

## Leahy Planning Ltd.

Clifden, Corofin, Co. Clare. 087 795 8180. [maleahyml@gmail.com](mailto:maleahyml@gmail.com)

Registration Number 623263.

Michael Leahy B.Arch., M.R.U.P., Dip Plng. & Env. Law, F.R.I.A.I., M.I.P.I., A.o.U.

The Secretary,

An Bord Pleanála,

64 Marlborough St.,

Dublin 1

**AN BORD PLEANÁLA**  
LDG- 009265-18  
ABP- \_\_\_\_\_  
17 OCT 2018  
Fee: € 220. Type: 9.00  
Time: \_\_\_\_\_ By: Reg

16<sup>th</sup> October 2018.

Re: Referral under Section 5 of the Planning and Development Act 2000.

Dear Sir/Madame,

On behalf of Mr. Donal Lyne of the Queens Hotel, Abbey St., Ennis, we wish to lodge a referral under Section 5 of the Planning and Development Act, for review of declaration made by Clare County Council. This referral deals with the following issues:

1. *Matter of referral on which declaration was originally sought from Clare County Council:*  
***"Whether change of use from general hotel reception area to cafeteria area providing counter service and seating at the Queens Hotel, Abbey Street, Ennis County Clare, is or is not development and is or is not exempt development."***
2. *Name of Referrer:* Mr. Donal Lyne, manager, the Queens Hotel.
3. *Address of referrer:* The Queens Hotel, Abbey St, Ennis Co. Clare.
4. *Name & address of agents for appellant:* Leahy Planning Ltd., Clifden, Corrofin, Co. Clare.
5. *Planning Authority:* Clare County Council.
6. *Section 5 referral reference Number in Clare County Council:* R18-41.
7. *Fee Enclosed:* €220.00
8. *Date of issuance of declaration:* 21<sup>st</sup> September 2018 (Copy declaration Attached-Appendix 1).

Also attached: Appendix 2 showing warning letter 23<sup>rd</sup> April 2018, Appendix 3 showing drawings, site location and original declaration request form.



## 1. Introduction:

By letter dated 23<sup>rd</sup> April, our clients, the Queens hotel received a warning notice in respect of certain developments which it was alleged constituted unauthorised development (Copy attached- Appendix 2).

The first item on this list of alleged unauthorised developments was in respect of what was described as a

*"material change of use at ground floor level of Queens Hotel from hotel reception/lobby area to coffee shop".*

This referral is taken solely in respect of that aspect of the warning letter. We have had correspondence with the council in respect of the other matters mentioned in the warning letter. In particular, we have also requested a declaration from the council under section 57 of the Planning and Development Act as amended, seeking clarification as to what works are still considered to be exempted development notwithstanding the fact that this building is a protected structure (RPS-739).

We had hoped that this Section 57 declaration would have issued in time for it to be considered in tandem with this referral. It may be that when a declaration issues in respect of the Section 57 request that we may wish to refer all or part of it to the Board for final adjudication. In the interim, however, we request only that the board adjudicate on the matter of the alleged material change of use.

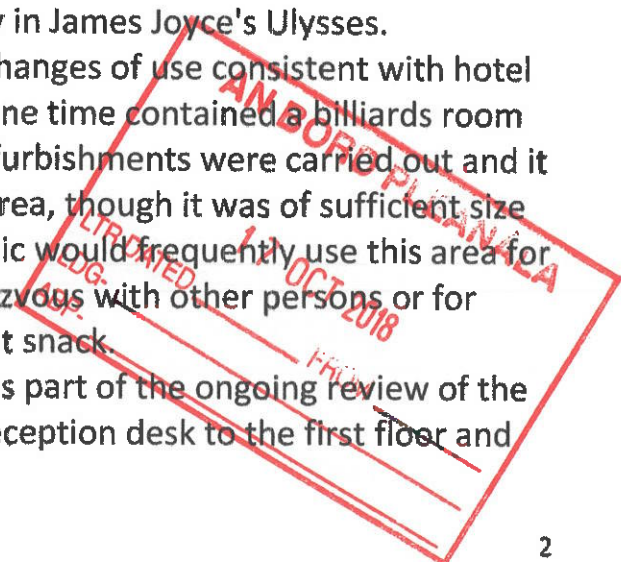
We referred the matter of the alleged material change of use to the council for a declaration on 28<sup>th</sup> August 2018 and the declaration issued on 21<sup>st</sup> September 2018 (Appendix 1).

