

**ROSCOMMON COUNTY COUNCIL**

**PLANNING AND DEVELOPMENT ACT, 2000 (as amended)**

**SECTION 5 - DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT**

**NOTIFICATION OF DECISION**

**REGISTERED POST**

Didean Dochas Eireann Teoranta,  
Bloom HQ,  
Mountrath,  
Co. Laois,  
R32 DC58.

Reference Number: DED 787  
Application Received: 21<sup>st</sup> October 2024  
Name of Applicant: Didean Dochas Eireann Teoranta  
Agent: Cunnane Stratton Reynolds Ltd

WHEREAS a question has arisen as to whether the use of the subject premises as a residence for International Protection Applicants at 29 Ross Ard, Athlone, Co. Roscommon, N37 A8R9, is or is not development and is or is not exempted development:

**AND WHEREAS Roscommon County Council, in considering this application, had regard particularly to:**

- (a) Sections 3 and 4 of the Planning and Development Acts 2000 (as amended).
- (b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- (c) Part 4 of Schedule 2 of the Regulations 2001 as amended.
- (d) ABP Ref.-307077-20 in December 2020 the Board decided that '*the use of the premises at The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons*', is not development.
- (e) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended).
- (f) The planning history on site.

**AND WHEREAS Roscommon County Council has concluded that:**

- (a) The use of the subject premises as a residence for International Protection Applications at 29 Ross Ard, Athlone, Co. Roscommon, N37 A8R9, is not development.

**NOW THEREFORE:**

By virtue of the powers vested in me by the Local Government Acts 1925 – 2024 and Section 5(2)(a) of the Planning and Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the application described above, it is hereby declared that the said development to use the subject premises as a residence for International Protection Applicants at 29 Ross Ard, Athlone, Co. Roscommon, N37 A8R9, is **not development** as defined within the Planning and Development Act 2000 (as amended) and associated Regulations.

Signed on behalf of the Council:



Alan O'Connell,  
Senior Executive Planner,  
Planning.

Date: 13<sup>th</sup> January 2025

cc agent via email: Cunnane Stratton Reynolds Ltd  
[planning@csrlandplan.ie](mailto:planning@csrlandplan.ie)

**ADVICE NOTE**

**Any person issued with a Declaration under Section 5 of the Planning and Development Act, 2000 (as amended) may, on payment to An Bord Pleanála of the prescribed fee, refer a Declaration for review within 4 weeks of the date of the issuing of the Declaration.**

## Carmel Curley

---

**From:** Carmel Curley  
**Sent:** Monday 13 January 2025 14:57  
**To:** info@didean.ie  
**Cc:** planning@csrlandplan.ie  
**Subject:** DED 787  
**Attachments:** DED 787 Notification of Decision.pdf

A Chara,

Please find attached Notification of Decision for DED Application 787. A hard copy will follow via registered post.

Regards,

Carmel

**Carmel Curley, Assistant Staff Officer,  
Planning Department, Roscommon County Council,  
Aras an Chontae, Roscommon, Co. Roscommon, F42 VR98  
☎: (090) 6637100**

✉: [planning@roscommoncoco.ie](mailto:planning@roscommoncoco.ie) | 🌐 [www.roscommoncoco.ie](http://www.roscommoncoco.ie)

**MAP LOCATION**



**Planner's Report on application under Section 5 of the  
Planning and Development Act, 2000, as amended**

**Reference Number:** DED 787

**Name and Address of Applicant:** Didean Dochas Eireann Teoranta

**AGENT:** Eamonn Prenter

**WHEREAS** a question has arisen as to whether 'the use of the subject premises as a residence for International Protection Applicants' at 29, Ross Ard, Athlone, Co. Roscommon N37 A8R9 is or is not development and is or is not exempted development:

**1.0 Site Location and Description**

The site is located within an existing residential development known as Ross Ard in Monksland, South Roscommon. The application site consists of a two-storey semi-detached dwelling.

**2.0 Planning History**

**08/762:** Permission granted for the substitution of a block of three terraced houses granted under planning permission PD/06/756 (Houses 40, 41 & 42) with four houses consisting two blocks of two storey semi detached houses. Also for the alterations to the rear of the block of three terraced houses namely houses no's 55, 56 & 57 granted under planning permission PD/06/756 (only) (Application made for the substitution of a block of three terraced houses granted under planning permission PD/06/756 (Houses 40, 41 & 42) with four houses consisting two blocks of two storey semi detached houses. Also for the alterations to the rear of the block of three terraced houses namely houses Nos 55, 56 & 57 granted under planning permission 06/756. Also for the capped and rendered 2m high block wall erected adjacent to the Old Tuam Road instead of the boundary treatment specified under condition 3b attached to planning permission 06/756)

**06/756:** Permission granted to demolish existing house and shed. 2. Extend the site pertains to planning permission PD/04/1086. 3. Construct of 1 Block of three terraced two storey houses and construction of 2 no. detached bungalows. 4 Change orientation of house numbers 50,51 and 52 granted under PD/04/1086, 5. Close access point onto Old Tuam Road, 6. Create new access point via Mount William Court, 7. Partially change layout of site at Monksland Townland Athlone Co. Roscommon. (Application made for (a). To demolish existing house and shed. (b). Extend the site pertains to Planing Permission PD/04/1086. (c). Construct 1 Blocks of five terraced two storey houses & construction of 2 no. detached bungalows. (d). Change orientation of house no. 50,51 and 52 granted under PD/04/1086. (e). Close access point onto Old Tuam Road. (f). Create new access point via Mount William Court. (g). Partly change layout of site) Road. (f). Create new access point via Mount William Court. (g). Partly change layout of site)

