WESTMEATH COUNTY COUNCIL
Comhairle Chontae na hIarmhí

An Bord Pleanala,
64 Marlborough Street,
Dublin 1
D01 V902

Date: 28 May 2025
Our Ref: S5-23-25

Re: **Rathcontrath Property Ltd**
To confirm that the current use of the site for the purposes of providing temporary protection to displaced persons under the European Union (Planning & Development) Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No.306/2022) does not require planning permission (ii) proposed change of use of Mearsecourt House to use as accommodation for protected persons at- Mearescourt House, Rowlandstown, Rathconrath, County Westmeath, N91 &405

Dear Sir/Madam,

In accordance with Section 5(4) of the Planning and Development Act 2000 (as amended), Westmeath County Council hereby refers the attached to the Board, being a request for a declaration on development and exempted development (Section 5) which was submitted to Westmeath County Council on 13 May 2025.

As the subject building is a protected structure, the above Section 5 application to Westmeath County Council was accompanied by an application for a Section 57 declaration regarding the proposed change of use.

The submitted documentation includes all correspondence in relation to S5-23-25 and the prescribed fee.

Yours faithfully,

Eamonn Brennan,
Administrative Officer,
Planning Department
Enc.

AN BORD PLEANÁLA
LDG- 060617-25
ABP-
05 JUN 2025
Fee: € 110.00 Type:
Time: By: POST

Áras an Chontae
Mullingar, County Westmeath | An Muileann gCearr, Contae na hIarmhí | N91 FH4N
tel: 044 9332000 | fax: 044 9342330 | email: info@westmeathcoco.ie | web: www.westmeathcoco.ie

MidlandsIreland.ie
gateway to growth

County Buildings
Mullingar,
Co. Westmeath
Telephone: (090) 6442100
Fax: (090) 6479020
E-mail: Finance@westmeathcoco.ie

Westmeath County Council

An Bord Pleanala
64 Marlborough Street Dublin 1
Ireland
D01V902

REMITTANCE ADVICE / FAISNÉIS ÍOCAÍOCHTA

Cheque No.	276593
Supp ID / Uimh. Aitheantais	13784
Date / Dáta	29/05/2025
Page / Leathanach	1/1

Your Ref/ Bhur dTagairt	Inv Date/ Dáta Sonraisc	Our Ref/ Ár dTagairt	AMOUNT/ SUIM EUR	Payable Íoctha EUR
Section 5 Referral	29/05/2025	30657264	110.00	110.00
PAGE TOTAL / IOMLÁN AN LEATHANAIGH		**EUR**	**110.00**	**110.00**
GRAND TOTAL / MÓRIOMLÁN		**EUR**	**110.00**	**110.00**

WH = Withholding Tax CT = Subcontractors Tax RA = Non Resident Landlord
INT = Late Payment Interest, Rate = 10.5% CMP = Late Payment Compensation

WESTMEATH COUNTY COUNCIL
Comhairle Chontae na hIarmhí

The Planning Partnership,
The Bank Building,
52 Oliver Plunkett Street,
Mullingar,
County Westmeath.
N91 FAA6

Date: 14/05/2025
Our Ref: S5-23-25

Re: Section 5 Application - S5-23-25
Request for Section 5 Declaration: Rathcontrath Property Ltd

A Chara,
I acknowledge receipt of your Section 5 Application received on the 13th May 2025 together with fee. I enclose receipt of €80.00 for your records.

Yours faithfully,

Grainne Coyle

Grainne Coyle
Clerical Officer
Planning Section

BY EMAIL & POST

Áras an Chontae
Mullingar, County Westmeath | An Muileann gCearr, Contae na hIarmhí | N91 FH4N
tel: 044 9332000 | fax: 044 9342330 | email: info@westmeathcoco.ie | web: www.westmeathcoco.ie

MidlandsIreland.ie
gateway to growth



Westmeath County Council,
Mullingar Area Office,
County Buildings, Mullingar
~~~~~~~~~~~~~~~~~~~~~~~~~~
E-Mail: secretar@westmeathcoco.ie
Web: www.westmeathcoco.ie
14/05/2025 15:08:36

Receipt No. : MAO/0/261602
***** REPRINT *****

S5-23-25

Planning Fees		80.00
GOODS	80.00	
VAT	0.00	
S5-23-25		

Total : 80.00 EUR

Tendered :
Credit/Laser Card 80.00

Change : 0.00

Issued By : Claire Daly
From : Mullingar Area office
Vat reg No.6517963W
~~~~~~~~~~~~~~~~~~~~~~~~~~

WESTMEATH COUNTY COUNCIL
Comhairle Chontae na h-Iarmhí

PLANNING DEPARTMENT
SECTION 5 APPLICATION

DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

1. **Applicant's Name:** Rathconrath Property Limited (c/o Sarah Tracey)

Applicants Address: Mearescourt House

Rowlandstown, Rathconrath, Co. Westmeath

N91 Y40H

Tel. No. 087 2555023 **Fax. No.** _____ **E-Mail** rathconrathpropertyltd@gmail.com

2. **Name of Agent (if any):** The Planning Partnership

Address: The Bank Building, 52 Oliver Plunkett Street,

Mullingar, Co. Westmeath

N91 FAA6

Tel. No. 044 931 0210
087 116 0181 **Fax. No.** _____ **E-Mail** mark@theplanningpartnership.ie
tomas@theplanningpartnership.ie

3. **Name and Address to which notifications should be sent:**

The Planning Partnership

The Bank Building, 52 Oliver Plunkett Street,

Mullingar, Co. Westmeath

N91 FAA6

4. **Location of Proposed Development:** Mearescourt House

Rowlandstown, Rathconrath, Co. Westmeath, N91 Y40H

5. **Description of Proposed Development:** (i) Confirm that the current use of the site for the purposes of providing temporary protection to displaced persons under the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022) does not require planning permission (ii) Proposed change of use of Mearescourt House to use as accommodation for protected persons (see Cover Letter).

6. **Is location a Protected Structure or within the curtilage of a Protected Structure? YES** **(delete as appropriate)**

RPS 017-009, RPS 017-010, RPS 017-011

7. **If yes to 6 above, has a Declaration under Section 57 (works affecting the character of a Protected Structure(s) or Proposed Protected Structure(s)) of the Planning and Development Act 2000-2010 been requested or issued for the property by the Planning Authority?**

YES **(delete as appropriate)**

8. **Applicants Interest in site:** Owner

9. **List of plans, drawings etc. submitted with this application:** OS Site Location Map

Section 5 Declaration Request Cover Letter (The Planning Partnership)

Floorplans: Current Use, Pre-existing Use, Proposed Use (3Dimensional)

9. **Signature of Applicant (or Agent)** Tom Stevens (Agent)

****

NOTES: (a) **Application must be accompanied by fee of €80.00**

(b) **Application must be accompanied by a copy of the following documentation:**

- **(i)** **site location map to scale 1:2500 clearly showing the site outlined in red and the extent of the site boundaries, the position of existing structures, etc., and the proposed work.**
- **(ii)** **site layout plan to scale 1:500 of the proposed development. All drawings to differentiate between the original building, all extensions and proposed development. Please indicate position of proposed development relative to premises and adjoining properties.**
- **(iii)** **Drawings, plans, photographs and other particulars necessary to identify and describe the matter to which the question relates**
- **(iv)** **Any relevant planning history (including details of any previous requests for related Section 5 requests/declarations)**

****

OFFICE USE ONLY

Ref. No. _____ **Date Received:** _____

Fee Received: € _____ **Receipt No.** _____

the planning partnership

The Bank Building
52 Oliver Plunkett Street
Mullingar
Co. Westmeath
N91 FAA6

t: +353 (0) 44 9310210
e: info@theplanningpartnership.ie
w: www.theplanningpartnership.ie

Principal Officer
Planning Department
Westmeath County Council
County Buildings
Mount Street
Mullingar
Co. Westmeath

13th May 2025
[By email: planning@westmeathcoco.ie,
cc. heritage@westmeathcoco.ie, buildheritage@westmeathcoco.ie]

-: SECTION 5 DECLARATION REQUEST :-

Dear Sir/Madam,

RE: SECTION 5 DECLARATION REQUEST IN RELATION TO CHANGE OF USE AT MEARESCOURT HOUSE, ROWLANDSTOWN TOWNLAND, CO. WESTMEATH

1.0 INTRODUCTION

1.1. Section 5 Declaration Request

The Planning Partnership, The Bank Building, 52 Oliver Plunkett Street, Mullingar, Co. Westmeath, acting on behalf of **Rathconrath Property Limited** (the 'Declaration Applicant'), Mearescourt House, Rowlandstown, Rathconrath, Co. Westmeath, hereby seeks a declaration from Westmeath County Council under Section 5 of the Planning and Development Act 2000, as amended. The associated fee of €80.00 will be supplied.

1.2. Structure of this request for a Section 5 Declaration

Section 1 of this letter presents a summary of our planning opinion and the scope and questions of the subject request for a Section 5 Declaration.

Section 2 introduces the context of the subject site and its planning history, and a review of the previous Section 5 Declaration(s).

Section 3 presents the statutory provisions of the Planning and Development Act, 2000 (as amended), the Planning and Development Regulations, 2001 – 2025, and the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022) which are considered relevant to the subject request for a Section 5 Declaration.

Section 4 presents our Planning Opinion on the scope and questions of the subject request, as set out below.

3. Summary of our Planning Opinion

The purpose of this request for a Section 5 Declaration is to confirm our understanding of the following matters:

- That the provisions of the Planning and Development Act 2000, as amended, (other than Sections 181 and 181A to 181C) do not apply to the current use of the site for the purposes of providing temporary protection to displaced persons under the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022).

- Following the above, that the current use of the site does not require planning permission or a declaration that such use is or is not exempted development until such a time that the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4th March 2022 comes to an end (i.e. as currently extended to 4th March 2026).

