

Planning Department 045-980845

Date:

31/05/2023

File Ref:

ED1040

The Secretary An Bord Pleanála 64 Marlborough Street Dublin 1

AN BORD PLEANÁLA			
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Fee: € 110 iype: cand			
Time: 11:56 By: Land			

RE: Referral of application for a Declaration of Exempted Development under Section 5 to An Bord Pleanalá for determination

Dear Sir/Madam,

Pursuant to Section 5(4) of the Planning and Development Act 2000 (as amended), Kildare County Council is referring the question to you for determination, whether (A) The use of the dwelling-house and the coach house at Ryevale House as long term private residential accommodation for protected persons is or is not development; and (B) whether certain associated internal works to the dwelling house and coach house at Ryevale House is or is not development, and if those works constitute development, whether those works do or not constitute exempted development.

In respect of same, please see attached copy of the Section 5 application for a declaration of exempted development.

The payment of the required fee of €110 will be made by card when submitting this request.

If you have any queries, please contact the undersigned at 045 980916.

Yours faithfully,

A/Administrative Officer **Planning Department**

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Kildare County Council Declaration of Exempt Development under Section 5, of the Planning and Development Act 2000

Incomplete application forms will be deemed <u>invalid</u> and <u>returned</u>



All responses must be in <u>block</u> <u>letters</u>

Section 1	Details of Applicants	
1. Name of Ap		
2. Address . W.	VIT 9, APPLE ADRICAVAN BUSINES PARK, WEXFORD, IRELA	WO.
Section 2	Person/Agent acting on behalf of applicant (if applicable)	
 Name of Address. 85. 	Phone No. 01.539.0710. Fax No. MERRION SQUARE, DUBLIN 2.	Kildare County Council Planning Department
*************		T 0 MAY 2023
Section 3	Company Details (if applicable)	*****
	mpany NE UBERER LIMITED. Phone No	RECEIVED
, ,	PERSON UNIT 9 , ADRCAVAN BUSINESS PARK , WEX	FORD, IRELAND
Section 4	Details of Site	
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required documents as outlined at Section 6 above.

Date: 10 May 2023.

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8th May 2023

Re. Ryevale House, Ryevale Lawns, Leixlip, County Kildare
Intended Request by Mé Liberer Limited for Declaration
Section 5 of the Planning and Development Act, 2000, as amended.

To whom it may concern,

We refer to the intended request for a declaration to be submitted to Kildare County Council by Mé Liberer Limited, pursuant to section 5 of the Planning and Development Act, 2000, as amended, concerning the use of Ryevale House as private accommodation for persons currently seeking international protection. We confirm that we have had sight of the Report prepared by Hughes Planning and Development Consultants to be submitted with that request for a section 5 declaration.

We note that a section 5 declaration was issued by Kildare County Council, dated 7 March 2023 and bearing reg. ref. no. ED/1021, concerning the purported use of Ryevale House as "an accommodation centre". In the circumstances of this pre-existing section 5 declaration, Counsel have been instructed by Mé Liberer Limited to address the jurisdiction of Kildare County Council to consider and determine the intended request for a section 5 declaration on behalf of Mé Liberer Limited.

The question to be determined on foot of the intended request for a section 5 declaration is as follows:

"Whether: (a) the use of the dwelling-house and coach house at Ryevale House as long-term private residential accommodation for protected persons is or is not development and; (b) whether certain associated internal works to the dwelling-house and coach house at Ryevale House is or is not development and, if those works constitute development, whether those works do or not constitute exempted development."

Thus, the issue is clearly one to be determined by Kildare County Council, as planning authority, based on relevant planning and/or factual considerations. We are of the view, for the reasons set out below, that Kildare County Council has the jurisdiction to decide upon our client's section 5 application, notwithstanding the existence of Declaration bearing Reg. Ref. ED/1021, particularly considering the judgments of the High Court and Court of Appeal in Narconon Trust v. An Bord Pleanála [2021] I.E.C.A. 307.

In Narconon Trust, the Court of Appeal (per Costello J.,) determined that a planning authority is:

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"precluded from determining a section 5 referral in circumstances where a planning authority has previously determined the same, or substantially the same, question in respect of the same land where there is no evidence that there has been a change in the planning facts and circumstances since the planning authority's determination."

