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VITRUVIUS HIBERNICUS

6 April 2021

AN BORD PLEANALA
LDG- 038414 -21
ABP-
09 APR 2021
Fee: € 220 Type: CHG
Time: By: [illegible]

An Bord Pleanala,
64 Marlborough Street,
DUBLIN 1.

Leitrim County Council ref. ED 21-03

Sir/Madam,

this a referral made under section 5 of the Planning and Development Act, as amended. The referrer is Ciaran Smyth, High St., Ballinamore, Co. Leitrim.

Attached are :
(i) An Bord's referral fee €220-00
(ii) declaration by Leitrim County Council dated 31 March 2021
(iii) the Section 5 request and submissions made by Ciaran Smyth through me on which the P.A. made its declarations.

The questions posed are/were as to whether :
(1) works to complete the then incomplete apartments for use as mere apartments,
(2) works to complete the then incomplete apartments for the reception and care of those seeking international protection i.e protected persons,
(3) the use of the completed apartments for the reception and care of protected persons *i.e.* a material change of use from use as typical apartments,
(4) the use of the now complete apartments for non-paying tenants together with related facilities e.g. secutity office, doctor's/nurse's station, pharmacy, food store, the ordering of tenants' food by way of food coupons, provision of mental health services and therapy rooms for tenants, transport to/from the Centre acknowledged by the developer to be an Asylum Centre for the reception and care of those seeking International Protection (ors. "protected pesons") instead of use as a typical apartment block at The Rock centre, Ballinamore, Co. Leitrim

are or are not development and/or are or are not exempted development.

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To aid An Bord in its deliberations I attach a copy of the developement company's Director's Affidavit to the High Court in which the development is explained fully.
(I add for clarity that the referrer herein was not a party to the High Court matter.)

The relevant history is set out in the papers contained in the S.5 request to the the P.A. Noteworthy is part of the Bord Inspector's report in a previous referral ref. 307077-20 in which the development was described as no different than a typical block of apartments. My client, Ciaran Smyth, takes issue with that absurd conclusion.
Accordingly, the wording of the questions has been modified to reflect the manifest absurdity in that part of the Inspector's report.

Of significance is that the original 'parent' permission ref. 04/1546 (a ten year permission), as amended by 07/858, authorised in total 25 no. Apartments did not authorise secutity office, doctor's/nurse's station, pharmacy, food store, the ordering of tenants' food by way of food coupons, provision of mental health services and therapy rooms for tenants.

It is of the greatest legal significance that any exemption cannot apply to any change of use of the apartments authorised by parent permission 05/1546 by virtue of Condition 1 of that permission.
That is to say that Articles 9 and 10 of the P&D Regulations expressly provide that change of use, material or otherwise, from use as apartments to any other use [i.e. an Asylum Centre] shall not be exempted development if the change of use would "*contravene a Condition attached to a permission under the Act*" or "*be inconsistent with any use specified in a permission under the Act*".
I refer, of course, to Condition 1 of parent permission 04/1546.
I further refer to Article 9 (a)(viii) which refers to "*... a structure the use of which is an unauthorised use*". In this I draw An Bord's attention to the P.A. Warning Letter of 2008 citing non-compliance with Conditions 2 to 12 of parent permission 04/1546.
I stress that the developer formally acknowledged and conceded to the High Court that the apartments were in use as an Asylum Centre for 'protected persons'.

The supporting arguments in the S.5 Request are the arguments now relied on.
My client awaits a proper determination of the quesions posed.

Yours faithfully,

Liam Madden

Liam Madden,
Convent Road,
LONGFORD
N39 EE72

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Leitrim County Council

Declaration regarding Development/Exempted Development
(Section 5 of Planning & Development Act 2000, as amended)

Leitrim County Council Reference Number: ED- 21-03

WHEREAS a question has arisen as to whether:

(1) works to complete the then incomplete apartments for use as mere apartments,
(2) works to complete the then incomplete apartments for the reception and care of those seeking international protection i.e. protected persons,
(3) the use of the completed apartments for the reception and care of protected persons i.e. a material change of use from use as typical apartments,
(4) the use of the now complete apartments for non-paying tenants together with related facilities e.g. security office, doctor's/nurse's station, pharmacy, food store, the ordering/provision of tenants' food by way of food coupons, provision of mental health services and therapy rooms for tenants, transport to/from the Centre acknowledged by the developer to be an Asylum Centre for the reception and care of Those seeking International Protection (ors. "protected persons"), instead of use as a typical apartment block, at The Rock Centre, Ballinamore, Co. Leitrim

are or are not development and/or are or are not exempted development.

AND WHEREAS the said question was referred to Leitrim County Council by on the 25th January 2021, by Mr. Ciarán Smyth of High Street, Ballinamore, Co. Leitrim with respect to The Rock Centre, Ballinamore, Co. Leitrim;

AND WHEREAS Leitrim County Council, in considering this referral, had regard particularly to -

a) Sections 2, 3, 4, 5 and 40 of the Planning and Development Act 2000, as amended;

b) Article 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended;

c) The planning and development history of the site;

d) The nature and current use of the site;

e) The submissions of the Referrer;

f) The response received from Remcoll 2 Ltd. on 29th March 2021

g) The report of the assigned planning officers dated 22nd February, 25th March and 31st March 2021

AND WHEREAS Leitrim County Council has concluded that -

a) works to complete the then incomplete apartments for use as mere apartments, come within the scope of Section 40 of the Planning and Development Act 2000, as amended and do not come within the scope of

Section 5 of the Planning and Development Act 2000, as amended. Nonetheless, the subject works are considered to constitute development but are exempted development within the provisions of Section 4 (1)(h) of the Planning and Development Act 2000, as amended;

b) works to complete the then incomplete apartments for the reception and care of those seeking international protection i.e. protected persons, come within the scope of Section 40 of the Planning and Development Act 2000, as amended and do not come within the scope of Section 5 of the Planning and Development Act 2000, as amended. Nonetheless, the subject works are considered to development but are exempted development within the provisions of Section 4 (1)(h) of the Planning and Development Act 2000, as amended;

c) the use of the completed apartments for the reception and care of protected persons i.e. a material change of use from use as typical apartments does not constitute a change of use from the permitted use in the manner provided for at The Rock Centre, Ballinamore and, therefore, does not constitute development, and;

d) the use of the now complete apartments for non-paying tenants together with related facilities e.g. security office, doctor's/nurse's station, pharmacy, food store, the ordering/provision of tenants' food by way of food coupons, provision of mental health services and therapy rooms for tenants, transport to/from the Centre acknowledged by the developer to be an Asylum Centre for the reception and care of Those seeking International Protection (ors. "protected persons"), instead of use as a typical apartment block, at The Rock Centre, Ballinamore, Co. Leitrim in the manner provided for at The Rock Centre, Ballinamore does not constitute a change of use from the permitted use of the 25 no. apartment units and, therefore, does not constitute development.

