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9th December 2025

AN COIMISIÚN PLEANÁLA
LDG- 085776-25
ACP-
09 DEC 2025
Fee: € 220 Type: Cq
Time: 11:42 By: Hand

An Coimisiún Pleanála
64 Marlborough Street
Dublin 1

Ref.: **ED/1275**

Proposal: **Change of use (no material alterations) of lower ground floor area of Bert House Hotel to bedrooms to accommodation people seeking internal protection (IPS) in accordance with Class 20F of the Planning and Development Regulations 2001 (as amended) at Bert House Hotel (a protected structure), Athy, Co. Kildare, R14 WD68.**

Decision Date: **12th November 2025**

Appeal By: **9th December 2025**

Re: SECTION 5 REFERRAL

Dear Sir or Madam,

This is a section 5 planning referral on behalf of ***Damien Malone, Spindara Limited, Landscape House, Baldonnell Business Park, Dublin 22*** in respect of the section 5 declaration decision by Kildare County Council that the proposal constituted development and it was not exempted development. Attached is a copy of the local authority decision and a cheque for € 220 in respect of the prescribed fee.

The Council did not accept that the proposed change of use would not affect the integral character and fabric of the protected structure and thus relied upon Section 57 of the Planning Act and Article 9(1)(a)(vii) of the Planning Regulations to determine the proposal is NOT EXEMPTED development. Our client disagrees with the Council's declaration and accordingly refers the question to the Commission for a decision. For the reasons set out below, the Commission is invited to agree that the proposed change of use is exempted development in accordance with Class 20(f) of the Regulations and the ancillary internal works are exempted development in accordance with section 4(1)(h) of the Act.

Description of the Proposal

From a review of the section 5 declaration submitted to Kildare County Council, it is considered necessary to clearly set out what is proposed and thus subject of the declaration and now referral to the Commission. The question submitted to the Council was:

> *"Is the change of use (no material alterations) of lower ground floor area of Bert House Hotel to bedrooms to accommodation people seeking internal protection (IPS) in accordance with Class 20F of the Planning and Development Regulations 2001 (as amended)?"*

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It occurs to us that the information provided to the Council could have been clearer in respect of the existing layout of the lower ground floor area and what internal works were required as part of the proposed change of use. The only floor plan drawing submitted was Drg. No. FSC 02 by RKAD Architects, which appears to be a fire safety certificate application drawing and not a planning drawing per se. Admittedly, Drg. No. FSC 02 did show that part of the lower ground floor subject of the proposed change of use in pale yellow but it could have been clearer. For clarity, we include two drawings of the lower ground floor plan. Drg. No. KOM1 is the existing floor plan layout[1] and Drg. No. KOM2 is the proposed layout that is subject of this referral.

The Commission is invited to note that the extent of the proposed change of use at lower ground floor level is outlined red on KOM1 and KOM2. As part of this referral, it has been decided to reduce the area subject of the section 5 because we are uncertain as to the planning status of the use of the proposed living room. Therefore, the question before the Commission has been slightly amended as follows:

> *"Is the change of use (no material alterations) of **part of the** lower ground floor area of Bert House Hotel to bedrooms to accommodation people seeking internal protection (IPS) in accordance with Class 20F of the Planning and Development Regulations 2001 (as amended)?"* [additional text highlighted ***thus***]

The only internal works are the proposed sub-division of the gymnasium, which is at the northeastern end of the building and the conversion of two small stores to en-suite facilities. All three locations are outlined green on Drg. No. KOM2. Aside from those specific works, walls have been repainted to freshen up the lower ground floor but no other works have been required e.g. all original doors and windows remain in place.

The Commission's inspector can have full access to the lower ground floor during their site visit but we also include a short walk-through video of the lower ground floor as taken on Friday 5th December 2025. The video starts at point A as denoted on the attached drawings and moves 'down' the corridor. It should be evident that the existing features at lower ground floor level have been untouched save for painting. Where it is proposed to provide two new internal walls at the former gym, the Commission is referred to Fig 14 in the AHIA. We are instructed by our client that the gym extension was added c. 40 years ago to Bert House and further, our client instructs us that is in very poor condition (as evidenced by Fig 14). The internal walls of the former gym would be re-plastered and painted. The internal sub-division would be fully reversible partitions like those set up in an open plan office.

Architectural Heritage Impact Assessment

For the avoidance of any doubt, the section 5 declaration submitted to the Council included an Architectural Heritage Impact Assessment (AHIA) prepared by James Powell (who is officially recognised by Kildare County Council as a qualified conservation consultant). However, from inspecting the section 5 at the public planning counter, reviewing the on-line version and reading the planning officer's report, it would appear the AHIA was possibly misplaced thus it wasn't made available to our office when we visited the local authority last week, it is not scanned as part of the on-line version of the file and inadvertently wasn't reviewed by the Council's planning officer. A copy of the AHIA is submitted with this referral.

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1 We are instructed this layout is correct at the time our client purchased Bert House.

The Section 5 Declaration Decision

From a review of the planning officer's report, the justification for the declaration decision is that "*the applicant has not demonstrated that proposed works will not affect the integral character and fabric of that protected structure*". This comment plus the absence of the AHIA on the planning file or the on-line file leads us to suspect that the AHIA wasn't reviewed by the Council. In addition, there is no reference in the planning officer's report to a site visit, so did the planning officer inspect Bert House as part of their assessment of this declaration?

Further, the planning officer's assessment does not identify any specific internal changes to the protected structure that would materially change or affect the character of the structure. Instead, they repeat "*it has not been outlined that the changes would not materially change or affect the character of the structure*" when as a matter of fact our client had an AHIA prepared and instructs us that he submitted it with the section 5 declaration. The AHIA is specifically referenced in the section 5 cover letter dated 27th August 2025, so the planning officer should have been aware of it or requested its re-submission if it wasn't part of the initial section 5 declaration documentation.

