

**SIMON CLEAR & ASSOCIATES
PLANNING AND DEVELOPMENT
CONSULTANTS**

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1

AN BORD PLEANÁLA	
LDG-	050424-22
ABP-	
21 MAR 2022	
Fee: €	220
Type:	CHEQUE
Time:	
By:	HAND

21st March 2022

Re: Section 5 Declaration re Use of the Village Campus, Waterford Road, Kilkenny

Dear Secretary,

I have been requested by Alan Mooney, 81 Mount Anville Park, Goatstown, D14W7X2, to Refer to An Bord Pleanála the Declaration made by Kilkenny County Council that the use of former religious institution accommodation as short stay hostel/student accommodation constitutes a material change of use and is not exempted development. The Planning Authority Reference Number is DEC 564. A copy of the Planning Authority's decision, made on 21st February 2022 is enclosed.

The Planning Authority has declared that *the use of bedroom accommodation for clerical and other guests to accommodation of guests and student accommodation is development and is a material change of use, therefore is not exempt from planning.*

The Request for Declaration and the response to RFI from Kilkenny County Council (KCC) were made without specific planning advice and some comments in these grounds for Referral may not be consistent with the submissions to KCC by the applicants.

I enclose herewith the requisite fee in relation to a Referral in the sum of €220 (cheque).



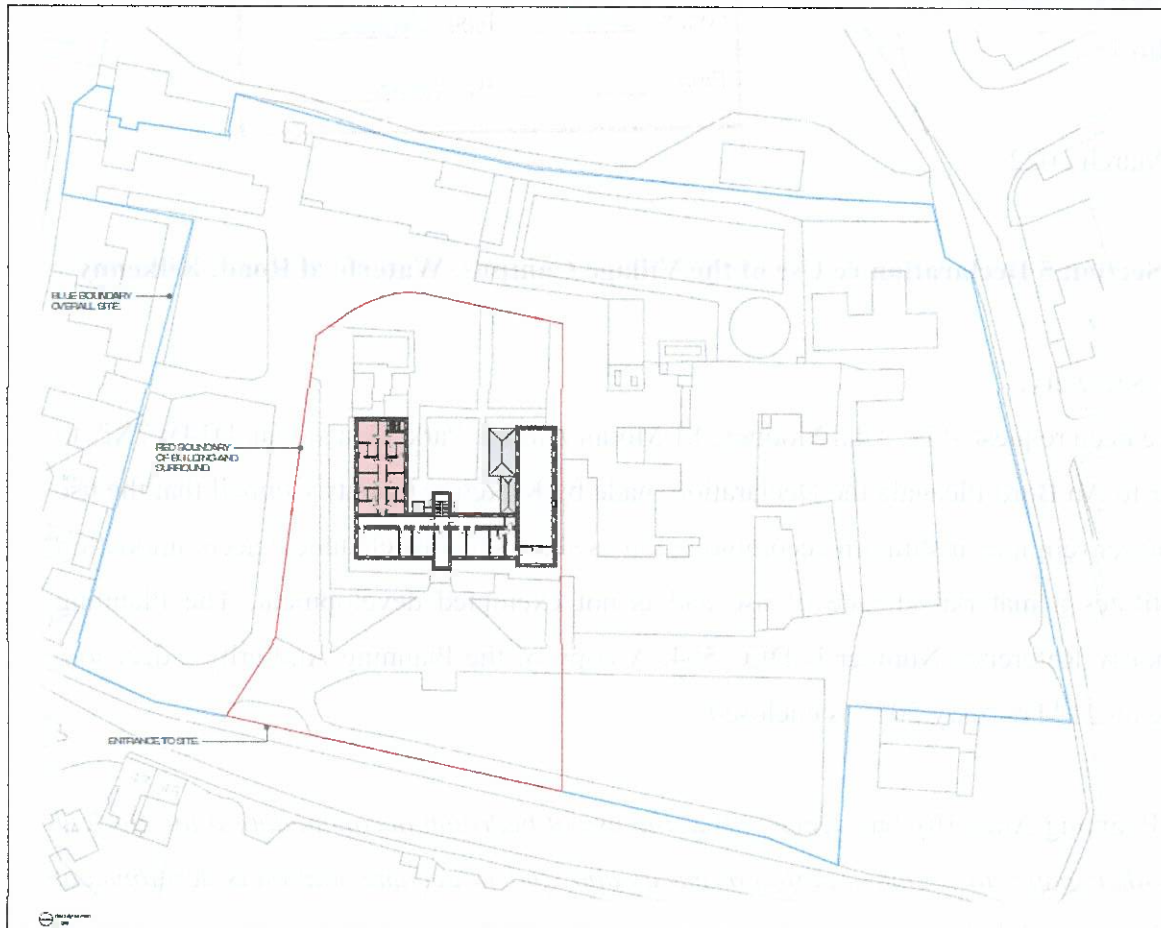
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Background

The Village Campus occupies the entire grounds of a substantial institutional complex located in Kilkenny City. The entire area occupied constitutes the 'planning unit' for the purposes of this Referral, as outlined in Blue below.