NOW THEREFORE Leitrim County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Acts 2000, as amended, hereby declares that:

- works to complete the then incomplete apartments for use as mere apartments at The Rock Centre, Ballinamore constituted development and such development was exempted development;
- works to complete the then incomplete apartments for the reception and care of those seeking international protection i.e. protected persons at The Rock Centre, Ballinamore constituted development and such development was exempted development;
- the use of the completed apartments for the reception and care of protected persons i.e. a material change of use from use as typical apartments (which the Planning Authority would dispute) in the manner provided for at The Rock Centre, Ballinamore does not constitute a change of use from the permitted use and, therefore, does not constitute development, and;
- the use of the now complete apartments for non-paying tenants together with related facilities e.g. security office, doctor's/nurse's station, pharmacy, food store, the ordering/provision of tenants' food by way of food coupons, provision of mental health services and therapy rooms for tenants, transport to/from the Centre acknowledged by the developer to be an Asylum Centre for the reception and care of Those seeking International Protection (ors. "protected persons"), instead of use as a typical apartment block, at The Rock Centre, Ballinamore, Co. Leitrim in the manner provided for at The Rock Centre, Ballinamore does not constitute a change of use **from the permitted use of the 25 no. apartment units** and, therefore, does not constitute development.

Finbarr Heaney

Signed: *pp* **Administrative Officer**
Planning Department

Dated this 31st March, 2021

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ENVIRONMENTAL SCIENTIST

VITRUVIUS HIBERNICUS

Leitrim County Council,
Aras an Chontae,
Carrick-on-Shannon,
Co. Leitrim.
N41 PF67

14 Jan. 2021

Section 5 Request : The Rock Centre, Ballinamore, Co. Leitrim.

Dear Sir/Madam,

this is request under Section 5 of the Planning and Development Act 2000, as amended, for a declaration as to whether certain matters are or are not edvelopment and are or are not exempted development.

The Requestor is my client, Ciaran Smyth, High Street, Ballinamore, Co. Leitrim.
Attached is the request fee €80-00 and in-house Request Form
Also attached is mapping and various relevant extracts from Referral 307077.

BACKGROUND
This request arises from An Bord Pleanala's assessment, conclusions and order ref. 307077 which issued on 4th Jan. 2021. I attach for ease of reference a copy of An Bord's conclusions and order. The site is well known to Leitrim County Council's planning office.
The owner/occupier/developer is Remcoll 2 Limited.

The reason for this request is simple.
The attached Bord Pleanala conclusions and order in 307077 are flawed.
This purpose of this request is to eliminate the uncertainties and procedural irregularities in An Bord's Order 307077 without the necessity of a High Court Judicial Review in the form of an order of certiorari (i.e. an order to have made more certain).

The Inspector's Report which prompted the Direction and Order was a very brave attempt at a thorough examination and assessment of a thorny issue, an issue which has troubled the High Court more than once and which is pre-ordained to go before the High Court again.
However, there were flaws which this request and/or referral may resolve.

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The flaws were, generally, though the list below is not exhaustive :

(i) This referrer's three questions were re-worded and, while the re-wording may at first glance appear trivial, there was a slightly different nuance in meaning.

(ii) There is a glaring error in the assessment *viz.* Section 40 of the Act.

(iii) An Bord reached only two conclusions although three questions were posed.

(iv) An Bord made an order in only one of three questions posed.

(v) There is, on the face of it, a blatant contradiction between the second conclusion and the order although this may be partly due to syntax and choice of words.

That said, An Bord's assessment in these complex questions was very useful.
Accordingly, I am now posing re-worded questions.
Question (1) is almost identical to (2) save only for the very different use of the apartments.
Question (3) is at the heart of the matter.
Question (4) is an expanded version of (3).

It is noteworthy that I have now omitted reference to the abandonment of the 'parent' permission 04/1546. The reason is simple.
If there has been no material change of use, abandonment doesn't arise.
If there has been a material change of use, then the development is unauthorised and Injunctive Reliefs will be sought.

The pivotal issue is that An Bord's Inspector held that the apartments in The Rock, Ballinamore were no different from any typical block of apartments.
I submit that this conclusion is wholly irrational and illogical, contrary to plain reason and common sense and indefensible for being in the teeth of plain reason and common sense.

WHEREAS a question has arisen as to whether :

(1) works to complete the then incomplete apartments for use as mere apartments,

(2) works to complete the then incomplete apartments for the reception and care of those seeking international protection i.e. protected persons,

(3) the use of the completed apartments for the reception and care of protected persons i.e. a material change of use from use as typical apartments,

(4) the use of the now complete apartments for non-paying tenants together with related facilities e.g. security office, doctor's/nurse's station, pharmacy, food store, the ordering/provision of tenants' food by way of food coupons, provision of mental health services and therapy rooms for tenants, transport to/from the Centre acknowledged by the developer to be an Asylum Centre for the reception and care of Those seeking International Protection (ors. "protected persons"), instead of use as a typical apartment block,

at The Rock Centre, Ballinamore, Co. Leitrim are or are not development and/or are or are not exempted development.

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QUESTIONS (1) and (2)

An Bord in 307077 held that the apartments were " *substantially complete*".
This view was underpinned by Leitrim County Council who expressed the view that the apartments " *substantially complete*".
An Bord also concluded that the "*primary structure was, therefore, complete in 2009*"
An Bord determined that the lifetime/duration of the parent permission 04/1546 had not expired within the terms and meaning Section 40 of the Act.

I add a commentary/opinion below which speaks for itself.
Frankly it doesn't matter one iota whether the internal and external works at the then incomplete apartments are or are not exempted development.
Clearly the works are "*development*", as defined.
Works "*affecting only the interior of the structure*" are exempted development under Section 4.-(1)(h) and this is so by reference to Act alone and not the Regulations made thereunder by Section 4.-(2)
That is to say, there are no Conditions or Limitations affecting this exempted status in s. 4.-(1)(h) as opposed to Exemption Classes made under s. 4.-(2)
However, the works to complete do not affect ONLY the interior of the structure.

(The question as to how to determine whether the internal works are unauthorised is wholly academic : an injunction declaring the apartment complex as a whole unauthorised would encompass this.)

The external planters dividing the flirst floor promenade– or 'corrals' as I earlier described them – are more problematic. The planters are also clearly "*development*".
The P.A. and/or An Bord may well determine the planters exempted under some section or article or Class. So be it.
The sole reason for including this slightly re-worded question is for completeness sake and to ensure that this planning process is without flaw.

I submit that An Bord's conclusion in 307077 viz. s.40 is blatently flawed.
Reliance by An Bord on S.40 is blatanty flawed as the duration of a permission does not cease to have validity where the works, necessary for and ancillary or incidental to the use do but only when the apartments were "*complete*".
It is common case that the apartments were NOT complete.