## 2. History.

The Queens hotel premises has been integral to the town of Ennis since the 19th century and received its present name at a time of Queen Victoria's visit to Ireland in 1900. It was mentioned briefly in James Joyce's Ulysses.

Over that time, it has seen many internal changes of use consistent with hotel usage. The area of the present referral at one time contained a billiards room and later a meeting room. In the 1980's refurbishments were carried out and it was changed to the main hotel reception area, though it was of sufficient size that guests and other members of the public would frequently use this area for brief visits to the hotel or in order to rendezvous with other persons or for purposes of drinking coffee or having a light snack.

Approximately 6 months ago the owners, as part of the ongoing review of the operation of the premises, relocated the reception desk to the first floor and





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made certain minor non-structural changes to the area of this referral incorporating a food counter and provision of seating. It should be noted that seating, together with small tables, had been present in the reception area before this change, and coffee and other items were regularly served there. It should also be noted that like most businesses the hotel business changes with time. The concept of a large hotel reception area is now somewhat dated given that most reservations are made online or as part of group bookings. For that reason, the reception area was relocated to an upstairs room. This is a common feature of many commercial hotels and is entirely consonant with internal rearrangements within a hotel premises without involving any material change to the premises from a planning point of view.

### 3. Change of use versus material change of use.

"Development" is defined in the planning act as

*"the carrying out of any works on over or under land or the making of any material change of use in any structure or other land"*. (Section 3)

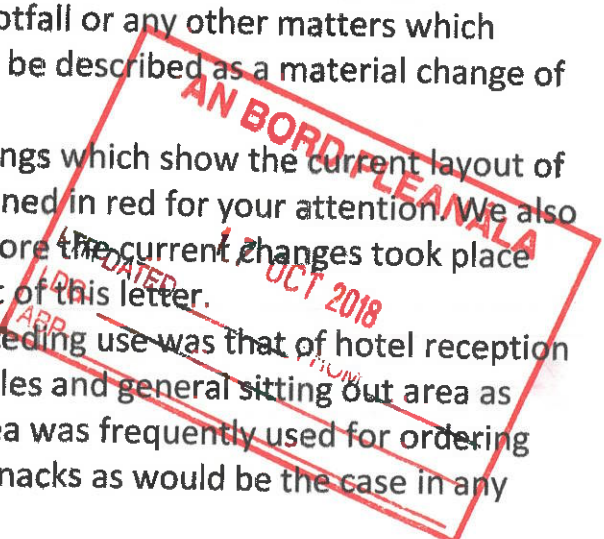
It is to be understood from this that the making of a **non-material** change of use to a premises does not require planning permission. For example, an internal change in a dwelling-house from the kitchen to dining room which does not affect the external appearance of the building clearly does not require planning permission.

The use of the current premises is that of "hotel". Such use incorporates a wide variety of activities including, in the public areas; bar, meeting, dining, restaurant, provision of light refreshment and the many other activities which will be commonplace in an hotel premises.

It is our contention that a change of use which has been carried out, from one use commonly associated with an hotel to another use commonly associated with an hotel, and which does not involve issues of greater usage, greater traffic generation, greater pedestrian footfall or any other matters which would be of planning concern, could not be described as a material change of use and is therefore **not development**.

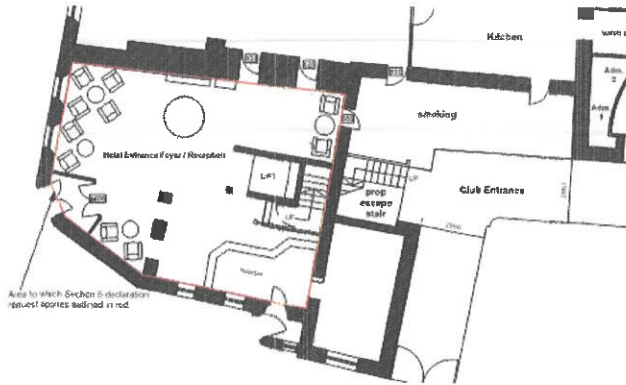
We attach herewith as appendix 3 drawings which show the current layout of the area in question which we have outlined in red for your attention. We also show the layout of the area as it was before the current changes took place and these are shown in miniature as part of this letter.

