enough to prove that a use had intensified, but it must also be demonstrated that the change of use has affected the

proper planning and sustainable development of the area. This can be achieved by considering the matters which the planning authority would have taken into account in the event that a planning application had been made for the use. He also stated that if these matters are materially different from the original use, then the nature of the use must equally be materially different. Keane J., (*Monaghan Co. Co. v Brogan* [1987] IR 333) quoted Barron J., but held that it was a matter for the court to determine the issue of materiality as a matter of fact. He also held that 'material' means 'material for planning purposes'. It was also held that the absence of objections from third parties would not necessarily be crucial factors in determining whether there has been a material change of use.

9.2.6.2 The issue of intensification is only considered to be relevant in this instance if the Board is not persuaded that there has been a material change of use by reason of the introduction of a new planning unit, which falls within a different use class to that which had been permitted in 1991. Notwithstanding this, it is considered that the use has been intensified and that the intensification would result in external impacts which would be material for planning purposes. The permitted use is as a golf clubhouse with limited overnight guest accommodation. There is no indication in the planning permission documents or drawings before the Board that there was any significant level of other recreational uses such as a gymnasium, pilates/yoga classes, health and fitness type uses which were targeted at members of the general public. The P.A.'s planning report states that the current use is a stand-alone leisure/commercial facility which no longer includes any provision of accommodation.

9.2.6.3 It is considered that the extent and nature of the current uses, which is likely to be considerably greater than any previous recreational uses, together with the termination of the use of the hotel bedrooms, would fundamentally alter the nature and character of the use. It would also result in a significant increase in the number of people visiting the premises throughout the day and into the evening. This would have an impact on traffic entering and exiting the premises and on parking demand, which are material planning considerations, as evidenced by the significant expansion of the original (permitted) parking areas. Thus it is considered that the change of use from a golf club house/hotel to a golf club house/recreational use (or gymnasium/providing for indoor sports and recreation), which is operated

independently of the golf club on a commercial basis, results in a change in the nature and character of the permitted use and in an intensification of that use, which is of such significance that it gives rise to fresh planning considerations. Thus the conversion of all of the hotel bedrooms to a sports and recreation use results in a material change of use, which is development.

### **9.3 If development, are there any exemptions and/or restrictions of exemption?**

As noted in 9.2.5 above, it is considered that there are no exemptions provided by Class 14 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended) in respect of a change of use between the permitted use, which I consider to be Class 6 and/or Class 10(f) and Class 11(e) and/or Class 10(f). Thus there are no exemptions that can be applied.

### **9.4 Are the works of alteration to the golf course development?**

#### **9.4.1 Construction of car park on the former 'Putting Green'**

- 9.4.1.1 The area in question is located to the south west of entrance to the site and the clubhouse and immediately adjacent to the southern car park. The Referring Party has pointed out that the permitted development (91/6781) included the provision of a large car park of 270 car parking spaces, which was located to the southwest of the club house building, and that this permitted car park had included the area referred to as the 'putting green'. Having examined the permitted drawings, it is considered that the former putting green is within the area originally permitted as a car park. This area is currently laid out as an overflow car park with a gravel surface. As the use of this area for car parking associated with the permitted use is currently in accordance with the permitted development, it is considered that this element does not constitute 'development' as there is no change to the permitted use. As such, the issue of exempted development does not arise.

#### **9.4.2 Construction of car park on former Tee area**

- 9.4.2.1 The permitted plans show the former Tee Area as part of the golf course wherein it is labelled as a 'First Tee Area'. The Referring party states that this was originally part

of an overflow car park. However, there is no such indication on the permitted drawings. There is currently a large car park which covers both the area of the 'First Tee' and the adjoining area to the west, immediately adjoining the public road. Thus works would have been required to remove soils and level the lands associated with the Tee area and the grassed area adjoining the First Tee area. It is considered that such works come within the scope of 'Development' as defined in Section 3 of the Planning and Development Act 2000, (as amended).

## **9.5 Are the works to the golf course exempted development?**

9.5.1 Class 34 of Part 1 Schedule 2 of the P&D Regulations 2001 (as amended) provide for an exemption for works which are incidental to the maintenance and management of a golf course, including the alterations to the layout, but excluding extensions to the golf course. The P.A. considers that alterations to the layout of a golf course in order to provide car parking is not part of the management and maintenance of a golf course, i.e. the management of the greens and fairways, and as such, does not come within the scope of Class 34. I would agree with this position, which is also generally consistent with previous Board decisions in respect of works of alteration to golf courses, as set out in sections 8.7 - 8.9 above. Thus it is considered that the works to construct a car park on, and adjoining, the First Tee Area are development but are not exempted development, as they do not come within the scope of Class 34.

## **10 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 (a) conversion of 12 bedrooms to "recreation suites", (b) construction of car park to former putting green area and (c) construction of car park to former tee area is or is not development or is or is not exempted development:

**AND WHEREAS** PD Lane Associates on behalf of Clive, Wilson and



Lance Evans requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 2nd day of November, 2016 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 29<sup>th</sup> day of November, 2016:

**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) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) The hotel accommodation was permitted under the Planning and Development Acts as a use ancillary to and associated with the golf club use of the site;
- (b) The conversion of all of the hotel bedrooms to “recreation suites” for the provision of an independent recreational and indoor sports facility for both members of the club and for visiting members of the

public results in a change in the nature and character of the permitted use and in an intensification of the use, and would constitute a material change of use, which is development.

- (c) The said change of use does not fall within the scope of any one of the classes of use specified in Part 4 of the Second Schedule of the Planning and Development Regulations 2001 (as amended), and is not therefore exempted development.
- (d) The alterations to the hotel bedrooms involving the removal of internal partitions and ensembles come within the scope of 'development' as set out in Section 3 of the Planning and Development Act 2000 (as amended) and come within the scope of the exemptions provided for in Section 4(1)(h) of the said Act being internal works which do not affect the character of the structure.
- (e) The works of alteration to the golf course comprising the construction of a car park on the former Tee Area and the adjoining grassed area comes within the meaning of Section 3 of the said Act and are, therefore, development.
- (f) The said works to the former Tee Area do not come within the scope of Class 34 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, (as amended), not being works incidental to the maintenance or management of the golf course.
- (g) The construction of the car park on the former putting green is in accordance with the layout permitted under planning permission P.A. Ref. 91/6781 and does not constitute development.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that (a) the said change of use from a golf clubhouse/hotel to a golf clubhouse/leisure centre is development and is not exempted development; (b) the alterations to the hotel bedrooms are development and are exempted development; (c) the works of alteration to the former Tee Area and associated grassed

area are development and are not exempted development and (d) the works of alteration to the former putting green area are not development.

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Mary Kennelly  
Planning Inspector

30<sup>th</sup> March 2017