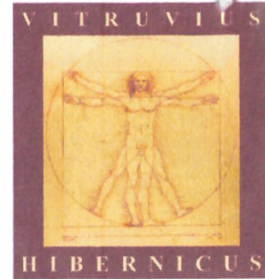


LIAM MADDEN B. ARCH. NUI, M.APPL.ENVIR. SC., CERT. ARCH. PROF., DIP. MICRO-PROC. TECH.
ENVIRONMENTAL SCIENTIST PLANNING CONSULTANT LEGAL ADVISOR S.I. 8/2017 SCH. 5
CONVENT ROAD, LONGFORD N39 EE72

EU REGISTERED ARCHITECT NETHERLANDS REG. NO. 1.180615.001
POSTBUS 41882, 1009 DB AMSTERDAM, NEDERLAND

UK REGISTERED ARCHITECT REG. NO. 0461701
10/2 354 MEADOWSIDE QUAY WALK, GLASGOW G11 6EE



An Bord Pleanála,
64 Marlborough Street,
DUBLIN 1
D01 V902

31May 2024

P.A. ref. DC 24/5 Section 5 request – Longford County Council
Requestor : Ballymahon St. Management Ltd.

AN BORD PLEANÁLA
LDG- 072370-24
ABP-
04 JUN 2024
Fee: € 220 Type: Chg
Time: 10:07 By: p067

Dear Sir/Madam,

this is a Referral by mt client Ballymahon St. Management Ltd.
Attached is An Bord's referral fee €220 along with Site Map.
Also attached is the Section 5 request to and the determination by Longford County Council of the question posed. Many of the arguments are peripheral to the only question in this referral as they address built works rather than the mere change of use.

My client's principal argument and complaint is that the Council has not answered the question put to it.

Neither did the Council give any reason or rationale for its determination.

In addition, the Council has answered a question which was not put to it.

I explain below.

The simple question is to be answered is :

*whether the change of use at a development now called Saints Quarter
to 4 no. residences is or is not exempted development.*

1. **ARTICLE 10(6) – Exempted Change of Use.**

Article 10(6) of the Planning and Development Regulations is a recent regulation which provides for the change of use of certain Classes of Use to residential use. Attached is Article 10(6).

The Classes of Use listed in Part 4 to Schedule 2 are :

- Class 1 Use as a shop,
- Class 2 Use as the provision of financial services, professional services (other than health or medical), any other services including as a betting shop,
- Class 3 Use as an office other than Class 2 use,
- Class 6 Use as a residential club, guest house or a hostel,
- Class 12 Use as a Public House.

The premises in the attached Art. 10(6) Notification falls into Class 1 of the uses.

The premises was not used as Class 2, Class 3, Class 6 or Class 12.

The building was vacant for over 20 years.

The Freehold Owner of the premises is Ballymahon Street Management Ltd.

The leasehold legal interest in the building was recently surrendered to the Freehold owner Ballymahon St. Management Ltd.

The leaseholder who surrendered the leasehold interest was Mae Sexton (nee Breaden), sister-in-law of this writer and former TD.

She is the daughter of Cllr. Tommy Breaden (dec'd), this writer's father-in-law, who was Chairman of Longford UDC.

The premises was sublet by Tommy Breaden to Liam Og Glennon (dec'd 2005) who ran his Teepol business (Class 1 Use) from the premises.

The premises had fallen into an advanced state of dereliction until recently.

The premises is not a Protected Structure.

The site is in close proximity to two sites on which there are Protected Structures, (No.5 New St. and the disused old Garda Station and Sgt.'s residence on Dublin St.) though the site was not connected to either.

The referor is the Freehold owner of both nearby Protected Structures.

(For academic purposes I add that the oft misused phrase 'curtilage of a protected structure' is wrong. The word 'curtilage' does not appear in the definition.)

2. Article 10(6)

This is the starting point. The relevant provisions are check-listed below in the order they appear in the Article 10 regulation.

- (a) Not relevant.
- (b) The previous use falls into Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2.
That the Council entered the Exemption Notification onto its own record is of Article 10 exemptions is testament to this.
- (c)
 - (i) The structure was erected c. 100 years ago as confirmed in archive OS Maps i.e. prior to 2018
 - (ii) The structure was used for a purpose in Class 1, 2, 3, 6 or 12 as confirmed in correspondence with the P.A.
 - (iii) The structure has been vacant/unused for c. 20 years.