As indicated above the immediately preceding use was that of hotel reception area, incorporating seating area with tables and general sitting out area as shown in the attached drawings. This area was frequently used for ordering and consuming cups of coffee and light snacks as would be the case in any hotel reception or waiting area.



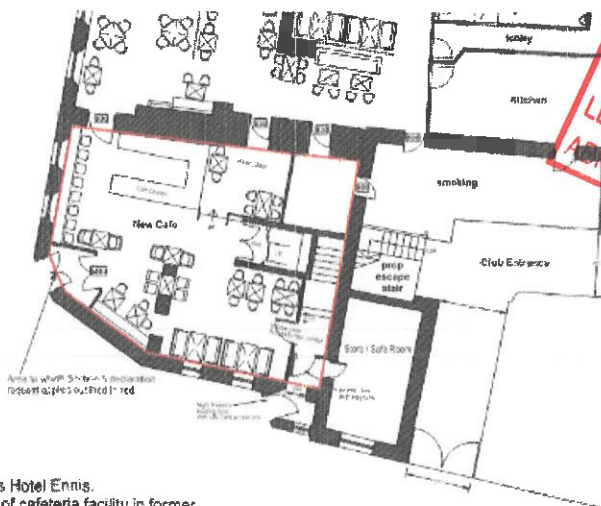


The area also gave access to the main lift of the hotel and a main staircase. It also had doors connecting it to the remainder of the hotel.

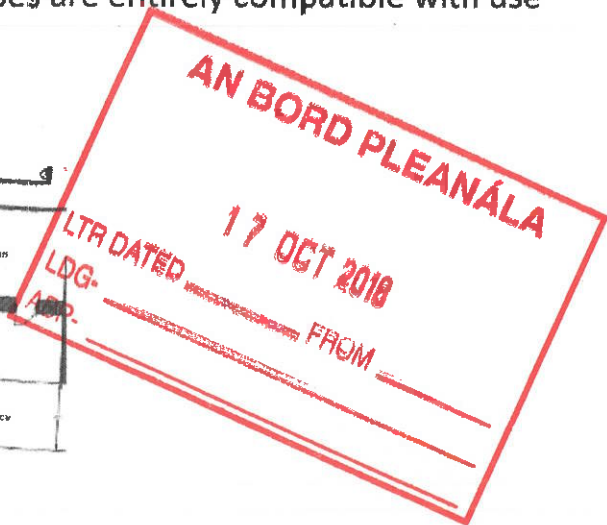


Queens Hotel Ennis.  
Layout of Reception Area prior to Provision to Cafeteria facility.

When looking at the current layout a food counter has been installed, the reception desk has been removed and the access to the staircase has been slightly modified. If any of these very minor works are required to obtain planning permission, i.e. that they are not exempted under section 4(1) (h) of the Act, by virtue of the fact of this building's being a protected structure, then we are happy to apply for planning permission for them. As mentioned in the introduction above that is a matter to be decided. However, it appears manifest that the general usage of the area is very similar to that which prevailed prior to the removal of the reception desk. There are seats and there are tables at which people may consume snacks. Instead of a reception counter, there is a food counter. These uses are entirely compatible with use as an hotel.



Queens Hotel Ennis.  
Layout of cafeteria facility in former Reception Area .







It may be argued that the cafeteria use is to some extent "stand-alone". However, it is no more so than the original hotel reception area. Persons who are not patrons would enter the reception area, have a cup of coffee or a snack and then leave. They were required to use the toilets of the hotel in common with the other patrons of the hotel. It was not, therefore, a stand-alone premises and it is not now as the same conditions apply. Similarly, it is, of course, the case that hotels contain restaurants which would have a certain "stand-alone" function, in that persons not necessarily using the residential function of the hotel would use the restaurant and then leave. Similarly, with respect of bar premises or nightclub premises all of which are entirely compatible with use as an hotel.

Given the above, and the similarity in layout in the "before and after" situations we would contend that it could not be argued that a material change of use has taken place.