Firstly, such a preclusion applies where a second (or subsequent) request for a section 5 declaration invokes the same, or substantially the same, question as the previous request for a declaration. Indeed Collins J. in his concurring judgment noted that the two section 5 declarations in that case dealt with "precisely the same question".

However, secondly, the preclusion applies where there is no evidence of a change in planning facts and circumstances. Thus, where there is such a change in planning and/or factual circumstances, then in line with previous judgments of the High Court, a planning authority (or, subsequently, An Bord Pleanala) may consider and determine a second (or subsequent) request for a section 5 declaration.

By way of example, in *Clearly Composting v. An Bord Pleandla* [2017] I.E.H.C. 458, the High Court considered the interplay between three section 5 declarations made by Kildare County Council between 2009 and 2011 and three later section 5 declarations made by the Board between 2013 and 2014. Baker J. held that the Board's declarations were made in the light of the evidence before it that the nature and extent of the activity had changed from the subject matter of the earlier declarations made by Kildare County Council:

"78. The s. 5 declarations made by Kildare County Council and the later ones made by An Bord Pleanala in each case are now not capable of being challenged. Insofar as a conflict arises, the applicant argues that the Board are not competent to make a determination which favoured one decision over another.

79. That analysis fails to have regard to the fact that An Bord Pleanala expressly determined the applications before it in light of the evidence before it that the nature and extent of the activity had changed."

Later in the judgment, Baker J. stated as follows:

"83. I do not accept the argument of the applicant that the Board ought to have favoured the earliers. 5 declarations over the later ones, and while such an argument might have been made in a challenge to the s. 5 declaration made by An Bord Pleanala, such a challenge was not made, and the s. 5 decisions of the Board are valid and not now open to challenge.

84. The matter could be said to be a question of weight. The Board did not overturn, ignore or disagree with Kildare County Council because it made its determinations in light of the then current activity on site in respect of which it had ample evidence, and substantial and extensive submissions by the applicant in regard to the authority and force of the previous decisions."

Kildare County Council Planning Department

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Thus, in practical terms, and quite logically, a planning authority is not precluded from considering and determining a second request for section 5 declaration in circumstances where there was a change in planning and/or factual circumstances as between the first request and the second request for a section 5 declaration.

Having reviewed the documentation to be submitted to the planning authority with the intended request for a section 5 declaration, our view is as follows:

- (a) the planning authority is entitled to consider whether the subject-matter of the request for a section 5 declaration differs from the subject-matter of section 5 request made previously under Ref. No. ED/1021;
- (b) on the basis of the material to be submitted with the intended request for section 5 declaration, it is open to the planning authority to conclude that the question is not the same whether substantially or precisely as the question previously submitted, given the factual inaccuracies which underpinned the question posed in the previous request;
- (c) however, even if the planning authority did decide that the second question is the same as the first, it is still open to Kildare County Council to both consider and determine the second section 5 request because of the clear differences in both planning and factual circumstances as between the actual proposed use of the land and the supposed use of the land assumed in the first section 5 request;
- (d) the planning authority would have to consider (i) if the second request was, in fact, the same as a previous one and (ii) whether the factual and planning circumstances had changed; and
- (e) unless the planning authority concludes <u>both</u> that (i) the second request was, in fact, the same as a previous one; <u>and</u> (ii) the planning and/or circumstances had not changed as between the two requests for a section 5 declaration, then Kildare County Council has the jurisdiction to consider and determine the intended second request for a section 5 declaration.

Nothing further occurs.

Yours faithfully,

Kevin Bell B.L.

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PLANNING REPORT

REQUEST FOR SECTION 5 DECLARATION OF EXEMPTED DEVELOPMENT

RYEVALE HOUSE, RYEVALE LAWNS, LEIXLIP, CO. KILDARE

Prepared in May 2023 on Behalf of:

Mé Liberer Limited

85 Merrion Square, Dublin 2, D02 FX60 +353 (0)1 539 0710 info@hpdc.ie www.hpdc.ie EBHOUN

1.0 Introduction

Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, have prepared this Report to accompany an request application for a Declaration pursuant to section 5 of the Planning and Development Act, 2000, as amended, on behalf of our client, Me Liberer Limited, concerning the proposed use of Ryevale House, Ryevale Lawns, Leixlip, Co. Kildare, as private accommodation for persons seeking international protection, and certain limited internal works carried out to update and maintain the property.