- That a precedent has been established by An Bord Pleanála that would enable Westmeath County Council to declare such classes of development under S.I. No. 306/2022 to be development and exempted development.

- Separate to the above, that the proposed change of use to use as accommodation for protected persons represents a change in tenure only which does not constitute development.

- If the Planning Authority do not accept the above, that the proposed change of use from use as a premises providing overnight accommodation or part thereof to use as accommodation for protected persons is development and is exempted development.

- If the Planning Authority do not accept the above, that the proposed change of use from use as a guesthouse or part thereof to use as accommodation for protected persons is development and is exempted development.

- That the Planning Authority are not precluded from being able to issue a declaration under Section 5 on the proposed change of use due to the current use of the site.

1.4. Scope and questions of subject request for a declaration under Section 5

In the first instance, we note and emphasise that this is not a planning application, and that the purpose of this request for a declaration under Section 5 is not to determine the merits or acceptability of the referred development at the subject site in terms of the proper planning and sustainable development of the area.

In this regard, we specifically note and highlight Section 4 (2) (a) (i) of the Planning and Development Act, 2000 (as amended), which sets out that regulations may provide for any class of development to be exempted where the Minister is of the opinion that "*by reason of the size, nature or limited effect on its surroundings, of development belonging to that class,* ***the carrying out of such development would not offend against principles of proper planning and sustainable development***". That is to say, where a Minister has set out a class of development to be exempted development, it has already been determined and established that the carrying out of such development would not offend against the principles of proper planning and sustainable development.

It is recognised that the change of use as referred herein is proposed to take place in a Protected Structure (see below). The subject request for a declaration under Section 5 of the Planning and Development Act 2000 (as amended) should be read in conjunction with the accompanying request

for a declaration under Section 57 of the Act, to determine whether the matters raised herein constitute works that would materially affect the protected structure.

Also of relevance in determining the scope of this request is Section 181 of the Planning and Development Act, 2000 (as amended), as refers to regulations that may provide for the non-application of the Planning and Development Act 2000 (except for Sections 181 and 181A to 181C of the Act) to certain classes of development for as long as the regulations are in force.

In these circumstances, we request that the scope of this determination is structured around the following questions:

(a) On the matter of the current use

1. Whether the current use of the site for the purposes of providing temporary protection to displaced persons under the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022) is or is not development and is or is not exempted development.

(b) On the matter of a change in tenure only

2. Whether the change of use to use as accommodation for protected persons represents a change in tenure only.

3. Following the above, whether a change in tenure is or is not development and is or is not exempted development.

(c) On the proposed change of use from use as a premises providing overnight accommodation

4. Whether the change of use from use as a premises providing overnight accommodation or part thereof to use as accommodation for protected persons is or is not development and is or is not exempted development.

(d) On the proposed change of use from use as a guesthouse

5. Whether the change of use from use as a guesthouse or part thereof to use as accommodation for protected persons is or is not development and is or is not exempted development.

0 CONTEXT

2.1 Site Location and Description

The site to which this request for a declaration under Section 5 refers is located at Mearescourt House in Rowlandstown Townland, Co. Westmeath, ca. 6km northwest of Rathconrath. Access to the site is provided via an existing access point on the L-1914.

The site comprises Mearescourt House, a Protected Structure (RPS Reference: 017-009), which is described in the NIAH (Record Reference: 15401711) as being of 'National' significance. The NIAH identify its current use, as per the survey date of November 2004, as a "Guest House/B&B".

There is a recorded archaeological monument (Reference: WM017-013, Castle-unclassified) located to the rear of the house.

Also relevant to this request is the stable block complex to the west of Mearescourt House (RPS Reference: 017-010, NIAH Record Reference: 15401712), described by the NIAH as being of 'Regional' significance.

To the rear of Mearescourt House is the walled garden (RPS Reference: 017-011, NIAH Record Reference: 15401713), which the NIAH describe are of 'Regional' significance, and which "act as an interesting historical reminder of the extensive organisation and the high level of resources needed to maintain a large country demesne in Ireland during the eighteenth and nineteenth centuries."

2.2 Planning History

The relevant planning history for the site to which this request for a declaration under Section 5 refers is summarised below.

Planning Application Register Reference:	96/1045
Applicant:	Brendan Pendred
Date Lodged	23rd December 1996
Development Description	Installation of septic tank and percolation area.
Decision Date	22nd February 1997
Outcome:	Granted (Conditional)

The following additional planning history records are noted, being in the surrounding area:

Planning Application Register Reference:	97/613
Applicant:	Eithne & Brendan Pendred
Date Lodged	27th June 1997
Development Description	Extension and alterations to existing cottage and septic tank.
Decision Date	26th August 1997
Outcome:	Granted (Conditional)

Planning Application Register Reference:	04/5158
Applicant:	Mary Dalton
Date Lodged	16th March 2004
Development Description	Constructing a dwelling house with septic tank, percolation area and a detached garage.
Decision Date	6th May 2004
Outcome:	Granted (Conditional)

WESTMEATH COUNTY COUNCIL
Comhairle Chontae na hIarmhí

The Planning Partnership,
The Bank Building,
52 Oliver Plunkett Street,
Mullingar,
County Westmeath.
N91 FAA6

Date: 14/05/2025
Our Ref: S5-23-25

Re: Section 5 Application - S5-23-25
Request for Section 5 Declaration: Rathcontrath Property Ltd

A Chara,
I acknowledge receipt of your Section 5 Application received on the 13th May 2025 together with fee. I enclose receipt of €80.00 for your records.

Yours faithfully,

Grainne Coyle

Grainne Coyle
Clerical Officer
Planning Section

BY EMAIL & POST

Planning Application Register Reference:	06/5285
Applicant:	George Tracey
Date Lodged	12th June 2006
Development Description	Retention of as built machinery storage shed in addition to planning permission being sought for the construction of three additonal buildings comprising of the following:- (1) building no. 1 is for a stable/haybarn; building no. 2 is for an indoor arena for the schooling of hunters, show jumpers and dressage horses; building no. 3 is for the housing of classic and vintage cars together with concrete wash apron and silage slab, landcaping, staff carparking site works and ancillary site services at Mearscourt House - Protected Structure Ref. No. B239
Decision Date	22nd February 2007
Outcome:	Granted (Conditional)

2.3 Previous Section 5 Declarations

Two requests under Section 5 of the Planning and Development Act 2000, as amended, have previously been made to Westmeath County Council by the Declaration Applicant to date.

The first request was made on 18th November 2024 (Reference: S5-49-24) in relation to the following:

> *Property upgrade to include conversion of existing house/B&B into accommodation for use under SI 376 for multi family occupancy.*

By order dated 13th December 2024, the Planning Authority declared that the proposed development is development and is not exempted development.

A second request was made on 20th January 2025 (Reference: S5-02-25) in relation to the following:

> *Change the current hotel and asylum seeker centre to accommodation multi family occupancy under SI 376. No structural alterations are required as the hotel which comprises of a large Georgian House and accompanying courtyard is occupied by 70 people with capacity of 85 people. The hotel which has run for several years has held over 30 weddings including numerous events and festivals such as Music at Meares – sponsored by Westmeath County Council.*

By order dated 14th February 2025, the Planning Authority declared that the proposed development is development and is not exempted development.

For clarity, we understand that previous references to the use of the site as a hotel were mistaken, and that our understanding of the pre-existing use of Mearescourt House was as being a house with limited "guesthouse" use which in our view, is enabled by the exemptions provided under Article 10 (4) of the Planning and Development Regulations 2001 – 2025 (please refer to Section 4.4 below for further discussion).

Furthermore, where we recognise that the previous Section 5 (S5-02-25) referred to an occupancy "*by 70 people with capacity of 85 people*", for clarity it is our understanding that these figures were provided on the basis of the current use of the site for displaced persons, not as potential occupancy for international protected persons following the change of use.

3.0 STATUTORY PROVISIONS

3.1 Planning and Development Act, 2000 (as amended)

Part I

Section 2 (1) of the Planning and Development Act, 2000 (as amended) states as follows:

2.— (1) In this Act, except where the context otherwise requires —

"development" has the meaning assigned to it by Section 3, and "develop" shall be construed accordingly;

"exempted development" has the meaning specified in Section 4;

"protected structure" means—
(a) a structure, or
(b) a specified part of a structure,
which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 of the Planning and Development Act, 2000 (as amended) states as follows:

3.— (1) In this Act, except where the context otherwise requires, "development" means—
(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or

Section 4 of the Planning and Development Act, 2000 (as amended) sets out various circumstances in which development is exempted development for the purposes of the 2000 Act. We note the following extracts as being of particular relevance:

4.— (1) The following shall be exempted developments 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;

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—
(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or [...]

(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

(3) A reference in this Act to exempted development shall be construed as a reference to development which is—
(a) any of the developments specified in subsection (1) or (1A), or
(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 57 of the Planning and Development Act, 2000 (as amended) refers to works affecting the character of protected structures. We note the following extracts as being of relevance:

57.—(1) Notwithstanding section 4(1) (a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—
(a) the structure, or
(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.

Section 181 of the Planning and Development Act, 2000 (as amended), states as follows:

181.—(1) (a) The Minister may, by regulations, provide that, except for this section and sections 181A to 181C, the provisions of this Act shall not apply to any specified class or classes of development by or on behalf of a State authority where the development is, in the opinion of the Minister, in connection with or for the purposes of public safety or order, the administration of justice or national security or defence and, for so long as the regulations are in force, the provisions of this Act shall not apply to the specified class or classes of development.

3.2 Planning and Development Regulations 2001 – 2025

Article 6 of the Planning and Development Regulations 2001 – 2025 states as follows:

6. (1) 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.