A **material** change of use is said to take place when change is such that it involves matters which the planning authority would be obliged to take into account in their normal assessment of a planning application. (*Barron J. Galway County Council v Lackagh Rock Ltd.*) Such changes would, for example, be a significant increase in noise, environmental emissions, increase in deliveries or a significant increase in footfall over and above what would be expected by normal improvement in business. It cannot be argued that this would be the case in the current situation. There is no difference in noise levels or indeed in general visitor levels to the area which was formerly used as a reception and is now used as a coffee area. Nor are there any other external nuisances being generated. We would, therefore, state that even if the provision of a cafeteria may be considered to be a change of use, it is not **material**, and as such does not require planning permission. Our contention, therefore, is that in this regard development has not taken place.

It should be noted that as per Section 2 of the act "use" does not include use of the land by the carrying out of any works thereon.

Stamp: **AN BORD PLEANÁLA**  
LTR DATED 17 OCT 2018  
LDG  
ASP  
FROM

#### 4. Development or Exempted Development.

Despite the above, the Board may conclude that development has taken place. The question then arises as to whether or not it is exempted development.



Section 4(1)(h) of the act allows that certain minor works

*"including the carrying out works for the maintenance, improvement or other alterations of any structure, being works which affect only the interior of the structure..."*

shall be exempted development. Certain works have been carried out in respect of this development including the removal of a reception counter and the creation of a small internal partition to a section of the staircase as well as provision of certain internal linings to surfaces of walls and columns. Clearly, under normal course of events, such works would be exempted development but it is possible that these will be de-exempted under section 57 by virtue of the building's being a protected structure. As indicated above we have sought a declaration on this matter of section 57 de-exemptions. In any event, if these minor works are found not be exempt we will apply to have them retained. However, it is the matter of use which is the primary concern of this referral.

Section 4 of the act and article 6 of the regulations make provision for change of use within certain "classes" of use being exempted. Though the regulations specify that an hotel is a "business premises" the specific class to which hotel belongs is not clarified. It is, therefore, a specific use in his own right and the issue of change from one class to another within a band of uses does not arise. What must be determined therefore is what is an appropriate type of use or range of uses within the context of an hotel, all of which can be considered compatible with hotel use?

Hotel premises have always contained a variety of uses both for patrons enjoying the residential element of the hotel and for general members of the public who make use of the facilities of the hotel on an ongoing basis. These facilities include bar, restaurant, coffee areas, meeting rooms, leisure facilities ballrooms et cetera. There are of course certain hotels which are reserved exclusively to residents. The Queens has never been such a hotel and from its earliest times it was available as a commercial hotel and given its central town location it provided ongoing facilities to the public of Ennis very much in line with similar hotels throughout the country. It is clear that the current use as cafeteria area is entirely compatible with the generally understood use of "hotel", and with the use to which the Queens Hotel premises has been put since its foundation, considerably preceding the introduction of the planning Acts.

## **5. Planning precedents.**

Decisions which the board has made in previous referrals may be of some interest.



In **RL 3315** the Board decided that use of a coffee shop within a shop was considered to be compatible with use of the shop and came within "*the scope of the definition of shop*" and was therefore considered not to constitute development. In that case, the works to the protected structure were considered to be exempted development.

In a very similar case, **RL 2941**, a partial change of use from shop to coffee shop was also considered not to constitute development.

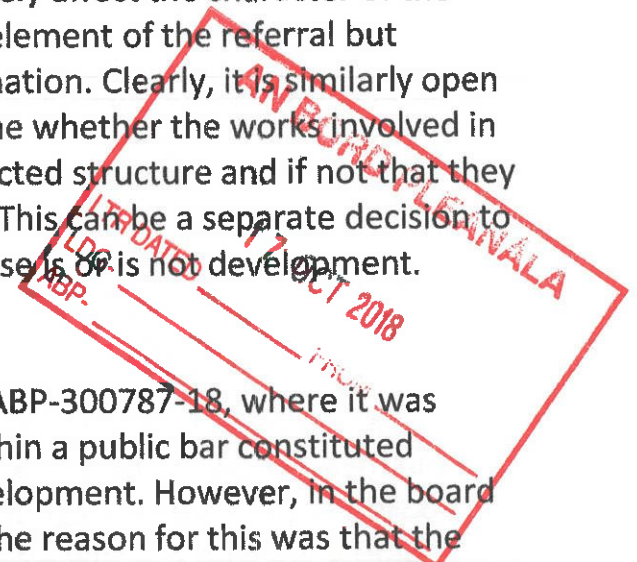
The precedence value of these cases derives from the fact that though there were what could be considered as certain changes of internal use they were considered entirely compatible with the pre-existing uses and were therefore not considered to constitute development. A directly analogous situation arises in the current case. While unlike the use of "shop", the use of "hotel" is not defined in the act or the regulations, nevertheless use of hotel is clearly understood by most people and is clearly understood to incorporate cafeteria use.