Therefore, as Article 10(6) categorically states :

“then the proposed development for residential use, and any related works, shall be exempted development, subject to the conditions and limitations set out in paragraph (d)”

- (d)(i) Not relevant
- (d)(ii) Compliance with (iii) and (vii) is ongoing insofar as the works on site are related to the change of use i.e. the works can be exempted under S.4.-1(h) or S. 4.-2
 - (I) works primarily affect the interior of the structure.
Comment : everything within the outer walls is interior works and, separately, is exempted under S.4.(1)(h)
 - (II) 50% or more of the external fabric to be retained.
Comment : 100% of the external stone has been retained and as many of the slates as survived. It should be noted that (II) does not require the stone to be retained in situ. Note also that re-use of the retained stone is exempted separately under S.4.-1(h) above as “works for the maintenance, repair or other alteration of any structure”
 - (III) the development will not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure (or of neighbouring structures)
- (d)(iii) Not relevant.
- (d)(iv) Not relevant.
- (d)(v) Development comprises 4 no. residences.
- (d)(vi) OK
- (d)(vii) OK
- (d)(viii) The structure is not a Protected Structure.
- (d)(ix) There is no Permission Condition.
- (d)(x) Not applicable.
- (d)(xi) Not applicable.
- (d)(xii) Not applicable.
- (d)(e) OK

3. DC24/5

None of the above was contested by the Planning Authority save only where a planner in error declared the site to be within the 'curtilage' (sic) of a protected structure.

Article 10(6) Notification is a simple procedure.

The whole point of any Exempted Development is that it doesn't involve any further entanglements with the Planning Authority.

The permission, consent or approval of the P.A. is not required.

In fact there is no requirement to engage with the council at all.

My client holds that the planner in the matter took on the role of an amateur detective with no authority whatsoever ... and got it all wrong.

The planner confused the simple words *"then the proposed development for residential use, and any related works, shall be exempted development"* with the works as opposed to the mere change of use.

Of course the finished project will involve change of use AND built works.

However, the built works need not be limited only to works **directly related** to the exempted change of use : the works can exempted development in their own right.

In this particular case other exemptions are being availed of.

There are three types of exemptions being availed of in this development which is now called Saints Quarter

viz. **Article 10(6) Section 4.-(1)(h) Section 4.(2)(a), (b) and (c)**

The law is simple: Article 10(6) change of use is exempted development.

The Council has confused the simple question posed – whether the change of use is exempted or not – with the "works" related to the change of use.

I have made this crystal clear in the S. 5 Request but to no avail.

So now it is An Bord's job to determine the simple question.

The supporting arguments in the Request focussed on the built details, that, is, the Conditions and Limitations attached to Article 10(6).

But that's a matter for enforcement AFTERWARDS and only IF compliance with the Conditions and Limitations of Article 10(6) or other Exemptions availed of becomes an issue. That very concept doesn't even arise where there are NO related built works.

Attached is an extract from a Senior Counsel's opinion is just such an instance.

So, An Bord can see where this is all leading.

Therefore it follows, as sure as night follows day, that the Change of Use is exempted development. For some unfathomable reason the Council's officer appears to consider that this new law doesn't apply to Longford.

4. CONDITIONS & LIMITATIONS

Compliance with the Conditions & Limitations to Art. 10(6) change of use is NOT the question or even part of the question before An Bord in this Referral.

The sole question is :

whether the change of use at a development now called Saints Quarter to 4 no. residences is or is not exempted development.

Attached is the P.A.'s declaration DC 24/5.

The wording in the declaration speaks volumes viz.

*"The planning authority wishes to acknowledge receipt of your request for a declaration of **works** considered to be development or exempted development under Section 5 of the Planning and development Act 2000 (as amended) on the 12th April 2024."*

The **works** were not part of the S.5 request and are not part of this Referral.

It may well be that the works, taken by themselves, may become the subject of another Section 5 request/referral in the future.

The question may well be phrased – whether the dismantling and rebuilding of the stone wall but in the precise hitherto location constitutes "*works for the maintenance, repair or other alteration of any structure*" and is so exempted under S. 4.-1(h) or words to like effect.

But that's for another day.