Article 9 of the Planning and Development Regulations 2001 – 2025 states as follows:

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act —
(a) if the carrying out of such development would—
(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

Article 10 of the Planning and Development Regulations 2001 – 2025 states as follows:

10. (4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

We note the following excerpts from Schedule 2, Part 1 'Exempted Development – General' as being of particular relevance:

Column 1 **Description of Development**	**Column 2** **Conditions and Limitations**
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	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.

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.	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.

3.3 European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022)

We note the following extracts:

3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.

SCHEDULE

Article 3

1. Reception and integration facilities.

2. Residential accommodation, including ancillary recreational and sporting facilities.

3. Medical and other health and social care accommodation.

4. Education and childcare facilities, including ancillary recreational and sporting facilities.

5. Emergency management coordination facilities.

6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.

7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

0 PLANNING OPINION

3. On the matter of the current use

In the first instance, we refer to Question 1 as follows:

1. Whether the current use of the site for the purposes of providing temporary protection to displaced persons under the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022) is or is not development and is or is not exempted development.

We understand that that the site is currently in use to provide temporary accommodation for displaced persons from Ukraine, and that the use of the site for this purpose has been undertaken under the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022).

In this regard we note and highlight that a contract for "*the provision of accommodation and ancillary services for refugees arriving in Ireland as a result of the Ukrainian conflict*" at Maerscourt House [*sic.*] was signed between Rathconrath Property Limited and the Department of Children, Equality, Disability, Integration and Youth (DCEDIY) in August 2022 following a tender process.[1] Another award of contract to Rathconrath Property Limited for this provision is also recorded in November 2024.[2]

We also note that the site has been identified as a property for which Beneficiaries of Temporary Protection Accommodation (BOTPs) are provided on behalf of and supported by the DCEDIY.[3] This use of the site has also been recognised locally, for example in the Westmeath County Childcare Committee Integration Team (December 2022) *Stay and Play* report.[4]

We note the following extract from the 2022 tender award as referred above, which contextualises the urgent need for accommodation and ancillary services for refugees arriving in Ireland as a result of the Ukrainian conflict and the emergency legislation enacted in response to the same:

> *Arising out of the unfolding humanitarian crisis and displacement of Ukrainians as a result of the ongoing war in Ukraine since 24 February 2022 and the numbers of Ukrainian refugees arriving in to Ireland, the Contracting Authority in order to accommodate such refugees as beneficiaries under the Temporary Protection Directive 2001/55/EC, as activated by EU Council Decision 2022/382, has entered into a number of arrangements to provide accommodation for these beneficiaries in the short to medium term. Given the large number of refugees seeking accommodation and the urgency involved, the Contracting Authority was not in a position to procure the necessary contract(s) by advertising openly. Rather, the Contracting Authority has formed the view that in view of such urgency and in furtherance of the Council Implementing Decision (EU) 2022/382 of 4 March 2022 that it was open to the Contracting Authority to rely on the exception under the applicable EU procurement Directive 2014/24 to negotiate directly without prior publication to put in place a number of short service contracts.*
>
> *The Department's reliance on this derogation was confirmed by two separate communications from the European Commission 8 and 23 March 2022 which states that "Member States that need to ramp up reception capacity to provide shelter, supplies and services can make use of*

[1] https://irl.eu-supply.com/ctm/Supplier/PublicTenders/ViewNotice/268049
[2] https://ojeu.com/ojdblnk/view-notice.php?id=4084508
[3] Please refer to https://data.oireachtas.ie/ie/oireachtas/debates/questions/supportingDocumentation/2022-11-17_pq-240-17-11-22_en.docx (2022) and https://data.oireachtas.ie/ie/oireachtas/debates/questions/supportingDocumentation/2023-02-07_pq539-31012023_en.docx (2023)
[4] https://westmeathchildcare.ie/wp-content/uploads/2023/01/Integration-Report-Final.pdf

the rules foreseen for urgent public procurement, as was the case during the migration crisis of 2015-16 and the COVID-19 pandemic".

On this basis the Department has chosen to enter into short term contracts with the providers listed, in the context of an ongoing emergency response to a humanitarian crisis.[5]

The European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022[6]) were enacted for the purpose of giving effect to Council Directive No 2001/55 EC (the Temporary Protection Directive) and Council Implementing Decision EU 2022/382 of 4th March 2022, as referred in the quoted extract above.

The purpose of S.I. No. 306/2022 is to provide immediate protection in EU countries for persons displaced by the Russian invasion of Ukraine, including the provision of emergency accommodation and support to these displaced persons. These Regulations **continue to be in effect for the duration of temporary protection** activated by European Union Council Decision EU 2022/382 of 4 March 2022. In this regard, we note and highlight Council Implementing Decision (EU) 2024/1836 of 25th June 2024 **extends this temporary protection to 4th March 2026** (see below for further discussion).

S.I. No. 306/2022 refers to the **non-application of the Planning and Development Act 2000 (as amended) – other than Sections 181 and 181A to 181C of the Act – to certain classes of development** by or on behalf of a State authority during the relevant period. In this regard, we refer to Section 181 of the Planning and Development Act, 2000 (as amended), which states as follows:

181.—(1) (a) The Minister may, by regulations, provide that, except for this section and sections 181A to 181C, the provisions of this Act shall not apply to any specified class or classes of development by or on behalf of a State authority where the development is, in the opinion of the Minister, in connection with or for the purposes of public safety or order, the administration of justice or national security or defence and, for so long as the regulations are in force, the provisions of this Act shall not apply to the specified class or classes of development.

We note and highlight the following extracts from S.I. No. 306/2022 [***our emphasis***]:

*3. (1) **The Act of 2000 (other than sections 181A to 181C) shall not apply** to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.*

SCHEDULE

Article 3

1. Reception and integration facilities.

*2. **Residential accommodation**, including ancillary recreational and sporting facilities.*

3. Medical and other health and social care accommodation.

4. Education and childcare facilities, including ancillary recreational and sporting facilities.

5. Emergency management coordination facilities.

[5] https://irl.eu-supply.com/ctm/Supplier/PublicTenders/ViewNotice/268049
[6] https://www.irishstatutebook.ie/eli/2022/si/306/made/en/print

6. ***Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities***.

7. ***Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6***.

Per the above, it is our understanding that the existing use of the site for the purposes of providing accommodation and ancillary facilities to displaced persons has been undertaken under S.I. No. 306/2022, as includes:

- Residential accommodation.
- Structures or facilities ancillary to this residential accommodation
- Infrastructure and other works ancillary to the above.

Please refer to the following accompanying drawings prepared by 3Dimensional, as relate to the current use of Mearescourt House and adjacent courtyard in their entirety for the purposes of providing accommodation and ancillary facilities to displaced persons under S.I. No. 306/2022:

- MHM-101 Lower Ground Floor Current Use
- MHM-102 Upper Ground Floor Current Use
- MHM-103 First Floor Current Use
- MHM-104 Second Floor Current Use
- MHM-105 Courtyard Ground Floor Current Use

The provisions of the Planning and Development Act 2000 (other than Section 181 and Sections 181A to 181C) **do not apply** to these classes of development – as disapplies the provisions and associated requirements of, *inter alia*, Section 4, Section 5, Section 57 of the Act for so long as the Regulations are in force, i.e. until such a time that the temporary protection given to displaced persons comes to an end.

In this regard, we note and highlight Council Implementing Decision (EU) 2024/1836 of 25th June 2024 **extends the temporary protection as introduced by Implementing Decision (EU) 2022/382[7] to 4th March 2026**, wherein Article 1 states:

> *The temporary protection given to persons displaced from Ukraine referred to in Article 2 of Implementing Decision (EU) 2022/382, and extended by Implementing Decision (EU) 2023/2409, is extended for a further period of 1 year, until 4 March 2026.*

S.I. No. 306/2022 refers to the 'non-application' of the Planning and Development Act 2000 to certain classes of development until such a time that the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 comes to an end (i.e. 4th March 2026, as per Council Implementing Decision (EU) 2024/1836), and therefore those classes of development do not require planning permission.

That is to say, the existing use of the site for the provision of residential accommodation for displaced persons, structures or facilities (including administration and storage facilities) ancillary to this residential accommodation, and infrastructure and other works ancillary to the above **currently do not require planning permission**.

[7] https://eur-lex.europa.eu/eli/dec_impl/2024/1836/oj/eng

Furthermore, we present that a precedent has been established by An Bord Pleanála that would enable Westmeath County Council to declare such classes of development under S.I. No. 306/2022 to be **development and exempted development**.

161 Shanakiel, Shanakiel Road, Cork City (An Bord Pleanála Case Reference: RL28.320219)

Whether proposed change of use of former medical consulting rooms (now vacant) to a hostel is or is not development or is not exempted development; (2) Whether works consisting of replacement of window with two new windows, blocking up of door, removal of a window and its replacement with a new door is or is not development or is or is not exempted development.

We note and highlight the following extracts from the Board Inspector's Report:

> *S.I. No. 306/2022*
> *9.2.19. This legislation provides for the non-application of the Planning and Development Act 2000 (as amended) for certain classes of development including Article 3, class 2 which provides for development comprising residential accommodation, for displaced persons.*
>
> *9.2.20. The proposed development comprises residential accommodation for both displaced persons and persons seeking International Protection.*
>
> *9.2.21. I therefore consider that the proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons (or persons seeking international protection) is development which is exempt development under S.I. 306/2022.*
>
> *9.3.5. S.I. No. 306/2022 also provides an exemption for all development associated with provision of residential accommodation for displaced persons including any associated works and in this regard the works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door are also considered development which is exempted development.*

The separate question may be asked at such a time that the temporary protection given to displaced persons comes to an end as to whether the continuation of development afforded by S.I. No. 306/2022 is or is not development and is or is not exempted development, i.e. then requires planning permission or a declaration confirming exemption.

However, it is considered that **such a question is premature** wherein such a date is currently understood to be 4th March 2026, and furthermore recognising the changing context in terms of the war in Ukraine (noting Council Implementing Decision (EU) 2024/1836 and the potential for further extensions to the temporary protection given to persons displaced from Ukraine), the upcoming implementation of the Planning and Development Act 2024, and potential revisions / re-issue of the Planning and Development Regulations associated with the 2024 Act.