Planning Authority's Decision

The question was submitted to Kilkenny County Council in October 2019 and the Council requested further information (RFI) in November 2019. Due to Covid, all use was suspended and a response to the RFI was not submitted until October 2020.

Section 5(2)(b) requires that *where further information is received under this paragraph, the planning authority shall issue the declaration within 3 weeks of the date of the receipt of the further information.*

The Planning Authority did not make a decision until February 2022.

In the request for further information (RFI) KCC asked for detailed information relating to use of specific areas within the campus and that the applicant for declaration should confirm that the established use is a Class 7 use.



Established Use

The premises opened in 1873 as an “Industrial School” managed by the Sisters of Charity in the period 1873 – 1989. This was the use established as the permitted use on 1st October 1964.

The state placed children at St. Josephs in the care of the Sisters of Charity. This was a Class 9 Institutional Use, providing residential accommodation and care to people in need of care (9a), as a residential college and as a residential training centre (9c).

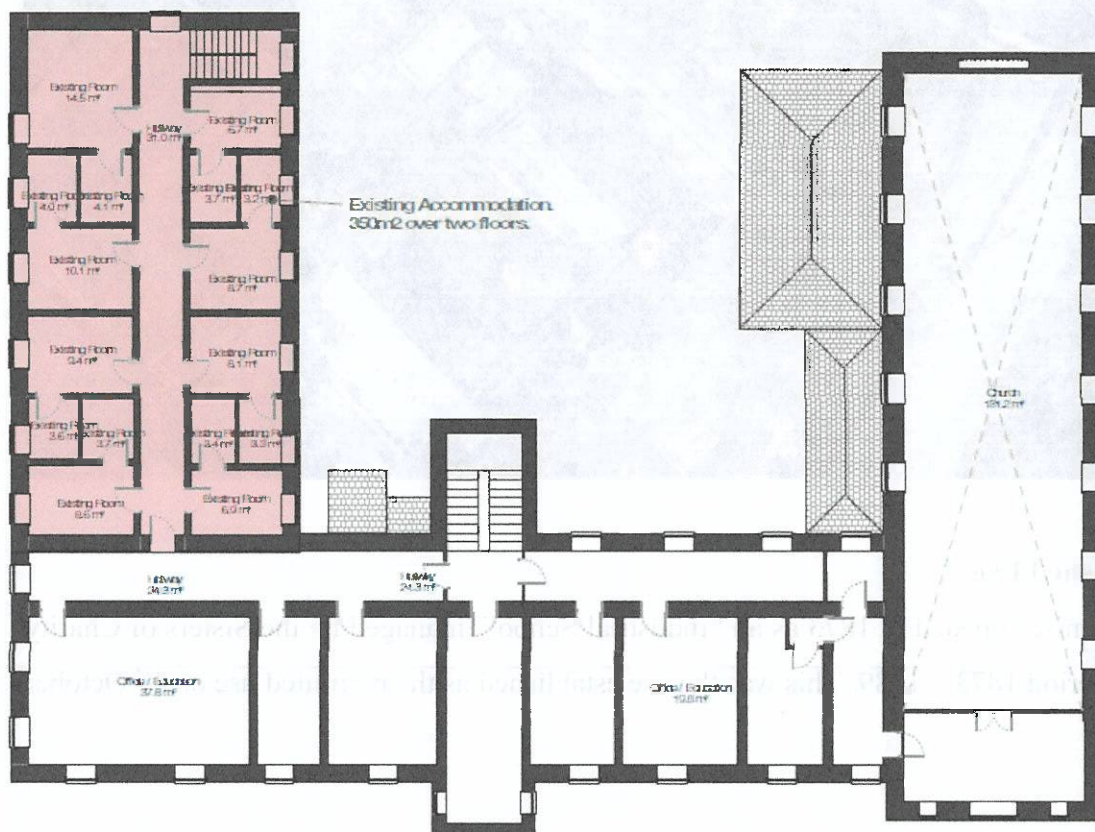
Mill Hill Fathers

From 1989 to 2017 the premises were an operational base for Mill Hill Fathers involving:

- Accommodation for priests and priests on rotation from missions abroad
- Religious activities
- Education Activities
- Administration operations of The Mill Hill Fathers

Village Campus Use

In 2018 the accommodation rooms were painted and decorated, and the heating system and electrical wiring renewed. Fire safety was also improved. There has been no new development or unauthorised development. The use of the rooms has not changed and no new bedroom accommodation has been provided on the campus site. Section 4(1)(h) works were carried out. There was no material change of use by way of intensification of use.