The planning officer's report also refers to a previous declaration, ref. ED11993, but this query is materially different to that one because it relates to Class 20(f) and not Class 14(f), there is a different question being asked, and this section 5 included an AHIA. In other words, the Commission is not precluded from considering this section 5 referral having regard to the Narconon Trust v An Bord Pleanála judgement.

Class 20(f)

From the Regulations, the following is Class 20(f) with the conditions and limitations also listed:

CLASS 20F Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.	1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection. 2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022[1] comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001[2]. 3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028. 4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class. 5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development. 6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in

	accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022. 7. 'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015). 8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.

It is not disputed by the Council that the proposed change of use is in accordance with Class 20(f) of the Planning Regulations. The general restriction on exemption in Article 9(1)(a)(vii), which is referenced in the planning officer's report, is addressed below.

Section 4(1)(h)

From the Planning Act, section 4(1)(h) is as follows:

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;

It is not disputed by the Council that the ancillary internal works are in accordance with Section 4(1)(h) of the Planning Act. However, the Council rely upon section 57 of the Act to dis-apply the exemption. Section 57 is addressed below.

Section 57 & Article 9(1)(a)(vii)

Without specifying what part of the internal works are of particular concern, the Council relies on section 57 of the Act and article 9(1)(a)(vii) of the Regulations to de-exempt the proposed change of use. Both these legislative provisions are set out below:

Section 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.

Article 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—
(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,

Addressing these in reverse order, it is submitted that Article 9(1)(a)(vii) does not apply because the change of use in isolation from any internal works does not comprise excavation, alteration or demolition of the lower ground floor at Bert House; and Article 9(1)(a)(vii) is not applicable to the internal works that are exempted development under Section 4(1)(h) of the Act (subject to complying with Section 57 of the Act).

From section 57, the internal works shall be exempted development only if those works would not materially affect the character of the structure. The Commission is reminded that the proposed works at lower ground floor level are to that part of the former hotel that was previously used as a gymnasium and leisure facility ancillary to the overall hotel. There are no architectural features at lower ground floor level that would be affected by the internal works to the gym and two en-suites.

As the local authority has made a clear issue that the applicant has not demonstrated that the works will not affect the integral character and fabric of the protected structure, the Commission is referred to sections 5, 6 and 7 in the AHIA plus a further opinion on the works by Arthur Hickey who is a Grade 2 Conservation Architect. Both James Powell, Conservation Consultant, and Arthur Hickey, Grade 2 Conservation Architect conclude that the internal works will have no impact on the historical and architectural character of Bert House. It should therefore follow, and the Commission is invited to agree that section 57 of the Act does not de-exempt the internal works, which are exempt development in accordance with section 4(1)(h).

Having regard to the above and attached with this referral, the Commission is requested to confirm that the proposed change of use is exempted development in accordance with Class 20(f) and the ancillary internal works are exempted development in accordance with section 4(1)(h).

Please acknowledge receipt of this referral and direct all future correspondence to this office.

Regards,

Raymond O'Malley.
Kiaran O'Malley & Co. Ltd.
ROM: rom

Enclosures
1. A copy of local authority declaration decision
2. A cheque for € 220 for the referral fee
3. Drg. Nos. KOM1 and KOM2
4. Walk through video on USB stick
5. Architectural Heritage Impact Assessment by James Powell, Conservation Consultant
6. Letter dated 8th December 2025 by Arthur Hickey, Grade 2 Conservation Architect

Comhairle Contae Chill Dara
Kildare County Council

Date: 12th November 2025
Our Ref: ED/1275

Mr Damien Malone
Spindara Limited
Landscape House
Baldonnell Business Park
Dublin 22

RE: Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at Bert House Hotel, Athy, Co Kildare R14 WD68

Dear Sir/Madam,

I refer to your correspondence received on 27th August 2025 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 (as amended) in this regard.

Yours sincerely,

PP
Senior Executive Officer,
Planning Department.

AN COIMISIÚN PLEANÁLA
09 DEC 2025
LTR DATED _____ FROM Appell
LDG-_____
ACP-323936

Comhairle Contae Chill Dara
Kildare County Council

Declaration of Development & Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended).

ED/1275.

WHEREAS a question has arisen as to whether the change of use (no material alterations) of the lower ground floor area of Bert House Hotel (a protected structure - RPS No. B34-03) to bedrooms to accommodate people seeking international protection (IPS) is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 27th August 2025.

AND WHEREAS Damien Malone requested a declaration on the said question from Kildare County Council,

AND WHEREAS Kildare County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

(a) Planning and Development Act 2000 (as amended) and
(b) Planning and Development Regulations 2001 (as amended); and
(c) Documentation received with the application

AND WHEREAS Kildare County Council has concluded that the development comprises works to which the provisions of the following applies:

(a) Section 2, 3, 4, 5 and 57 of the Planning and Development Act 2000 (as amended) and
(b) The nature and extent and purpose of the works

NOW THEREFORE Kildare County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the change of use (no material alterations) of the lower ground floor area of Bert House Hotel (a protected structure - RPS No. B34-03) to bedrooms to accommodate people seeking international protection (IPS) **IS development and IS NOT EXEMPTED development pursuant to Sections 2, 3, 4, 5 and 57 of the Planning and Development Act 2000 (as amended) and Article 6, Article 9 of the Planning and Development Regulations 2001 (as amended).**

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Coimisiún of the prescribed fee, refer a declaration to An Coimisiún Pleanála within 4 weeks of the issuing of the decision.

12th November 2025

PP
Senior Executive Officer,
Planning Department.