**05/205:** Permission Granted for a) demolition of shed, b) extend the site pertaining to planning permission PD/04/1086, d) change orientation of house numbers 50,51 and 52 granted under PD/04/1086,e) close access point onto Old Tuam Rd, and f) create new access point via Mount William Court, g) partly change site layout in compliance with conditions under PD/04/1086 (only) REFUSE PERMISSION for demolition of existing house and to construct 2 blocks of 5 two storey dwellings. (Application made for (a) to demolish existing house and shed. (b) Extend the site pertains to Planning Permission PD/04/1086. (c) Construct 2 blocks of five two storey houses. (d) Change orientation of house no. 50, 51 and 52 granted under PD/04/1086. (e) Close access point onto Old Tuam Road. (f) Create new access point via Mount William Court. (g) Partly change layout of site)

**04/1086:** Permission granted to change house type of the 52 houses granted under planning permission number PD/03/252. Permission is also sought for all the associated site services associated with the residential development. Permission is also sought to demolish existing house and sheds.

**03/252:** Permission granted to demolish existing sub-standard house and sheds and to construct a new 59- dwelling residential development including new site entrance roads parking, public open space and all associated site services all as per planning application documents.

### 3.0 Relevant Legislation

I have considered this question, and I have had regard particularly to –

- a) Sections 3, and 4 of the Planning and Development Acts 2000 (as amended);
- b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- c) Part 4 of Schedule 2 of the Regulations 2001 as amended.
- d) ABP Ref.-307077-20 in December 2020 the Board decided that *'the use of the premises at The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons'*, is not development
- e) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended);
- f) The planning history on site.

#### **Planning and Development Act, 2000 (as amended)**

##### Section 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.

### 4.0 Planning Assessment

The question to be determined in this Section 5 declaration is whether **'the use of the subject premises as a residence for International Protection Applicants'** at 29, Ross Ard, Athlone, Co. Roscommon N37 A8R9 consists of a material change of use. The existing building on site has an established and permitted residential use. The applicant's proposal under this Section 5 application is to use this premises as a residence for International Protection Applicants.

It has been clarified in the submission that no physical works or subdivision to the building is proposed and it is not intended to provide any reception or an administrative centre. The Planning Authority is satisfied from the applicant's submission that it is intended that the premise will operate as residential accommodation for protected persons and not as an emergency reception for the care of protected persons. Having established that the intended future use is residential, the status or personal circumstances of the future residents is not a material planning issue.

Based on the clarifications provided in documents received concerning the intended intensity of use the stated residential use would not appear to be such that it could be considered to amount to a material change of use on the basis of intensity alone.

Having regard to the nature of the development the Planning Authority is satisfied that the proposal does not constitute a change of use from the permitted residential use or a change of use within any one of the classes of use specified in Part 4 of Schedule 2 of the Regulations 2001 as amended and therefore is not development.

Having regard to the above, I am satisfied that the general question raised in this referral can be determined as follows: **'the use of the subject premises as a residence for International Protection Applicants' at 29, Ross Ard, Athlone, Co. Roscommon N37 A8R9, is NOT development.**

## 5.0 Recommendation

**WHEREAS** a question has arisen as to whether **'the use of the subject premises as a residence for International Protection Applicants' at 29, Ross Ard, Athlone, Co. Roscommon N37 A8R9, is development and is exempted development, and is or is not exempted development:**

**I have considered this question, and I have had regard particularly to –**

- a) Sections 3, and 4 of the Planning and Development Acts 2000 (as amended);
- b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- c) Part 4 of Schedule 2 of the Regulations 2001 as amended.
- d) ABP Ref.-307077-20 in December 2020 the Board decided that *'the use of the premises at The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons'*, is not development
- e) The record forwarded to Roscommon County Council in accordance with subsection (6)(c) of Section 5 of the Planning and Development Acts 2000 (as amended);
- f) The planning history on site.

**AND WHEREAS I have concluded that**

**the use of the subject premises as a residence for International Protection Applicants at 29, Ross Ard, Athlone, Co. Roscommon N37 A8R9 is not development and I recommend that a declaration to that effect should be issued to the applicant.**

Signed:

  
Shane Winters  
Executive Planner

Date: 10<sup>th</sup> January 2025

  
Signed: \_\_\_\_\_  
Alan O'Connell  
Senior/Senior Executive Planner.

Date: 10<sup>th</sup> January 2025



Photos taken on 9<sup>th</sup> January 2025



















Comhairle Contae  
Ros Comáin  
Roscommon  
County Council



Dídean Dóchas Eireann Teoranta,  
Bloom HQ,  
Mountrath,  
Co. Laois,  
R32 DC58.

Date: 22<sup>nd</sup> October 2024  
Planning Reference: DED 787

Re: Application for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended), regarding Exempted Development.  
Development: Permission to seek clarification as to whether the use of the subject premises as a residence for International Protection Applicants constitutes development and whether, if it does, can it be considered exempted development under the Planning & Development Act (Exempt Development) Regulations 2018 at 29 Ross Árd, Athlone, Co. Roscommon. N37 A8R9.

\*\*\*\*\*  
A Chara,

I wish to acknowledge receipt of your application which was received on the 21<sup>st</sup> October 2024, for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended), regarding Exempted Development along with the appropriate fee in the sum of €80.00, Receipt No. L01/0/231185 dated 22<sup>nd</sup> October 2024, receipt enclosed herewith.