The subject site comprises a large three storey building with recessed upper floor level and its associated two-storey coach house which together provide a total of 17 no. bedrooms. The buildings are used to provide accommodation for protected persons on behalf of the International Protection Accommodation Services (IPAS). For clarity and to assist with the definition of the current and proposed uses of the building, we confirm that a contract is in place between our client and IPAS to use the property as a long-term residential building for people in the International Protection ('asylum') process. The management of the subject site and the provision of staff will solely be the responsibility of our client, the property owner. No element of care, be it social, physical or emotional, has been, is being or will be provided to residents residing within the subject site, nor will any non-governmental organisation or approved housing body be involved.

The question before the Planning Authority is:

"Whether: (a) the use of the dwelling-house and coach house at Ryevale House as long-term private residential accommodation for protected persons is or is not development and; (b) whether certain associated internal works to the dwelling-house and coach house at Ryevale House is or is not development and, if those works constitute development, whether those works do or not constitute exempted development."

A protected person, is defined in Article 5(1) of the Planning & Development Regulations 2001-2023 (as amended) as follows:

- (a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013),
- (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or
- (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996

2.0 Site Description

The subject site comprises Ryevale House, a large dwelling comprising lower/upper ground floor levels, a first floor level and a recessed upper floor level with a large quantum of attic space. The property comprises 10 no. bedrooms, a kitchen/dining room, sitting room, laundry room, larder, children's room and a number of additional W.C.s and bathrooms. The subject site also accommodates a coachhouse which provides accommodation over two floor levels and includes 7 no. bedrooms, a living area and a number of additional W.C.s and bathrooms. The properties are situated on extensive grounds, which provide ample external amenity space for residents, within the centre of the wider Ryevale Lawns residential estate which comprises more than 100 no. standard two-storey residential dwellings.

The properties are notably not located within an Architectural Conservation Area, but the site, specifically Ryevale House, is identified on the National Inventory of Architectural heritage (NIAH), under Site ID No. 1929, and is also identified on the Kildare County Council Record of Protected Structures (RPS No. B11-115). The applicant is aware of the effect of the inclusion of the house on the Record of Protected Structures in terms of limited works which may be rearried on the Department.

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Figure 1.0 Aerial image illustrating the immediate locational context of the site (red outline).



Figure 2.0 Aerial image illustrating the wider locational context of the site (red outline).

Internal works have been carried out at the property in order to improve living and safety standards. It is submitted that these works constitute exempted development pursuant to section 4(1)(h) of the Planning and Development Act 2000 (as amended) which states:

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

The works carried out within the building, as listed above, were carried out for the maintenance and improvement of the building. All works that have been carried out to date have been exclusively internal and do not affect the external appearance of the building in any way. It is our submission that these works have been exclusively internal, and have not affected the character of Ryevale House, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, as per section 57 of the Planning and Development Act, 2000. Accordingly, we submit that provisions of section 4(1)(h) apply and that these works constitute exempted development. The details of the limited internal works are set out below:



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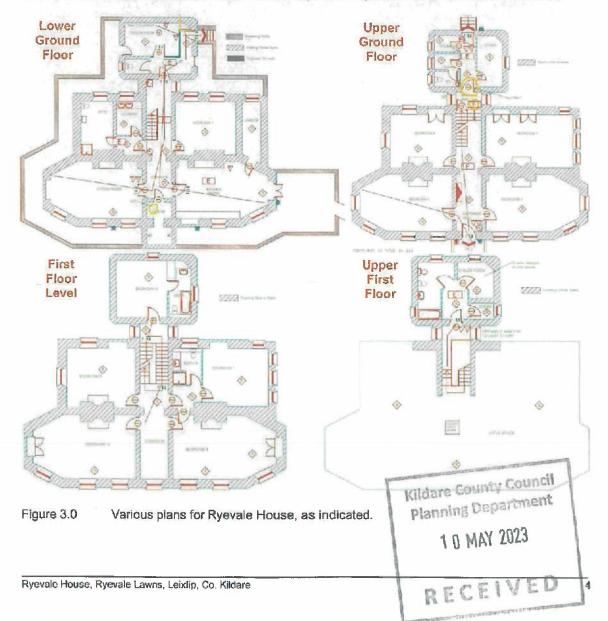
Ryevale House