Another very important element of **RL3315** is the manner in which a split decision was issued whereby the board made separate determinations in respect of the "works" element of the referral and in respect of the "use" element of the referral. It decided that the **use** aspect did not constitute development and that the **works** aspect constituted exempted development. The board may consider that a similar approach should be taken in this instance.

Also of importance in this referral is the fact that the board decided, in the absence of a section 57 declaration from the council, that certain works were exempt development as they did not adversely affect the character of the protected structure. This was not the main element of the referral but nevertheless, the board made that determination. Clearly, it is similarly open to the board in the present case to determine whether the works involved in this matter affect the character of the protected structure and if not that they thereby remain as exempted development. This can be a separate decision to determining whether or not the change of use is or is not development.

Another case which may be of relevance is **ABP-300787-18**, where it was decided that occasional use of a theatre within a public bar constituted development which was not exempted development. However, in the board order for this referral, it is made clear that the reason for this was that the proposed change would have involved "*...material planning considerations due to intensification of pedestrian and traffic arriving...*".

No such material planning consideration can be said to arise in the current case.



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At paragraphs (c) and (d) of the conclusions section, the council again referred to class 14 of part 1 of schedule 2 as well as part 4 of schedule 2. As indicated above it is difficult to see how these are relevant to the current circumstance.

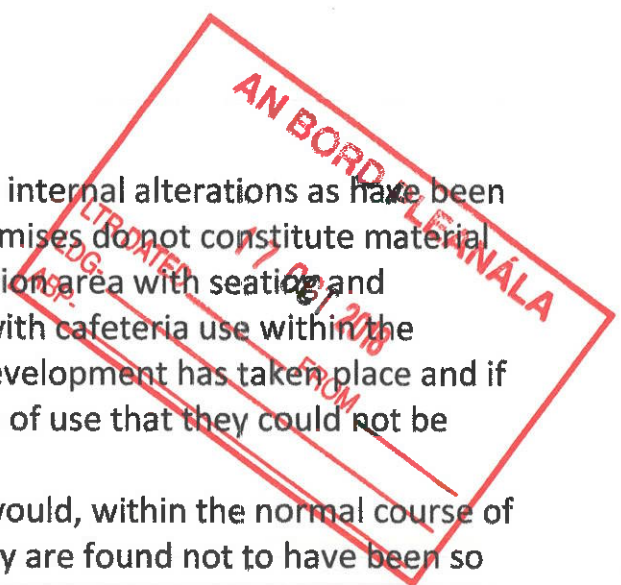
At paragraph (e) of the declaration, the council suggested the nature and scale of change, including seating and provision of a fixed counter, have material planning impacts. This is not however justified by the council. It is difficult to see within the context of a large hotel building how, for example, a significant increase in footfall requiring planning assessment, other than that created by a generally improving business model, could be generated without extending the premises and without changing the nature of the hotel use.

We may not in the above have fully understood the reasoning behind the council declaration and if the council chooses to clarify to the board the reasons for its inclusion of certain elements of the regulations in the preamble, or to clarify the reasons why they suggest that the alteration has material planning impacts, then I trust that the board will make these comments available to us for response if they raise new issues.

## 7. Conclusions.

This statement is intended to show that such internal alterations as have been carried out to a part of the Queens Hotel premises do not constitute material change of use in that the change from reception area with seating and consumption of food is entirely compatible with cafeteria use within the context of a hotel premises. Therefore, no development has taken place and if the alterations may be described as a change of use that they could not be described as a material change of use.

