



Peter Thomson  
Planning Solutions



The Secretary,  
An Coimisiún Pleanála,  
64 Marlborough Street,  
Dublin 1,  
D01 V902

25 September 2025

AN COIMISIÚN PLEANÁLA  
LDG- 0831 27 '25  
ACP-  
29 SEP 2025  
Fee: € 220 Type: Post  
Time: 9:07 By: Cheque

**Re: Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) on the question of whether the change of use of an existing shop to 7 no. residential units at 4/5 Sexton Street, Abbesside, Dungarvan, Co Waterford is or is not development and, if development, is or is not exempted development.**

**PA ref: D5 2025/24**

Dear Sir/ Madam,

Please find attached a Referral of a Waterford City and County Council Declaration under Section 5 of the Planning and Development Act 2000 (as amended).

The exemption my client is seeking to avail of is to provide apartments under the provisions of Article 10(6) of the Planning and Development Regulations 2001 – 2025, for which it has notified the Planning Authority and received acknowledgment of receipt (attached).

This exemption expires at the end of **December 2025**.

Given the current housing crisis and the urgency in providing residential units, my client respectfully requests that the Commission give this application its urgent attention with a view to issuing an early decision.

Peter Thomson, MSc, MIPI



Comhairle Cathrach & Contae Phort Láirge  
Waterford City & County Council

EG

Keybuild Services Ltd,  
C/o Vincent Murray Designs Ltd,  
Ballythomas,  
Rathgormack,  
Co. Waterford

18<sup>th</sup> December, 2024

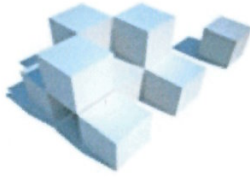
Re: **NOTIFICATION OF INTENTION TO AVAIL OF ARTICLE 10 (6) ) EXEMPTION – CHANGE OF USE  
FROM COMMERCIAL TO RESIDENTIAL PROPERTY AT:** No. 4 & 5 Abbeyside, Dungarvan, Co.  
Waterford X35 TO43

Dear Sir/Madam,

I acknowledge receipt of your Notification to avail of Article 6(a) Exemption received on 11<sup>th</sup>  
December, 2024 in relation to property at No. 4 & 5 Abbeyside, Dungarvan, Co. Waterford X35  
TO43

Yours faithfully,

Eileen Grace  
Staff Officer



Peter Thomson  
Planning Solutions



The Secretary,  
An Coimisiún Pleanála,  
64 Marlborough Street,  
Dublin 1,  
D01 V902

25 September 2025

**Re: Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) on the question of whether the change of use of an existing shop to 7 no. residential units at 4/5 Sexton Street, Abbesside, Dungarvan, Co Waterford is or is not development and, if development, is or is not exempted development.**

**PA ref: D5 2025/24**

Dear Sir/ Madam,

#### **Introduction**

I act on behalf of Keybuild Services Limited, Villerstown, Cappoquin, Co Waterford which owns the property referred to in this Referral for review of the Declaration issued by the Planning Authority dated 4<sup>th</sup> September 2024.

The Declaration issued by the Planning Authority states as follows;

***"AND WHEREAS the Planning Authority concluded that: -***

- (a) *The stated use as a shop is inaccurate; the subject premises was last used as a cafe.*
- (b) *The change of use of an existing cafe to 7 no. residential units would come within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended),*
- (c) *The change of use of an existing cafe to 7 no. residential units would not be consistent with the provisions of Article 10(6).*

**NOW WHEREAS** Waterford City and County Council, in exercise of the powers conferred on it by section 5(2)(a) of the 2000 Act, as amended, it is hereby decided that change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbesside, Dungarvan, Co. Waterford at the site in question **is development and is not exempted development**

***IT IS DECLARED*** that the said development constitutes development and is ***not exempted development***".

There are two planner's reports leading to this decision. In the report dated 27<sup>th</sup> August 2025, the Senior Executive Planner concluded that the change of use of the existing shop to 7 apartments at 4/5 Sexton Street, Abbesside Dungarvan, County

Thomson Planning Consultant Limited T/A Peter Thomson Planning Solutions  
Company Registration No. 603096 VAT Registration No. IE 3469921SH  
Address: 30 Archersleas, Kilkenny, R95R2VE  
Tel: 086 819 6856 email: [peter@ptplanning.ie](mailto:peter@ptplanning.ie)

Waterford was development and was exempted development (copy of report attached).