- Full clear out of furniture and cleaning of entire house
- Repainting of entire house (including appropriate fire-painting of ceilings)
- All doors converted into fire doors with door closers attached and appropriate fire-painting
- Basement level kitchen replaced in entirety
- New wireless L1 fire alarm and wired cameras installed
- Emergency lighting system added
- All plumbing works repaired/serviced
- New flooring provided were required

Coachhouse

- Full clear out of furniture and cleaning of entire house
- Repainting of entire house (including appropriate fire-painting of ceilings)
- Partitions installed to give corridors a half-hour-rating
- New lobby area added to ground floor level
- New staircase and 2 no. new bathrooms installed
- New wireless L1 fire alarm and wired installed
- Emergency lighting system added

Please refer to the drawings prepared by Bury Architects, extracts of which are included in Figures 5.0 to 9.0 below, for a visualisation of the existing layouts of Ryevale House and the coachhouse.



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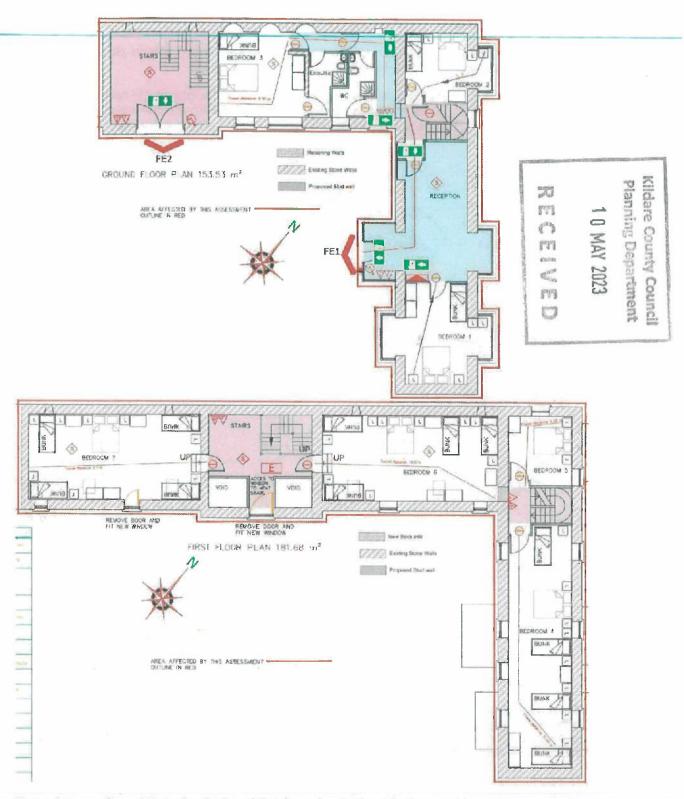


Figure 4.0 Ground floor plan (top) and first floor plan (bottom) for the coachhouse.

3.0 Planning History

We note, upon review of the Kildare County Panning Register, 1 no. historical planning application relating to the subject site as detailed below.

Reg. Ref. 971036

Planning permission granted by An Bord Pleanála on 21st April 1998 for change of use of existing coach house to office/studio and conversion of existing grain store to 2 residential units with new vehicular access off Ryevale Lawns.

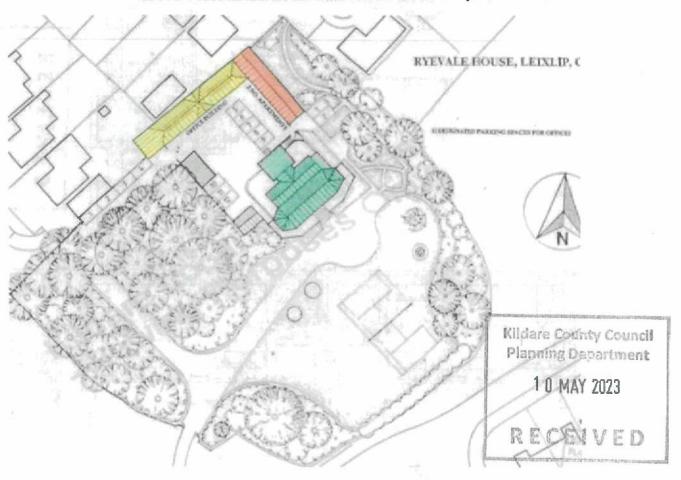


Figure 5.0

Site layout plan approved under Reg. Ref. 971036. We note Ryevale House (green fill) for which no works were proposed, alongside the grain store which was approved for conversion into 2 no. apartments (yellow fill) and the coach house building which was approved for conversion into office/studio space (red fill).