As such, we respectfully present that Westmeath County Council are able to determine that the current use of the site **does not require planning permission**, until such a time that the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4th March 2022 comes to an end (i.e. currently 4th March 2026, but subject to possible further extension).

Furthermore, per the precedent that has been established by An Bord Pleanála, Westmeath County Council are able to declare such classes of development under S.I. No. 306/2022 to be **development and exempted development**.

2. Preamble to Questions 2 – 5

In the first instance, we wish to clarify that the change of use of the site as referred in Questions 2 – 5 of this request for a declaration under Section 5 relates to the condition of the site prior to the commencement of the current, temporary use to provide accommodation for displaced persons from Ukraine. That is to say, these questions relate to the use of the site that would be reverted to at a time that a use as enabled under S.I. No. 306/2022 is discontinued.

Furthermore, we wish to clarify that the proposed change of use of the site as referred in Questions 2 – 5 of this request for a declaration under Section 5 relates to Mearescourt House only, and not the adjacent courtyard. These questions are <u>not</u> being asked of the courtyard area.

In this regard, please refer to the following accompanying drawings prepared by 3Dimensional, as relate to the pre-existing use of Mearescourt House:

- MHM-201 Lower Ground Floor Pre-Existing
- MHM-202 Upper Ground Floor Pre-Existing
- MHM-203 First Floor Pre-Existing
- MHM-204 Second Floor Pre-Existing

Please also refer to the following accompanying drawings prepared by 3Dimensional, as relate to the proposed use of Mearescourt House:

- MHM-301 Lower Ground Floor Proposed Use
- MHM-302 First Floor Proposed
- MHM-303 Upper Ground Floor Proposed
- MHM-304 Second Floor Proposed

The proposed change of use relates to Mearescourt House in its entirety, as discussed in more detail below. That is to say, where the drawings present changes as relate to guest bedrooms to bedrooms, residents would continue to avail of the existing services and facilities of the house, as comprise, *inter alia*, kitchen, dining, laundry facilities, that have always served the occupants of those bedrooms.

4.3. On the matter of a change in tenure only

We refer to Questions 2 and 3 as follows:

2. Whether the change of use to use as accommodation for protected persons represents a change in tenure only.

3. Following the above, whether a change in tenure is or is not development and is or is not exempted development.

In this regard, we refer to the precedent as established by An Bord Pleanála that would enable Westmeath County Council to determine that the proposed change of use represents a **change in tenure only**, and **does not constitute development**:

<u>**The Rock Centre, Ballinamore, Co. Leitrim (An Bord Pleanála Case reference: RL12.307077)**</u>

Whether the use of The Rock Centre for use as a protection centre for protected persons is or is not development or is or is not exempted development..

We note and highlight the following extracts from the Board Inspector's Report:

8.2.3. Each of the questions also query whether a change of use of the apartments has arisen and if a change of use has arisen, is this material for planning purposes. [...]

8.2.6. The next issue to consider from the questions, is whether or not the current use of the permitted apartments conforms to a change of use that would be material. [...]

8.2.7. Correspondence between representatives of the referrer and the Chief State Solicitor's Office dated the 7th day of November, 2019, states that the Minister for Justice and Equality has not entered into any contract to establish an EROC in Ballinamore. Subsequent correspondence between these parties dated the 29th November, 2019, clarifies that 25 families would occupy the subject 25 apartments, which would be used on an 'own-door independent living basis', with no communal living facilities. Having visited the referral site, it is clear that the residential accommodation is being operated in a manner similar to other apartment developments, with gated access and servicing by a management and security suite. Facilities beyond those that would normally form part of an apartment complex were not in evidence and the facility does not feature any particular additional reception, orientation or care services. The facility is not operating as an emergency reception for the care of protected persons, it is being operated as residential accommodation, as per the permitted use and the status or personal circumstances of the apartment residents is not a material planning issue. I am satisfied that the current use of the apartments is not as a facility for the reception and care of protected persons and does not constitute a change of use from the permitted use and, therefore, does not constitute development.

We consider that this precedent is highly relevant to the subject request. The original use of the subject site, being the use as established before 1st October 1964, was the residential use of the house. For clarity, this can be understood as falling under the definition of a "house" as presented in Section 2(1) of the Planning and Development Act 2000 (as amended):

> *"house" means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;*

The occupancy of that dwelling can be understood in terms of (a) the quantity of bedrooms and (b) the services and facilities of the house, as comprise, *inter alia*, kitchen, dining, laundry facilities, that serve the occupants of those bedrooms. These bedrooms do not comprise additional dwellings, a flat, or an apartment – they are bedrooms within the house, and benefit from the services and facilities of that house.

For clarity, it is not proposed to sub-divide the house into multiple individual residential 'units', rather to simply occupy the existing bedrooms within the house. That the house has a large number of bedrooms and their associated facilities and services are of an appropriate scale to serve the same is well-established, i.e. before 1st October 1964.

The proposed change of use represents the intention to occupy those bedrooms in the house – i.e. **a change in tenure only**. The use of those bedrooms would be the exact same use as before – i.e. their use as a bedroom only – whereby the residents would continue to avail of the existing services and facilities of the house, as comprise, *inter alia*, kitchen, dining, laundry facilities, that have always served the occupants of those bedrooms. Per ABP-307077-20 as referred above, *"the status or personal circumstances of the [...] residents is not a material planning issue"*.

The use of the site as residential accommodation would continue to be the case. No additional works or changes to the house or bedrooms within the house are required to facilitate this use, and no

additional facilities beyond those that normally form part of the house are proposed. No permission or exemption is being sought for any non-residential use.

As such, it is respectfully presented that Westmeath County Council are able to declare that the proposal represents a **change in tenure only**, and that this **does not constitute development**.

4.4. On the proposed change of use from use as a premises providing overnight accommodation

If the Planning Authority do not accept the planning opinion presented in Section 4.3 above, and consider that subject proposal represents a material change in use, we respectfully present that such a change in use would fall under the exemptions provided by the Planning and Development Act, 2000 (as amended) and/or Planning and Development Regulations 2001 – 2025.

We therefore refer to Question 4 as follows:

4. Whether the change of use from use as a premises providing overnight accommodation or part thereof to use as accommodation for protected persons is or is not development and is or is not exempted development.

In this regard, we refer to the following relevant precedent as established by An Bord Pleanála:

The Rock Centre, Ballinamore, Co. Leitrim (An Bord Pleanála Case reference: RL12.307077)

Whether the use of The Rock Centre for use as a protection centre for protected persons is or is not development or is or is not exempted development..

We note and highlight the following extracts from the Board Inspector's Report:

> *8.3.1. I am satisfied that in response to the referrer's questions, development has not currently taken place on the referral site. However, should the Board consider otherwise and to comprehensively address the changes that were not in evidence, although they were asserted by the referrer to have taken place, below I consider the provisions set out within Articles 5(1), 6(1), 9(1) and 10(1) of the Regulations and whether any exemptions would apply.*
>
> *8.3.3. Part 1 of Schedule 2 to the Regulations deals with general exempted development, including the conditions and limitations to the exemptions, if any. Development consisting of a change of use from various guest accommodation, religious, defence barracks and other premises, as well as residential institutions providing overnight accommodation, to use for accommodation for protected persons and use as an EROC for protected persons is exempt under Classes 14(h) and (i). There are no conditions or limitations listed beside these exemption classes. The exemption does not specifically refer to a change from residential accommodation, apartments or a category to which the subject permitted use would reasonably fall into, but the exemption does refer to a change from 'other premises'. The Regulations do not specifically define a 'premises', but they do define a 'business premises' and an 'excluded premises'. Based on the definitions, a block of apartments is an 'excluded premises' and therefore not a 'business premises' for the purposes of the Regulations. A standard dictionary definition for a 'premises' is as a house or other building and the land on which it is built. I am satisfied that the subject block of apartments can therefore be considered under the term 'other premises' for the purposes of Class 14, providing residential or overnight accommodation. Accordingly, I consider that the use of the apartments for the reception and care of protected persons or as accommodation for protected persons comes within the scope of the exempted development provided for under Classes 14(h) and (i) of Part 1 of Schedule 2 to the Regulations.*

While we recognise that the exemption under Class 14 (h) of Schedule 2 Part 1 of the Planning and Development Regulations 2001 – 2025 does not specifically refer to a change from residential accommodation, as per the above extracts the exemption does refer to a change from 'other premises'.

Following the precedent set by the above, it can be considered that a 'premises' is a house or other building and the land on which it is built.

Attention is similarly drawn to the definition of 'excluded premises' as presented in Article 5 (1) of the Planning and Development Regulations 2001 – 2025 [our emphasis]:

> *"excluded premises" means—*
>
> *(c)* ***any structure which was designed for use as one or more dwellings****, except such a structure which was used as business premises immediately before 1 October, 1964 or is so used with permission under the Act;*

We note that the restrictions described under (c) do not apply to the subject site, which has not been used as a business premises (as defined in Article 5(1) of the Regulations) before 1st October 1964 and is not used as a business premises by way of a permission under the Act (please refer to Section 4.5 below for discussion on the distinction between "business premises" and "excluded premises", of which guesthouse comes under the latter).

It is therefore presented that Mearescourt House is a 'premises' and can be considered under the term 'other premises' providing overnight accommodation, and therefore it can be considered that the use of the house as accommodation for protected persons comes within the scope of the exempted development provided for under Class 14 (h).

As such, it is respectfully presented that Westmeath County Council are able to declare that the proposed change of use from use as a premises providing overnight accommodation or part thereof to use as accommodation for protected persons **is development and is exempted development**.