In a subsequent planner's report signed by the same Senior Executive Planner, dated 3 September 2025 it was stated; *"the change of use of an existing café to 7 no. residential units at No. 4/5 Sexton Street, Abbey side, Dungarvan, Co. Waterford is development and is not exempted development"* (copy attached).

The same wording was repeated in the Declaration that issued (copy attached).

Both the planner's report of 3 September and the Declaration are incorrect for a number of reasons.

1. The café use that previously existed was in no. 5 Sexton Street; not no. 4 which was previously a public house and then a shop. Only the ground floor of no. 5 was ever in café use.  
There was, and still is, no connection between the ground and first floor of number 5. The first floor of no. 5 can only be accessed independently or from no. 4.  
There is a ground floor connection between no. 4 and no. 5. The kitchen that served the café is within the public house at no. 4.  
The café layout that was permitted at no. 4 Sexton Street (permission ref: under planning permission 17/290) was never fully implemented. Contrary to what was noted in the Section 5 application, the wash/ prep area and storage at first floor level was linked to and served the adjacent public house, not the ground floor of no. 4 (see attached 'walkabout link').
2. The declaration does not refer to the existing shop use at no. 4 Sexton Street, which is not in dispute.
3. It was incorrect to state the last use of the subject premises was as a café. The subject premises spans nos. 4 and 5 Sexton Street which, while interconnected and in single ownership, operated independently of each other until the bike shop was established in no.4 Sexton Street and the use, thereafter, extended into no. 5 Sexton Street.
4. It was incorrect to state in the declaration that there was an existing café at 4/5 Sexton Street. A site visit would have confirmed that. The property was not inspected by any Council officials.

It is unclear what changed the planner's mind from accepting the premises were last used as a shop to being last used as a café. There is nothing in the planner's reports to explain this. Indeed, the second planner's report states, *"The subject premises is understood to have last been used as a café, as distinct from a shop ...."*<sup>2</sup>

The cafe use on the ground floor of no. 4 Sexton Street ceased in late July 2023<sup>3</sup>. In late August 2023, after the café had closed, a "garage sale" took place.

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<sup>1</sup> [Explore Sexton Street in 3D](#)  
[my.matterport.com](http://my.matterport.com)

<sup>2</sup> My emphasis on "understood".

<sup>3</sup> Previously indicated as being 2022 based on information received from the seller's auctioneer. However, Bliss Café Facebook page confirms this as being July 2023.

When my client acquired the property, there was no evidence of the previous café use. Equally, there was no evidence of the bike shop use, although this use in 4 Sexton Street is not disputed. When the property was acquired, I am advised by my client that there were bike parts, leaflets and junk which appeared to be from the bicycle hire company on the ground floors of nos. 4 and 5.

Advertising by the Waterford Greenway Bike Hire Company, has its business address at 3-5 Sexton Street, Abbesside, Dungarvan.

Notwithstanding and without prejudice, as stated in the application to the Planning Authority, by dictionary definition, a café is a small restaurant. Change of use of a restaurant to a shop is exempted development under Class 14(c) **Part 1 of Schedule 2** of the Regulations of the Regulations. The Planning Authority had no regard to this.

Even if the use of the ground floor of 5 Sexton Street as a shop after the closure of the café for the purposes of a "garage sale" was not considered a material change of use, there is An Bord Pleanála precedent for leapfrogging from one use to another which is not of itself an exempted development, if an intervening change use, if availed of, would have automatically exempted both uses.

In this case, change of use from a café to a shop use is exempted development and change of use of a shop to a residential use can be exempted development. The precedent exists to go from café use to shop use to residential use, without implementing the shop use.

This precedent exists in a Waterford City Council Referral case from 2012, where the Council successfully argued that a permitted bookmaker use that had never been implemented in a new build development could go to a hairdresser (a retail use by definition) as an exempted development (change of use from bookmaker to shop being exempted development).<sup>4</sup>.

