

Stephen Sutton

From: Pat Gibney [REDACTED]
Sent: Thursday 17 August 2023 08:22
To: Appeals2
Subject: ABP 317397 23
Attachments: Appendix C Michael Walsh email.pdf; Appendix B WCC withdrawn letter 211175.pdf; Appendix D Circular letter PL 102022.pdf; Appendix A RFI 211175.pdf; appendix E Car park sign august 2023.jpg; Response to ABP on McHt response.pdf

Dear Sir

In relation to Case number ABP-317397-23 please find attached my response to letter dated 28th July 2023 including appendices A, B, C, D and E.

Please acknowledge receipt of my response. If you have any further queries I can be contacted on 086 0258853.

Kind Regards
Pat Gibney

Pat Gibney
13 Railway Gardens
Station Road
Townspark East
Lismore
Waterford
P51 F6W8
16/08/2023

John Cannon,
Executive Officer
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902,
An Bord Pleanála Reference Number; ABP-317397-23
Planning Authority Register Reference Number; D5 2023/10

RE: Whether works carried out to provide a care facility for IPAS refugees is or is not development or is or is not exempted development. Lismore House Hotel. 1-2 Main Street, Lismore, Co. Waterford (protected structures)

Dear John

I acknowledge receipt of your letter in relation to An Bord Pleanála reference number ABP-317397-23 dated 28 July 2023. I also acknowledge the chance to make a submission/observation in relation to the submission dated the 17th of July 2023, from Griffin Project Management on behalf of McHt Limited.

I refer to the submission dated the 17th of July 2023, from Griffin Project Management on behalf of McHt Limited and respond as follows.

Statement from Griffin Project Management on behalf of McHt Limited (GPM Statement)

GPM Statement claims that my submission appears to be concerned with 3 particular matters

1. The sequence and schedule of the works in relation the various statutory consents required.

2. Whether exempted works are or are not development or whether said works are or are not exempted development.

3. Whether said exempted development regulations can be applied to a premises which is to be utilised for the accommodation of protected persons.

Response

My Referral to An Bord Pleanála (ABP) listed 15 points and Appendices A, B, C and D not 3.

Taken the 3 particular matters mentioned in the Statement from Griffin Project Management on behalf of McHt Limited (GPM Statement) in order I respond below

GPM Statement particular matter number 1 states the following.

1. The sequence and schedule of the works in relation the various statutory consents required.

It is submitted that the control of the sequence and schedule of works in relation to the various statutory requirements is only something, with respect to Bord Pleanála, which could be monitored and controlled by Waterford County and City Council Building Control and Enforcement Depts. The development applied for and was granted both a Fire Safety Certificate and a Disability Access Certificate.

My Response to GPM Statement number 1

I do not agree with the GPM Statement raised in point 1. There is a wide range of legislation that applies to this form of development. It is the responsibility of the Building Owner to satisfy themselves in term of compliance. The control of the sequence and schedule of works in relation to various statutory requirements would be the responsibility of McHt Limited. Planning permission 211175 applied for on the 17/12/2021 was not granted. Planning permission 211175 was withdrawn by WCC on the 18/01/2023.

What development applied for are GPM referring to. The current planning permissions that apply to numbers 1 & 2 Main Street Lismore are 03/328 and 062011. Planning permission 211175 was not granted.

As WCC fire department would not issue me with a copy of the Fire Safety Certificate and Disability Access Certificate I cannot comment on them further than the information I submitted already. The GPM response has not provided a copy either. These could be the certs for works carried out originally under planning permission 03/328 and nothing to do with recent works as a commencement cert was not issued by McHt to the BCMS website.

GPM Statement particular matter number 2 states the following.

2. Whether exempted works are or are not development or whether said works are or are not exempted development.

Whether exempted works are or are not development or whether said works are or are not exempted development. The act is specific in this regard "Section 57 of the Planning and Development Act 2000 as amended allows for the owner or occupier of a protected structure to apply to the planning

authority for a declaration as to the type of works which it considers would or would not materially affect the character of the structure or any element of the structure. " The files pertaining to the premises will clearly demonstrate that the developer consulted with the Heritage Officer and the Planning Dept of Waterford County City Council prior to any works commencing.