Ground floor plan showing bedrooms, replicated on the 1st floor

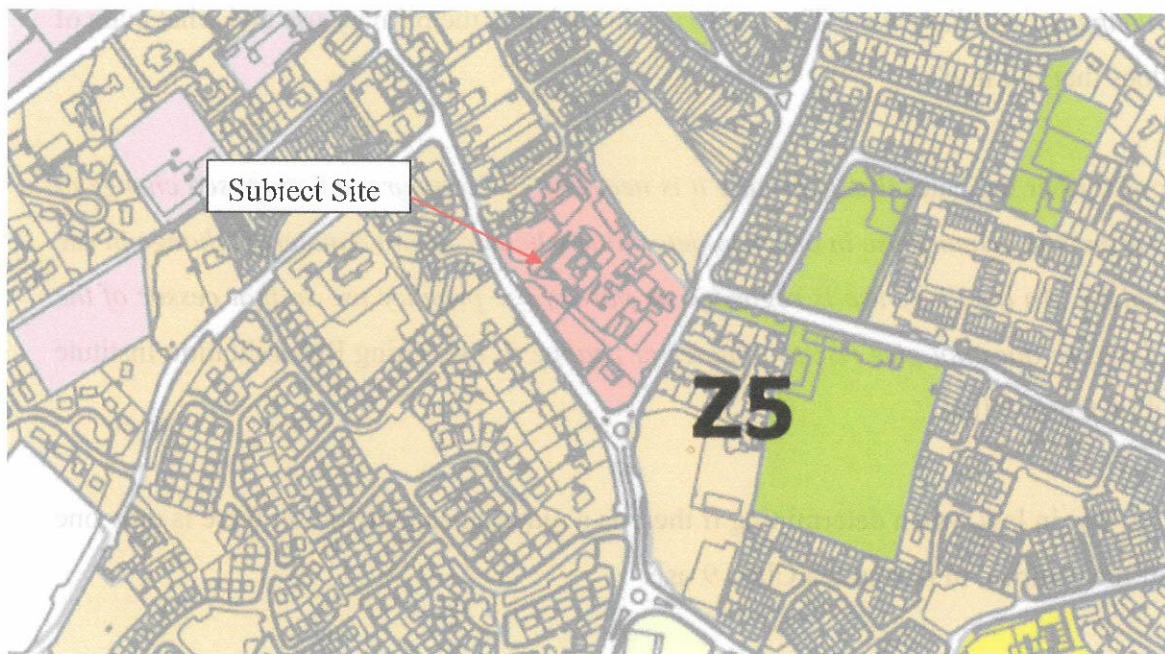
The accommodation rooms occupy 1 wing within the larger complex, with 16 rooms over two floors and a capacity for 41 persons maximum.

Kilkenny Fire and Rescue Service have visited the premises and does not require a regularisation certificate as there has been no unauthorised development.

In summary, the institutional grounds have been used for accommodation of persons for more than 140 years. The continuation of the established use is not a material change of use.

Site Zoning

The site is identified as being zoned for Mixed Use in the Kilkenny City and County Development Plan 2021-2027, with an objective *to consolidate and facilitate the development of inner suburban sites for mixed use development which will allow for commercial and residential uses.*



Extract from Kilkenny City & County Development Plan 2021-2027 Zoning Map

Grounds for Referral

At the time of making this Referral, the Planning Officer's Report has not been made available by KCC.

The established use is the use in existence on 1st October 1964. Why the planning authority sought the applicant confirm that the use is a Class 7 use is unknown.

The applicant's chronology indicates the use of the property has been continuous and has not been abandoned. Even if the Mill Hill Father's use was considered to be in a different

class, the provisions of Article 10(1)(d) and 2(a) apply, respectively relating to resumption of the established use if interrupted by unauthorised change in use and incidental uses not being excluded for being a different class to the primary class.