Moreover S. 40.-(1)(b) says :

> *(b) in case the development is commenced during that period, so much of the development as is not completed during that period.*

Furthermore, S. 40.-(2)(b) goes on to say :

> *(i) the continuance of anuy use, in accordance with a permission, of land*
> *(ii) where a development has been completed (whether to an extent described in paragraph (a) or otherwise, the obligation of any person to comply with any Condition attached to the relevant permission whereby something is required to be done or not to be done.*

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Paul Collins Director of Remcoll 2 Ltd. which purchased the Property (The Rock Centre taken as a whole) in his attached Affidavit to the High Court swore :

Para. 6

The Plaintiff [Remcoll 2 Limited] *purchased the property in 2018 in a state of disrepair. It had only three tenants and no prospects of regeneration.*

Para. 7.

The Property includes 25 apartments which were – at the time of acquisition – in 'shell and core' condition and were not wired or plastered.
There were only concrete floors throughout the residential part of the Property.
There were leaks thoughout the building.
The cost of this upgrade to the building has been c. €1.2 million.

Para. 9

As of the 18th October [2019] there was just a week's outstanding work to be completed to finalise the regeneration of the Property and ensure the residential units are fit for purpose. The works to be completed within the 7-days of final works to be done consist of the final works to be done to the plumbing system, the installation of WI-FI and the completion of fitting out works regarding the attendant commercial units.

Para. 11

The Department [of Justice, Equality and Law Reform] *has explained to the Plaintiff that generally, the families in question are persons who are either being transferred from emergency accommodation in Ireland or persons who are seeking asylum who have arrived in Ireland relatively recently.*

Para. 12

The accommodation offered by the Plaintiff is unique in Ireland .....
For the purposes of this kind of accommodation, the Department [of Justice] defines a family as one adult and one child.

Para. 13

.... in this regard it will be the first of its kind in Ireland.
What makes these units different from other Centres around the country .....
I have given thought to the environment as a whole, to the fact that there will be a supermarket right by them, and a GP in the complex too (this latter aspect is dependent on these protests coming to an end). In other Centres, people who have never met each other before share a living space, for example. This Centre is a significant step up from that. It is an important feature of the completed Centre that mental health services will be provided, together with appropriate rooms to enable therapy to be conducted. Every centre must have what is called a food store, something which I liken to a larder. This stocks niche food for those in accommodation, and this food can be purchased through a coupon system.
It goes without saying that this centre will have that too.

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Para. 32

For the premises earmarked for the GP's practice to be ready, I would estimate that 7 days' work would be needed. The only other element to make the Centre fully functioning for its purpose is to stock the food store, which I described earlier as something like a larder. It would not take long to stock it with a range of food stuffs, and once it up and running it begins to regulate itself in that people request certain foodstuffs and we seek them out and stock them.

Para. 34

As stated above, c. €1.2 million has been invested in the residential units alone and the protests have one aim and one aim only – to prevent the completion of the asylum centre and to prevent the performance of the contract between Townbe Limited and the Department [of Justice, Equality and Law Reform].

BORD PLEANALA – INSPECTOR'S REPORT in 307077

Para. 1.1

The upper floor residences are accessed solely by a gated stairs off Cannoboe Street and served by a management and security suite.

Para. 3.2.1

Photographs taken by the Council Enforcement Officer in 2009 reveal that the subject structure was sealed and watertight, the primary structure was, therefore complete in 2009 and only the internal fit out of the apartments remained incomplete.

Para. 3.2.1

This claims the structure was "*sealed and watertight*".
This is directly contradicted by para. 7 of Paul Collins Affidavit to the High Court.

The Property includes 25 apartments which were – at the time of acquisition – in 'shell and core' condition and were not wired or plastered.
There were only concrete floors throughout the residential part of the Property.
There were leaks thoughout the building.
The cost of this upgrade to the building has been c. €1.2 million.

The uncontested Collins Affidavit to the High Court, an Affidavit accepted by the High Court, swore that the works required to complete cost c. €1,2 million.
Therefore it was clearly wrong for the P.A. to assess and declare that the apartments were "*substantially complete*" or even that "*the primary structure was complete*".
It was equally wrong for An Bord'Inspector to rely on the P.A.'s flawed assessment and to ignore the Collins Affidavit which accompanied the Referral

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But why an ENFORCEMENT Officer from the Council and not a Planning Officer ?

2 no. Warning Letters and 2 no. Enforcement Notices issued. See attached.
The Enforcement issues were non-compliance with Conditions 2 to 12 of the parent permission 04/1546. The then developer fell on hard times and the works ceased and left the works incomplete. The non-compliance with Conditions 2 to 12 was never resolved.
Of significance is that Section 40 of the Act upon which An Bord's Inspector relied expressly provides that :

> *S. 40.-(2)(b)*
> *(i) the continuance of any use, in accordance with a permission, of land*
> *(ii) where a development has been completed (whether to an extent described in paragraph (a) or otherwise, the obligation of any person to comply with any Condition attached to the relevant permission whereby something is required to be done or not to be done.*

The current developer remains under obligation to comply with Conditions 2- 12.
The time required to enable compliance extends indefinitely.
Of huge note is that the ENFORCEMENT Notices did not mention non-compliance with Condition 1 of parent Permission 04/1546.
This is precisely the Condition which de-exempts what might ordinarily be exempted development by virtue of Article 9(1)(a)(i).
This features at paragraph 8.3.5 of the Inspector's report.
That Condition 1 of 04/1546 was not mentioned in the 2 no. ENFORCEMENT Notices is the clearest indication of intent by the original developer not to convert the apartments for The Reception and Care of those seeking International Protection.
This change is a brand new invention by Remcoll 2 Limited... and Remcoll admits this.

This is reflected in the Inspector's report at para. 8.3.5
Para 8.3.5

> *Accordingly if it has been considered that a material change of use or occupancy had arisen from that which was permitted, this condition would restrict the exemption provided for under Article 9(1)(a)(i).*

Para. 6.2.4

> The Definition of 'excluded premises' expressly identifies :
> (a) Medical and pharmacy use
> *(Comment : The apartments are complemented by auxillary medical use and pharmacy facilities.)*
>
> (b) block of flats or apartments
> *(Comment : The apartments are a block of apartments and are excluded.)*
>
> (c) care means personal care including help with physical, intellectual or social needs.
> *(Comment : The protected persons are afforded personal care far beyond what a tenant in an ordinary block of apartments is provided with.)*

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Para. 6.3.1

The definition of '*protected person*' is common case and not disputed.

Para. 8.2.2

The planning authority has outlined that their records reveal that the development was substantially complete in 2009.
I am satisfied that there is a permission and that their consequent recorded completion, including subsequent fit out necessary and ancillary or incidental to the use of the permitted building, would have come under Section 40 of the Act.

The Inspector considered the following relevant :

cf. IEHC 74 of 2004 Molloy et al v. Minister for Justice Equality and Law Reform

* *substantive eveidence to show that the owner/occupiers intended to abandon the use of the apartments has not been provided.*

The change of use from apartments per se to use for the reception and care of those seeking international protection is clearly a brand new and unique invention in this case which arises from not simply the cessation of the previous permitted but unavailed of use but the combining of the unavailed of use with the ancillary facilities which the developer confirms by Affidavit. The incontravertible evidence – nay proof - absent in IEHC 74 of 2004 is provided herewith.