My Response to GPM Statement number 2

I do not agree with the GPM Statement raised in point 2. I submitted a section 5 application to Waterford City and County Council (WCC) and a Referral to An Bord Pleanála for formal adjudication following initial consideration of the matter by WCC as I did not agree with the decision of WCC that works carried out from the 24/01/2022 on a protected structure and its curtilage did not require planning permission. WCC did not answer the question in relation to works carried out to a protected structure prior to 29/11/2022 and just put a question mark in their response (?). As regards to works to a protected structure inside and outside and its curtilage which continue still on 16/08/2023 from 29/11/2022 require planning as per Guidelines issued to Planning Authorities for Class 20F amendment. It clearly states "Where a proposed change of use would materially affect a protected structure, the exemption is removed and planning permission is required in accordance with Section 57 of the Planning and Development Act 2000, as amended. Class 20F was amended on the 29th of November 2022, works on the Site began on or before the 24/01/2022. GPM statement does not deny anything that I state about when works commenced or ongoing.

GPM statement has not provided a copy of a section 57 declaration from WCC. No evidence is provided that the developer consulted with the Heritage Officer and the Planning Department prior to any works commencing. No evidence of a Commencement notice is provided. Planning permission 211175 was not granted. WCC did ask McHt in the RFI for planning permission 211175 (appendix A) for an Archaeological Impact Assessment, drawings etc for the works they planned to carry out. No response was received, and the application was withdrawn by WCC on the 18/01/2023 as they had not received any response from McHt. (Appendix B).

I listed several factors in my section 5 declaration how the character and elements of the structure has been materially altered and affected. GPM have not commented or denied any of these.

I attach in Appendix C; an email from Michael Walsh County Manager for WCC. This states that WCC were not notified prior to the 30/01/2023 of the planned use for the hotel.

GPM Statement particular matter number 3 states the following.

3: Whether said exempted development regulations can be applied to a premises which is to be utilised for the accommodation of protected persons.

The Planning and Development (Exempted Development) (No. 4) Regulations 2022 were introduced to assist the Minister for Children, Equality, Disability, Integration and Youth (MCEDIY) in meeting Ireland's legal obligation to provide accommodation to international protection applicants. The Regulations amend Part 1 of Schedule 2, entitled 'Exempted Development -General', to the Planning and Development Regulations 2001, as amended, to insert a new Class 20F exemption. The European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 were introduced in response to the emerging Ukrainian crisis. The Regulations give effect to Council Directive No 2001/55 EC and Council Implementing Decision EU 2022/382 of 04

March 2022 (European Council Decision) to provide immediate protection in EU countries for persons displaced by the Russian invasion of Ukraine, including the need to provide emergency accommodation and support to these displaced persons.

The Regulations provide that the provisions of the Planning and Development Act 2000 (other than the environmental considerations in Sections 181A to 181C) will not apply to certain classes of development by or on behalf of a State Authority for the purposes of providing temporary protection to displaced persons as specified in the Regulations. It should be noted that neither the granting of planning permission, or the provision of an exemption from the requirement to obtain planning permission, removes the requirement to comply with any other statutory code, particularly in relation to the Building Regulations, including fire safety. It should be noted that the developer current has both Fire Certs and DAC Certs in place for the works

My Response to GPM Statement number 3

I do not agree with the GPM Statement raised in point 3. The protected structure is not used for displaced persons from Ukraine. The war in Ukraine started after unpermitted works commenced on the protected structure. Please find attached in Appendix D; Guidelines issued to Planning Authorities for Class 20F amendment. It clearly states "Where a proposed change of use would materially affect a protected structure, the exemption is removed and planning permission is required in accordance with Section 57 of the Planning and Development Act 2000, as amended.