The issue of whether my client was barricaded – and remains so barricaded – out of its own land by an illegal pallisade fence is a matter which is destined to go before the Planning Regulator and/or the Court is NOT part of the question in this Referral.

The fact that Council officers trespassed on my client's adjoining property, a three storey Protected Structure, and threatening my client's workforce with closing the premises is NOT part of the question in this Referral.

The fact that a Council officer entered into the adjoining Herterich Butchers Shop and interrogated and humiliated Louis Herterich Junior in front of his own staff and customers by accusing him in public of committing an offence, for which event the Director of Services had to apologise in person and in public, in the special circumstances that Louis Herterich Junior has no hand, act or part in the residences at 'Saints Quarter' is NOT part of this Referral question.

(It is noteworthy that the defaming officer has not apologised but he will.)

(The Council proffered a pathetic written apology ... but the illegal fence remains.)
This writer will not sit on the fence !

5.

An Bord should be aware that this development was the subject of a titanic battle between the Enforcement Dept. of the Council and my client.
However, I am able to confirm that at the time of writing this battle is over.
The whole point of this referral and the above mentioned battle is that this was/is a wholly unnecessary conflict.

Therefore the simple question to be answered is :

*whether the change of use at a development now called Saints Quarter
to 4 no. residences is or is not exempted development.*

My client will be entirely satisfied to have a declaration from An Bord which says, yes, the change of use is indeed Exempted Development simpliciter but subject to compliance with attached conditions and limitations which may relate to the development or other exempted works which may apply.

My client anxiously awaits An Bord's determination.

Yours faithfully,

Liam Madden,
Convent Road,
LONGFORD
N39 EE72



08/05/2024

Ballymahon Street Management Ltd
c/o Liam Madden
Convent Road,
Longford

Dear Mr. Madden

The planning authority wishes to acknowledge receipt of your request for a declaration of works considered to be development or exempted development under Section 5 of the Planning and Development Act 2000 (as amended) on the 12th April 2024.

It is the opinion of the Planning Authority, based on the assessment above:

That change of use to 4 No. residents, as defined, is considered to be development as defined in the Planning and Development Act and is development that is **not exempted development**.

Yours Sincerely,



Planning Department

12th April 2024

Ballymahon Street Management Ltd
c/o Liam Madden
Convent Road,
Longford,
N39 EE72

Acknowledgement of application for a Section 5 Declaration.

Planning Reference No: DC24/5

Date Received: 12/04/2024

Dear Sir/Madam,

I hereby acknowledge receipt of your application on the date stated above and wish to inform you that it is under consideration at present.

A decision will be issued to you by Registered Post in due course.

Should we require any further particulars or information in relation to the application, we will be in contact with you further.

Yours faithfully,



Planning Department

Planning Department, Great Water Street, Longford. N39 NH56
Tel: (043) 3344222 Email: planning@longfordcoco.ie

Section 5 Declaration – Exempted Development
Planning & Developments Acts 2001 as amended

- 1. REQUESTOR**
Applicant Name: BALLYMAHON STREET MANAGEMENT LTD.
Address: 37 BALLYMAHON ST., LONGFORD
Phone No: **E-mail:**
- 2. Name of Agent (if any):** LIAM MADDEN
Address: CONVENT RD, LONGFORD N39 EE72
Phone No: 043/33/4115 **E-Mail:** VITRUVIUS.HIBERNICUS@hotmail.com
- 3. Address for correspondence (if different from above):**
Address: CONVENT ROAD LONGFORD
- 4. Location of Proposed Development:** BREADEN'S LAKE - SAINTS QUARTER
- 5. Description of Development:** CHANGE OF USE OF TO 4 NO. RESIDENCES
- 6. Under what section of the Planning and Development Act, 2000 as amended and Planning and Development Regulations, 2001 as amended is exemption sought (Specific details required)**
SEE ATTACHED ARGUMENTS

7. Will the development take place within the curtilage of a dwelling house?

Please tick as appropriate: YES ☒ NO ☐ AND DWELLINGS

8. Will / Does development take place in / on a Protected Structure or within the curtilage of a Protected Structure?

Please tick as appropriate: YES ☐ NO ☒

8(a) If "YES", has a Declaration under Section 57 of the Planning & Development Act 2000, as amended, been requested or issued for the property by the Planning Authority?