**Note:** Please note your Planning Reference No. is **DED 787**  
This should be quoted in all correspondence and telephone queries.

Mise le meas,

Alan O'Connell  
Senior Executive Planner,  
Planning Department.

cc agent via email: [Cunnane Stratton Reynolds Ltd  
planning@csrlandplan.ie](mailto:CunnaneStrattonReynoldsLtd@roscommoncoco.ie)



Roscommon County Council  
Ara an Chontae  
Roscommon  
D9086 37100

22/10/2024 10 27.19

Receipt No.: L010/231185

DIDEAN  
C/O CLINNANE STRATTON REYNOLDS  
GAINSBORO HOUSE  
24 SUFFOLK ST  
DUBLIN 2

EXEMPTED DEVELOPMENT

PLANNING APPLICATION FEES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	
DED787	

Total 80.00 EUR

CSR Ref: 24298

CUNNANE STRATTON REYNOLDS

Planning Department  
Áras an Chontae,  
Roscommon,  
Co. Roscommon



21<sup>st</sup> October 2024

**Re: Section 5 application for a declaration as to whether use of the subject premises as a residence for International Protection Applicants constitutes development and whether, if it does, it can be considered exempted development.**

**Premises at 29 Ross Árd, Athlone, N37 A8R9**

Dear Sir/Madam,

I refer to the above and enclose this application for a declaration of the above under Section 5 of the Planning and Development Act 2000, as amended which seeks clarity on:

**Whether use of the subject premises as a residence for International Protection Applicants constitutes development and whether, if it does, it can be considered exempted development.**

This application is made by Cunnane Stratton Reynolds Ltd of Gainsboro House, 24 Suffolk Street, Dublin 2, D02 KF65 on behalf of Dídean Dóchas Eireann Teoranta with an address in the county at Bloom HQ, Mountrath, Co. Laois R32 DC58.

This cover letter sets out our client's application under the following headings:

- The content of this application;
- The applicant;
- The subject premises;
- The subject proposal;
- Planning history;
- Planning context;
- Our client's case; and
- Conclusions

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### ***The Content of this Application***

This application contains the following documents:

- This cover letter;
- The completed Section 5 application form;
- Location Plan;
- Site Layout Plan;
- Existing floor plan and existing elevations which also constitute the proposed floorplan and elevations as there are no changes to either the internal layout or the exterior of the subject dwelling;
- Legal Opinion from Eamon Galligan SC and Conor Sheehan BL;
- Architectural Opinion on Planning Compliance;
- Laois County Council's recent Section 5 Declaration Reg. Ref. S5/2024/26;
- Compliance report with Building and & Fire Regulations; and
- Planning application fee of €80.

### ***The Applicant***

The applicant in this case is Dídean Dóchas Eireann Teoranta ('Dídean'), which has its main office in County Laois. Dídean have a portfolio of residential properties across the State. Typically, these comprise 2, 3 and 4 bed dwellings in typical residential communities in a variety of locations throughout the State (including one off housing, houses within a housing estate, etc.). In all instances Dídean currently provide and wish to continue to provide residential accommodation for those awaiting political asylum. Dídean facilitate a visiting service or support where required.

In some instances, Dídean also provides supported living, day and community outreach services to both children and adults, as a household or family, or to individuals or groups with a range of support requirements otherwise known as 'direct services' to the occupants of their properties. (Their properties are not used as health care facilities or as 'asylum centres')

Accommodation is provided to international protection applicants on a 6-18 month basis through a contract with a Government Department and Dídean's staff provide direct services, on an occasional basis (c. 3 hours per week on a visiting basis), which is social care services including arranging school places, sourcing doctors, arranging medical cards, IPAS (International Protection Applications Service) appointments, getting medical assessments etc to occupants of the houses.

No staff are based in Dídean's homes. Dídean's team liaise with the adults of the house to assist with arranging the above while integrating into the community.

The services are provided on a visiting basis and would be no different to care being delivered to a traditional domestic setting, for example, for elderly or infirm occupants of a dwelling.

The dwellings provided by Dídean accommodate between three and eight persons. Overcrowding does not occur. The premises are used, and will be used, for residential purposes and are not used and will not be used for reception or administrative purposes.

Various nationalities are accommodated in Dídean's properties (but no persons of Ukrainian nationality).

The above are important considerations in determining whether the use of the properties constitutes development and/or if there has been a material change of use (i.e. a use amounting to development). The advice obtained from Senior Counsel (assisted by Junior Counsel) is that the use is not development.

### ***The Subject Premises***

The premises is occupied by a family of international protection applicants at present. No internal or external modifications were undertaken to the house to facilitate the use of the house by international protection applicants. The premises include a rear garden and the dwelling enjoys to nearby amenities and open space.

The house is a typical second hand house that is similar to other houses located in the area.

### ***The Subject Proposal***

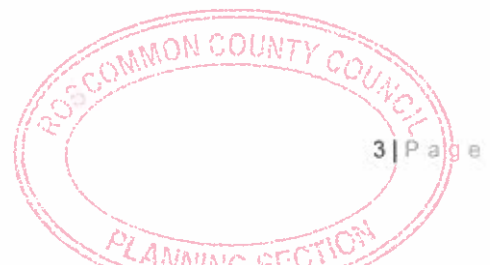
Dídean wishes to continue to provide residential accommodation and direct services for people seeking asylum ('protected persons') including the provision of visiting services and/or support where required. These services comprise of supported living, day and community outreach services to individuals or groups with a range of complex support requirements known as 'direct services'. The services, as mentioned above, are typically provided for up to 3 hours per week, per individual. It is confirmed that there is on average one vehicle movement to the subject site, and one vehicle movement from the site each day (the occupants do not own or having use of a car). This level of car usage is considered at, or less than, the norm for such a dwelling.