Para 8.2.6

EROCs are centres for asylum seekers in ireland, where in addition to offering accommodation, ancillary services to facilitate relocstion and resettlement would be provided.
EROCs serve as temporary accommodation facilities fior persons arriving into the country through relocatin and resettlement, providing medical services, language training, education, cultural orientation and social protection services.

Para. 8.2.7

Having visited the referral site, it is clear that the residential accommodation is being operated in a manner similar to other apartment developments, with gated access and servicing by a management and security suite. Facilities beyond those that would normally form part of an apartment complex were not in evidence and the facility does not feature any particular additional reception or care service. The facility is not being operated as an emergency reception for the care of protected persons .....

Para. 8.3.1

Should the Board consider otherwise and to comprehernsively addrfess the changes that were not in evidence although they were asserrted by the referrer to have taken place, below I consider that provisions of Articles 5(1), 6(1), 9(1) and 10(1) opf the Regulations and whether any exemptions would apply.

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Para. 8.3.2

> *I am satisfied that Article 10(1) of the Regulations would not provide for an exemption to allow the apartments change to a reception and care centre for protected persons as this change would not consist of a change within one of the classes of use specified in Part 4 of Schedule 2 of the Regulations.*

Para. 8.3.4

> *If the carrying out of the development would contravene a condition or be inconsistent with any perrmitted use, the Class 14 exemptions for the aforementioned changes of use are restricted under Article 9(1)(a)(i).*

At paragraph 8.3.5 the Inspector plays it both ways.
This is a common practice and I do not take issue with this.

Para. 8.3.5

> *Accordingly if it has been considered* [by An Bord] *that a material change of use or occupancy had arisen from that which was permitted, this condition would restrict the exemption provided for under Article 9(1)(a)(i).*
> (i.e. Condition 1 of Permission 04/1546)

Now it is crystal clear that if a material change of use has occurred, then the built works, internal and external, i.e. the works in QUESTION (2), relate to the new occupancy use which has replaced and supplemented the permitted use.
Therefore the works cannot fall within the ambit of Section 40.

The built works may well come under some other provision(s) of the Act or Regulations but it can't be Section 40 as the parent permission expired in June 2015 and, by sworn Affidavit of the developer, accepted by the High Court, the apartments were c. €1.2 million from completion. Section 40 says *"complete"* not *"substantially complete"*.

Therefore An Bord's Conclusion **(a)** in 307077 was defective.

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RESIDENCE : VITRUVIUS HIBERNICUS, CONVENT ROAD, LONGFORD N39 EE72 Tel./Fax 043-33 41151

QUESTIONS (3) and (4)
This is the kernel of the matter.
I argue that An Bord's Conclusion **(b)** in 307077 was defective.

> ***(b)***
> *the permitted use of the apartments was not abandoned and the current use of the apartments, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, does not constitute development.*

As Conclusion **(b)** is written, the use permitted in parent permission 04/1546 may not include the use as a facility for reception and care of protected persons.
That is to say, use of apartments as mere apartments, (regardless of race, colour or creed of the tenants) is OK but use for reception and care of protected persons is not OK.
As written, Conclusion **(b)** is in direct conflict with the single Order made in 307077.
The above interpretation may not be supported by much of the Inspector's Report and the confusion may have arisen from choice of words and syntax.
For whatever reason Conclusion **(b)** in 307077 is defective and warrants correction.

The Inspector's Report hinges on the words :

> *"the residential accommodation is being operated in a manner similar to other apartment complexes".*

Questions (3) and (4) rely on demonstrating that The Rock apartments are NOT being operated in a manner similar to other apartment blocks. I demonstrate this below.

An Bord's Inspector said at para. 8.2.7 :

> *The referrer states that the current use of the facility is for the reception and care of those seeking international protection or, in the re-worded questions the reception and care of protected persons.*

and : ..... *centres for asylum seekers in Ireland (where) in addition to offering accommodation, ancillarly services would be provided to facilitate relocation and resettlement.*

and : ... *providing medical services, language training, education, cultural orientation and social protection services.*

and : ... *the subject 25 apartments* [which] *would be used on an own-door independent living basis with no communal living facilities.*

and : *Having visited the referral site, it is clear that the residential accommodation is being operated in a manner similar to other apartment complexes, with gated access and servicing by a management and security suite.*

and : *I am satisfied that the current use of the apartments is not as a facility for the reception and care of protected persons.*

L. MADDEN B. ARCH. NUI, M.APPL.ENVIR. SC,, CERT. ARCH. PROF., DIP. MICRO-PROC TECH.
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Now combine the above extracts with the extracts from developer Paul Collins sworn Affidavit to the High Court :

* *The accommodation offered by the Plaintiff is unique in Ireland .....*
* *There were leaks thoughout the building.*
  The cost of this upgrade to the building has been c. €1.2 million.
* *The Department* [of Justice, Equality and Law Reform] *has explained to the Plaintiff that generally, the families in question are persons who are either being transferred from emergency accommodation in Ireland or persons who are seeking asylum who have arrived in Ireland relatively recently.*
* *The accommodation offered by the Plaintiff is unique in Ireland .....*
* *.... in this regard it will be the first of its kind in Ireland.*
* *What makes these units different from other Centres around the country .....*
* *I have given thought to the environment as a whole, to the fact that there will be a supermarket right by them, and a GP in the complex too.*
* *It is an important feature of the completed Centre that mental health services will be provided, together with appropriate rooms to enable therapy to be conducted.*
  Every centre must have what is called a food store, something which I liken to a larder. This stocks niche food for those in accommodation, and this food can be purchased through a coupon system. It goes without saying that this centre will have that too.
* *For the premises earmarked for the GP's practice to be ready, I would estimate that 7 days' work would be needed. The only other element to make the Centre fully functioning for its purpose is to stock the food store, which I described earlier as something like a larder. It would not take long to stock it with a range of food stuffs, and once it is up and running it begins to regulate itself in that people request certain foodstuffs and we seek them out and stock them.*
* *As stated above, c. €1.2 million has been invested in the residential units alone and the protests have one aim and one aim only – to prevent the completion of the* ***asylum centre*** *and to prevent the performance of* ***the contract between Townbe Limited and the Department*** *[of Justice, Equality and Law Reform].*

Look again at the final Affidavit statement - *"the asylum centre"* and *"the contract between Townbe Limited and the Department"*.

The developer Paul Collins swore to the High Court that this development is an asylum centre and refers to the contract between Townbe Limited and the Department.
Attached to the referral 307077 were both Collins' Affidavit and the lead page of the Contract entitled *"Memorandum of Agreement between the Minister for Justice and Equality and Townbe Limited for the reception and care of those seeking International Protection"*.

The Collins Affidavit was sworn before the High Court.
The Affidavit was uncontested. Collins' sworn statements were not rebutted or refuted.
The Affidavit was accepted by the High Court.
The High Court's Order was grounded on the uncontested Affidavit.
The Affidavit is true ..... and the High Court said so.