Please tick as appropriate: YES ☐ NO ☐ N/A

9. Please state applicants interest in this site OWNER

If applicant is not the owner of site, please provide name & address of owner:

10. Are you aware of any enforcement proceedings connected to this site?

Please tick as appropriate: YES ☐ NO ☒

10(a) If "YES" please supply details:

11. Are you aware of any previous planning application/s on this site?

Please tick as appropriate: YES ☐ NO ☒

11(a) If "YES" please supply details:

✓ 12. List of Items to accompany this application:-

- ✓ a) A fee of €80
- ✓ b) 1 x An appropriately scaled site location map (not less than 1:2,500 rural and 1:1000 urban), clearly indicating the site of the proposed development outlined in red.
- N/A c) 1 x An appropriately scaled site layout plan (not less than 1:500) indicating the location of the proposed works and access to same from the public road.
- N/A d) 1 x Plans and particulars of the proposed development, including sections and dimensions to differentiate between the existing works and proposed works.
- N/A e) 1 x Approximate finished floor levels of the proposed development should be provided in relation to the existing ground level at the site of the proposed development.

SIGNED: Walter Madden

DATE: 11 APRIL 2024

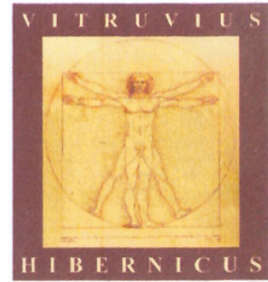
PLEASE NOTE:

This application form must be fully completed and all items listed in Part 12 submitted, or your application will not be accepted and will be returned.

LIAM MADDEN B. ARCH. NUI, M.APPL.ENVIR. SC., CERT. ARCH. PROF., DIP. MICRO-PROC. TECH.
ENVIRONMENTAL SCIENTIST PLANNING CONSULTANT LEGAL ADVISOR S.I. 8/2017 SCH. 5
CONVENT ROAD, LONGFORD N39 EE72

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POSTBUS 41882, 1009 DB AMSTERDAM, NEDERLAND

UK REGISTERED ARCHITECT REG. NO. 0461701
10/2 MEADOWSIDE QUAY WALK, GLASGOW G11 6EE



Planning Office,
Longford County Council,
Áras an Chontae,
Great Water St.,
LONGFORD.

11 April 2024

Section 5 Request. SAINTS QUARTER

Dear Sir/Madam,

this is a section 5 request by Ballymahon Street Management Company Limited
Attached is the €80 fee.

WHEREAS a question has arisen as to whether the Change of Use at a development called "Saints Quarter" to 4 no. residences is or is not Exempted Development. The requestor makes a request to determine the above question.

HISTORY

1.

The requester owns the feeehold of the site edged in RED on the attached map. A leasehold interest in the site was recently surrendered. The building on the site has been vacant and unused for over 20 years and was allowed to fall into an advanced state of dereliction. Large sections of the slated roof had collapsed.

2.

The site was identified in an Article 10 (6) Notification and the Council duly entered the Notification into its Record of Article 10(6) Exemptions. The Exemption status was thereby conferred on the development.

3.

Complicating matters in the carrying out of related works, the Council barricaded my client out of its own site by the erection of a metal pallisade fence across the only entrance to the Notification site. In addition a metal gate with lock was erected across the laneway giving access to the rear of the old disused Garda Station. That (Garda) laneway did not give access to the Notification site, however.

Section 4.-(1)(h)

The following shall be exempted development for the purposes of this Act -

- (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 first half of the paragraph deals with the interior and this is absolute.

Everything that's within the outer stone wall is internal and exempted under S. 4.-(1)(h)

The second half of the paragraph deals with alterations permitted within Article 10(6)

The relevant parts of the section are:

the carrying out of alteration of any structure being works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure ...

(I comment that the final words “.. or of neighbouring structures” are not applicable as the conditioning link word is ‘or’ and not ‘and’.)

There has been an alteration to the structure.

Section 4.(2)(a), (b) and (c) Exemption Classes and Exempted Change of Use
Class 50 of Schedule 2 Part 1 of the Regulations (Development within the curtilage of a house) partly relate to the development and overlap with the Article 10(6) Exemption.

Sch. Part 1 Class 50 exempts demolition areas per house and there are 4 no. dwellings and a permitted cumulative demolition area of 100 sq.m.