Whilst we note that limited documentation is available on the Kildare County Council website in relation to the above application, it is considered prudent to note that this application was ultimately approved by An Bord Pleanála (ABP Ref. No. 105084) following the submission of a third-party appeal against the Council's decision to grant issued on 21st November 1997.

This permission allowed the provision of 2 no. residential apartments on site and the conversion of the coach house into an office/studio space with no works proposed to Ryevale House, which would continue as a residential dwelling.

It is understood, however, that this permission was never enacted and, as such, the coach house remains in residential use and the grain store was not converted into residential use. As a result, it can be said with some certainty that the established permitted user of both Ryevale House and its coach house is for private residential accommodation.

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4.0 Planning Context

4.1 Zoning

The subject property is zoned Objective 'B' 'Existing / Infill Residential' which seeks to:

'protect and enhance the amenity of established residential communities and promote sustainable intensification.'

The Land Use Zoning Matrix included in Section 13.1 of the Leixlip Local Area Plan 2020-2023 indicates permissible and open for consideration uses for each zoning objective. Permitted in Principle' uses are generally acceptable subject to the normal planning process and compliance with the relevant policies and objectives, standards and requirements set out in the Plan.

Open for Consideration' uses may be permitted where the Planning Authority is satisfied that the proposed development is compatible with the policies and objectives for the respective zone and would not be in conflict with the permitted, existing or adjoining land uses whilst conforming with the proper planning and sustainable development of the area.

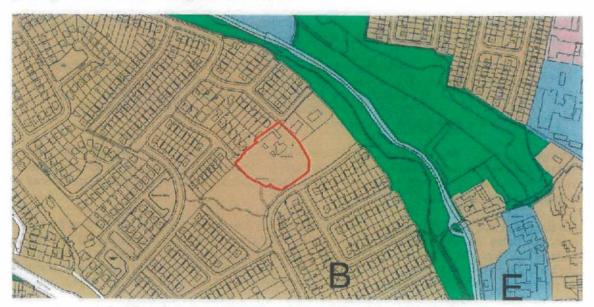


Figure 6.0 Extract from the Leixlip Local Area Plan 2020-2023 Zoning Map in the showing the site (outlined in red) zoned Objective 'B' 'Existing / Infill Residential'.

It is noted that residential use is permissible upon lands subject to the 'Existing /Infill Residential' zoning objective, and it is therefore submitted that the proposed use is appropriate upon the subject site.

5.0 Basis of Exemption

Under Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3 (1) as follows:-

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."

This application for a declaration seeks clarity on the use of Ryevale House as private accommodation for persons availing of IPAS services. It is noted that legislation does not define the phrase 'material change of use' as used in section 2(1) of the Act. In order to determine the materiality of any change, the practical impacts and effects of the proposed change of use must be considered by the planning authority.

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The jurisprudence on this topic illustrates that the focus of the planning authority must be on the practical effects of the examined use, when determining whether it is materially different from the prior use. In Esat Digifone v South Dublin County Council [2002] 3 I.R. 585, the High Court made the following remarks:

"The consideration to be taken into account in determining materiality must at least be relevant to "proper planning and development and the preservation of amenities" which are the twin objectives of the preamble to the legislation. The question is whether there were sufficient planning considerations raised by the change in activity to justify its submission to development control."

In a similar vein the court quoted Barron J. in *Galway County Council v. Lackagh Rock* [1985] I.R.120 at 127:

"To test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use."

A further decision in support of that view is that of Budd J. in Westmeath County Council v. Quirke & Sons [Unreported, High Court, 23rd May 1996] where the court noted that:

"Many alterations in the activities carried out on the land constitute a change of use, however, not all alterations will be material. Whether such changes amount to a material change in use is a question of fact as is explained in Monaghan County Council v Brogan [1987] IR 339. Consideration of the materiality of a change in use means assessing not only the use itself but also its effects."