When dealing with an established use, the first matter of import is to identify the 'planning unit' and the primary use type established throughout the planning unit. It is clear that the established use of the planning unit is Class 9.

A planning unit can have primary and ancillary uses, and multiple uses¹. Judge Simons indicates that *a planning unit may be used for several activities: a single primary use and any number of ancillary uses*. The test to use is - what is the primary use and what class of use does that fall into?

Simons further indicates that *generally it is necessary to compare any proposed change of use against the primary use in order to determine whether or not a material change in use is involved. An ancillary use is regarded as part of the primary use so that cesser of the ancillary use does not give rise to a material change in use*, citing *Rehabilitation Institute v Dublin Corporation*.

Effectively, in law, when determining if there is a material change in use, there is only one use of the campus, in this case a Class 9 use.

At no stage in its history was this institution abandoned, leaving the land with a nil use.

Therefore, the use of the premises by the Sisters of Charity is a Class 9 use, with ancillary uses. The subject accommodation wing can operate under Class 9 as a residential institution providing care, as a hospital or nursing home, as a residential school, residential college, or residential training centre.

Using accommodation for guests as an ancillary use in this context is not a material change of the primary use and is not a material change of use. As indicated by Simons a low level of ancillary use cannot overthrow the primary use.

¹ **Planning and Development Law; Garrett Simons 1st edition 2-28 Thomson Round Hall 2004.**

Conclusion

The passage of time and circumstances changing under Covid restrictions and the delay in the planning authority's delivery of a declaration long after receipt of the further information, outside the statutory period, means the question posed in 2019 is now moot.

The use in the accommodation wing is an integral use within the overall campus. There is no development and there is no material change in the established permitted use in the planning unit.

It is requested that the declaration of the planning authority be ruled void and overturned.

Yours sincerely,



Simon Clear

Our Ref.: DEC564

21.02.2022

Alan Mooney

c/o Reddy Architecture & Urbanism

41 Dean Street

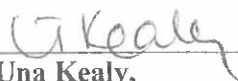
Kilkenny

Re: Application for Declaration under Section 5 of the Planning & Development Acts 2000-2021
Development location – Village Campus, Waterford Road, Kilkenny.

A Chara

I refer to the above application and now attach Declaration relating to same.

Mise le meas,


Una Kealy,
Administrative Officer,
Planning Section

Reddy Architecture+Urbanism	
Project No.	
Date	22 FEB 2022
FOR	RE
Copy	

**Comhairle Chontae Chill Chainnigh
Kilkenny County Council**



Declaration and Referral on Development and Exempted Development under Section 5 of the Planning & Development Act 2000-2021

Kilkenny County Council Reference: DEC 564

WHEREAS a question has arisen as to whether the following works at the Village Campus in Kilkenny consisting of

Is the use of bedroom accommodation for clerical and other guests, to accommodation of guests and student accommodation, a material change of use?

AND WHEREAS the said question was referred to Kilkenny County Council by

Alan Mooney, c/o Reddy Architecture and Urbanism, 41 Dean Street, Kilkenny

AND WHEREAS Kilkenny County Council, in considering this referral, had regard to:

- (a) Section 3 of the Planning and Development Act 2000-2021;
- (b) Schedule 1, Part 2, Articles 5 and 6 of the Planning and Development Regulations 2001 – 2021;
- (c) Schedule 2, Part 1, Class 14 of the Planning and Development Regulations 2001 – 2021;
- (d) Schedule 2, Part 4, Class 7 of the Planning and Development Regulations 2001 – 2021;
- (e) Planning enforcement file reference ENF18054; and
- (f) The documentation submitted with the application.

AND WHEREAS Kilkenny County Council has concluded that;

The use of bedroom accommodation for clerical and other guests, to accommodation of guests and student accommodation is development and is a material change of use.

NOW THEREFORE Kilkenny County Council, in exercise of the powers conferred on it by Section 5 of the 2000-2021 Act, hereby decides that;

The use of bedroom accommodation for clerical and other guests, to accommodation of guests and student accommodation is development and is a material change of use, therefore is not exempt from planning.

MATTERS CONSIDERED

In making its decision, the Planning Authority 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.



Una Kealy
Administrative Officer

Date: 21/02/2022

Footnote:

Section 5(3)(a) of the Planning & Development Act 2000-2021 states: 'Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.'

*An Bord Pleanála, 64 Marlborough Street, Dublin 1, Tel 01 8588100 or LoCall 1890 275175,
www.pleanala.ie*