Demolitions of the external stone wall facing is covered by Class 50 and also by S.4.(1)(h) which is “*maintenance, improvement or other alteration*”.

It's an improvement.

In other words, my client was fully entitled to lawfully dismantle the entire and retain, re-use and reinstate the stone walling.

Compliance with Conditions or Limitations attaching to, for instance, a Class 1 House Extension could have an exempted extension built, say, 500mm higher than permitted. This doesn't mean the extension taken as a whole becomes unauthorised.

All this means is that the incomplete extension must be corrected to comply with the height condition.

The relevance of this argument is the the Council has already declared that the Change of Use is Exempted Development by the very act of entering the development on its Exemption Record.

The fence and gate were erected by the Council without the benefit of planning permission and/or without a Part 8 Consultation procedure.

In other words the fence and gate are an unauthorised development.

My client who owns the Notification site was not consulted privately or publically about the erection of the fence.

In a planning farce, the Council demanded that the fence and gate which itself had erected be removed by a Mr. Louis Herterich who was not the erector of the fence nor the owner or, indeed, not a Director of the company which owns the Article 10 (6) Notification site. After heated exchanges, the Council apologised to Mr. Herterich. However, the illegal fence was NOT removed and to date continues to block the only access to the Notification site.

4.

it is noteworthy that the Notification site was not connected to the adjoining site No. 5 New Street (formerly McGarry's). Neither was the Notification site connected to the old disused Garda Station. Both of the above – McGarry's and the Garda Station with Sgt.'s residences – are Protected Structures.

The Notification site and disused shed thereon is not a Protected Structure nor is the site part of the attendant grounds of a Protected Structure.

5.

In spite of repeated protests, my client remained barricaded out of his site by an illegal development by the Council and in order to gain access to the site to execute the Exempted Development had to dismantle his own building and stone boundary wall, which, it is conceded, is being re-instated in order to comply with the conditions and limitations attaching to the Article 10(6) exemption, in particular the retention of - at least - 50% of the external stone fabric.

(In fact 100% of the external stone is being retained.)

However, the reinstatement is only partly executed and compliance with the conditions is on-going and is NOT part of the single question posed in this Section 5 Request. However, this significant additional cost to the works is attributable to the Council which continues to this day to retain its illegal fence which barricades the site.

6.

Although not directly related to the Request question posed, concerns have been raised about certain of the works or elements of the building.

I mention en passant other Exemptions which relate to the works and not just compliance with conditions and limitations attaching to Article 10(6).

Also, the alteration does not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure. This assessment is entirely subjective cannot be contradicted as no drawings are required to be submitted with an Article 10(6) Notification. Even with a formal Planning Application for (material) Change of Use, plans are not required. Since the Council has no plans of the partly executed development, any opinion which runs contrary to my view is mere speculation. In effect, that would be picking my client up before he falls down.

I argue further that even if an impartial well-grounded opinion were to the effect that the elevations materially affect the external appearance so as to render inconsistent with the character of the structure – which is denied - that can be adjusted and does not affect the change of use exemption per se.

The words in the recent Article 10(6) exemption are absolute :

“... shall be exempted development for the purposes of the Act...”

It is to be reasonably inferred that certain officer(s) in the Council is/are of the view that the law doesn't apply to County Longford.

Change of Use planning applications do not require any plans, elevations, sections, drawings except only for a Site Map. In like fashion, this request does not need to be accompanied by detailed plans etc.

Therefore you shall issue your determination within the appropriate period and, if necessary, your determination will be referred to An Bord for ratification and/or review.

Attached is the site map, request fee €80 and completed Request Form

I await hearing.