Ryevale House and its associated coach house have an established, pre-1 October 1964, use as private residential accommodation. The current use of the property continues the long-established private residential use, with the only alteration to have occurred being an increase in the number of residents accommodated upon the site.

It is submitted that there will be no discernible change to the use of the building other than the socio-economic class of the inhabitants occupying it. This class distinction should not be taken into consideration when having regard to whether a material change of use has occurred. In underlining the fact that such considerations regarding the socio-economic class of residents have no place in planning considerations, the Supreme Court in *Dublin Corporation v Moore* [1984] I.L.R.M. 339 stated:

"I can well understand the objection voiced by Mr. Heneghan in his affidavit, to which I have referred - the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin - yet others for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law - if they were, they might well offend against rights of equality."

Our client submits that if this were a planning application for two private residential properties, the planning authority would not include conditions prohibiting accommodation to people of a particular socio-economic class. Nor would the planning authority preclude the residential properties from accepting long-term residents. It is therefore submitted that the extant residential properties on site will continue to operate like any other residential properties by providing accommodation to long-term private residents, and nothing more.

The continued use of Ryevale House as private residential accommodation will have no material effects on proper planning considerations and the sustainable development of the area. The use of the properties will not negatively impact on the amenity of local residents in Ryevale Lawns in any way — certainly no more than if the buildings were being used as a large single-family residence with resident staff. As a result, it is our view that no material change of use has development has occurred.

County Council Planning Department

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The remarks of Clarke J. in Cork County Council v. Slattery Pre-Cast Concrete [2008] IEHC 291 are relevant in assisting the planning authority in determining whether an intensification of an established use is material:

"The assessment of whether an intensification of use amounts to a sufficient intensification to give rise to a material change in use must be assessed by reference to planning criteria. Are the changes such that they have an effect on the sort of matters which would properly be considered from a planning or environmental perspective? Significant changes in vehicle use (and in particular heavy vehicle use that might not otherwise be expected in the area) are one such example, changes in the visual amenity or noise are others.

The judgment of Gilligan J. in *Molloy v. Minister for Justice* [2004] IEHC 74 is also relevant due to its parallels with Ryevale House. In that case the High Court, assessed whether the change of use of a property from a residential religious novitiate to accommodation for asylum seekers was material intensification. The case has a number of parallels with the facts at issue at Ryevale House. The applicants' arguments as they related to intensification were as follows:

"The proposed use would involve an intensification of use by reason of the dramatic increase in the number of persons accommodated at the said premises and in the numbers of staff and persons providing ancillary services which are necessary to support such a reception centre. The proposed use would have significant planning implications in terms of generating traffic and parking demand, with consequent off-site parking requirements. The proposed use is likely to give rise to traffic congestion, traffic hazard and as a consequence be injurious to the amenities of residents and businesses in the vicinity of the subject premises."

In *Molloy* the Court held that the question of whether or the developer's proposals would lead to intensification of use was premature in circumstances where the novitiate had not yet been converted to use as a hostel for asylum seekers:

"It is accepted by the respondent that an intensification of use can constitute a material change of use in circumstances which would amount to development under the Planning Acts and would accordingly require planning permission. In my view, the respondent can use Broc House as a residential hostel and any significant intensification may lead to a material change of use but that situation at the moment is hypothetical and is a matter for another day as appropriate."

One differentiating factor between the proposals for Ryevale House and the Molloy case is that it is not proposed to convert Ryevale House into a "hostel" with a reception centre and providing ancillary services. Our client submits that any proposed intensification of use of Ryevale House is less significant as the asylum seekers in Ryevale House are accommodated in individual residential apartments, with some shared bathroom and kitchen facilities

The question as to whether an intensification of an existing use at a property constitutes a material change of use is one to be assessed in light of the practical effects of that intensification on relevant planning considerations. These considerations include, but are not limited to, increased vehicular traffic, noise, pressure on infrastructure, visual impact, and impact on the amenity of surrounding residents.

In considering the above, it is our client's submission that the practical differences in the current use of the entirety of Ryevale House as a private accommodation for persons seeking international protection, are, to all intents and purposes, almost indiscernible from its established use. Whilst it is clearly a matter for Kildare County Council to determine, in accordance with the law set out above, it is our submission that the lack of practical effects of the new use, in line with the judgments of the High Court in *Slattery Pre-Cast Concrete* and *Molloy*, means that no material change of use has occurred at the Ryevale House. Given the lack of any material change in use, no development requiring planning permission pursuant to the terms of the Planning and Development Act, 2000, has taken place or is proposed to take place in this regard.

