

An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

AN BORD PLEANÁLA	
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ABP-	_____
21 DEC 2023	
Fee: €	Type: _____
Time: 16:45pm	By: <u>HAND /</u> <u>COURIER</u>

21st December 2023

RE: Case number ABP-318455-23

Section 5 (4) Referral by Wexford County Council to An Bord Pleanála to determine if the part use of the former Great Southern Hotel, Rosslare, County Wexford use for accommodation under international protection is development and exempted development.

We, Amhola Rosslare Nursing Home Trading Limited, as owner of the property, formerly known as the Great Southern Hotel, Rosslare Harbour, wish to make the following observation in relation to the Section 5(4) referral submitted by Wexford County Council with further section 5 referral submitted on the 12th December 2023 relating to the same hotel.

Our company purchased the property in early 2022 with intention to carry out works to convert the existing hotel to a nursing home and received a grant of planning permission. A commencement notice was submitted in May 2023. Substantial works have not been carried out in relation to the nursing home permission and no certificate of completion has been submitted. During this time, through design development, it was realised the existing format and structural layout of the building prevents an efficient conversion of the existing hotel to use as a nursing home. This, along with market conditions resulted in the nursing home operators rejecting the project for clearly outlined rationale as to why the building was not suitable to conversion of a nursing home.

Wexford County Council have sought the boards determination on the **10th November 2023** that "the use of the Great Southern Hotel, Rosslare, County Wexford for accommodation under international protection is development and if so, exempted development".

It is our position following planning and legal advice, per Appendix A, that the conversion of the existing use of the building as a hotel, (and other facilities which provide overnight accommodation), to emergency accommodation is exempted development under Class 14(h) and (i) of the regulations. The intended occupation restrictions have been agreed with the department of integration and it is noted the length of use may require a planning permission to revert to a hotel if longer than three years.

The further submission by Wexford County Council on the **12th December 2023** seeking determination that the "Use of the building located at former Great Southern Hotel, for the purposes of accommodation person seeking international protection development, and if so, is same exempted development".

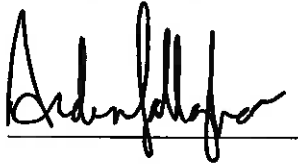
It is our position that the use of the building has never changed from that of a hotel, no subsequent planning permission was activated and therefore the change of use is exempted

development for the reasons outlined above. It should be noted if we chose to open a hotel today in the existing layout of the building, we would not be required to obtain planning permission and therefore the change of use is clearly exempted development.

Further to validation of the commencement notice for works to convert the existing hotel into emergency accommodation, the works are now substantially complete to the West Wing which is phase 1 per the certificate. A fire safety certificate has been issued by Wexford County Council and only disabled access certificate is pending to allow the certificate of completion to be submitted. The external works required for which is being hindered by protests to the entrance of the hotel. The level of satisfaction to building regulations in a such a short period of time is possible from the existing hotel use.

We trust this clarifies our position as owner of the property and look forward to the determination of the board to this effect.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Aidan Gallagher', written over a horizontal line.

Aidan Gallagher
Director

Appendix A, submission from Beauchamps LLP

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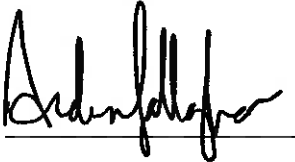
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Appendix A, submission from Beauchamps LLP

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Our Ref: TOS/AD/AXI6.55

Your Ref:

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Our Client: Amhola Rosslare Nursing Home Trading Limited ("Amhola"),