Yours,

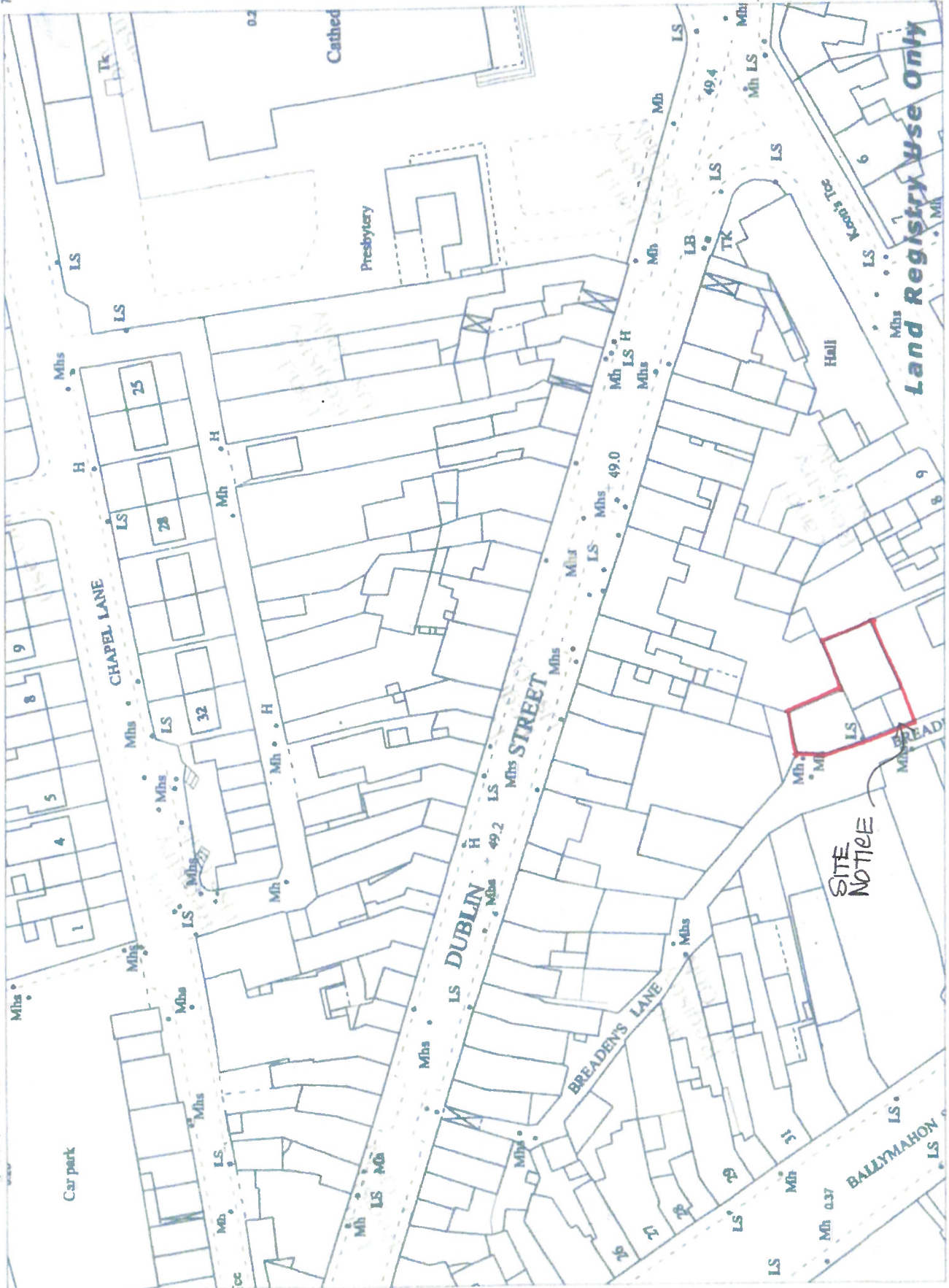
Liam Madden
Convent Road,
LONGFORD.
N39 EE72

Surveyed 1986
Revised 2012
Levelled 1987

Land Registry Compliant Map

613442

613209



775385

775193

Scale:- 1:1,000
Scale:- 1:1,000

0 20 40 60 80 100 Metres

Plot Ref. No. 19824788_1_1
Plot Date 18-AUG-2012

613442

UTM CENTRE PT. COORDS.

813328, 775279

DESCRIPTION

MAP SHEETS

1:1000
2285-17 2295-12

OS
Authorised
Internet Map

Any person using any part of this map is deemed to be using it as a reference only. The Ordnance Survey is not responsible for any loss or damage caused by its use.

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3.3

Works at Longford Garda Station which do not materially affect the character of the protected structure or any element of the structure which contributes to its special architectural and/or social interest and, therefore, fall within the scope of the exemption provisions provided for under the scope of the said Regulations and section 57 of the Planning and Development Act, 2000.