Kildare County Council Planning Department

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5.1 Compliance with Applicable Local Area Plan

Section 178(2) of the Planning and Development Act 2000 (as amended) provides that the Planning Authority shall not affect any development in the borough which contravenes materially the development plan. Upon review of the Kildare County Development Plan 2023-2029, we submit that the use of the subject site to provide private accommodation to people in the International Protection ('asylum') process does not materially contravene the development plan. Section 3.11.5 'International Protection Applicants' of the Kildare Development Plan 2023-2029 provides the following commentary in relation to refugees and asylum seekers:

The Council will continue to liaise and work with the relevant agencies and stakeholders in securing appropriate accommodation for refugees and asylum seekers in appropriate locations throughout County Kildare.'

Of particular relevance is Objective HO O35 which states:

Objective HO 035

It is an objective of the Council to - Continue to work with Central Government and relevant State Agencies to support the provision of housing for International Protection Applicants (asylum seekers/ refugees) in County Kildare, and to support those communities in accessing Council services in their widest provision (including arts and culture)

In response to Objective HO O35, we submit that the private accommodation provided upon the subject site is required now more than ever. It is acknowledged that these facilities require careful management and planning, however, the subject site is of appropriate size to accommodate the quantum of residents currently in situ, the immediate area is well served by a range of residential amenities and services, and is well capable of accommodating the new residents of Ryevale House. We submit that the accommodation of asylum seekers in Ryevale House is compliant with Objective HO O35 and Section 3.11,5 of the Kildare Development Plan 2023-2029. As a final point, it is noted that there is no commentary contained within the Leixlip Local Area Plan 2020-2023 regarding accommodation for refugees and asylum seekers.

6.0 Third Party Section 5 Declaration

It is noted that a third party obtained a separate Section 5 Declaration, under Reg. Ref. ED/1021, in relation to the subject site based on the following question:

'Whether the change of use from a dwelling house to a centre of accommodation for people seeking international protection is or is not Development and is or is not Exempted Development.'

Kildare County Council, in response to the above, issued a Declaration on 7th March 2023 stating that:

'The change of use from a dwelling house to an accommodation centre for people seeking international protection, at Ryevale House, Leixlip, Co. Kildare, IS development and IS NOT EXEMPTED development pursuant to Sections 2, 3, 4 and 5 of the Planning and Development Act 2000 (as amended) and articles 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended).'

Notwithstanding the Declaration of Kildare County Council, we submit that the question raised by the third party is inherently flawed, in that it contains a material error in the description of the use of Ryevale House as a 'centre of accommodation'. Accordingly, given the incorrect description of the use of the premises contained in the documentation accompanying the request for a section 5 declaration, there is undoubtedly a change in factual and planning circumstances, such as would enable the planning authority to issue a section 5 declaration, notwithstanding the existence of the previous section 5 declaration: see *Narconon Trust v. An Bord Pleanála* [2021] I.E.C.A. 307.

The Planner's Report prepared on foot of the previous third-party section 5 application, dated 6 March 2023, incorrectly described the proposed use as "a commercial facility" and "an accommodation centre" and, on that basis, determined that a change of use has occurred.

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The planner's assessment seemed to have been predicated not only on the basis of this mistaken premise, but also on the basis that the proposed use was not covered by Glass 14(h) of the "Planning and Development Amendment Regulations 2015", which covers the change of use from various commercial/institutional uses to accommodation for asylum seekers. Clearly Class 14(h) does not apply to Ryevale House as Ryevale House already has an existing, established, residential user. The use of Ryevale House as private residential accommodation therefore does not constitute a material change, and therefore does not constitute development, meaning it does not require a saving provision in the Regulations to render it exempted development.