4.5. On the proposed change of use from use as a guesthouse

If the Planning Authority do not accept the planning opinion presented in Sections 4.3 and 4.4 above, we thereafter refer to Question 5 as follows:

5. Whether the change of use from use as a guesthouse or part thereof to use as accommodation for protected persons is or is not development and is or is not exempted development.

It is our understanding, through communication with the Declaration Applicant, that the prior use of Mearescourt House was principally as a house, but that some use for the purposes as guest accommodation (i.e. a "guesthouse") has existed from as far back as the 1970s, as carried out by the previous owners of the property. The use of the site for this purpose is reflected in the NIAH survey dated November 2004, which refers to the use as a "Guest House/B&B".

Based on communication with the Declaration Applicant, the guesthouse use of Mearescourt House in recent years has been of a limited scale, and undertaken in good faith in the understanding that such use was exempted development under Article 10 (4) of the Planning and Development Regulations 2001 – 2025:

> *10. (4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that*

such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

In this regard, please refer to the following accompanying drawings prepared by 3Dimensional, as relate to the pre-existing use of Mearescourt House and present the guest bedrooms of the house:

- MHM-203 First Floor Pre-Existing

Wherein we note the exemption provided under Article 10 (4) relates to the use of bedrooms in a house as "overnight guest accommodation", and that Article 5 (1) refers to "guest house or other premises ... providing overnight guest accommodation", it would be our view that the use of Mearescourt House (or the part thereof to which Article 10 (4) applies) is as a house and guest house providing overnight guest accommodation, as reflected in the NIAH survey dated November 2004, and furthermore that such use is exempted development under Article 10 (4).

It is our view that there is no distinction between the use "as overnight guest accommodation" and guesthouse, and furthermore that this use does not necessarily constitute a business use (e.g. as would more appropriately relate to a hotel or hostel). In this regard we note the following extract from Article 5 (1) of the Planning and Development Regulations 2001 – 2025 which clearly states the same [***our emphasis***]:

5. (1) In this Part—
"business premises" means—
(b) a hotel, hostel (other than a hostel where care is provided) or public house, or

"excluded premises" means—
(b) ***any guest house or other premises*** *(not being a hotel or a hostel)* ***providing overnight guest accommodation****, block of flats or apartments, club, or boarding house, or,*

For clarity, we recognise that previous references to the use of the site as a hotel are mistaken, and that the use is understood as being a house with limited "guesthouse" use which, in our view, is enabled by the exemptions provided under Article 10 (4) of the Planning and Development Regulations 2001 – 2025.

Furthermore, where we recognise that the previous Section 5 (S5-02-25) referred to an occupancy *"by 70 people with capacity of 85 people"*, for clarity it is our understanding that these figures were provided on the basis of the current use of the site for displaced persons, not as potential occupancy for international protected persons following the change of use.

As such, it is respectfully presented that Westmeath County Council are able to declare that the proposed change of use from use as a guesthouse or part thereof to use as accommodation for protected persons **is development and is exempted development**.

4.6. Conditions, limitations, or other potential restrictions on exemptions

Following the above, it is presented that the proposed change of use from use as a premises providing overnight accommodation and / or from use as a guesthouse to use as accommodation for protected persons constitutes exempted development in accordance with the exemptions provided under Article 6 (1) of the Planning and Development, Regulations 2001 – 2025, of which Class 14 (h) of Schedule 2, Part 1, specifically applies:

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,

The following Condition and Limitation associated with Class 14 (h) is noted, and the Declaration Applicant recognises and accepts the same as not being applicable to the subject proposal (i.e. no persons or resident carers so described are intended to avail of the proposed use):

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.

It is also recognised that Article 9 (1) of the Planning and Development Regulations, 2001 – 2025, relates to restrictions on exemptions, as referred in the following relevant extracts:

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act —
(a) if the carrying out of such development would—
(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

In relation to 9 (1) (a) (i), whether the carrying out of the development would contravene a condition attached to a permission issued under the Act or if it would be inconsistent with any use specified in a permission under the Act, the review of the Planning History presented in Section 2.2 above does not indicate any permission under the Act to which such a contravention or inconsistency may be considered to apply. For the reasons presented in the above planning opinion, we present that any existing use does not require planning permission under the Act.

In relation to 9 (1) (a) (vi), it is presented that the proposed change of use is in keeping with the original residential use of the site (i.e. occupation of existing bedrooms, as benefit from the existing services and facilities of the house), and furthermore does not comprise works which might interfere with the character of the local landscape, or a view or prospect of special amenity value or special interest (e.g. associated with the protected structure).

In relation to 9 (1) (a) (vii) and (viiA), the proposed change of use would not involve any excavation, alteration or demolition activities to any places, etc., or archaeological monuments as referred.

In relation to 9 (1) (a) (viii), the proposed change of use does not comprise works as might fall under an understanding of "extension, alteration, repair or renewal", and furthermore, we present that the use of the site is not an unauthorised use.

We also recognise Section 57 of the Planning and Development Act, 2000 (as amended), as refers to works affecting the character of protected structures with following extracts as being of relevance [***our emphasis***]:

> *57.—(1) Notwithstanding section 4(1) (a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), **the carrying out of works** to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*
> *(a) the structure, or*
> *(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.*
>
> *(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.*

The subject request for a declaration under Section 5 of the Planning and Development Act 2000 (as amended) should be read in conjunction with the accompanying request for a declaration under Section 57 of the Act, to determine whether the matters raised herein constitute works that would materially affect the protected structure.

We note the following relevant precedent established by An Bord Pleanála to be of relevance:

Former the Great Southern Hotel, St. Martin's Road, Rosslare, Co. Wexford (An Bord Pleanála Case reference: RL26.318709)

Whether works carried out to provide a care facility for IPAS refugees is or is not development or is or is not exempted development.

We note and highlight the following extracts from the Board's decision:

> *AND WHEREAS An Bord Pleanála has concluded that:*
>
> *(a) The works carried out to Lismore House Hotel to facilitate the temporary accommodation facility for international protection applicants would constitute development under Section 3(1) of the Planning and Development Act 2000, as amended.*
>
> *(b) The temporary change of use from hotel to accommodation for international protection applicants would constitute exempt development and would fall within the scope of Class 14 and Class 20F of Schedule 2 of Part 1 of the Planning and Development Regulations 2001 (as amended).*
>
> *(c) the works carried out 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 and would fall within the scope of the exemption provided by Section 4(1)(h) of the Planning and Development Act 2000, as amended,*
>
> *(d) However, it has not been satisfactorily demonstrated by the owner/occupier that the carrying out of the works to facilitate this temporary accommodation for international*

protection applicants does not materially affect the character of the Protected Structures, or any element of the structures which contributes to their special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest and is, therefore, not exempt development under Section 57 of the Planning and Development Act 2000 (as amended)

In reaching their decision that the referred development 'Is development and is not exempted development', the Board based their decision principally with regard to the status of the building as a protected structure. As seen, in all other aspects it is recognised that the relevant provisions of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 – 2025 **would provide that the development constitutes exempted development**.

We present that the provisions of the Planning and Development Act 2000, as amended, (other than Sections 181 and 181A to 181C) **do not apply to the current use of the site** – as includes Section 57 of the Act.

With regard to the **proposed change of use**, as presented above no additional works or changes to the house or bedrooms within the house are required to facilitate this proposal, and no additional facilities beyond those that normally form part of the house are proposed. As such, we believe that the precedent established by ABP-318709-23 does not apply to the subject proposal, which **does not propose the carrying out of any works required to facilitate the change of use** as might *"materially affect the character of the Protected Structures, or any element of the structures which contributes to their special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest".*

In this regard, we also refer to the following precedent as established by the Board:

Gaineville House, Multyfarnham, Co. Westmeath (An Bord Pleanála Case reference: RL3406)

Whether the use of a house as a residence for persons with an intellectual or physical disability is or is not development or is or not exempted development.

We note and highlight the following extracts from the Board Inspector's Report:

Section 3 of the Planning and Development Act 2000
It is apparent from the information contained on file that no physical 'works' as defined in the Act are to be undertaken as part of the proposed development. No operation of construction, excavation, demolition, extension repair or renewable is to take place within the structure as part of the referral before the Board. What is sought in this instance is a change of use of the structure from a domestic dwelling to use as a care home for persons of intellectual disabilities. So while no works are to be undertaken on site, it is clear that the change from a use as a domestic dwelling to use as a residential care home represents a material change in the use of the structure and as such I can only conclude that the proposal constitutes development in the first instance.

Furthermore as the development in this instance relates to a material change of use only, and does not involve the carrying out of works I consider that the provisions of Section 57(1) of the Act is not of relevance to the referral before the Board.

That is to say, while the proposed change of use of the subject site may constitute 'development' for the purposes of the accompanying request for a declaration under Section 5 of the Act, **no physical 'works' (as defined in the Act) are to be undertaken as part of the proposed change of use**. As such, the provisions of Section 57(1) of the Act are not of relevance to restrict the exemption being sought.

In summary, if Westmeath County Council do not accept the planning opinion as presented in Section 4.3 above, it is presented that the Planning Authority are able to determine that the relevant restrictions on the exemptions do not apply to the proposed change of use as referred in Sections 4.4 – 4.6, and therefore that that the proposed change of use is **development** and is **exempted development**.

4.7. Ability of the Planning Authority to issue a declaration under Section 5

Further to the above, the question may be asked whether the Planning Authority are precluded from being able to issue a declaration under Section 5 on the proposed change of use due to the current use of the site.

We respectfully present that this is not the case – that the current use of the site does not restrict the ability of the Planning Authority to issue their declaration.

In this regard, we refer to both S.I. No. 306/2022 and its accompanying Circular EUIPR 3/2022, which refer to the **temporary nature of development** carried out under the Regulations as being enabled for only as long as the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 remains in force. We note the following extract from Circular EUIPR 3/2022:

> *After this time the removal, demolition or alteration of any temporary structure and the discontinuance of any temporary use and, in so far as is practicable, the restoration of the land to its condition prior to the commencement of the development, will be required, unless the development is permitted, exempted or otherwise regularised by a provision of the Planning and Development Act 2000 or the Planning and Development Regulations 2001, as amended.*[8]

That is to say, the questions as relate to the proposed change of use of the subject site refer to the use of the site that would be reverted to at a time that S.I. No. 306/2022 is discontinued (i.e. that of a house).