The Board in its deliberations concluded;

**"AND WHEREAS** the Board has concluded that –

- (a) the permitted use of Unit 2 under planning register reference PL236313; 09/249 as a betting shop;
- (b) the change of use from Class 2 to Class 1 of Part 4, Schedule 2 of the said Regulations (betting office to barber's shop) constitutes a material change of use;
- (c) Class 14, Part 1, Schedule 2 of the Planning and Development Regulations 2001 provides for an exemption for this material change in use;
- (d) The said Regulations do not require that an authorised use be implemented before availing of the exemption permitted under this class".

Therefore, even if the café had not been used as a shop, such a use would have been an authorised use through exemption and it was not necessary for that authorised use to be implemented for the change of use to residential to take place.

## Conclusion

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<sup>4</sup> Waterford City Council ref: D5/73 and ABP ref: 31.RL3090

It is considered that the Planning erred in its assessment of the application for a declaration.

Only the former café use at ground floor level of no. 5 Sexton Street is in dispute. The café use ceased and, being interconnected with no. 4 Sexton Street, became an extension of the bike shop.

While my client never witnessed how the bike shop operated, it is considered that in any event, the change of use from a former café use on the ground floor to residential was exempted development. Therefore, the change of use of the entire property at nos. 4 and 5 Sexton Street to residential is exempted development.

The Board is requested to determine that the change of use of 4 and 5 Sexton Street to residential is exempted development, thereby enabling my client to develop apartments in Dungarvan at a time when there is a national housing crisis and housing is urgently needed.



Peter Thomson, MSc, MIPI





Comhairle Cathrach & Contae Phort Láirge  
Waterford City & County Council

**PLANNING & DEVELOPMENT ACT 2000, AS AMENDED.**

**Section 5**

**Planning Authority Reference No. D5 2025 24**

**WHEREAS** a question has arisen as to Whether the change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford or is not development and is or is not exempted development.

**AND WHEREAS** Keybuild Service Ltd has requested a declaration on the said question from Waterford City & County Council on the 03<sup>th</sup> of July 2025

**AND WHEREAS** Waterford City & County Council, in considering this request, had regard to the details submitted and:

- (a) Sections 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 9 and 10(6) of the Planning and Development Regulations 2001, as amended,

**AND WHEREAS** the Planning Authority concluded that: -

- (a) The stated use as a shop is inaccurate; the subject premises was last used as a café.
- (b) The change of use of an existing café to 7 no. residential units would come within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended),
- (c) The change of use of an existing café to 7 no. residential units would not be consistent with the provisions of Article 10(6).

**NOW WHEREAS** Waterford City and County Council, in exercise of the powers conferred on it by section 5(2)(a) of the 2000 Act, as amended, it is hereby decided that change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford at the site in question is **development and is not exempted development**

**IT IS DECLARED** that the said development constitutes development and is not exempted development.

For: Ivan Grimes  
Director of Services,  
Corporate Services, Culture and Planning

Dated this: 04/09/2025

*In accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended), any person issued with this declaration may, on payment of the prescribed fee, refer this declaration for review by An Bord Pleanála, 64, Marlborough Street, Dublin 1, within 4 weeks of date of issuing of the declaration.*

## Facebook Extracts

### Café Closure Announcement – 12 June 2023



Café Bliss is in Dungarvan.

12 June 2023 · 🌐



To our amazing customers - it is sad for us to announce that we have made the difficult decision to close our doors at the end of this summer. We thank you from the bot... [See more](#)



👍🥰🥰 230

41 comments 11 shares

👍 Like

💬 Comment

➦ Share



## Final weekend in businrss announcement – 26 June 2023



Café Bliss is at Café Bliss.

26 June 2023 · Dungarvan · 🌐



We are excited to announce we are holding a final weekend of theme nights before closing at the end of the summer.

This weekend will be Thailand themed, one of our most well-loved themes from over the years and will be held 28th & 29th July.

Tickets go on sale Thursday 6th July at 9am in the cafe! No pre sales will be available.