In the case of Longford Garda Station (a protected structure) it is only works which are directly related to the change of use to dwellings which are at the heart of Querist's concerns. It is clearly the case that the proposed tympanum and replacement slated pitched roof are works which materially affect the architectural character of the structure. (There are no identified special elements.)

However, Article 10(6) regulates only "related works". If the tympanum and replacement slated roof are not directly related to the change of use, the exempted change of use is not de-exempted by these works. The test is whether the change of use could be effected without the rebuilding of the tympanum and the replacement slated pitched roof.

This certainly appears to be the case.

It follows therefore that there are no **related** works which materially affect the architectural character of the structure. Therefore it is my opinion that the exempted change of use is unaffected. The works which are unrelated to the change of use may, of course, require a permission.

3.4

NOTIFICATION FORM
EXEMPTED DEVELOPMENT - ARTICLE 10(6) CHANGE OF USE EXEMPTION

Name of Relevant Planning Authority: LONGFORD COUNTY COUNCIL
 Name of Notifier/Property Owner: BALLYMAHON ST., MANAGEMENT LTD.
 Name of Person/Agent Acting on behalf of Notifier/Property Owner (if any):
LIAM MADDEN

[Note: Contact Details to be supplied at the end of this form]

Notification of intention to avail of exempted development provisions under Article 10(6) of the Planning and Development Regulations 2001, as inserted by Article 2 of the Planning and Development (Amendment) (No. 2) Regulations 2018, at least two weeks prior to the commencement of the proposed change of use and any related works.

Notification Details Required:

Location of structure	Full Postal Address <u>Nº1. BREADEN'S LANE</u> <u>LONGFORD TOWN</u>	
	Eircode <u>NONE</u>	
Total number of Residential Unit(s)	number - e.g. 5 <u>4</u>	
Total Residential Floorspace (m²)	number - e.g. 642 <u>360 m²</u>	
	Number of bedrooms	Floorspace of unit (m²)
Residential Unit 1	number - e.g. 2 <u>2</u>	number - e.g. 84 <u>90</u>
Residential Unit 2	<u>2</u>	<u>90</u>
Residential Unit 3	<u>2</u>	<u>90</u>
Residential Unit 4	<u>2</u>	<u>90</u>
Residential Unit 5		
Residential Unit 6		
Residential Unit 7		
Residential Unit 8		
Residential Unit 9		

Date works will commence
 (Minimum of two weeks subsequent to date of notification)

15/02/2023
 dd/mm/yyyy

Signed (Notifier/ Agent as appropriate): Liam Madden Date: 19/1/23

SEE ATTACHED O.S. MAP & PHOTOS
IDENTIFYING PREMISES.

CONTACT DETAILS – NOT TO BE PUBLISHED

Notifier/Property Owner BALLYMAHON ST. MANAGEMENT LTD.

Address: C/O L. HERTERICH 38 BALLYMAHON ST.

Eircode: LONGFORD N39 D2 C4

Telephone number:

Mobile number:

E-mail address:

Person/agent (if any) acting on behalf of the Notifier/Property Owner

Address: LIAM MADDEN, CONVENT RD., LONGFORD

Eircode: N39 EE 72

Telephone number: 043-33-41151

Mobile number:

E-mail address: VITRUVIUS.HIBERNICUS@hotmail.com

(6) (a) In this sub-article—

‘habitable room’ means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

‘relevant period’ means the period from 8 February 2018 until 31 December 2025.

Commented [154]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2

Commented [155]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

- (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
- (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and
- (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

Commented [156]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(d)(i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall —

- (I) primarily affect the interior of the structure,
- (II) retain 50 per cent or more of the existing external fabric of the building, and
- (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

Commented [157]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

Commented [158]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.

Commented [159]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

Commented [160]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

Commented [161]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

Commented [162]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

Commented [163]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

Commented [164]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(x) No development shall relate to any structure in any of the following areas:

- (I) an area to which a special amenity area order relates;
- (II) an area of special planning control;
- (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of

establishment to which the Major Accident Regulations apply.

Commented [165]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(xi) No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

Commented [166]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

Commented [167]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(e) (i) Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure,

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and

(III) the Eircode for the relevant property,

shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

Commented [168]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).

Commented [169]: Substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022

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development.

11.

Development commenced prior to the coming into operation of this Part and which was exempted development for the purposes of the Act of 1963 or the 1994 Regulations, shall notwithstanding the repeal of that