We confirm, on behalf of the applicant, that no physical modifications to facilitate the current use were undertaken. We further confirm that the subject premises do not contain any reception and/or lobby areas, or administrative component, which otherwise might lead to it being categorised as a reception centre. The subject premises will continue to function as a single residential unit or dwelling and has not been, nor will it be, sub-divided.

### ***Planning History***

There are no physical works, inside or out, to the subject dwelling, the focus of this application is on the use and whether the use for which the building is currently used, and for which it is intended to be used, constitutes either an intensification of that existing permitted use, or constitutes a material change of use.

Planning permission was originally granted for the subject dwelling as part of a wider housing scheme under reg. ref. PD/06756, PD/04/1086 and PD/03/252. A number of relatively standard planning conditions were attached to all units within the overall development. It should be noted that no conditions were attached to the final grant of planning permission restricting the subject dwelling to single families or excluding any group, non-nationals, political grouping etc.



### **Planning Context**

There are several aspects to the planning context which are material considerations in this instance.

The material factors to be considered are the planning history of the subject dwelling which establishes the scope of the permitted residential use and the provisions of the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001, as amended.

In terms of planning impacts, in respect of the Development Plan zoning maps, we noted that the subject site is zoned for existing residential use and that its existing use is a residential use.

Relevant legislative provisions are set out in the attached Joint Opinion of Counsel to which the Council is referred. In essence, it is considered that there is no material change of use and as there have also been no works undertaken to the property and where the property is not unauthorised, the continued use of the property is its lawful use and as such its use for housing internal protection applicants is not Development within the meaning of the Planning and Development Act, 2000.

The matter of change of use is addressed in the attached legal opinion. In considering that no works have been undertaken to the originally permitted dwelling the opinion addresses whether any change in the use of the subject premises is material in planning terms having regard to *Monaghan County Council v. Brogan* [1987] I.R. 333 where it was found that issues raised by a change of use would be normally considered by a planning authority as if it were dealing with an application for planning permission and in so doing would consider 'residential amenity, traffic safety or policy issues related to the statutory plan'. It was found also that a continuation of the same use does not, in general, amount to development. It is also clear that practical effects of the use, including off-site impacts must be considered. Potential off-site impacts are considered in the legal opinion.

We also add that no other impact would occur including noise impact, visual impact, such as to impair existing residential amenity.

It is also clear from the attached legal opinion attached that the use of the subject premises is not as a hostel requiring a change of use.

The possibility of material intensification is considered in the attached legal opinion and it is concluded that there is no evidence of intensification in this instance, nor is there a concentration of other similar accommodation in the immediate locality.

The provision of direct services is not sufficient to alter the character of the use of the premises as residential.

The Ballinamore Section 5 Declaration made by An Bord Pleanála referred to in Counsels opinion would indicate that where no reception or administrative function is provided, as in this case, and in the absence of any additional material off-site impacts, there is no material change of use from a dwelling.

None of the other questions posed are sufficient to alter that fundamental opinion contained within the legal opinion.





As indicated in the opinion the decision of the County Council should conclude that there is no change of use, no intensification, no development and no requirement to obtain planning permission.

Please see attached a recent Section 5 Declaration from Laois County Council regarding use for international protected applicants in similar circumstances where the County Council concluded clearly that the same use is not development in the first place and no issue of exemption thereafter applies.

### ***Our Client's Case***

Our client's case for a positive determination of this Section 5 application in their favour, namely that the subject development does not constitute development is set out in the joining legal opinion of Eamon Galligan SC and Conor Sheehan BL.

Their joint opinion concludes that:

- It is considered that the use the subject premises for the accommodation of protected persons does not give rise to a material change of use from its use as a dwelling and, therefore, does not constitute development requiring planning permission.
- There are no conditions or limitations imposed by the planning permission for the subject dwelling which would prevent it being used for the purposes of accommodating applicants for international protection.
- No physical works or changes to the building have been undertaken, or are required to be undertaken, to accommodate persons applying for international protection.
- There is one kitchen and one living/sitting room serving all residents within the context of a single dwelling. The bathroom is also shared.
- There is currently one family living in the subject premises. Were additional occupants to be accommodated, who were not related, but shared the kitchen and living room facilities in a similar manner, this would not of itself give rise to any material change of use, unless it was accompanied by a material increase in site impacts, which does not appear likely. The position might be different if there was significant car ownership among protected persons, leading to increased traffic or car parking demand, but this would not normally be expected.
- The subject dwelling is being used solely for residential purposes and there is no intention to provide a reception or administrative centre for those seeking international protection at this location that would give rise to a change of use.
- The issue of intensification does not arise. Moreover, it is only where an intensification of use gives rise to material planning impacts that a material change of use by reason of intensification could be taken to have occurred. In the absence of any material vehicular or other off-site impacts in the present case, Counsel conclude that there is no material change of use in this respect.
- The Board's decision and Inspector's Report on the Ballinamore referral referenced in the Counsels opinion supports the view that the use of residential accommodation by protected persons does not constitute development.