This is compared with the matters raised above as relate to (a) a change in tenure or (b) proposed change of use, neither of which are restricted by a 'temporary' condition, limitation or restriction. We highlight in particular that the exemptions provided by Class 14 (h) refer to the "change of use... to use as...", unlike comparable exemptions under, say, Class 20F which refer to "temporary use" with defined time periods as described by the associated conditions and limitations.

As such, we respectfully present that Westmeath County Council are able to issue a declaration under Section 5 in relation to both the temporary current use and the proposed change of use.

8 https://assets.gov.ie/static/documents/circular-euipr-32022-european-union-planning-and-developmentdisplaced-persons-from-ukr.pdf

10 CONCLUDING COMMENTARY

We, on behalf of the Declaration Applicant, hereby seek a declaration from Westmeath County Council under Section 5 of the Planning and Development Act 2000, as amended.

The current and proposed use ensure that Mearescourt House, will be retained and well-maintained in accordance with conservations objectives which seek to ensure that such buildings are kept in active use. In this regard, we also refer to Department of Arts, Heritage and the Gaeltacht's (2015) *Action Plan for the Sustainable Future of the Irish Historic House in Private Ownership*[9], which recognises that the ongoing management and maintenance of the fabric and contents of Historic Houses are seen to present considerable financial and administrative challenges for their owners. The Action Plan states: *"The majority of Irish Historic Houses, along with their gardens, parks and collections, have not achieved their potential, either on a national or an international stage. This impedes their development and hinders their long-term sustainability."*

We respectfully present that the current use and proposed change of use present a mutually beneficial and highly sustainable scenario that addresses both the immediate and urgent need to accommodate displaced and protected persons (per national and international commitments), and the challenges associated with the maintenance of historic properties.

We have presented herein our planning opinion on both the current use of the site and the proposed change of use, summarised as follows:

(a) On the matter of the current use

That the provisions of the Planning and Development Act 2000, as amended, (other than Sections 181 and 181A to 181C) do not apply to the current use of the site for the purposes of providing temporary protection to displaced persons under the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022).

Following the above, that the current use of the site does not require planning permission or a declaration that such use is or is not exempted development until such a time that the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4th March 2022 comes to an end (i.e. as currently extended to 4th March 2026).

That a precedent has been established by An Bord Pleanála that would enable Westmeath County Council to declare such classes of development under S.I. No. 306/2022 to be **development and exempted development**.

(b) On the matter of a change in tenure only

Westmeath County Council are able to declare that the proposed change of use to use as accommodation for protected persons represents a **change in tenure** only which is **not development**.

(c) On the proposed change of use from use as a premises providing overnight accommodation

If the Planning Authority do not accept the previous planning opinion, and consider that subject proposal represents a material change in use that is development, then Westmeath County Council are able to declare that the proposed change of use from use as a premises providing overnight accommodation or part thereof to use as accommodation for protected persons is **development**

[9] https://www.buildingsofireland.ie/app/uploads/2019/10/An-Action-Plan-for-the-Sustainable-Future-of-the-Irish-Historic-House-in-Private-Ownership-2015.pdf

and is **exempted development** under Article 6 (1) of the Planning and Development, Regulations 2001 – 2025, of which Class 14 (h) of Schedule 2, Part 1, specifically applies.

(d) On the proposed change of use from use as a guesthouse

If the Planning Authority do not accept the previous planning opinion, then Westmeath County Council are able to declare that the proposed change of use from use as a guesthouse or part thereof to use as accommodation for protected persons is **development** and is **exempted development** under Article 6 (1) of the Planning and Development, Regulations 2001 – 2025, of which Class 14 (h) of Schedule 2, Part 1, specifically applies.

We trust that the information provided herein will enable a swift and positive declaration. However, please do not hesitate to contact us if you require any additional information.

Yours faithfully



Tomás Skinner
Senior Planning Consultant
The Planning Partnership

the planning partnership

The Bank Building
52 Oliver Plunkett Street
Mullingar
Co. Westmeath
N91 FAA6

t: +353 (0) 44 9310210
e: info@theplanningpartnership.ie
w: www.theplanningpartnership.ie

Principal Officer
Planning Department
Westmeath County Council
County Buildings
Mount Street
Mullingar
Co. Westmeath

13th May 2025
[By email: heritage@westmeathcoco.ie, buildheritage@westmeathcoco.ie
cc. planning@westmeathcoco.ie]

-: SECTION 57 DECLARATION REQUEST :-

Dear Sir/Madam,

RE: SECTION 5 DECLARATION REQUEST IN RELATION TO CHANGE OF USE AT MEARESCOURT HOUSE, ROLANDSTOWN TOWNLAND, CO. WESTMEATH

1.0 INTRODUCTION

1.1. Section 57 Declaration Request

The Planning Partnership, The Bank Building, 52 Oliver Plunkett Street, Mullingar, Co. Westmeath, acting on behalf of **Rathconrath Property Limited** (the 'Declaration Applicant' and owner of the protected structures as referred herein), Mearescourt House, Rowlandstown, Rathconrath, Co. Westmeath, hereby seeks a declaration from Westmeath County Council under Section 57 of the Planning and Development Act 2000, as amended.

1.2. Structure of this request for a Section 57 Declaration

Section 2 introduces the context of the subject site and its planning history, and a review of the previous Section 5 Declarations.

Section 3 of this letter presents our Planning Opinion that the proposed change of use of the subject site does not constitute "works" as would or would not materially affect the character of a protected structure.

Separate to this proposed change of use, we also take this opportunity in **Section 4** of this letter to seek confirmation from the Planning Authority that the provisions of the Planning and Development Act 2000, as amended, (other than sections 181A to 181C) do not apply to the current use of the site for the purposes of providing temporary protection to displaced persons under the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022).

0 CONTEXT

2.1 Site Location and Description

The site to which this request for a declaration under Section 5 refers is located at Mearescourt House in Rowlandstown Townland, Co. Westmeath, ca. 6km northwest of Rathconrath. Access to the site is provided via an existing access point on the L-1914.

The site comprises Mearescourt House, a Protected Structure (RPS Reference: 017-009), which is described in the NIAH (Record Reference: 15401711) as being of 'National' significance. The NIAH identify its current use, as per the survey date of November 2004, as a "Guest House/B&B".

There is a recorded archaeological monument (Reference: WM017-013, Castle-unclassified) located to the rear of the house.

Also relevant to this request is the stable block complex to the west of Mearescourt House (RPS Reference: 017-010, NIAH Record Reference: 15401712), described by the NIAH as being of 'Regional' significance.

To the rear of Mearescourt House is the walled garden (RPS Reference: 017-011, NIAH Record Reference: 15401713), which the NIAH describe are of 'Regional' significance, and which "act as an interesting historical reminder of the extensive organisation and the high level of resources needed to maintain a large country demesne in Ireland during the eighteenth and nineteenth centuries."

2.2 Planning History

The relevant planning history for the site to which this request for a declaration under Section 57 refers is summarised below.

Planning Application Register Reference:	96/1045
Applicant:	Brendan Pendred
Date Lodged	23rd December 1996
Development Description	Installation of septic tank and percolation area.
Decision Date	22nd February 1997
Outcome:	Granted (Conditional)

The following additional planning history records are noted, being in the surrounding area:

Planning Application Register Reference:	97/613
Applicant:	Eithne & Brendan Pendred
Date Lodged	27th June 1997
Development Description	Extension and alterations to existing cottage and septic tank.
Decision Date	26th August 1997
Outcome:	Granted (Conditional)

Planning Application Register Reference:	04/5158
Applicant:	Mary Dalton
Date Lodged	16th March 2004
Development Description	Constructing a dwelling house with septic tank, percolation area and a detached garage.
Decision Date	6th May 2004
Outcome:	Granted (Conditional)

Planning Application Register Reference:	06/5285
Applicant:	George Tracey
Date Lodged	12th June 2006
Development Description	Retention of as built machinery storage shed in addition to planning permission being sought for the construction of three additonal buildings comprising of the following:- (1) building no. 1 is for a stable/haybarn; building no. 2 is for an indoor arena for the schooling of hunters, show jumpers and dressage horses; building no. 3 is for the housing of classic and vintage cars together with concrete wash apron and silage slab, landcaping, staff carparking site works and ancillary site services at Mearscourt House - Protected Structure Ref. No. B239
Decision Date	22nd February 2007
Outcome:	Granted (Conditional)

2.3 Previous Section 5 Declarations

Two requests under Section 5 of the Planning and Development Act 2000, as amended, have previously been made to Westmeath County Council by the Declaration Applicant to date.

The first request was made on 18th November 2024 (Reference: S5-49-24) in relation to the following:

> *Property upgrade to include conversion of existing house/B&B into accommodation for use under SI 376 for multi family occupancy.*

By order dated 13th December 2024, the Planning Authority declared that the proposed development is development and is not exempted development.

A second request was made on 20th January 2025 (Reference: S5-02-25) in relation to the following:

> *Change the current hotel and asylum seeker centre to accommodation multi family occupancy under SI 376. No structural alterations are required as the hotel which comprises of a large Georgian House and accompanying courtyard is occupied by 70 people with capacity of 85 people. The hotel which has run for several years has held over 30 weddings including numerous events and festivals such as Music at Meares – sponsored by Westmeath County Council.*

By order dated 14th February 2025, the Planning Authority declared that the proposed development is development and is not exempted development.