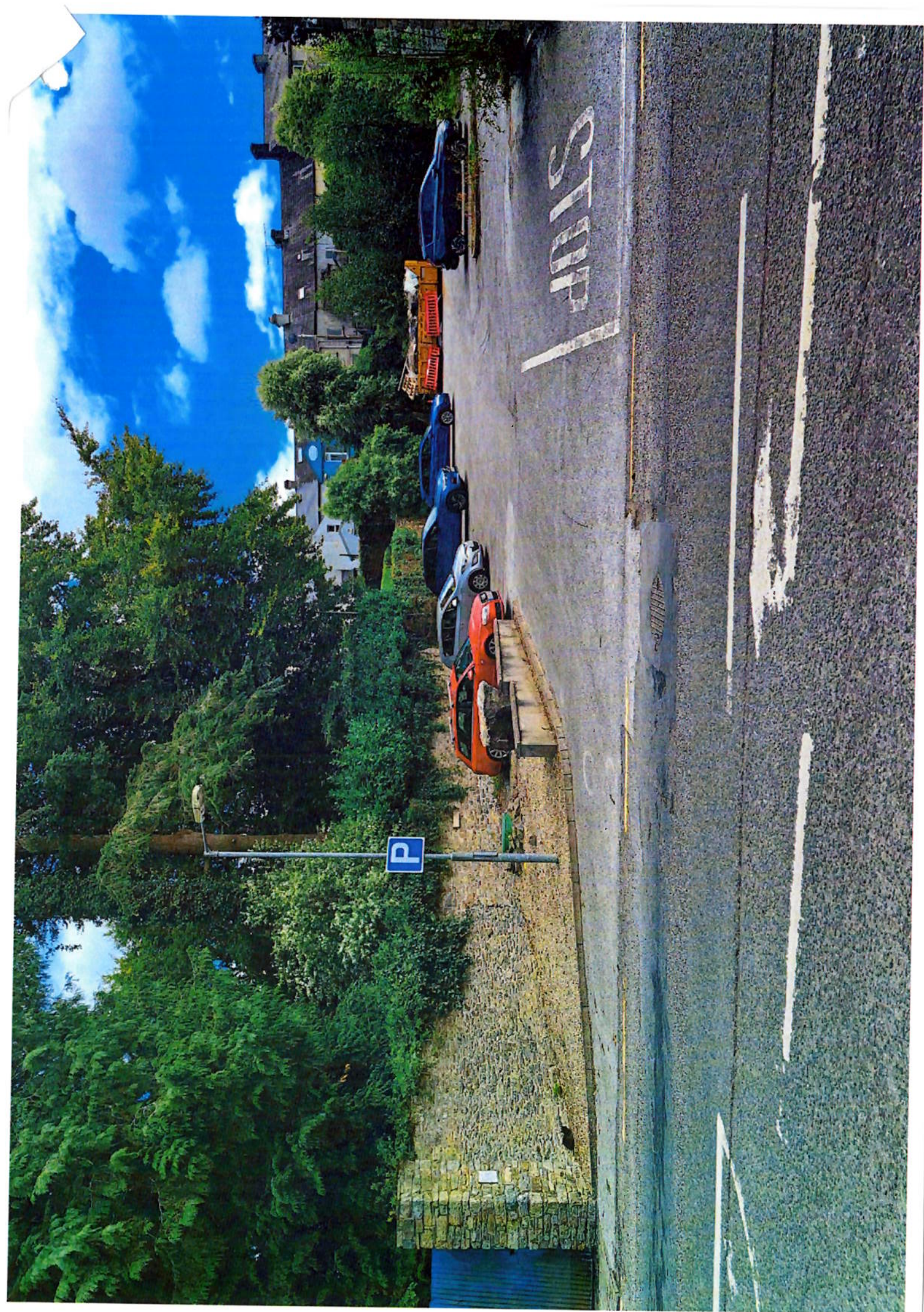
McHt have not commented on the environmental considerations eventhough they mention them. In the ordinary course, it might be anticipated that a proposal to carry out a project of this scale within the vicinity of a SAC would be subject to screening for the purposes of the Habitats Directive and the Environmental Impact Assessment Directive. How do McHt and WCC know that the so-called emergency works are not likely to have any significant effect on a European Site. The failure to comply with the Habitats Directive represents a serious breach of EU law. I refer ABP back to the environmental points I raised in my section 5 deferral and my section 5 to WCC. Information to carry out the Appropriate Assessment must be provided by the Developer.

I would also like to now add that McHt has **opened the car park for public use** (August 2023) and a carpark sign erected by WCC (Appendix E), This is another change of use and is in contradiction to the argument for planning exemptions that McHt refer to. The planning exemption they argue is for the accommodation of protected persons and not a public use car park as well. No Appropriate Assessment has been carried out for this public car park. The car park is within the curtilage of the protected structure.

Taking a precautionary approach, and all the points I have raised above WCC and McHt are wrong in the decision they made and the development which has and continues to be carried out is not exempt development. I trust my concerns will be taken into consideration prior to a decision being reached.

Yours Sincerely

Patrick Gibney
Patrick Gibney





Comhairle Cathrach & Contae Phort Láirge
Waterford City & County Council

PL 7994 0940 JIE

21/1175

REGISTERED POST

MCHT unlimited company
c/o Crocon Engineers Ltd.
Atlanta House
4 Main Street
Co. Cork, P75 PW64

17/02/2022

APPLICATION: PERMISSION - construction of an extension, alterations to fenestration, change of use of nightclub to café/retail space to Lismore House Hotel (a protected structure) and all associated site works

LOCATION: Lismore House Hotel Castle St. Lismore

Dear Sir or Madam,

I refer to your application for the above development, which was submitted on the 17/12/2021. Unfortunately, the documents submitted are not sufficient to enable a decision to be made on the application. The following further information is, therefore, requested in accordance with Article 33 (1) of Planning & Development Regulations, 2001 as amended:-