### **Conclusions**

The attached legal opinion and the planning case presented in the within submission, shows that the use of the subject premises, does not constitute 'development' through a material change of use, or alternatively through any intensification, that would result in any planning or environmental impact such as would warrant the requirement for obtaining planning permission.

This view is also strongly supported by a Section 5 Referral precedent Declaration made by the Board under Ref. ABP-397077-20 and the precedent established by Laois County Council's recent Section 5 Declaration (their Reg. Ref. S5/2024/26) that use as a dwelling for international protection applicants does not constitute development for any existing residential premises, upon which the applicant relies in the present case.

We trust that this application and supporting documentation is sufficiently comprehensive and robust to enable a positive determination for our client demonstrating that the subject use does not constitute development, and that planning permission is not required in this instance.

If you have any queries please contact the undersigned at the address given below.

Yours sincerely,



**Eamonn Prenter** MIPI MRTPI  
Director

**CUNNANE STRATTON REYNOLDS**  
**LAND PLANNING & DESIGN**  
Dublin, Cork & Galway  
[www.csrlandplan.ie](http://www.csrlandplan.ie)



# RFT PART 1.6.3 MANDATORY REQUIREMENTS COMPLIANCE WITH BUILDING & FIRE REGULATIONS

(Type 2 Accommodation- MR2)

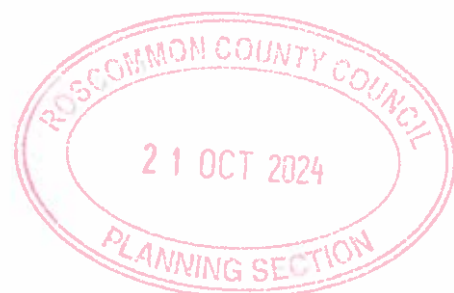
**29 Ross Árd,  
Athlone,  
N37 A8R9**

Prepared for:

**Dídean**  
PARTNERSHIP | INTEGRATION | INCLUSION



Lenztech Ref: LT24003-R01  
Version No:1  
May 2024



## Quality Control

Prepared by

*Kevin Staunton*

Kevin Staunton CEng  
BEng, MIEI  
Chartered Engineer

Checked by

*Damien Quigley*

Damien Quigley  
B.Eng (Hons), MIEI  
Director, Senior Engineer

Approved by

*Kevin Staunton*

Kevin Staunton CEng  
BEng, MIEI  
Chartered Engineer

## Revision History

Revision:	Revision Date:	Details:	Authorized:	Name:	Role:
R1	17 <sup>th</sup> May 2024	Initial Issue	Kevin Staunton	KS	Senior Engineer

## Distribution List

# Hard Copies	PDF Issue:	Association Company Role:
	17 <sup>th</sup> May 2024	Client: Fiona Delaney, Chief Financial Officer, Dídean



## BASIS OF REPORT/FOREWORD

This document has been prepared by Lenztech Surveying & Engineering Ltd. with reasonable skill, care and diligence, and taking account of the manpower, timescales and resources devoted to it by agreement with Dídean (the Client) as part or all of the services it has been appointed by the Client to carry out. It is subject to the terms and conditions of that appointment.

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Information, advice, recommendations and opinions in this document should only be relied upon in the context of the whole document and any documents referenced explicitly herein and should then only be used within the context of the appointment.





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## 1. INTRODUCTION

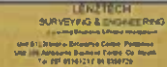
- 1.1 Lenztech Surveying & Engineering Ltd. were appointed to carry out the role of Independent Chartered Engineers to provide Evidence of Compliance with the Technical Guidance Documents and in turn the Building Regulations for the property at **29 Ross Árd, Athlone, N37 A8R9** on behalf of Dídean.
- 1.2 The purpose of this report is to review and compile all documentation required as part of the “*RFT Part 1.6.3 Mandatory Requirements Compliance with Building and Fire Regulations for Type 2 Accommodations (MR2)*”.



## 1.1 Outline of Compliance Assessment Requirements




**LBN TECH**  
 SURVEYING & ENGINEERING  
 Unit 51, 11th Floor, Encorp Centre, Ponghwa  
 100 Hillside Avenue, Singapore 117570  
 Tel: 65 6342 1212 | Fax: 65 6342 1213  
 www.lbn.tech | Email: info@lbn.tech



## 2. DOCUMENTATION FOR EVIDENCE ON COMPLIANCE





## 2.1 Compliance Review of Building & Fire Regulations TGD A to K





## Lenztech Surveying & Engineering Ltd.

Unit 20B,  
Ashbourne Business Centre,  
Ballybin Road, Ashbourne,  
Co. Meath,  
A84 RH51

Unit B12  
National Enterprise Park,  
Portlaoise,  
Co. Laois,  
R32 RT73

T: + 353 (0)57 8510121  
E: info@lenztech.ie

YOUR REFERENCE:

OUR REFERENCE: LT24003-R01-05

DATE: 17<sup>th</sup> MAY 2024

**FIONA DELANEY**  
**CHIEF FINANCIAL OFFICER**  
DÍDEAN  
UNIT 3 BLOOM HQ  
PATRICK'S STREET,  
MOUNTRATH,  
CO. LAOIS

### Re: COMPLIANCE REVIEW OF BUILDING & FIRE REGULATIONS

Dear Fiona,

Further to the detailed review and inspection, I can confirm that the property at **"29 Ross Árd, Athlone, N37 A8R9"** remains in compliance with Building Regulations Technical Guidance Documents (TGD) relevant to the time Substantial Completion was achieved.