To be in with the chance of winning two tickets for one of these wonderful nights, like and share this post and tag the person you will bring with you 🙏🙏 (competition on Facebook only)



👍 157

247 comments 151 shares

👍 Like

💬 Comment

➦ Share

## Closing Evening on 28 July 2023



28 July 2023 · 🌐

**Café Bliss** awww 😊 the end of an era - you will be sooo missed Suzette ❤️ enjoy your new beginnings xxxx



👍❤️ 24

3 comments



**Retail use – 28 August 2023** – The building opposite can be seen in the reflection confirming the sale was in the former café.



**Café Bliss**

28 August 2023 · 🌐

...

We're having a garage sale at the cafe this Saturday the 2nd from 10 am. Pop on by for a bargain 😊



👍 24

13 shares

👍 Like

💬 Comment

➦ Share

## Waterford Greenway Bike Hire Dungarvan

4.6 ★ (183) ⓘ · Bicycle rental service



 Website

 Directions

 Save

 Share

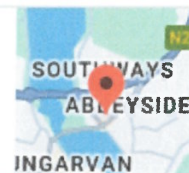
 Call



Open · Closes 6 p.m.



3-5 Sexton St, Abbeyside, Dungarvan, Co. Waterford, X35  
VW98



■ (051) 295 955

## Peter Thomson

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**From:** Denise Radley <denise@radleyauctioneers.com>  
**Sent:** Wednesday 11 December 2024 12:16  
**To:** Horsom Contracting Ltd.  
**Subject:** 4/5 Sexton Street, Dungarvan, Co. Waterford

Dear George

I am writing to you to confirm that the premises at 4/5 Sexton Street, Dungarvan, Co. Waterford has been vacant and unoccupied since 1<sup>st</sup> October 2022.

If you need any further information please don't hesitate to contact me.

Cheers

Denise



**DENISE RADLEY**

DENISE RADLEY  
AUCTIONEERS  
(BBS, MIPAV, REV)



+3533876294754



denise@radleyauctioneers.com



GLANDORE HOUSE, 23 CHURCH STREET,, DUNG,  
CO.WATERFORD







## Comhairle Cathrach & Contae Phort Láirge Waterford City & County Council

Planning	Report
<b>File Ref</b>	2025 24
<b>To</b>	Marcus Linehan, Senior Executive Planner
<b>From</b>	Justin Fleming, Assistant Planner
<b>Date</b>	27 August 2025
<b>Applicant</b>	Keybuild Services LTD
<b>Address</b>	No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford
<b>Application</b>	Whether the change of use of an existing shop to 7 no. residential units is or is not development and is or is not exempted development.

Keybuild Services LTD has applied for a Declaration and Referral on Development and Exempted Development under Section 5 of the Planning and Development Act 2000 (as Amended) in respect of the change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford.

The following question has been asked:-

Whether the change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford is or is not development and is or is not exempted development.

The application is accompanied by a site location map, site layout plan, front and rear elevation drawings and floor plans and section drawings of the buildings.

### Environmental Impact Assessment

The proposed development is not a type of development included under Schedule 5 of the Planning and Development Regulations 2001, as amended. Based on the information submitted with the application, Waterford City and County Council has considered the nature, size and location of the proposed development in the context of the criteria set out in Schedule 7 to the 2001 Regulations and is satisfied that EIA is not required.

### Habitats Directive

A Habitats Directive Screening Assessment Report is attached. The following are the nearest instances of an SAC, SPA, Wetland, Fresh Water Pearl Mussel Catchment Area, and River:

- The site is 0.69km East of the DUNGARVAN TOWN PONDS - 304 Wetlands Area
- The site is 5.5km North of the Licky Fresh Water Pearl Mussel Catchment Area
- The site is 0.05km North of the Dungarvan Harbour SPA Special Protection Area (Site Code: 004032 Version: 3.03)

- The site is 248.61m North of the Colligan River, which is a tributary of Sea
- The site is 3.27km South West of the Glendine Wood SAC Special Area of Conservation (Site Code: 002324 Version: 3)

## Relevant Legislation

### Planning and Development Act 2000, as amended

#### Structure

"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

#### Works

S.2 (1) Defines "works" as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

#### Development

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

Section 4(2) provides for the making of regulations providing for any class of development to be exempted development for the purposes of the Act.

Section 4(4) "Notwithstanding ... any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required."