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And An Bord's Inspector had the breathtaking effrontery to declare :

> *I am satisfied that the current use of the apartments is not as a facility for the reception and care of protected persons.*

The Inspector's other declaration is equally mindboggling :

> *Having visited the referral site, it is clear that the residential accommodation is being operated in a manner similar to other apartment complexes.*

Did the Inspector even bother to read the Affidavit accompanying the Referral ?
Did the Inspector decide to overrule the High Court ?
This **IS** a Centre for the Reception and Care for Those seeking International Protection (*or, as the Inspector chose to re-word it - the use of the apartments for the reception and care of protected persons*). The developer admits it. This is res judicata.

Is there a single apartment block in Ireland where the tenants-occupiers are transported by the State to take up occupation ?
Or where the occupants don't pay rent ?
Or where the occupants don't pay for their electricity or heating ?
Or where the occupants are provided with Food Coupons ?
Or with a communal Food Store of larder ?
Or where the occupants have a resident Doctor's/Nurse's Station (with no Planning Permission) and Pharmacy ?
Or where there is a security officer on guard duty (with no Planning Permission) ?
Or where the occupants' landlord seeks out foodstuffs and stocks the food for the tenants in a larder (with no Planning Permission) ?
Or where the landlord provides a suite of rooms for mental health services therapy (with no Planning Permission) ?
Or where the owner of the apartment block calls it a "Centre" ?
Or where the developer and the Minister for Justice admit the complex is an Asylum Centre ?

What has been concluded, declared and ordered by An Bord is wholly irrational and illogical, contrary to plain reason and common sense and indefensible for being in the teeth of plain reason and common sense.

Now go back and answer these carefully re-worded questions ... and this time properly.
I await hearing, This is not going to go away.

Yours faithfully,

Liam Madden,
Convent Road,
LONGFORD
N39 EE72

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County	Leitrim

COMHAIRLE CHONTAE LIATROMA
LEITRIM COUNTY COUNCIL

Declaration Regarding Development / Exempted Development
(Section 5 of Planning & Development Acts 2000-2017)

REQUEST ~~APPLICATION~~ FORM

Please note: A fee of €80.00 must accompany this form

1. Name of person seeking declaration [~~Applicant~~ REQUESTOR] CIARÁN SMYTH

2. Postal Address of Property /Site or Building to which the declaration sought relates

   THE ROCK CENTRE, BALLINAMORE, CO. LEITRIM

3 Applicant's legal interest in the land or structure. [Give details] NONE — IRRELEVANT

4. State whether or not the ~~applicant~~ REQUESTOR is the owner of the property in question [~~Yes~~] or [No] and if {No} please provide the information under item 11 at the end of this form

5 State if owner / occupiers are aware of the current ~~application~~ REQUEST for Declaration under S 5 of the Act [~~Y~~] / [N]

6 Type of declaration sought
   a. That the proposal is or is not development within the Act [Yes] ✓ or [No] and if {yes}
   b. That the development is or is not Exempt development [Yes] ✓ or [No]

7 Provide full description of the question /matter / subject which arises wherein a declaration on the question is sought?

SEE ATTACHED DOCUMENTATION / QUESTIONS

Liam Madden AGENT FOR CIARÁN SMYTH

Signature: _____ Date: 23 JAN. 2021

{The applicant is advised to set out the matter on which the declaration is sought, as comprehensively as possible and should use additional material / pages if necessary, to give as full account as possible of this matter A site map to a scale of not less than 1;2500 based on the Ordnance Survey map for the area, shall be provided to identify the lands in question.}
Additional accompanying documentation provided .....[Yes] / ~~[No]~~

The applicant is advised that notwithstanding the completion of the above application form, that the planning authority may require the applicant to submit further information with regard to the request in order to enable the authority to issue the declaration on the question.

The applicant is also advised that the Authority may also request other persons, other than the applicant to submit information on the question which has arisen and on which the declaration is sought.

FOR OFFICE USE ONLY

Date Received..... Fee of €80.00 Paid. [Yes] / [No]

Date acknowledged..... Reference No.: -ED- _____

Decision:.....

Date declaration made.....

M.O. No.....

APPLICATION FORM : ADDITIONAL CONTACT INFORMATION :
See next page, which must be completed.

APPLICATION FORM continued: **ADDITIONAL CONTACT INFORMATION**
NOT TO BE MADE AVAILABLE TO THE GENERAL PUBLIC WITH APPLICATION

Please note:

- The applicant's address **must** be submitted on this page.
- If the applicant/agent wishes to submit additional contact information, this may be included here.
- This page will not be published as part of the planning file.

8. ~~Applicant:~~ REQUESTOR

Address (Required)	CIARÁN SMYTH HIGH STREET, BALLINAMORE CO. LEITRIM
Telephone No.(optional)	—
Email Address (if any)	—
Fax No.(if any)	—

9. Person/Agent acting on behalf of the Applicant (if any):

Name and Address	LIAM MADDEN CONVENT ROAD, LONGFORD N39EE72
Telephone No.(optional)	043-33-41151
Email Address (if any)	VITRUVIUS.HIBERNICUS@hotmail.com
Fax No. (if any)	043-33-41151

Should all correspondence be sent to the Agent's address? (please tick appropriate box)
(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)
Yes [✓] No [ ]

10. Person responsible for preparation of any Drawings and Plans accompanying the application:

Name and Address	N/A
Telephone No.(optional)	
Email Address (if any)	
Fax No. (if any)	

11. Owner (required where applicant is not the owner):

Name of Owner (Required	REMCOLL 2 LIMITED
Address (required)	CHAMBER BUILDINGS, NORTH STREET, SWORDS, CO. DUBLIN
Telephone No.(optional)	NOT KNOWN
Email Address (if any)	NOT KNOWN

THE HIGH COURT

Record No 2019/

Between

REMCOLL 2 LIMITED

Plaintiff

-and-

FRED WALSH, GORDON HUGHES, ITA REYNOLDS, BRIAN CRIBBEN, ADRIAN SMITH, DESMOND WISLEY and PERSONS UNKNOWN PROTESTING AT THE ROCK CENTRE, BALLINAMORE, COUNTY LEITRIM

Defendants

AFFIDAVIT OF PAUL COLLINS

I, Paul Collins, Company Director of Chamber Building, North Street, Swords, County Dublin, aged eighteen years and upwards make oath and say as follows:-

1. I am employed as the Plaintiff's Chief Executive. I am duly authorised to make this Affidavit for and on behalf of the Plaintiff and I do so from facts within my own knowledge and from a perusal of the books and records of the Plaintiff save where otherwise appears, and where so otherwise appearing, I believe same to be true and accurate.

2. I beg to refer to the pleadings and proceedings already had herein when produced.

3. I make this Affidavit for the purpose of grounding the Plaintiff's application for both interim and interlocutory reliefs against the Defendants.

The property

4. The property the subject matter of these proceedings is known as The Rock Centre ("known colloquially as "The Rock"), which is entirely comprised in Folio LM20931F ("the Property") at Ballinamore in the County of Leitrim. The Plaintiff is the registered owner of the Property. I beg to refer to a copy of the Filed Plans in respect of the Folio upon which, marked with the characters 'PC1', I have signed my name prior to the swearing hereof. The Property covers a space of just under ten acres.

