

An Bord Pleanála  
64 Marlborough Street,  
Dublin 1.

06<sup>th</sup> December 2023

<b>AN BORD PLEANÁLA</b>	
LDG-	<u>068467-23</u>
ABP-	
07 DEC 2023	
Fee: €	<u>50.00</u> Type: <u>Cash</u>
Time: <u>11.45am</u>	By: <u>Hanel</u>

**Re: Section 5(4) of the Planning & Development Act 2000 by Wexford County Council dated 10<sup>th</sup> November 2023 Regarding the Site of the former Great Southern Hotel, Rosslare Harbour.**

**ABP Case Reference 318455**

Dear Sirs

As a party who may make written submissions to the Planning Authority, pursuant to section 130 of the *Planning & Development Act 2000*, we hereby submit as follows in connection with the above referenced section 5 referral made on 10<sup>th</sup> November 2023 to your Board by Wexford County Council regarding whether the subject development is 'development' for the purpose of the Act of 2000 and secondly whether the subject development is 'exempt development' for the purpose of S.I. 376/2023.

We would like firstly to say that we are at a loss as to why Wexford County Council failed, refused or neglected to determine the matter as to whether the proposed change of use is development and whether it is exempt development particularly taking into account their acknowledgements in their said referral. The manner in which Wexford County Council are dealing with this matter, viz. the s.5 referral to your Board, has deprived and/or denied the residents of Rosslare Harbour the opportunity of making statutory observations to a body of first instance regarding the effect of a second IPAS centre in what is a small rural community already overstretched and with very limited services, medical, educational, social and otherwise.

The essence of the matter is what is referred to as a proposed 'change of use' from a nursing home to an International Protection Accommodation Service Centre at St. Martin's Road, Rosslare Harbour, Wexford.

Pursuant to s.5 of the Act of 2001, Wexford County Council has sought your Board's determination as to whether the use of the former Great Southern Hotel, Rosslare Harbour, Co Wexford as accommodation for international protection services is 'development and exempt development'. Specifically:-

*1. Is the intensification or increased occupancy of bedrooms covered under Planning and Development (Exempted Development)(No. 4) Regulations 2023 (S.I.376/2023) when consent for the nursing home was based on one occupant per room.*

*2. Can the part use of the building for accommodation for those seeking international protection, which is undergoing renovation for use as a nursing home, be considered exempted development.*

3. Can exempted development status accrue when the building is under extensive renovations commenced under an approval permitted as a nursing home but not completed.

It is our respectful submission that:-

1. Wexford County Council has failed, refused or neglected in its s.5 referral to state the reasons or arguments on which the referral is grounded. Specifically Wexford County Council has not stated any reasons or arguments as to why they need to make the within referral in that they have acknowledged there is intensification, that the intensification is 'likely to have a material impact' and 'would not appear to be covered by S.I. 376/2023'. Wexford County Council has also acknowledged that what is happening is 'contrary to the phasing set out in the planning permission'.
2. Wexford County Council state that phase 1 of the development 'related to the conversion of a complete hotel'. Any notion, inference or suggestion that there was a change of use from a hotel to nursing home must be debunked. The use as hotel had long been abandoned and in effect the site at the time of grant of permission for use as a nursing home had a 'nil' use. We do not wish or intend to lecture your Board on the concept of abandonment save to say that the Supreme Court in *Dublin County Council V Tallaght Block Company Limited* (S.C. 17 May 1983) explained the concept as follows:-

"Where a previous use of land has been not merely suspended for a temporary and determined period, but has ceased for a considerable time, with no evidenced intention of resuming it at any particular time, the tribunal of fact was entitled to find that the previous use had been abandoned".

In summary, therefore, in determining whether or not a former use has been abandoned a number of tests are generally applied and include-

- 1 The physical condition of the premises - e.g., is it derelict?
- 2 The length of time of abandonment – see *Cork County Council V Ardfert Quarries* (Unreported High Court December 7, 1982) where a lapse of four years in the use of an industrial building was held to be have been abandoned.
- 3 Evidence of any intention to resume the former use.
- 4 Objectively, would a reasonable person looking at the derelict former hotel conclude that its use as a hotel had been abandoned.

The documentation accompanying the application for the nursing home application confirms that the former Hotel became derelict in 2007.

Regarding paragraph 1, the site of the former Great Southern Hotel was derelict; regarding paragraph 2 the abandonment commenced in 2007 some 16 years previous; regarding paragraph 3 there is no evidence that there was an

intention to resume the former use of hotel; regarding paragraph 4 no person, reasonable or otherwise, objective or otherwise would conclude other than the use as a hotel had been abandoned. Consequently, it not sustainable and indeed is unreasonable and irrational to conclude that the use as a former hotel brings the premises within the ambit of Class 20F.