Dear Colleague

A. INTRODUCTION

1. Beauchamps have been instructed to provide advices on certain planning law issues arising in relation to the development of the former Great Southern Hotel in Rosslare, County Wexford, a pre-1964 structure (hereinafter **"the Property"**), which was actively used as a hotel until around 2010 after the economic crash. The change of use to a Nursing Home is now economically unviable and Amhola have decided not to implement the new planning but to continue the Hotel use.
2. On 14 July 2021, Wexford County Council issued a Notification of Grant of Planning Permission, under reg. ref. no. 2021/0283 (**"the 2021 permission"**), authorising the change of use of the former hotel to a 90-bedroom nursing home together with associated works. This planning has not been implemented.
3. Subsequently, Amhola, purchased the property in 2022. Shortly thereafter, on 20 July 2020, a further a Notification of Grant of Planning Permission, under reg. ref. no. 2022/0711 (**"the 2022 permission"**), authorising alterations to the 90-bedroom nursing home development previously authorised under the 2021 permission. This planning has also not been implemented.
4. Beauchamps are instructed that the nursing home development was **"not viable"** in circumstances where, inter alia, the configuration of the building is not suitable for a nursing home. Consequently, Amhola entered into negotiations with the Department of Children, Equality, Disability, Integration and Youth (the **"Department"**) in recent months and the Department provided an expression of interest to use the property as an International Protection Accommodation Service (**"IPAS"**) centre. Those negotiations envisaged the commencement of the occupation of the premises on 6 December 2023.
5. On 10 November 2023, Wexford County Council made a referral to An Bord Pleanála (**"the Board"**) seeking a determination in respect of three questions posed in relation to the use of the Property as an IPAS centre.

6. It is understood by Beauchamps, and indeed from recent media reports, that there is considerable local resistance to the use of the Property as an IPAS centre. In this context, on 14 November 2023, Verona Murphy T.D. submitted a separate and distinct request for a section 5 declaration to Wexford County Council on two questions relating to the use of the Property as an IPAS centre.
7. By letter dated 21 November 2023, the Minister for Children, Equality, Disability, Integration and Youth, Roderic O’Gorman T.D. (“the Minister”), wrote to James Browne T.D., noting that planning matters had been referred to the Board and stated that, while the International Protection Procurement Service (“IPPS”) was still considering the offer of accommodation made in respect of the Property, the Department would not enter into a contract for the property until these matters have been concluded.
8. On 24 November 2023, the Board wrote to Amhola indicating that submissions on observations may be made on the section 5 referral made by Wexford County Council, requiring any such submissions or observations to be made within a period of four weeks commencing on 24 November 2023, i.e., on or before 22 December 2023.
9. Against this background, Beauchamps have been instructed to provide advices as to whether the proposed use of the Property for the purposes of IPAS accommodation is, as a matter of law, exempted development.

B. FACTUAL AND PLANNING BACKGROUND

10. Beauchamps are instructed that the former Great Southern Hotel in Rosslare was a pre-1964 hotel and was used and traded as such until some stage in or around 2010 after the economic crash. The change of use to a Nursing Home is now economically unviable and Amhola have decided not to implement the new planning but to continue the Hotel use.
11. The planning search carried out on behalf of Amhola demonstrates that throughout the period between 1989 and 1995, certain permissions were sought which were related to the hotel use of the premises.
12. On 13 October 2010, planning permission was granted to Merchants Properties Ltd. (under reg. ref. no. 2009/1698) for demolition of, inter alia, an existing two-storey building known as St. Helens Hotel (formerly Great Southern Hotel) and construction of a new 60-bed nursing home facility on two to four-storeys with new vehicular access from St Martins Road, and associated car parking, landscaping and site development works. On the same date, under reg. ref. no. 2009/1758, permission was also granted to Merchants Properties Ltd for construction of new development consisting of the demolition of the existing two-storey building (formerly the Great Southern Hotel) and construction of 25 no. apartments for use as sheltered housing and associated landscaping and site development works. This permission was not acted upon.

As referenced above, on 14 July 2021, Wexford County Council granted the 2021 permission authorising the change of use of the former hotel to a 90-bedroom nursing home together with associated works.

13. Subsequent to the purchase of the Property by Amhola, the 2022 permission was granted authorising alteration works to the nursing home development previously authorised under the 2021 permission.
14. As noted in the section referral made by Wexford County Council to the Board, a commencement notice works was received and validated by the Building Control Section of Wexford County the Council on 16 May 2023, “to commence works on the Nursing Home”.

15. Subsequently, on 4 October 2023, a second commencement notice was issued to the Council in respect of Amhola's intention to use part of the premises as accommodation for those seeking international protection. It was entered onto the register on 10 October 2023. The proposal was described as follows:

"It is proposed to convert the existing hotel into an emergency accommodation centre. The work will be done in two phases. Phase 1 (The West Wing) for which this application applies is the fit out of the existing West Wing and a small extension which consists of a new stair."