5. Access to the Property is achieved by the Ballinamore Relief Road, which is not a public road. The Ballinamore Relief Road was constructed by the original developer under a Part 8 Planning Application. The relief road has not been declared a public road under Section 11 of

the Roads Act 1993. In this regard a beg to refer to a copy of the Declaration of Identify sworn by Joseph O'Reilly, Chartered Engineer, and dated the 26th May 2014 upon which marked with the characters 'PC2' I have signed my name prior to the swearing hereof.

Plaintiff's business and interest

6. The Plaintiff invests in distressed assets and brings them back to marketable condition. The Property was built in 2006 but the original builder was subsequently caught up in the recession and was unable to service the debt associated with the development. The Plaintiff purchased the property in 2018 in a state of disrepair. It had only three tenants and no prospects of regeneration. These tenants were – and remain – Tesco Ireland, Freshways (a fruit and vegetable supplier) and Allure Hair and Beauty.

7. The Property includes 25 apartments which were – at the time of acquisition – in 'shell and core' condition and were not wired or plastered. There were only concrete floors throughout the residential part of the Property. There were leaks throughout the building. The Property has now been brought to full show-house standard. The cost of this upgrade to the Plaintiff has been c. €1.2 million. Due to the activities described below the last element of the works required to make the apartments habitable cannot be completed and no person can move into the Property.

8. The regeneration and development of The Rock Centre is part of a mosaic of development being carried out by the Plaintiff in Ballinamore. The Rock Centre aspect is about 10% of the overall development work in Ballinamore. The Plaintiff has lodged planning applications in respect of 38 residential units and, in a separate application, in respect of a planned three storey office block. The total size of these developments is a combined area of c. 9,950 square metres in size. The Plaintiff plans to construct a one hundred bed nursing home in the area, and a number of "step down units". These 'step down' units are intended for use elderly persons and fill the gap in residential requirements between independent living in a person's own home and residence in a nursing home. These projects, together with the Rock Centre, make up what I have been told is the largest capital investment in Leitrim since 2006. This whole project started in 2012 and I am concerned that years of planning and investment is now in danger of being undermined.

9. As of the 16th October there was just a week's outstanding work to be completed to finalise the regeneration of the Property and ensure the residential units are fit for purpose. The works to be completed within the 7-days consist of final works to be done to the plumbing system, the installation of Wi-Fi access and the completion of fitting out works regarding the attendant commercial units.

The Contract with the Department

10. On the 16th October 2019 a contract was signed between Townbe Limited and the Department of Justice and Equality ("the Department"). Townbe Limited is 80% owned by the Plaintiff in the herein proceedings. This contract provided that Townbe Limited would provide the Department with the use of 25 residential units. For reasons of commercial sensitivity the entire contract cannot be exhibited but I refer to the cover page of same upon which marked with the characters "PC3", I have signed my name prior to the swearing hereof. I further beg to refer to a redacted copy of the Agreement for Lease in place between the Plaintiff and Townbe Limited upon which, marked with the characters 'PC4', I have signed my name prior to the swearing hereof. For the reasons outlined below it is not possible for Townbe Limited to provide the services it has contracted with the Department to provide and until Townbe Limited can fulfil its commitment to the Department it is not in a position to complete its lease with the Plaintiff. Townbe Limited has confirmed that in the event that the Property is finished out with the final works described above, that it will execute the lease.

11. The Department's plan is to house twenty-five families in these residential units (stated, alternatively, as a maximum of one hundred and thirty people). The Department has explained to the Plaintiff that generally, the families in question are persons who are either being transferred from emergency accommodation in Ireland or persons seeking asylum who have arrived to Ireland relatively recently. The first families were due to move in on the 4th November with further families moving to the Property on a phased basis.

12. The accommodation offered by the Plaintiff to these families is unique in Ireland for the following reasons. The twenty-five units in question are like twenty-five 'show' apartments; they are of the highest quality. Each unit is designed to cater for a family. For the purposes of this kind of accommodation, the Department defines a family as one adult and one child. My understanding is that many of the units will be occupied by one adult and one child. In the circumstances – and without trespassing upon the privacy of the individuals for whom this accommodation is intended – it appears likely that there are twenty-five children who are waiting to move into their new homes and who are presently unable to do so as a result of the protests details below.

13. What makes the units offered by the Plaintiff different from other Centres around the country – apart from the high spec element – is the fact that the Plaintiff strives to be, as I say, "best in class". This is a Centre where the people being accommodated will be able to cater for themselves, where they will have their own front door; in this regard, it will be the first of its kind in Ireland. I have given thought to the environment as a whole, to the fact that there will

be a supermarket right by them, and a GP in the complex too (this latter aspect is dependent on these protests coming to an end). In other centres, people who had never met each other before share a living space; sometimes this is three people in a living space, for example. This Centre is a significant step up from that. It is an important feature of the completed Centre that mental health services will be provided, together with appropriate rooms to enable therapy sessions to be conducted. Every Centre must have what is called a food store, something which I liken to a larder. This stocks niche foods for those in accommodation, and this food can be purchased through a coupon system. It goes without saying that this Centre will have that too.

The protest

14. A public meeting was held in Ballinamore on Wednesday the 16th of October, which was attended by approximately one hundred and fifty people. This was set up by the townspeople of Ballinamore to discuss the overall developments being proposed for Ballinamore which will involve the Plaintiff investing c. €30 million in the Ballinamore area and which is expected to generate significant employment. I was invited and attended this meeting to explain the overall development and surrounding complex. It became clear through the course of the meeting that there was only one item really on the agenda and that was discussion of the proposed asylum centre. Indeed, I was informed that the entirety of the additional development was simply a ruse to distract attention from the asylum centre. This is not the case.

15. A second public meeting was then held two nights later, on Friday the 18th of October, at which the residents of Ballinamore decided to oppose the planned development of the Rock and to create a twenty-four-hour picket around the centre. I was not invited to this meeting but I was told by some of those who were present about this outcome.

16. On the following night, Saturday 19th of October, an unknown person attempted to set fire to the building. In this regard I beg to refer to the Affidavit of Joseph Grennan and to a photograph of the damage caused, upon which and marked with the characters 'PC6' I have signed my name prior to the swearing hereof. The Court will see what appear to be dark stains on the floor of the main entrance area to the building. The video footage clearly shows what happened and I beg to refer to a copy of same, upon which and marked with the characters 'PC8' I have signed my name prior to the swearing hereof. A man entered the Property in the early hours of the morning, carrying a container of petrol. He proceeded to douse the floor with same and after some minutes struck a match and set the petrol on fire. The fire that resulted was relatively harmless on that occasion. It was extinguished without the need for the emergency services. What will not fail to strike this Honourable Court however, is how different the outcome could have been. Only fifteen feet away from where the fire took

place is Tesco's premises, a premises which contains a great deal of flammable material. If that person had taken a different course, the fire could have been far more extensive and could have caused untold damage. I became more conscious of this, and more fearful, after it was reported in the national media that Leitrim TD Martin Kenny's car had been burnt out in the small hours of the night outside his home, which is near Ballinamore. Mr Kenny had made remarks which were supportive of the Ballinamore asylum centre and critical of what he called "fearmongering" about asylum seekers. In this regard I beg to refer to a true copy of the newspaper report of that incident which appears in the Irish Independent on 28th October, 2019 and upon which, marked with the letters "PC7", I have signed my name prior to the swearing hereof.