3. Importantly, Wexford County Council has failed, refused or neglected to posit the relevant and appropriate questions, viz. is the proposed change from the permitted use of nursing home to that of IPAS centre 'development' for the purpose of the Act of 2000, as amended and if it is the development does that development get the benefit of the exemption in S.I. 376/2023.
4. The question of whether the proposed change of use in the circumstances of the within case is development or not must be answered before moving to an assessment of whether it is exempt development or not.
5. It has long been established that your Board is entitled to reformulate the questions set out in a reference. We now respectfully request your Board to so do having regard to the reasons, considerations and arguments set out herein.
6. In accordance with s.3 of the Act of 2000 it is submitted that the answer to the first question is that the proposed change of use is clearly development for the purpose of the Act of 2000 in that a change of use from a nursing home to an IPAS centre is not only a material change of use but a fundamental change. See the relevant part of section 3, set out hereunder for convenience, which provides as follows:-

*In this act, development means, except where the context otherwise requires, the carrying out of any works on, in, over or under land and the making of any material change of use in any structure or other land.*

7. That there is a proposed change in use is beyond doubt. That the proposed change is a material change of use is also beyond doubt. The question as to whether a change of use is material was considered by the High Court in *Monaghan County Council v Brogan* ([1987 I.R. 3]) where the Court stated that the issues of relevance to this question are as set out hereunder and in respect of which Simmons in his book on *Planning and Development Law* (Published Thomas Roundhall, 2007, 2<sup>nd</sup> edition at page 75, paragraph 2-27) having considered the various authorities submitted that the reasoning of Keane, J. in *Monaghan County Council* set out hereunder 'is to be preferred':-

*"The matters which the planning authority would take into account in the event of a planning application being made for the use. If these matters are materially different from the original use then the nature of the use, must be equally materially different".*

8. It is trite to state that the matters a planning authority would take into account in the event of a planning application being made for use as an IPAS Centre would be at a minimum materially different from those taken into account in

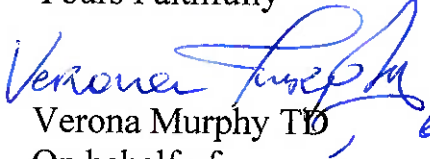
respect of an application for use as a nursing home such as matters regarding hours of operation, frequency of visits, visitor turnover, and parking requirements which it cannot be argued are other than materially different to matters to be taken into account for an IPAS centre. Further the character of the intended use involves a fundamental difference in both nature and purpose to that in respect of which planning permission was granted. The said grant of planning was in respect of a facility for the residential care of elderly people on a medium to long term basis whereas the proposed use would involve providing a different service to a completely different user group, with no or no significant element of care being provided.

9. Strictly without prejudice as to whether the development had accrued status of use as a nursing home at the material time: In accordance with Class 20F of S.I. 376/2000 it is submitted that the answer to the second question is that the proposed development, being change of use from a nursing home to an IPAS Centre is not exempt. On a plain reading of the said 20F nursing homes are not expressed to be entitled to the benefit of the said exemption from seeking planning permission for change of use. It is further clear from the definition of a nursing home in s.2 of the *Health (Nursing Home) Act 1990* that none of the categories set out in 20F of S.I. 376 could be interpreted as including a nursing home.
10. Further what is it a change of use from in that the subject development's use as a hotel had long been abandoned and its use as a nursing home was, it is submitted, at best inchoate. In these circumstances an application to the Planning Authority was required in respect of a use as an IPAS centre.
11. As pointed out by Wexford County Council the Board is entitled to rely on earlier precedents wherein the Board did 'not consider that exempted development applies to developments under construction. It is respectfully submitted that the Board did more than consider. The Board determined that developments under construction were not exempt development. We submit that the Board is not only entitled to so rely on earlier decisions as precedents when determining a s.5 reference but that there is no reason, cogent or otherwise, as to why the Board should depart from these earlier decisions of the Board and determine that the proposed change of use is development for the purpose of the Act of 2000 and is not exempt development for the purpose of S.I. 367/2023.
12. It is reiterated that Wexford County Council has conceded that the proposed change of use involves intensification. It has long been established by the Courts, and as your Board will well know, that intensification of a use constitutes a material change of use.
13. **Summary on Question 1:** Based on all of the foregoing, it is self-evident that the proposed change of use is material in nature and therefore constitutes "development" for the purpose of the Planning and Development Act 2000, as amended.

14. **Summary Question 2:** As the premises has never been used for any of the uses specified in Class 20 F of S.I. 376/2023 and has a nil use in real terms we submit that the intended use is not exempt as it does not fall within the relevant exempted development provisions.

**The fee of €50.00 enclosed.**

Yours Faithfully

  
Verona Murphy TD, 62 South St, New Ross Co Wexford  
On behalf of 434 PC97  
The Ad Hoc, Rosslare Harbour and surrounding areas Concerned Residents Group.

**Note: This document is signed for and on behalf of the 'The Ad Hoc Rosslare Harbour Concerned Residents Group' and no personal liability is to attach to any of the members individually.**

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6<sup>th</sup> December 2023





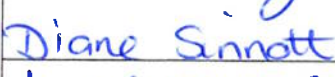












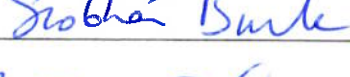



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Observation submitted by Verona Murphy TD, and The Ad Hoc, Rosslare Harbour and surrounding areas Concerned Residents Group.

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<i>Doreen de la Cour</i>	DOREEN de la Cour
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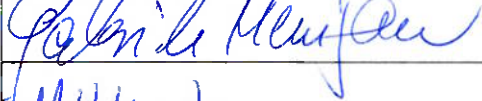



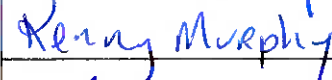
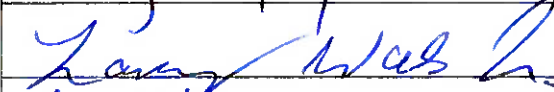






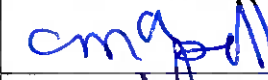


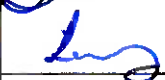

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