#### Section 172(1)

"An environmental impact assessment shall be carried out by a planning authority ... in respect of an application for consent for-

- (a) proposed development of a class specified in Schedule 5 of the Planning and Development Regulations 2001 which exceeds a quantity, area or other limited specified in that Schedule, and
- (b) proposed development of a class specified in Schedule 5 of the Planning and Development Regulations 2001 which does not exceed a quantity, area or other limit specified in that Schedule and which the planning authority or the Board determines would be likely to have significant effects on the environment."

#### Section 177U(9)

"In deciding upon a declaration or a referral under section 5 of this Act a Planning Authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section."

Section 5 relates to declaration and referral on development and exempted development.

**Planning and Development Regulations 2001, as amended**

Article 10(6) of Part 2 of the Planning and Development Regulations 2001, as amended, relates to changes of use that are exempted development:

(a) In this sub-article—

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

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

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

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

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

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

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

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

(I) primarily affect the interior of the structure,

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

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

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

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

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

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

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

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

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

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

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

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice –

Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

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

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

(I) the location of the structure,

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

(III) the Eircode for the relevant property,

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

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

### Assessment

The question has been asked as to whether the change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford is or is not development and is or is not exempted development.

It should be noted the purpose of the referral is not to determine the acceptability or otherwise of the change of use of an existing shop to 7 no. residential units in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.

### Is or Is Not Development

Section 3(1) of the Act define 'development' as, except where the context otherwise requires, 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." I would consider that said change of use comprises 'development'.



#### **Is or Is Not Exempted Development**

Article 10(6) of Part 2 of the Planning and Development Regulations 2001, as amended, relating to changes of use that are exempted development provides for the following:

(a) In this sub-article—

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

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

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

Class 1 is use as a shop, as detailed in Part 4 of Schedule 2, and therefore such a change of use would be exempted development.

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

(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

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

Noted.

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

Noted.

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

(I) primarily affect the interior of the structure,

(II) retain 50 per cent or more of the existing external fabric of the building, and

(III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

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

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

The submitted elevation drawings and floor plans indicate consistency with these provisions.

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

The subject development consists of the provision of seven residential units across two structures.

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

The submitted floor plans indicate compliance with this requirement.

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

The submitted floor plans indicate compliance with this requirement.

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

Not applicable.

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

Not applicable.

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

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

Not applicable.

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

Not applicable – responded to in detail below.

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

Not applicable.

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

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

(I) the location of the structure,

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

(III) the Eircode for the relevant property,

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

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

I suggest that the applicant be informed of the requirements of Article 10(6)(e)(i) and (ii) and the Planning Authority note the requirements of Article 10(6)(e)(iii).

#### **Article 9(1) Restrictions on exemption**

Development to which article 10(6) relates shall not be exempted development for the purposes of the Act–

(a) if the carrying out of such development would–

iv. except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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,

Not applicable.

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,

Not applicable.

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,

Not applicable.

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,



viiC. consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

An AA screening report is attached to this report.

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,

Not applicable.

ix. consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area 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,

Not applicable.

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

Not applicable.

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

Not applicable.

### **Recommendation**

WHEREAS the following questions have arisen at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford:-

- (a) Whether the change of use of an existing shop to 7 no. residential units is or is not development and is or is not exempted development.

AND WHEREAS the Planning Authority, in considering this referral had regard particularly to:-

- (a) Sections 3 and 4 of the Planning and Development Act, 2000, as amended,

(b) Articles 9 and 10(6) of the Planning and Development Regulations 2001, as amended,

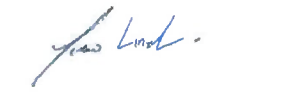
AND WHEREAS the Planning Authority concluded that:-

- (a) The change of use of an existing shop to 7 no. residential units would come within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended),
- (b) The change of use of an existing shop to 7 no. residential units would be consistent with the provisions of Article 10(6) of the Planning and Development Regulations 2001, as amended.

NOW THEREFORE the Planning Authority hereby decides that the change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbesside, Dungarvan, Co. Waterford is development and is exempted development.