17. A full time, twenty-four-hour picket was put in place at the Property on Sunday the 20th of October. The minimum number I have witnessed participating in this picket is 20 individuals while I have witnessed as many as 45 individuals picketing the Property. There is a notification system in place between the protesters which allows numbers to be rapidly increased. This notification system involves the blowing of whistles which appears to be quite effective as the area is small and many protesters live or work near the Property. A makeshift campsite has been established at the site. Builders attempting to gain access to the centre have been intimidated by members of the picket line and subsequently refused entry to carry out finishing works. 80% of all contractors hired have refused to enter the premises due to fear of the people around the centre. I beg to refer to a copy of the Irish Times report in relation to these events, dated 21st October 2019, upon which and marked with the characters "PC8" I have signed my name prior to the swearing hereof.

18. Large blocks of concrete and water tanks were set up in front of all entrances to the centre to stop any access into or egress from the premises. Members of the security team were locked inside the centre overnight as these blockades were set up. These events occurred over the course of the night of the 22nd to 23rd October.

19. On Tuesday the 22nd October a cordon or 7 feet tall wirefencing was erected around the rear of the Property by the protesters. They also changed a lock in one of the access doors, which gave access to a fire escape, to stop workers gaining access to the building. The front of the building was blocked by the protesters and again access to workers was blocked. Glue was used to seal the locks on access doors so the doors could not be opened.

20. Shortly after these events I met and spoke with some of the leaders of the protest. These individuals included Mr. Gordon Hughes (a local auctioneer), Ms. Ita Reynolds (a local County Councillor) and Mr. Brian Cribben (a local pharmacist) and I also spoke with Mr Adrian Smith (a local businessman) on the phone, these individuals who held themselves out to me as the spokespeople for the protesters. I explained that the protests were putting my employees in danger and in the event of a fire overnight the fire brigade would have no access to the

building. Considering the earlier arson attack on the building this was a major concern. The blocks of concrete and water tanks were subsequently removed from around the building which leads me to surmise that the individuals I spoke to have influence over the activities of the protestors.

21. On 7 November, RippleCom, a telecommunications company, sent a worker to provide the centre with internet access. Protestors refused the worker entry to the building to carry out planned works. I beg to refer to the Affidavit of Joseph Grennan in this regard. It was decided that it was unsafe for this worker to enter the building and provide Wi-Fi to the Property.

22. Security staff were told by picketers that *"people will be hurt"* if they attempted to cross the picket line to finish off works to the building and I beg to refer to the Affidavit of Joseph Grennan in this regard.

Timing of this application

23. The moment that the RippleCom employee was prevented from accessing the Property marked a watershed in the activities of the protesters. The possibility of this kind of protest – a copycat protest of those in Oughterard and Achill Island – was in the air from the 16th October. It began in earnest on Sunday the 20th. From the 16th October to the 7th November was a period of just over three weeks. I hoped that the protesters would see sense. I hoped that the Minister for Justice and Equality, or the Government in some shape or form, might have stepped in and brought people together somehow. In that period of just over three weeks, I was prepared to think of the attempted arson attack as a lucky miss and something that would not be repeated. I was prepared to put up with the disturbance caused by the protest for some limited amount of time, in the hope that the situation would resolve itself. In all that time, no employee or agent of the Plaintiff's was barred access to the Property. The security men, for example, could gain access; though it was difficult it was not impossible. When the RippleCom worker was prevented access on 7th November that marked a turning point, in that it was made clear to me that certain protestors were prepared to use violence to achieve their ends and that the protestors were making a distinction between the security men and all other professionals whose purpose was to bring the Centre another step closer to completion. The RippleCom worker was prepared to try and force his way past protestors but I advised him (through Joe Grennan) to leave it and walk away, because I was afraid of a violent altercation. When it was reported to me that one of the protestors had told a member of security staff that "people will be hurt" I was in no doubt that this was meant.

24. On 12th November the architect who was engaged to conduct the final works in relation to the fit-out of the GP facility travelled to the Property from Cork. He had been engaged by the Plaintiff to carry out a drawing of the GP's rooms as they would look when finished. Although

he was permitted to gain access to the Property, but he was prevented from moving from room to room within the Property. The fact that this interference took place within the actual confines of the Property has made it clear to me that the protestors' activities are not slowing down, but are becoming bolder. I do not want anyone acting for the Plaintiff to be injured and I believe that without the intervention of the Court work on the Property will continue to be paralysed.

Difficulty in identifying individuals

25. The damage which has been caused to the property has occurred under cover of darkness. The security and management staff at the property are not familiar with the area or the individual protestors. Neither the security workers employed by the Plaintiff nor I am in a position to identify the majority of the individuals who are carrying out this campaign against the Plaintiff.

26. I have very real concerns about protecting staff who act on my behalf at the Property. This is, of course, an extremely serious concern. In addition, the protests are preventing access to the Property to allow final essential work be completed.

27. Moreover, I am concerned at the damage being done to the Property on an on-going basis and I am of the very strong opinion that I have made all reasonable efforts to address the concerns of those involved in these protests but to no avail. I cannot envisage these protests ending without the intervention of the Court.

28. Having spoken with each of them, and given the fact that they each held themselves out as person who were in some way involved in organising the protest activity, I believe that Mr. Fred Walsh, Mr. Gordon Hughes, Ms. Ita Reynolds, Mr. Brian Cribben and Mr. Adrian Smith have considerable influence over the protestors at the site. They have held themselves out to me on various occasions as "spokespeople". Ms. Ita Reynolds is a local Councillor and I spoke to her by phone to outline my vision for the regeneration of the area on the night before the public consultation meeting described above. I have subsequently met Ms. Reynolds on one occasion at the Property where she has been engaged as a protestor. In the period since the protest began I have met Fred Walsh four to five times, Gordon Hughes three to four times, Adrian Smith once, and Brian Cribben every time I have been there. On each occasion they were there in their capacity as protesters, and it was clear to me that they were people who had influence over the other protesters. Fred Walsh in particular is experienced in issues of local activism – being involved at a senior level at meetings relating to the organisation of protests against the owners of Quinn Industrial Holdings – and I believe that he has a significant leadership role in the present protests. In circumstances where it is not possible to

name the majority of those engaged in protest, I am advised that it is appropriate to bring proceedings against these persons.

Damage

29. There has been a dramatic decrease in footfall at the property. Tesco first occupied the property in 2010 and are the key tenant. I have genuine concerns around the lease agreement as the Plaintiff can no longer provide unfettered access to the Property. The protests have caused a drastic decrease in the attractiveness of the units at the Property to prospective tenants.