For clarity, we understand that previous references to the use of the site as a hotel were mistaken, and that our understanding of the pre-existing use of Mearescourt House was as being a house with limited "guesthouse" use which in our view, is enabled by the exemptions provided under Article 10 (4) of the Planning and Development Regulations 2001 – 2025 (please refer to Section 4.4 below for further discussion).

Furthermore, where we recognise that the previous Section 5 (S5-02-25) referred to an occupancy "*by 70 people with capacity of 85 people*", for clarity it is our understanding that these figures were provided on the basis of the current use of the site for displaced persons, not as potential occupancy for international protected persons following the change of use.

We note the following extracts from the *Planning Report* of Westmeath County Council, dated 10th February 2025, associated with S5-02-25:

No Section 57 declarations or relevant planning applications have been filed to assess any modifications that may have already been undertaken. The submitted plans are all 'existing' and indicate 12 no. bedrooms and relates uses within Mearescourt House but fails to provide details on the number of multi-occupancy families or bed spaces.

No details have been submitted in respect of works carried out to the large Georgian House and its accompanying stable block in order to accommodate for the international protection applicants. Therefore, these alterations cannot be assessed with respect to their impact to this protected structure.

The above extracts have been carefully considered to inform the subject request for a declaration under Section 57 and accompanying request for a declaration under Section 5.

Please refer to the following accompanying drawings prepared by 3Dimensional, as relate to the current use of Mearescourt House and adjacent courtyard in their entirety for the purposes of providing accommodation and ancillary facilities to displaced persons under S.I. No. 306/2022:

- MHM-101 Lower Ground Floor Current Use
- MHM-102 Upper Ground Floor Current Use
- MHM-103 First Floor Current Use
- MHM-104 Second Floor Current Use
- MHM-105 Courtyard Ground Floor Current Use

Please also refer to the following accompanying drawings prepared by 3Dimensional, as relate to the pre-existing use of Mearescourt House:

- MHM-201 Lower Ground Floor Pre-Existing
- MHM-202 Upper Ground Floor Pre-Existing
- MHM-203 First Floor Pre-Existing
- MHM-204 Second Floor Pre-Existing

Please also refer to the following accompanying drawings prepared by 3Dimensional, as relate to the proposed use of Mearescourt House:

- MHM-301 Lower Ground Floor Proposed Use
- MHM-302 First Floor Proposed
- MHM-303 Upper Ground Floor Proposed
- MHM-304 Second Floor Proposed

0 ON THE MATTER OF "WORKS" VS. "CHANGE OF USE"

3.1. Statutory Provisions

In the first instance, we note the following extracts from Section 57 of the Planning and Development Act, 2000 (as amended):

> *57.—(1) Notwithstanding section 4(1) (a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*
> *(a) the structure, or*
> *(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.*
>
> *(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.*

We note the following definitions presented in Section 2 (1) of the Planning and Development Act, 2000 (as amended):

> *"protected structure" means—*
> *(a) a structure, or*
> *(b) a specified part of a structure,*
> *which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;*
>
> *"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—*
> *(a) where the context so admits, includes the land on, in or under which the structure is situate, and*
> *(b) in relation to a protected structure or proposed protected structure, includes—*
> *(i) the interior of the structure,*
> *(ii) the land lying within the curtilage of the structure,*
> *(iii) any other structures lying within that curtilage and their interiors, and*
> *(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);*
>
> *"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

We also note Section 3 of the Planning and Development Act, 2000 (as amended), which states as follows:

> *3.— (1) In this Act, except where the context otherwise requires, "development" means—*
> *(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or*

2. Planning opinion

As referred above, this request for a declaration under Section 57 of the Planning and Development Act 2000 (as amended) should be read in conjunction with the accompanying request for a declaration under Section 5 of the Act.

The accompanying request for a declaration under Section 5 presents:

- It can be declared that the proposed change of to use as accommodation for protected persons represents a change in tenure only which is not development.

- However, if the Planning Authority do not accept this planning opinion, and consider that subject proposal represents a material change in use that is development, then it can be declared that a change of use from use as a premises providing overnight accommodation or part thereof to use as accommodation for protected persons is development and is exempted development under Article 6 (1) of the Planning and Development, Regulations 2001 – 2025, of which Class 14 (h) of Schedule 2, Part 1, specifically applies,

- If the Planning Authority do not accept the above planning opinion, then it can be declared that a change of use from use as a guesthouse or part thereof to use as accommodation for protected persons is development and is exempted development under Article 6 (1) of the Planning and Development, Regulations 2001 – 2025, of which Class 14 (h) of Schedule 2, Part 1, specifically applies.

Please refer to the accompanying request for a declaration under Section 5 for further discussion, but for the purposes of this request for a declaration under Section 57 we highlight that the proposal relates to a **change in tenure which is not development** or a **change in use only**.

Section 57 of the Planning and Development Act, 2000 (as amended) refers to "works" and not "development" as would or would not materially affect the character of a protected structure [***our emphasis***]:

> *57.—(1) Notwithstanding section 4(1) (a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), **the carrying out of works** to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*
> *(a) the structure, or*
> *(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.*
>
> *(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.*

Therefore, the scope of the subject Section 57 Declaration can be **restricted only to the matter of "works" to a protected structure and not to development** (as would include both "works" and "material change in the use").

We note the following relevant precedent established by An Bord Pleanála to be of relevance:

Former the Great Southern Hotel, St. Martin's Road, Rosslare, Co. Wexford (An Bord Pleanála Case reference: RL26.318709)

Whether works carried out to provide a care facility for IPAS refugees is or is not development or is or is not exempted development.

We note and highlight the following extracts from the Board's decision:

> *AND WHEREAS An Bord Pleanála has concluded that:*
>
> *(a) The works carried out to Lismore House Hotel to facilitate the temporary accommodation facility for international protection applicants would constitute development under Section 3(1) of the Planning and Development Act 2000, as amended.*
>
> *(b) The temporary change of use from hotel to accommodation for international protection applicants would constitute exempt development and would fall within the scope of Class 14 and Class 20F of Schedule 2 of Part 1 of the Planning and Development Regulations 2001 (as amended).*
>
> *(c) the works carried out 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 and would fall within the scope of the exemption provided by Section 4(1)(h) of the Planning and Development Act 2000, as amended,*
>
> *(d) However, it has not been satisfactorily demonstrated by the owner/occupier that the carrying out of the works to facilitate this temporary accommodation for international protection applicants does not materially affect the character of the Protected Structures, or any element of the structures which contributes to their special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest and is, therefore, not exempt development under Section 57 of the Planning and Development Act 2000 (as amended)*

In reaching their decision that the referred development 'Is development and is not exempted development', the Board based their decision principally with regard to the status of the building as a protected structure. As seen, in all other aspects it is recognised that the relevant provisions of the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 – 2025 **would provide that the works and temporary change of use constitute exempted development**.

With regard to the subject **proposed change of use,** no additional works or changes to the house or bedrooms within the house are required to facilitate this proposal, and no additional facilities beyond those that normally form part of the house are proposed. As such, we believe that the precedent established by ABP-318709-23 does not apply to the subject proposal, which **does not propose the carrying out of any works required to facilitate the change of use** as might *"materially affect the character of the Protected Structures, or any element of the structures which contributes to their special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest".*

In this regard, we also refer to the following precedent as established by the Board:

Gaineville House, Multyfarnham, Co. Westmeath (An Bord Pleanála Case reference: RL3406)

Whether the use of a house as a residence for persons with an intellectual or physical disability is or is not development or is or not exempted development.

We note and highlight the following extracts from the Board Inspector's Report:

> ***Section 3 of the Planning and Development Act 2000***

It is apparent from the information contained on file that no physical 'works' as defined in the Act are to be undertaken as part of the proposed development. No operation of construction, excavation, demolition, extension repair or renewable is to take place within the structure as part of the referral before the Board. What is sought in this instance is a change of use of the structure from a domestic dwelling to use as a care home for persons of intellectual disabilities. So while no works are to be undertaken on site, it is clear that the change from a use as a domestic dwelling to use as a residential care home represents a material change in the use of the structure and as such I can only conclude that the proposal constitutes development in the first instance.

Furthermore as the development in this instance relates to a material change of use only, and does not involve the carrying out of works I consider that the provisions of Section 57(1) of the Act is not of relevance to the referral before the Board.

That is to say, while the proposed change of use of the subject site may constitute 'development' for the purposes of the accompanying request for a declaration under Section 5 of the Act, no physical 'works' (as defined in the Act) are to be undertaken as part of the proposed change of use. As such, the provisions of Section 57(1) of the Act are not of relevance to restrict the exemption being sought.

4.0 ON THE CURRENT VS. PROPOSED USE

5.1. Statutory provisions

Section 181 of the Planning and Development Act, 2000 (as amended), states as follows:

181.—(1) (a) The Minister may, by regulations, provide that, except for this section and sections 181A to 181C, the provisions of this Act shall not apply to any specified class or classes of development by or on behalf of a State authority where the development is, in the opinion of the Minister, in connection with or for the purposes of public safety or order, the administration of justice or national security or defence and, for so long as the regulations are in force, the provisions of this Act shall not apply to the specified class or classes of development.

We note the following extracts from the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022):

3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.

SCHEDULE

Article 3

1. Reception and integration facilities.

2. Residential accommodation, including ancillary recreational and sporting facilities.

3. Medical and other health and social care accommodation.

4. Education and childcare facilities, including ancillary recreational and sporting facilities.

5. Emergency management coordination facilities.

6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.

7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

5.2. Planning opinion

As referred above, this request for a declaration under Section 57 of the Planning and Development Act 2000 (as amended) should be read in conjunction with the accompanying request for a declaration under Section 5 of the Act.

The accompanying request for a declaration under Section 5 presents:

- That the provisions of the Planning and Development Act 2000 (as amended), other than Sections 181 and 181A to 181C, do not apply to the current use of the site for the purposes of providing temporary protection to displaced persons under the European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022).