This includes compliance with:

- TGD A- Structure
- TGD B- Fire Safety-Dwellings
- TGD C- Site Preparation and Resistance to Moisture
- TGD D- Materials & Workmanship
- TGD E- Sound
- TGD F- Ventilation
- TGD G- Hygiene
- TGD H- Drainage & Wastewater Disposal
- TGD J – Heat Producing Appliances
- TGD L- Conservation of Fuel and Energy Dwellings
- TGD M – Access & Use
- TGD K – Stairways, Ladders, Ramps and Guards

Refer to section 2 of this report for supporting information.

Yours Sincerely,

A handwritten signature in black ink, reading "Kevin Staunton".

**Kevin Staunton, Chartered Engineer, MIEI**

For and on behalf  
Lenztech Surveying & Engineering Ltd.



## 2.2 Architect/Engineers Opinion on Compliance with Building Regulation





**Mark Fahy & Associates**  
**CONSULTING ENGINEERS**

No. 2 Victoria Place,  
Eyre Square,  
Galway.

TEL: 091-533844 OR 087-9192293

**CERTIFICATE OF COMPLIANCE.**

**HOUSE No.29**

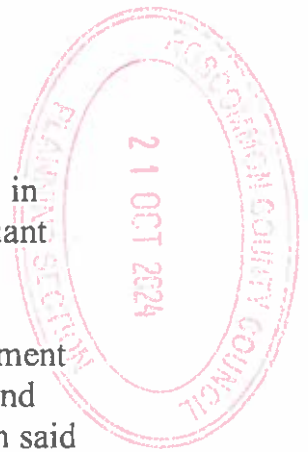
**Client:** Patrick Donoghue:

**Project:** Housing Development of 52 No. Houses.

---

1. I am a bonded Civil Engineer having qualified as such at University College, Galway in 1983. I qualified with a Bachelor of Civil Engineering degree in 1983. I am a member of the Institute of Engineers of Ireland.
2. I have been in independent private practice on my own account since 1997.
3. Mark Fahy & Associates are the firm retained by Patrick Donoghue to make periodic inspections during the course of construction of the section of Mount William Court estate known as Ros Ard situated at Monksland, Athlone, Co. Roscommon of which House No. 29 forms part. Hereafter, the said property shall be referred to as the Relevant Works"
4. I have visited the offices of the planning authority for Roscommon County Council and therein inspected the house plans, layout plans, specifications, other drawing and documents which were represented by the planning authority as those on foot of which the grant of planning permission for the development was granted.
5. The following grant of planning permission relates to the Relevant Works: - Planning Permission No. PD/04/1086 Roscommon County Council.
6. No Fire Safety Certificate is required, as the property will be use as dwelling house.

7. The Relevant Works and the services thereof have been designed in substantial conformity with the Building Regulations made pursuant to the to the Building Control Act 1990.
8. Commencement Notice of the intention to undertake the development was given in accordance with the Building Control Regulations and such notice contained the information and particulars described in said regulations.
9. I made periodic inspections on the site during the course of construction of the Relevant Works and in my opinion the completed works complies substantially with, (A) the Building regulations and (B) the Grant of Planning Permission mentioned above and that the position of the works is in substantial compliance with the layout Plans referred to in paragraph (4). Each stage of construction was inspected from the opening and lying of the foundation until the house was completed in accordance with good building practice.
- 10.No Planning Permission other than that referred to at parragraph 5 aforesaid is pertinent to the relevant Works.
- 11.The conditions of the Planning Permission referred to at parragraph 5 relating to the Estate of which the Relevant Works form part have been substantially complied with in so far as is reasonably possible at this stage of the development of such Estate, BUT this paragrapy is not to be taken as extending to conditions for the payment of financial contributions or the giving or the giving of security for satisfactory completion, compliance with which is not within my competence to certify.
- 12.The house has been constructed wholly within the curtilage of the site for which the planning permission was granted.
- 13.In the event that the house has not been built and/or laid out exactly in accordance with the said Planning Permission, I am of the opinion that the difference are unlikely to affect the planning and development of the area as envisaged by the planning authority and expressed through the above planning permission.
- 14.Take note that this Certificate is issued solely for the purpose of providing evidence for title purposes of the compliance of the development with the requirements of Planning Legislation and of the





Building Control Act (1990) and the regulations there under. Except insofar as it relates to compliance with the said requirements, it is not a report or survey on physical condition or on the structure of the relevant works, nor does it warrant, represent or take into account any of the following:

- The accuracy of dimensions in general saves where arising out of the conditions of the Planning Permission or the Building Regulations aforesaid.
- Matters in respect of private rights or obligations. Matters in respect of financial contributions and bonds.
- Development of the relevant works which may occur after date of issue of this Certificate.

Signed: Mark Fahy Date 10-01-06  
Mark Fahy B.E.



## 2.3 Architect/Engineers Opinion on Compliance with Planning :



**Mark Fahy & Associates**  
**CONSULTING ENGINEERS**

No. 2 Victoria Place,  
Eyre Square,  
Galway.