1. The applicant is requested to prepare and submit an Archaeological Impact Assessment in accordance with the requirements of the Department of Housing, Local Government & Heritage;
 - a. The applicant is requested to engage the services of a suitably qualified archaeologist to carry out an Archaeological Impact Assessment of the proposed development. No subsurface work should be undertaken in the absence of the archaeologist without his/her express consent.
 - b. The archaeologist shall carry out any relevant documentary research and inspect the site. The assessment shall involve documentary and cartographic research, archaeological testing (licensed under the National Monuments Acts 1930-2014), fieldwork and an examination of the proposed plans for development. Test trenches shall be excavated at locations specified by the archaeologist within the proposed development area, having consulted the site plans and results of fieldwork, to determine the presence/absence of archaeological remains.
 - c. Having completed the work, the archaeologist shall submit a written report, including an archaeological impact statement, to the Planning Authority and to the National Monuments Service in advance of the planning decision. Where archaeological material/features are shown to be present, preservation in situ, the establishment of sufficient 'buffers' to ensure preservation of archaeological remains, review of development layout and design, preservation by record (excavation) or monitoring, may be required and suggested mitigatory measures shall be outlined in the report.
- It should be borne in mind that, if significant archaeological remains are found, refusal might still be recommended, and/or further monitoring or excavation required. It is the Departments view that a final decision should not be made on this application until the Planning Authority and the National Monuments Service has had the opportunity to evaluate the Archaeological Assessment.
2. a) In addition to the proposed extension works the applicant has proposed a number of interventions in the original hotel / Protected Structure comprising of alteration to opes, closure of opes and



Comhairle Cathrach & Contae Phort Láirge Waterford City & County Council

creation of opes. Robust details such as drawing, photographs and the assessment of these interventions have not accompanied the application to allow for the Planning Authority's full assessment. The applicant is requested to submit an Architectural Heritage Impact Assessment which assessed all proposed works including the interventions to the interior of the original hotel as per Dwg 0085 as submitted 17th of December 2021. Please address.

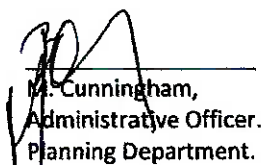
b) The applicant has submitted an Artists impressions of the proposed redevelopment/extension works have provided same with and without the wall bounding the public road. The Conservation Officer has requested additional views for the artists impressions be provided at locations to be agreed with the Conservation Officer, WCCC. Please address.

3. With regard to external opes and changes to fenestration the applicant is requested to provide update elevation drawings with same highlighted / outlined for the purpose of clarity.
4. The proposed redevelopment will result in a loss of 3 – 4 spaces. The applicant is invited to demonstrate compliance with the Development Management Standards as per Variation no. 1 of the Waterford County Development Plan 2011 - 2017 with regard to Car Parking requirements calculated against existing demands and the demands generated by the proposed change of use and proposed extensions subject to the current application. Dual usage can also be considered with regard to patrons / demand. Please address.

IMPORTANT NOTES

1. You are required to note that if the information submitted is considered, *in the opinion of the Planning Authority*, to contain significant additional data, you will be required, within a very tight timeframe, to give public notice in accordance with Article 35 (1) of the Planning & Development Regulations, 2006. If such is the case you will be notified in writing of the specified period in which you must publish, erect and submit such notice.
2. Please note that the period for dealing with this application will not commence until the Planning Authority considers that the notice requesting the Further Information has been FULLY complied with, i.e. ALL the information requested has been supplied (see 3 below).
3. If this further information request (including any subsequent request for clarification) are not complied with, within the period of 6 months from date of this request the planning application shall be declared to be withdrawn. Accordingly, you are advised to respond to this request at the earliest possible date to enable the planning authority to deal with the application.
4. 6 copies of all plans/documents are required with further information submission.
5. Should you have any queries with regard to the requirements of this request for further information please contact Aidan Walsh, Executive Planner, Waterford City and County Council (Tel. 058 21450) or email aidanwalsh@waterfordcouncil.ie at your convenience.

Yours faithfully,


M. Cunningham,
Administrative Officer,
Planning Department.

NOTE: Please forward all correspondence to the Staff Officer, Planning Department, Waterford City & County Council, 1st Floor, Menapia Building, The Mall, Waterford.