Such minor works as have been carried out would, within the normal course of events, be exempted development and if they are found not to have been so by virtue of Section 57 then we are happy to apply for retention of those works. As previously indicated, a section 57 declaration is awaited which will clarify this matter and indeed this may be clarified before the Board makes its decision in the current case.



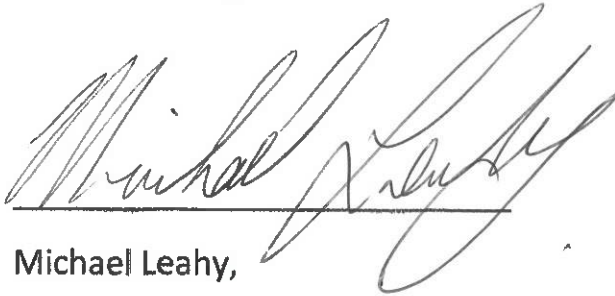




The Board is in any event free to make differing decisions in regard to the use aspect and the works aspect of the matter as it has done in previous referrals.

We look forward to the Board confirming that the change of use as carried out does not constitute development.

Yours sincerely,



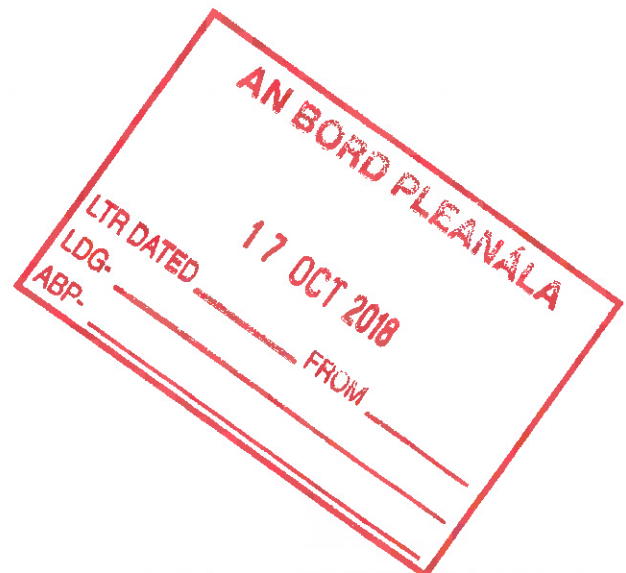
Michael Leahy,

for Leahy Planning Ltd.

On behalf of Mr. Donal Lyne, manager of the Queens Hotel.

Under instruction of Abbey River Investments Ltd., the owners of the Queens Hotel.

Encls:





**Appendix sheets.**

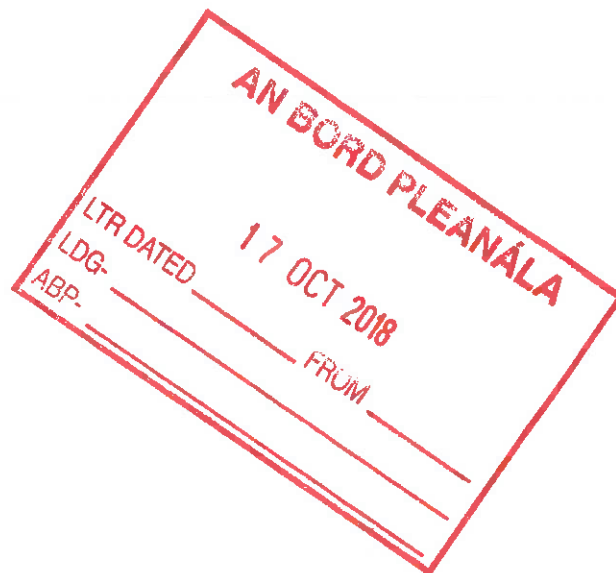
1. Copy of Declaration from Clare County Council. Ref No. R18-41. Issued 21<sup>st</sup> September 2018
2. Copy of Warning Letter, 23<sup>rd</sup> April 2018.
3. 3 Copy of drawings and application form lodged with declaration request.