TEL: 091-533844 OR 087-9192293

**CERTIFICATE OF COMPLIANCE.**

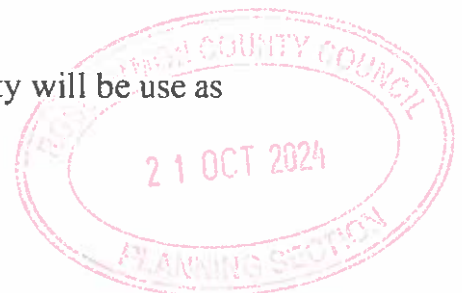
**HOUSE No.29**

**Client:** Patrick Donoghue:

**Project:** Housing Development of 52 No. Houses.

---

1. I am a bonded Civil Engineer having qualified as such at University College, Galway in 1983. I qualified with a Bachelor of Civil Engineering degree in 1983. I am a member of the Institute of Engineers of Ireland.
2. I have been in independent private practice on my own account since 1997.
3. Mark Fahy & Associates are the firm retained by Patrick Donoghue to make periodic inspections during the course of construction of the section of Mount William Court estate known as Ros Ard situated at Monksland, Athlone, Co. Roscommon of which House No. 29 forms part. Hereafter, the said property shall be referred to as the Relevant Works"
4. I have visited the offices of the planning authority for Roscommon County Council and therein inspected the house plans, layout plans, specifications, other drawing and documents which were represented by the planning authority as those on foot of which the grant of planning permission for the development was granted.
5. The following grant of planning permission relates to the Relevant Works: - Planning Permission No. PD/04/1086 Roscommon County Council.
6. No Fire Safety Certificate is required, as the property will be use as dwelling house.





7. The Relevant Works and the services thereof have been designed in substantial conformity with the Building Regulations made pursuant to the to the Building Control Act 1990.
8. Commencement Notice of the intention to undertake the development was given in accordance with the Building Control Regulations and such notice contained the information and particulars described in said regulations.
9. I made periodic inspections on the site during the course of construction of the Relevant Works and in my opinion the completed works complies substantially with, (A) the Building regulations and (B) the Grant of Planning Permission mentioned above and that the position of the works is in substantial compliance with the layout Plans referred to in paragraph (4). Each stage of construction was inspected from the opening and lying of the foundation until the house was completed in accordance with good building practice.
- 10.No Planning Permission other than that referred to at parragraph 5 aforesaid is pertinent to the relevant Works.
- 11.The conditions of the Planning Permission referred to at parragraph 5 relating to the Estate of which the Relevant Works form part have been substantially complied with in so far as is reasonably possible at this stage of the development of such Estate, BUT this paragrapy is not to be taken as extending to conditions for the payment of financial contributions or the giving or the giving of security for satisfactory completion, compliance with which is not within my competence to certify.
- 12.The house has been constructed wholly within the curtilage of the site for which the planning permission was granted.
- 13.In the event that the house has not been built and/or laid out exactly in accordance with the said Planning Permission, I am of the opinion that the difference are unlikely to affect the planning and development of the area as envisaged by the planning authority and expressed through the above planning permission.
- 14.Take note that this Certificate is issued solely for the purpose of providing evidence for title purposes of the compliance of the development with the requirements of Planning Legislation and of the

Building Control Act (1990) and the regulations there under. Except insofar as it relates to compliance with the said requirements, it is not a report or survey on physical condition or on the structure of the relevant works, nor does it warrant, represent or take into account any of the following:

- The accuracy of dimensions in general saves where arising out of the conditions of the Planning Permission or the Building Regulations aforesaid.
- Matters in respect of private rights or obligations. Matters in respect of financial contributions and bonds.
- Development of the relevant works which may occur after date of issue of this Certificate.

Signed: Mark Fahy Date 10-01-06  
Mark Fahy B.E.





## 2.4 Independent Engineers Review Report





## Lenztech Surveying & Engineering Ltd.

Unit 20B,  
Ashbourne Business Centre,  
Ballybin Road, Ashbourne,  
Co. Meath,  
A84 RH51

Unit B12  
National Enterprise Park,  
Portlaoise,  
Co. Laois,  
R32 RT73

T: + 353 (0)57 8510121  
E: info@lenztech.ie

YOUR REFERENCE:

OUR REFERENCE: LT24003-R01-01

DATE: 17<sup>TH</sup> MAY 2024

**FIONA DELANEY**  
**CHIEF FINANCIAL OFFICER**  
DÍDEAN  
UNIT 3 BLOOM HQ  
PATRICK'S STREET,  
MOUNTRATH,  
CO. LAOIS

### **Re: INDEPENDENT ENGINEERS REVIEW ON COMPLIANCE WITH RELEVANT STATUTORY REQUIREMENTS**

Lenztech Surveying & Engineering Limited, Unit B12, National Enterprise Park, Portlaoise have been retained by Dídean, (hereinafter called the Employer) of Unit 3 Bloom HQ, Patrick's Street, Mountrath to review the compliance of the dwelling at **29 Ross Árd, Athlone, N37 A8R9**, (hereinafter referred to as the "the Relevant Development") with the relevant statutory requirements for Building and Planning & Development regulations.

This review is based on the Visual Inspection only of the Relevant Development and the associated third party Opinion on Compliance prepared at the time of substantial construction completion insofar as the relevant statutory regulations and acts applicable at the time of construction commencement.

On the **22nd Day of February 2024** I inspected the Relevant Documents furnished by the Employer to Lenztech Surveying & Engineering Ltd. for the purpose of comparison of the Relevant Development with the Relevant Documents.