30. I had personally arranged for a prospective tenant to begin occupancy of the premises on completion of the Property but this occupancy cannot begin while the building remains incomplete and access is blocked. It is ironic that this tenant is RooDoo, a medical clinic which will provide a GP service. One of the complaints of protestors is that there is only one GP to serve the Ballinamore area and in this regard I beg to refer to a report of The Irish Times dated the 25th October 2019 upon which marked with the characters 'PCS' I have signed my name prior to the swearing hereof.

31. The protests have now created a situation where the media coverage suggests the occupancy of the Property is to be paused. For the avoidance of doubt, I confirm that no such suggestion has ever been made to me. However, it is a matter of considerable concern to me that these protestors seem to be moving ever closer to achieving their aim of jeopardising the future of the asylum centre.

32. To be very clear, the twenty-five units which are earmarked for asylum seekers are a hair's breath away from completion. In some of the units, all that's needs to be done is to dress the beds. I estimate that each unit requires no more than three hours' work to make it ready to be lived in. Thus, if the protest were to stop now, I believe that all of the twenty-five units would be ready in a matter of 72 hours. For the premises earmarked for the GP's practice to be ready, I would estimate that seven days' work would be needed. The only other element to make the Centre fully functioning for its purpose is to stock the food store, which I described earlier as something like a larder. It would not take long to stock it with a range of foodstuffs, and once it is up and running it begins to regulate itself, in that people request certain foodstuffs and we seek them out and stock them. Thus, this Centre is on the cusp of readiness and if the protest were to stop I believe families could be accommodated within seven days.

33. The protest activities are resulting in on-going loss and damage to the Plaintiff in the following ways: extra cost of employing additional security staff, damage to fences and property, delays in relation to completion dates, and consequent lost rental income due to this delay. I do not

believe the Plaintiff will ever recover these costs from the Defendants, even if successful in these proceedings.

34. The protests have now brought this project, which is extremely close to completion, to a standstill. As stated above, c. €1.2 million has been invested in the residential units alone and the protests have one aim and one aim only – to prevent the completion of the asylum centre and to prevent the performance of the contract between Townbe Limited and the Department. Due to the rural location it is a difficult task to attract tenants to Ballinamore at the best of times and it is now near impossible to do so. The GP occupancy of the property will not occur without the completion of the Property. The prospects for the Rock Centre had been good prior to the protests with business improving for the key tenant Tesco. The contract with the Department is simply not replaceable and the loss which will be suffered should the contract not be performed is not quantifiable.

35. Townbe is a subsidiary of the Plaintiff. It intended to take a twenty-five year lease with the Plaintiff in respect of the 25 units. It was agreed that the lease was to commence on the first of November this year but same has not been formally executed yet. Townbe will not complete the lease until the protests are stopped because until such time, the Plaintiff cannot finish out the Property. The Department has a three month break clause in its contract with Townbe. The protests put in jeopardy Townbe's contract with the Department, which puts in jeopardy the lease arrangement agreed between Townbe and the Plaintiff. This is another clear and imminent source of loss and damage for the Plaintiff.

36. On the date of swearing of this Affidavit I received an undated and unsigned letter from an individual who identifies themselves as a local of Ballinamore. This individual raises serious concerns which he/she holds regarding the motives of the protesters and identifies Freddie Walsh and Gordon Hughes in particular as leaders of the protest. The individual advises that he/she intends to raise these concerns with the Gardaí and others but will only do so anonymously as this person is in fear of the protesters. In this regard I beg to refer to a copy of said letter upon which marked with the characters 'PC10' I have signed my name prior to the swearing hereof. I have no reason to doubt the authenticity of the concerns expressed in this correspondence.

Undertaking as to damages

37. My solicitors have advised me that the Court must consider a number of factors in relation to the granting of injunctive relief, and I am advised that same – fair issue to be tried as to the lawfulness or otherwise of the protest activities complained of, the adequacy of damages, the balance of convenience, and so on – are a matter of legal submission.

38. I have been further advised by my solicitor of the requirement to provide an undertaking as to damages and of the effect of such an undertaking. On behalf of the Plaintiff, I hereby give an undertaking to the Court that, if it transpires at the hearing of the action that an interim or interlocutory injunction has been wrongly granted, the Plaintiff will indemnify the Defendants against any loss found by the Court to have been incurred by the Defendants as a consequence of the interim or interlocutory injunction having been wrongly granted.

39. In the above circumstances I ask the Court to grant the reliefs sought in the *ex parte* docket and, when the interlocutory Motion is heard, the reliefs sought in the Notice of Motion.

Sworn by the said Paul Collins
At 8-34 Percy Place
In the County of Dublin
On the 14th day of November
2019
Before me a ~~Commissioner for Oaths/~~ AoD Practising Solicitor and I know the Deponent

~~Commissioner~~ for ~~Oaths/~~ AoD
Practising Solicitor

Paul Collins

Filed on the day of 2019, by Clark Hill Solicitors, solicitor for the Plaintiff.

An Bord Pleanála

Board Order
ABP-307077-20

Planning and Development Acts 2000 to 2020

Planning Authority: Leitrim County Council

Planning Register Reference Number: ED-19-31

WHEREAS a question has arisen as to whether -

(a) the use of previously incomplete and abandoned apartments, as apartments,

(b) the change of use of previously incomplete and abandoned apartments to use for the reception and care of protected persons, and

(c) the works to complete the previously incomplete and abandoned apartments, in order to use the apartments for the reception and care of protected persons,

at The Rock Centre, Ballinamore, County Leitrim, is or is not development or is or is not exempted development:

AND WHEREAS Liam Madden of Vitruvius Hibernicus, Convent Road, Longford requested a declaration on the said question from Leitrim County Council and the Council issued a declaration on the 31st day of March, 2020 stating the following –

(a) the use of the then incomplete and abandoned apartments for use as apartments is development and is exempted development,

(b) the change of use of the then incomplete and abandoned apartments and partly completed on foot of planning permission 04/1546 to 'The Reception and Care of those seeking International Protection' is not development, and

(c) the built works carried out internally and externally at incomplete apartments currently in use as 'The Reception and Care of those seeking International Protection' are development and are exempted development:

AND WHEREAS Liam Madden referred the declaration for review to An Bord Pleanála on the 14th day of April, 2020:

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

(a) sections 2(1), 3(1), 4, 5 and 40 of the Planning and Development Act 2000, as amended,

(b) articles 5(1), 6(1), 9(1) and 10(1) of the Planning and Development Regulations 2001-2020,

(c) the planning and development history of the site,

(d) the nature of the current use of the site,

(e) the submissions of the Referrer, and

(f) the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that -

(a) the provision of works to complete the apartments, included in the relevant permission and which are either necessary for or ancillary or incidental to the use of the building permitted, come within the scope of section 40 of the Planning and Development Act 2000, as amended, and do not come within the scope of section 5 of that Act, and

(b) the permitted use of the apartments was not abandoned and the current use of the premises as apartments, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, 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 the use of the premises at The Rock Centre, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons, is not development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Michelle Fagan
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.

Dated this 4th **day of** January **2021.**