The planner's assessment appears to be partially based on the third party's submission that there would be "a refugee centre" at Ryevale House. However, as a matter of fact, there is no proposal to use Ryevale House as "a refugee centre". Moreover, again as a matter of fact, there is no proposal to install "80 individual bedrooms" as referred to in the Planner's Report. In fact the description of the "Works" in the Planner's Report under the heading "Assessment", taken from the third-party's submission, is wholly inaccurate. There is a stark difference, both in factual and planning terms, to be drawn between the proposed use as described in the previous third-party request for section 5 declaration and this request for such a declaration. It is thus clear that the previous section 5 request, and its consideration by the Planning Authority, were premised on a wholly inaccurate description of our client's proposal. We would note the following incorrect statements made within the third-party Section 5 Declaration:

	Incorrect Statement Per Third Party Section 5 Declaration	Correct Information Per Subject Report / Enclosed Drawings
1.	Ryevale House referred to as 'accommodation centre', 'centre for refugees', 'refugee centre'	The subject properties, Ryevale House and its associated coach house, together comprise a standard residential dwelling.
2.	Reference made to 80 individual rooms described as "lockable bedrooms". Further reference to the 'conversion of the structures so as to provide the '80 self-contained bedrooms'.	The subject site provides a total of 17 no. bedrooms between both Ryevale House (10) and its associated coach house (7)
3.	Reference made to the serving of meals 'each of the occupants will be entitled to three meals per day which will be served in a common room'.	No food is served to residents of either Ryevale House or its associated coach house. Residents are free to use existing cooking facilities on site.
4.	Reference made to need for 'significant staff, bot to provide the meals but for maintenance, cleaning and security and therefore this is a major development in planning terms with significant quantity of traffic, waste and major works required'	A limited extent of staff are provided on site for the sole purpose of cleaning communal/shared living areas within both Ryevale House and its associated coach house.
5.	Reference to acts of 'construction, alteration, demolition, repair and renewal all being carried out on the lands'.	All works carried out, in respect of Ryevale House and its associated coach house, are identified in Section 2.0 of this report.

Figure 7.0 Table identifying incorrect statements made in the third part Section 5 Declaration and providing the correct information in relation to these statements.

The consideration of our client's proposal on foot of the previous third-party section 5 request has been based on a factually incorrect description of the activity as well as erroneous planning considerations. The Planner's Report appears to consider that the use of Ryevale House as private accommodation for internationally protected persons is no longer a residential use. The clear (and now observable) use of the site is that of ordinary private residential use, albeit now with an increased number of persons accommodated within the properties.

As clearly and unarguably presented in this Report, the subject site clearly accommodates two properties already in standard residential use. The properties are in no discernible way being utilised as a 'centre of accommodation' or a 'refugee centre' with these definitions both clearly indicative of an institutional facility at which care, services or processing occur, and which is permanently altended by operating staff.

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The third party request was premised on the notion that 'a refugee centre' at Ryevale House would provide cooked meals and other material care and services for residents. The subject site does not and has never provided care to residents of any sort, nor is it proposed to provide any such care in the future. As previously outlined, the properties together do no more than provide 17 no. bedrooms, with associated reception areas, kitchen, sitting room, laundry room, bathrooms and access to extensive outdoor amenity space. This is clearly dramatically different from the 80 no. bedrooms referred to in the third party's documentation and the Planner's Report.

Accordingly, Ryevale House is simply being used as private accommodation in line with its established user. It is not operating as a centre' of any sort, given that no care, services, or processing is being provided to residents at the site. Ryevale House is no more a centre of accommodation' than any other private multi-unit apartment building. The subsequent consideration of the third-party section 5 application by the planning authority thus proceeded on an inaccurate premise and should not, in our submission, be considered binding upon the planning authority given this material error.

7.0 Conclusion

The subject site comprises 2 no residential buildings, Ryevale House and its associated coachhouse, used to provide accommodation to people in the International Protection ('asylum') process.

A contract was agreed between our client, Me Liberer Ltd., and International Protection Accommodation Services (IPAS) to provide long term accommodation. It is noted that no care services will be provided and the facility cannot be classified as a Class 9 Hostel. Our client will maintain the property and provide staff on-site. It is submitted that the use is exempted development in accordance with Section 4(1)(f) of the Planning and Development Act 2000 (as amended).

A review of the development plan, in particular section 3.11.5 and Objective HO O35, has found that the development does not materially contravene the development plan.

Accordingly, we request a declaration to this effect from Kildare County Council under Section 5 of the

Planning and Development Act 2000 (as amended). Should you have any queries or require any further information including access to the building, please do not hesitate to contact the undersigned.

Kevin Hughes MIPI MRTPI Director for HPDC Ltd.



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10 MAY 2023

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