- Following the above, that the current use of the site does not require planning permission or a declaration that such use is or is not exempted development until such a time that the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4th March 2022 comes to an end (i.e. as currently extended to 4th March 2026).

- That a precedent has been established by An Bord Pleanála that would enable Westmeath County Council to declare such classes of development under S.I. No. 306/2022 to be development and exempted development.

Please refer to the accompanying request for a declaration under Section 5 for further discussion, but for the purposes of this request for a declaration under Section 57, we highlight that **Section 57 of the Planning and Development Act 2000 (as amended) does not apply to the current use of the site**.

That is to say, the existing use of the site for the provision of residential accommodation for displaced persons, structures or facilities (including administration and storage facilities) ancillary to this residential accommodation, and infrastructure and other works ancillary to the above currently **do not require planning permission** under S.I. No. 306/2022.

We also present that a precedent has been established by An Bord Pleanála that would enable Westmeath County Council to declare all development under S.I. No. 306/2022 associated with provision of residential accommodation for displaced persons including any associated works to be **development and exempted development**.

161 Shanakiel, Shanakiel Road, Cork City (An Bord Pleanála Case Reference: RL28.320219)

Whether proposed change of use of former medical consulting rooms (now vacant) to a hostel is or is not development or is not exempted development; (2) Whether works consisting of replacement of window with two new windows, blocking up of door, removal of a window and its replacement with a new door is or is not development or is or is not exempted development.

We note and highlight the following extracts from the Board Inspector's Report:

S.I. No. 306/2022

9.2.19. This legislation provides for the non-application of the Planning and Development Act 2000 (as amended) for certain classes of development including Article 3, class 2 which provides for development comprising residential accommodation, for displaced persons.

9.2.20. The proposed development comprises residential accommodation for both displaced persons and persons seeking International Protection.

9.2.21. I therefore consider that the proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons (or persons seeking international protection) is development which is exempt development under S.I. 306/2022.

9.3.5. S.I. No. 306/2022 also provides an exemption for all development associated with provision of residential accommodation for displaced persons including any associated works and in this regard the works consisting of; replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door are also considered development which is exempted development.

We refer to both S.I. No. 306/2022 and its accompanying Circular EUIPR 3/2022, which refer to the **temporary nature of development** carried out under the Regulations as being enabled for only as long as the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 remains in force. We note the following extract from Circular EUIPR 3/2022:

After this time the removal, demolition or alteration of any temporary structure and the discontinuance of any temporary use and, in so far as is practicable, the restoration of the land to its condition prior to the commencement of the development, will be required, unless the development is permitted, exempted or otherwise regularised by a provision of the Planning and Development Act 2000 or the Planning and Development Regulations 2001, as amended.

These requirements are noted and accepted by the Declaration Applicant. The separate question may be asked at such a time that the temporary protection given to displaced persons comes to an end as to whether the continuation of development afforded by S.I. No. 306/2022 is or is not development and is or is not exempted development, i.e. then requires planning permission or a declaration confirming exemption.

However, it is considered that **such a question is premature** wherein such a date is currently understood to be 4th March 2026, and furthermore recognising the changing context in terms of the war in Ukraine (noting Council Implementing Decision (EU) 2024/1836 and the potential for further extensions to the temporary protection given to persons displaced from Ukraine), the upcoming implementation of the Planning and Development Act 2024, and potential revisions / re-issue of the Planning and Development Regulations associated with the 2024 Act.

As such, we respectfully present that Westmeath County Council are able to determine that the current use of the site **does not require planning permission**, until such a time that the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4th March 2022 comes to an end (i.e. currently 4th March 2026).

Furthermore, per the precedent that has been established by An Bord Pleanála, Westmeath County Council are able to declare such classes of development under S.I. No. 306/2022 to be **development and exempted development**.

9 CONCLUDING COMMENTARY

We, on behalf of the Declaration Applicant, hereby seek a declaration from Westmeath County Council under Section 57 of the Planning and Development Act 2000, as amended.

The current and proposed use ensure that Mearescourt House, will be retained and well-maintained in accordance with conservations objectives which seek to ensure that such buildings are kept in active use. In this regard, we also refer to Department of Arts, Heritage and the Gaeltacht's (2015) *Action Plan for the Sustainable Future of the Irish Historic House in Private Ownership*[1], which recognises that the ongoing management and maintenance of the fabric and contents of Historic Houses are seen to present considerable financial and administrative challenges for their owners. The Action Plan states: *"The majority of Irish Historic Houses, along with their gardens, parks and collections, have not achieved their potential, either on a national or an international stage. This impedes their development and hinders their long-term sustainability."*

We respectfully present that the current use and proposed change of use present a mutually beneficial and highly sustainable scenario that addresses both the immediate and urgent need to accommodate displaced and protected persons (per national and international commitments), and the challenges associated with the maintenance of historic properties.

We have presented herein our planning opinion on both the current use of the site and the proposed change of use, summarised as follows:

(a) On the matter of "works" vs. "change of use"

No works are required to facilitate the proposed change of use as might *"materially affect the character of the Protected Structures, or any element of the structures which contributes to their special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest"*. As such, the provisions of Section 57(1) of the Act are not of relevance for the subject proposal or to restrict the exemption being sought for the same, as it relates to a **change of use only**.

(b) On the current vs. proposed use

The existing use of the site for the provision of residential accommodation for displaced persons **does not require planning permission** under S.I. No. 306/2022, until such a time that the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4th March 2022 comes to an end (i.e. currently 4th March 2026). Under S.I. No. 306/2022, **Section 57 of the Planning and Development Act 2000 (as amended) does not apply to the current use of the site, including any associated works**.

We trust that the information provided herein will enable a swift and positive declaration. However, please do not hesitate to contact us if you require any additional information.

Yours faithfully



Tomás Skinner
Senior Planning Consultant
The Planning Partnership

1 https://www.buildingsofireland.ie/app/uploads/2019/10/An-Action-Plan-for-the-Sustainable-Future-of-the-Irish-Historic-House-in-Private-Ownership-2015.pdf

WESTMEATH COUNTY COUNCIL
Comhairle Chontae na hIarmhí

WESTMEATH COUNTY COUNCIL
SECTION 57 DECLARATION APPLICATION FORM

What is a Section 57 Declaration?

Section 57 of the Planning and Development Act 2000 as amended allows the **owner or occupier** of a **protected structure** to make a written request to the planning authority for a declaration as to the type of works the authority considers would or would not **materially affect the character** of a protected structure.

1. **NAME OF APPLICANT**: Rathconrath Property Limited (c/o Sarah Tracey)

2. **LEGAL INTEREST IN THE SITE:** (e.g. Owner or Occupier) Owner

   (In the case when you are not the occupier, please state the name & address of the Owner)

3. **ADDRESS OF APPLICANT**: Mearescourt House, Rowlandstown, Rathconrath, Co. Westmeath, N91 Y40H

4. **DATE OF APPLICATION**: 12th May 2025

5. **ADDRESS OF STRUCTURE**: Mearescourt House, Rowlandstown, Rathconrath, Co. Westmeath, N91 Y40H

6. **NAME OF OWNER OR OCCUPIER**: Rathconrath Property Limited (c/o Sarah Tracey)

7. **PROTECTED STRUCTURE REF**: RPS 017-009, RPS 017-010, RPS 017-011

8. **NATIONAL INVENTORY OF ARCHITECTURAL HERITAGE (NIAH) REF** : 15401711, 15401712, 15401713

9. **PURPOSE FOR WHICH THE DECLARATION IS REQUIRED**: (i) To confirm that the proposed change of use of the subject site does not constitute "works" as would or would not materially affect the character of a protected structure, (ii) to confirm that Section 57 of the Planning and Development Act, 2000, as amended, does not apply to the current use of the site (see enclosed Cover Letter for full discussion).

WESTMEATH COUNTY COUNCIL
Comhairle Chontae na hIarmhi

10. **ARE SPECIFIC WORKS PROPOSED?:** No - change of use only

11. **DESCRIPTION OF PROPOSED WORKS (Please use any supporting material you think is relevant – e.g. photographs, drawings, surveys, architectural heritage impact statements etc.)**

No works are proposed, and no works are required to facilitate the proposed change of use.

PLEASE FORWARD COMPLETED APPLICATION AND SUPPORTING DOCUMENTATION TO:-

Planning Department, Westmeath County Council, Áras an Chontae, Mount Street, Mullingar, Co. Westmeath, N91 FH4N.
Email: heritage@westmeathcoco.ie
Please note there is a 12 week statutory time frame for response to a Section 57 Declaration.

WESTMEATH COUNTY COUNCIL
Comhairle Chontae na hIarmhí

GUIDANCE NOTES

(i) Please note that the accuracy and relevance of the Declaration made by the Planning Authority is informed by the submitted information furnished by the applicant and any deviation from the information may require the re-consideration of the declaration.

(ii) This application shall be accompanied by 2 copies of a site location map to the scale of 1:1000 clearly identifying the structure and boundaries to which the application refers (subject structure to be **outlined in red**, overall land holding to be **outlined in blue**).

(iii) Drawings, plans, photos etc. which might facilitate the issuing of the Declaration may accompany this application. Please supply 2 copies.

(iv) Please return completed application forms to: Planning Department, First Floor, Westmeath County Council, Áras an Chontae, Mount Street, Mullingar, Co. Westmeath, N91 FH4N.

(v) Any Declaration issued by the Planning Authority may be referred to An Bord Pleanála for review within 4 weeks of its issue, in accordance with the provisions of Section 57(8) of the Planning and Development Act 2000 (as amended), upon payment of the requisite fee.

I/We wish to apply for a Section 57 Declaration from Westmeath County Council.

Signed: _____ (Agent) **Date:** 12th May 2025

The Planning Partnership, The Bank Building, 52 Oliver Plunkett St., Mullingar, Co. Westmeath, N91 FAA6

Daytime contact number: 087 116 0181 / 044 931 0210