To: Directors of Planning in each local authority

CC: Chief Executives
Senior Planners
An Bord Pleanála
Office of the Planning Regulator
Directors of Regional Assemblies

Circular Letter PL 10/2022

1 December 2022

**Re: Planning and Development (Exempted Development) (No. 4) Regulations 2022
[S.I. 605/2022]**

I have been asked by Mr. Peter Burke, T.D., Minister of State for Planning and Local Government to advise that he has signed the above set of Regulations which have immediate effect. A copy of the Regulations is attached for information.

These new Regulations amend provisions in the Planning and Development Regulations 2001, as amended (the Principal Regulations), to assist the Minister for Children, Equality, Disability, Integration and Youth (MCEDIY) in meeting Ireland's legal obligation to provide accommodation to international protection applicants.

New Class of Exempted Development

The Regulations amend Part 1 of Schedule 2, entitled 'Exempted Development - General', to the Planning and Development Regulations 2001, as amended, to insert a new Class 20F exemption.



This new Class permits the change of use of the following structures for the purpose of providing the necessary facilities for international protection applicants:

“school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.”

This provision is a temporary measure and will expire on 31 December 2024; the use of such structures shall cease on the expiry of the regulation.

Where a proposed change of use would materially affect a protected structure, the exemption is removed and planning permission is required in accordance with Section 57 of the Planning and Development Act 2000, as amended.

Notification Requirement

A planning authority must be notified in writing of the details of the development prior to the commencement of the proposed change of use.

Compliance with Building Regulations

In this context, as with the planning system generally, neither the granting of planning permission or the provision of an exemption from the requirement to obtain planning permission, removes the requirement to comply with any other code, particularly in relation to the Building Regulations, including fire safety. The aim of the Building Regulations is to provide for the safety and welfare of people in and about buildings. It



is important to note in the context of these exempted development provisions that compliance with the Building Regulations 1997 to 2021 must still be achieved and Building Control procedures will still apply.

Under the Building Control Acts 1990 to 2020, primary responsibility for compliance with the requirements of the Building Regulations rests with the owners, designers and builders of buildings. In particular, the Building Control (Amendment) Regulations 2014 (where they apply) require greater accountability in relation to compliance with Building Regulations in the form of statutory certification of design and construction by registered construction professionals and builders, lodgement of compliance documentation, mandatory inspections during construction and validation and registration of certificates.

Any queries in relation to this Circular letter should be emailed to planning@housing.gov.ie.

Terry Sheridan

Principal

Planning Policy and Legislation

Attachment for information:

Planning and Development (Exempted Development)(No. 4) Regulations 2022

RL 5616 2733 61E



Comhairle Cathrach & Contae Phort Láirge
Waterford City & County Council

18/01/2023

MCHT Unlimited Company
c/o Crocon Engineers Ltd.
4 Main Street
Bantry
Co. Cork
P75 PW64

Re : Planning application reference number: 21 / 1175
Applicant: MCHT Unlimited Company
Proposed development: construction of an extension, alterations to fenestration, change of use of nightclub to café/retail space to Lismore House Hotel (a protected structure) and all associated site works
Development location: Lismore House Hotel, Castle St., Lismore, Co. Waterford

Dear Sir/Madam,

A period of six months has elapsed since the date on which you were requested to submit Further Information in respect of the above application, in accordance with Article 33(1) of the Planning & Development Regulations, 2001 (as amended).

In accordance with Article 33(3) of the above Regulations, I hereby declare the application to be withdrawn.

Yours faithfully,

For Director of Services
CORPORATE SERVICES, CULTURE AND PLANNING



RE: Lismore Hotel

From: "Michael Walsh" <mwash@waterfordcouncil.ie>
To: "Patrick Gibney" [REDACTED]
Date: Apr 13, 2023 5:22:12 PM

Pat,

My apologies but I forgot to respond to this as I went searching for the briefing note and got waylaid. I have attached the briefing note issued by Dept. dated the 30th of January. It was in the public domain at least a week and a half prior to this, the note was simply informing us of the decision and there was no prior consultation on the issue as I have consistently stated. This would be the briefing note referenced in Kevin McCarthy's response to the Oireachtas.

Michael Walsh

From: Patrick Gibney [REDACTED]
Sent: Tuesday, March 21, 2023 2:27 PM
To: Michael Walsh <mwash@waterfordcouncil.ie>
Subject: Lismore Hotel

Michael

Have you any comments in relation to attached as Kevin McCarthy Secretary General of the Department of Children, Equality, Disability, Integration and Youth is claiming that local representatives were briefed in relation to the Lismore Hotel.

Kind Regards

Pat Gibney

Secretary

Lismore Town Association

Attachments

- Emergency IPAS Accommodation Lismore - Briefing Note for Public Reps.docx