  
Justin Fleming  
Assistant Planner

Date: 27 August 2025

  
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Marcus Linehan  
Senior Executive Planner

Date: 28/08/2025



## Comhairle Cathrach & Contae Phort Láirge Waterford City & County Council

Planning	Report
<b>File Ref</b>	2025 24
<b>To</b>	Marcus Linehan, Senior Executive Planner
<b>From</b>	Justin Fleming, Assistant Planner
<b>Date</b>	03 September 2025
<b>Applicant</b>	Keybuild Services LTD
<b>Address</b>	No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford
<b>Application</b>	Whether the change of use of an existing shop to 7 no. residential units is or is not development and is or is not exempted development.

Keybuild Services LTD has applied for a Declaration and Referral on Development and Exempted Development under Section 5 of the Planning and Development Act 2000 (as Amended) in respect of the change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford.

The following question has been asked:-

Whether the change of use of an existing shop to 7 no. residential units at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford is or is not development and is or is not exempted development.

The application is accompanied by a site location map, site layout plan, front and rear elevation drawings and floor plans and section drawings of the buildings.

### Environmental Impact Assessment

The proposed development is not a type of development included under Schedule 5 of the Planning and Development Regulations 2001, as amended. Based on the information submitted with the application, Waterford City and County Council has considered the nature, size and location of the proposed development in the context of the criteria set out in Schedule 7 to the 2001 Regulations and is satisfied that EIA is not required.

### Habitats Directive

A Habitats Directive Screening Assessment Report is attached. The following are the nearest instances of an SAC, SPA, Wetland, Fresh Water Pearl Mussel Catchment Area, and River:

- The site is 0.69km East of the DUNGARVAN TOWN PONDS - 304 Wetlands Area
- The site is 5.5km North of the Licky Fresh Water Pearl Mussel Catchment Area
- The site is 0.05km North of the Dungarvan Harbour SPA Special Protection Area (Site Code: 004032 Version: 3.03)

Pages 2-10 are exactly the same as the report dated 27 August 2025

viiC. consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

An AA screening report is attached to this report.

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,

Not applicable.

ix. consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area 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,

Not applicable.

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

Not applicable.

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

Not applicable.

However, the stated use as a shop is inaccurate. The subject premises is understood to have last been used as a café, as distinct from a shop, and therefore, consistent with Section 5 Declaration application, reference number: 2025 9, such a change of use would be development and would not be exempted development.

### Recommendation

WHEREAS the following questions have arisen at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford:-

- (a) Whether the change of use of an existing shop to 7 no. residential units is or is not development and is or is not exempted development.



AND WHEREAS the Planning Authority, in considering this referral had regard particularly to:-

- (a) Sections 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 9 and 10(6) of the Planning and Development Regulations 2001, as amended,


AND WHEREAS the Planning Authority concluded that:-

- (a) The stated use as a shop is inaccurate; the subject premises was last used as a café.
- (b) The change of use of an existing café to 7 no. residential units would come within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended),
- (c) The change of use of an existing café to 7 no. residential units would not be consistent with the provisions of Article 10(6).

NOW THEREFORE the Planning Authority hereby decides that the change of use of an existing café to 7 no. residential units at No. 4/5 Sexton Street, Abbeyside, Dungarvan, Co. Waterford is development and is not exempted development.

  
Justin Fleming  
Assistant Planner

Date: 03 September 2025

  
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Marcus Linehan  
Senior Executive Planner

Date: 04 September 2025

Additional SEP Comments – The question has arisen as to whether the change of use from shop to residential is exempted under the Planning Regulations.

Article 10(6) was introduced to allow for a change of use of certain vacant commercial premises (eg pubs, shops etc) to residential use with an aim to increase the re-use of vacant commercial buildings to increase much-needed housing supply and renew urban areas.

The site (part therefore) in question was last operated as a café which was permitted under Planning Ref 17290, and this is therefore considered to be the last established and permitted use.

A Café does not constitute use as a 'shop' as defined in article 5(1) of the Planning and Development Regulations, 2001 (as amended) nor does it fall under Class 2c of the Regulations (See ABP-Referral - 315684-23), or any other Class.

While this could be argued to be an oversight in the current legislation, or the legislation being outdated in terms of the advent of coffee shops in Ireland and not in the spirit of same, there are currently no exemptions in the Planning and Development Act, 2000 (as amended) or in the Planning and Development Regulations, 2001 (as amended), by which this development would constitute exempted development.