16. On 10 November 2023, Wexford County Council ("the Council") sought a determination from the Board as to whether the use of the premises as accommodation under international protection is development and/or is exempted development.

17. On 13 November 2023, the Council referred 3 no. questions to the Board in respect of the use of the Great Southern Hotel, Rosslare, County Wexford. These questions were recited as follows:

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.*

18. Again, as referenced above, on 14 November 2023, Verona Murphy T.D. requested a section 5 declaration from Wexford County Council confirming that "the use of the above property for the purpose of accommodating persons seeking international protection, is not exempted development."

19. A fire safety certificate in respect of the conversion of "the existing development into an accommodation centre" issued on 20 November 2023. It was noted on the Fire Safety Certificate that "[t]he work will be done in two phases. Phase 1 (The West Wing) for which this application applies is the fit out of the existing West Wing and a small extension which consists of a new stair..."

Exempted Development under the 2001 Regulations

20. Article 6(1) of the Planning and Development Regulations 2001, as amended, (the "2001 Regulations") provide as follows:

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1."

21. It is clear from the foregoing that development will be exempted from the requirement to obtain planning permission where the relevant development falls within the description contained in Column 1 of Part 1 of Schedule 2 and does not contravene any of the conditions and limitations set out in Column 2.

22. The conditions and limitations on this class of exempted development are set out in Column 2, as follows:

1. *The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.*
2. *Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001²*
3. *The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.*
4. *Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class.*
5. *The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.*
6. *'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU)2022/382 of 4 March 2022.*
7. *'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015).*
8. *'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.*

23. The provisions of Class 14 of Part 1 of Schedule 2 to the 2001 Regulations, as amended, are relevant. Class 14, paragraphs (h) to (j) provide as follows:

Change of use

CLASS 14 Development consisting of a change of use—

[...]

- (h) *from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,*
- (i) *from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons, and*
- (j) *from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both."*

24. In respect of Class 14 (h), Column 2 provides that:

The number of persons with an intellectual or physical disability or a mental illness living in any such residence shall not exceed 6 and the number of resident carers shall not exceed 2."

25. In respect of Class 14 (j), Column 2 provides the following limitation:

Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.

C. APPLICATION OF LEGAL PRINCIPLES TO FACTUAL & PLANNING BACKGROUND

Use of the Premises

26. On the basis of our instructions, it is clear that the hotel became unprofitable after the financial crash and the subsequent owners and then Amhola considered various planning options including a change to a Nursing Home. The use as a Nursing Home is now economically unviable and Amhola have decided not to implement the new planning but to continue the Hotel use.
27. The latest planning applications, which culminated in both the 2021 and 2022 permissions, related to a 90-bed nursing home and alterations to that nursing home development. These permissions have not been implemented. And the same economic forces that led to a proposed change of use have now led Amhola to maintain the status quo and maintain the hotel use.
28. The steps taken to renovate the premises are consistent with the previous hotel use. As such, it is open to a Court to conclude that, as a matter of fact and law, the hotel use of the premises has been maintained.
29. It is also noteworthy that the Property, despite having a permitted use of a 90-bed nursing home, has never actually been used as a nursing home.

Works Carried Out

30. The commencement notice, which issued on the 4 October 2022, related to the intended change of use of the Property for IPAS accommodation. Notably, the second commencement notice referred to the "existing hotel".
31. It is apparent that planning permission was not sought in respect of the works carried out in order to use the Property for the purposes of IPAS accommodation. Those works have been carried out with the intention of providing accommodation for 443 individuals in 113 rooms on a phased basis, with capacity to facilitate 176 residents by 27 November 2023, with a further 190 residents in March 2024 and a further 77 residents in May 2024.

Whether Use of the Property for IPAS Accommodation is Exempted Development?

Class 14

32. As set out above, Class 14 makes provision for an exemption for the change of use from the uses specified, including hotel use and residential institution, to that of accommodation for protected persons or emergency reception or orientation centre for protected persons.
33. Beauchamps are of the view that the former hotel use remains and it follows, accordingly, that the development consist of a *change of use* from use as a hotel.

Yours faithfully

BEAUCHAMPS LLP

BEAUCHAMPS LLP