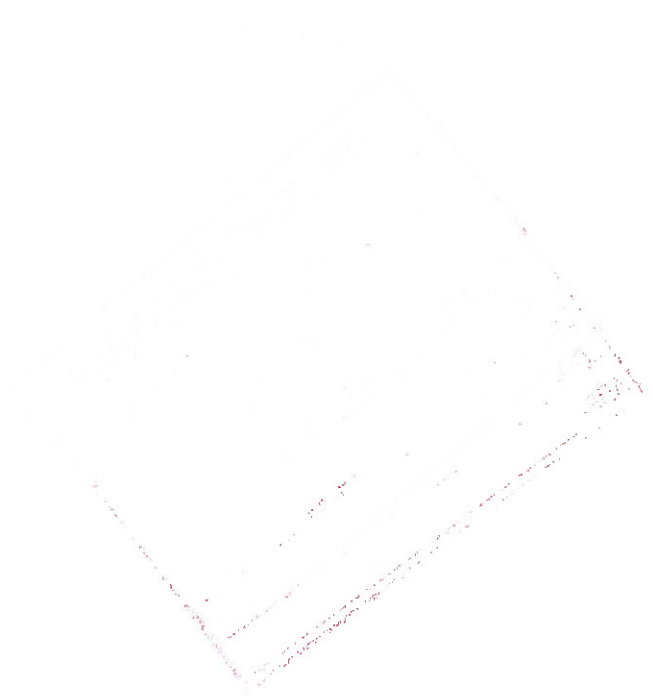




**Appendix 1.**

Declaration issued by council, 21<sup>st</sup> Sept 2018.





**DECLARATION ISSUED UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

Reference No.: R18-41



Comhairle Contae an Chláir  
Clare County Council

**WHEREAS a question has arisen as per the provisions of Section 5 (1) of the Planning and Development Act 2000 (as amended) as to:  
Whether changing the internal use of a portion of the Queens Hotel premises from reception area to cafeteria at the Queens Hotel, Abbey Street, Ennis, Co. Clare, is or is not development and is or is not exempted development.**

**AND WHEREAS, Donie Lyne** has requested a declaration from Clare County Council on the said question.

**AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –**

- (a) Sections 2, 3 of the Planning and Development Act, 2000, as amended,
- (b) Class 14 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2 Part 4 of the Planning and Development Regulations 2001, as amended.
- (d) Articles 9 and 10 of the Planning and Development Regulations 2001, as amended
- (e) The nature, scale and layout of the cafe, the layout and services provided to visiting members of the public such as the inclusion of new counter area and the extent of seating provided.
- (f) The proposed change of use as indicated in received documents from the referrer.

**And whereas Clare County Council (Planning Authority) has concluded:**

- (a) the proposed development consisting the change of use from use from a hotel reception area to a cafeteria at the Queens Hotel, Abbey Street Ennis, constitutes "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) the said works constitute "development" which comes within the scope of section 3 (1) of the Planning and Development Act 2000, as amended;
- (c) the said development consisting of the change of use from a hotel reception area to a cafeteria at the Queens Hotel, Abbey Street, Ennis, Co. Clare is not exempted development as same is outside the change of use exempted development provisions as set out in Class 14 of Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended;
- (d) the said development consisting of the change of use from a hotel reception area to a cafeteria at the Queens Hotel, Abbey Street, Ennis, Co. Clare is not exempted development as same is outside the change of use exempted development provisions as set out in Schedule 2, Part 4 of the Planning and Development Regulations 2001, as amended;

AN BORD LEANALA  
12 OCT 2018  
LTD DATED 12 OCT 2018





(e) Having regard to the nature, scale and layout of the cafe, the layout and services provided to visiting members of the public (e.g. inclusion of new counter area), and the extent of seating provided, the change of use from a hotel reception to a cafe raises issues that are material in relation to the proper planning and sustainable development of the area and this change of use constitutes a material change of use.

**NOW THEREFORE:** The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

**the change of use from a hotel reception area to a cafeteria at the Queens Hotel, Abbey Street, Ennis, Co. Clare, constitutes development which is not exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.**

  
Thomas Hogan  
Senior Staff Officer  
Planning Department  
Economic Development Directorate

21<sup>st</sup> September 2018





**Appendix 2.**

Warning letter issued by Council, 23<sup>rd</sup> April 2018.







COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**WARNING LETTER**  
PURSUANT TO  
SECTION 152(1) OF THE PLANNING AND DEVELOPMENT ACT  
2000, (AS AMENDED)

23<sup>rd</sup> April 2018

Queens Hotel Limited  
Unit 5 Westgate Business Park  
Kilrush Road  
Ennis  
Co. Clare  
V95 XY73

Our Ref: UD18-039

**RE: Lands at Abbey Street, Ennis, Co. Clare**

A Chara,

I am informing you that it has come to the attention of the Planning Authority, Clare County Council, that unauthorised development may have been, is being or may be carried out, namely:

1. A material change in use at ground floor level of Queens Hotel from hotel reception/lobby area to coffee shop (Protected Structure No. RPS.739);
2. The erection of unauthorised advertising signage "Kaffeine" associated with the new coffee shop;
3. The carrying out of alterations to the front elevation of the existing bar/restaurant and the erection of unauthorised advertising signage advertising "No. Forty One Bar & Restaurant";
4. The carrying out of interior alterations within the hotel premises including the removal of plaster and the erection of timber cladding.

On lands at Abbey Street, Ennis, Co. Clare

An Roinn Pleanála  
An Stiúrthóireacht Forbairt Gheilleagrach  
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

Planning Department  
Economic Development Directorate  
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



Accordingly, this Warning Letter, pursuant to the provisions of Section 152(1) of the Planning and Development Act, 2000, as amended, is hereby issued to the **Queens Hotel Limited, the owner.**

Any person served with this Warning Letter may make submissions or observations in writing to the planning authority, Clare County Council, regarding the alleged unauthorised development not later than four weeks from the date of the service of this Warning Letter.

When the Planning Authority considers that unauthorised development has been, is being or may be carried out, an Enforcement Notice may be issued requiring its recipient to cease or not to commence unauthorised development, or to proceed with development in accordance with the related permission. Officials of the Planning Authority may at all reasonable times enter on the land for the purposes of inspection.

Any person who has carried out or is carrying out unauthorised development shall be guilty of an offence pursuant to Section 151 of the Planning and Development Act, 2000, as amended. I am obliged to inform you that the possible penalties involved where there is a conviction for such an offence are that a person shall be liable:

1. on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.
- or
2. on conviction on indictment to a fine not exceeding €12,697,380.78 or to imprisonment for a term not exceeding 2 years, or to both.

Where an unauthorised development involves the construction of an unauthorised structure, the minimum fine is:

- 1 on summary conviction, the estimated cost of the construction of the structure or €2,500, whichever is less:
  - or
  - 2 on conviction on indictment, the estimated cost of the construction of the structure or €12,697.38, whichever is less,
- except where the person convicted can show to the court's satisfaction that he, she, or it, does not have the necessary financial means to pay the minimum fine.

Failure to comply with an Enforcement Notice is an offence contrary to Section 154(8) of the Planning and Development Act, 2000, as amended. The penalties upon conviction for an offence contrary to Section 154(8) are the same as for Section 151, set out above.

In addition, any costs reasonably incurred by the Planning Authority in relation to enforcement proceedings may be recovered from a person on whom an Enforcement Notice is served or where Court action is taken.

AN BORD PLEANALA  
LDG. DATED 17 OCT 2018  
HUM

Handwritten text on a tilted rectangular label, possibly a library or archival tag. The text is faint and difficult to read, but appears to include a date and some identifying numbers.

1975  
1000

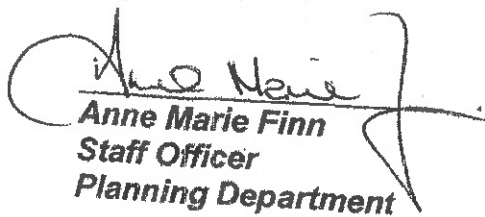




If you have any queries in relation to the above please contact The Planning Enforcement Section on 065 6821616.

I await any written submissions or observations you may have regarding the alleged unauthorised development, not later than four weeks from the date of the service of this Warning Letter.

Mise le meas,

  
**Anne Marie Finn**  
**Staff Officer**  
**Planning Department**





**Appendix 3.**

Drawings and form included with original declaration request to council.  
Drawings show site location and layout of relevant area before and after  
the change the subject of the referral.