On the **23rd Day of February 2024** ("the Inspection Date") I carried out a Visual Inspection of the Relevant development for the purposes of comparison of the Relevant Development with the Relevant Documents. The relevant statutory requirements and regulations applicable at the time are those in effect based on the below dates:

Property Ref	Planning Reference	Date of Commencement	Date of Completion
29 Ross Árd, Athlone, N37 A8R9	Roscommon County Council Ref: PD/04/1086	Unknown	10/01/2006

I have received confirmation from the contractor listed at schedule "A" hereto, that the recent refurbishment works have been constructed in substantial compliance with current Technical Guidance Documents for Building Regulations.

To the extent that the visual inspection as referred to above and not taking into account works which were covered up, inaccessible or otherwise obscured from view, I am of the opinion that the Relevant Building or Works remain in substantial compliance with the statutory requirements applicable at the time of the Relevant Development Construction.

This review relies on the visual inspection, opinions on compliance with Building Regulations and on the confirmation referred to above.

**Definitions:**

**"Building Control Act"** means the Building Control Act 1990 and any statutory modification or re-enactment thereof current at the date of the Commencement Notice referred to herein.

**"Building", "Works", "Construction" and "Design"** have the meanings respectively assigned by the Building Control Act.

**"Building Regulations"** means regulations made under the Building Control Act

**"Confirmations"** means statements received from the persons detailed at Schedule "A", confirming substantial compliance of elements of the Relevant Building or Works with Building Regulations

**"Substantial Compliance"** when applied to Construction means that such construction of the Relevant Building or Works, as is evident by Visual Inspection, is in accordance with the Building Regulations, saving and excepting such deviations as would not in my opinion warrant the issue of enforcement proceedings as provided for in the Building Regulations Control Act.


**"Visual Inspection"** means an inspection of the Relevant Development as existed on the Inspection Date. No opening up was carried out. The inspection was superficial only and therefore took no account of works which were covered up, inaccessible or otherwise obscured from view.

**Schedule A: Confirmations**

Contractor: JB Facilities & Maintenance Ltd  
Of: 4 Kilkenny Street, Castlecomer, Kilkenny  
Element: Contractor

**Dated This:** 17<sup>th</sup> May 2024

**Signed:**

  
**Kevin Staunton, Chartered Engineer, MIEI**  
For and on behalf  
Lenztech Surveying & Engineering Ltd.



## Schedule A- Confirmations and Certification

*Confirmation & Certification on refurbishment and upgrade works with respect to TGD Part A to K*



# *JB Facilities Maintenance Ltd*

---

8<sup>th</sup> May 2024

Fiona Delaney  
Chief Financial Officer  
Dídean  
Unit 3 Bloom HQ  
Patricks Street  
Mountrath  
Co Laois

## **Building Works Carried Out at: 29 Ros Ard**

Dear Fiona,

We confirm that it is the opinion of this Company that the building works carried out to the above mentioned address by JB Facilities Maintenance Ltd is in substantial compliance with Building Regulations made pursuant to the Building Control Act 1990.

Signed on behalf of JB Facilities Maintenance Ltd.



Jimmy Boland  
Director  
JB Facilities Maintenance Ltd.





## 2.5 Non-Intrusive Survey Report With Opinion on Pyrite/Mica





## Lenztech Surveying & Engineering Ltd.

Unit 20B,  
Ashbourne Business Centre,  
Ballybin Road, Ashbourne,  
Co. Meath,  
A84 RH51

Unit B12  
National Enterprise Park,  
Portlaoise,  
Co. Laois,  
R32 RT73

T: + 353 (0)57 8510121  
E: info@lenztech.ie

YOUR REFERENCE:

OUR REFERENCE: LT24003-R01-02

DATE: 17<sup>TH</sup> MAY 2024

**FIONA DELANEY**  
**CHIEF FINANCIAL OFFICER**  
DÍDEAN  
UNIT 3 BLOOM HQ  
PATRICK'S STREET,  
MOUNTRATH,  
CO. LAOIS



**Re: Non-Intrusive Inspection for Opinion on Pyrite/ Mica Mineral defects within Structure in  
accordance with NSAI I.S. 465:2015- TGD Part A & C**

Lenztech Surveying & Engineering Limited, Unit B12, National Enterprise Park, Portlaoise have been retained by Dídean, (hereinafter called the Employer) of Unit 3 Bloom HQ, Patrick's Street, Mountrath to undertake a non-intrusive visual assessment on the structure including opinion on the presence of Pyrite/Mica **29 Ross Árd, Athlone, N37 A8R9** (hereinafter referred to as the "the Relevant Development").

I Kevin Staunton, Chartered Engineer, BEng, MIEI, have provided the following Engineering services for the Employer in connection with the Relevant Development:

- (i) Building Condition Assessment in accordance with Section 5 of I.S 465:2018 at the Relevant Development as defined herein for evidence of defects or deterioration typically encountered with the presence of Pyrite and Mica minerals.

The Building Condition Assessment comprised of a desktop study where the following was assessed;

- History of any known occurrences of similar damage in local area or estate
- Information on the design and construction of the dwelling including location of services
- Information on the geographical location including prevailing winds and rain exposure
- Review of initial planning and certification documentation by others
- Outline construction details of the building, form of construction and any associated typical defects that may present during a subsequent site inspection

- (ii) On the **19<sup>th</sup> Day of February 2024** ("the Inspection Date") I carried out a Visual Inspection of the Relevant development

The property is considered to be within building **Group 1- Undamaged** as per the classification outlined in Table 1-Building Grouping of I.S.465:2018 with no pattern cracking present or visual structural defects identified during the inspection.

The report findings are contained within the attached schedule.

This opinion is based on the Visual Inspection only of the Relevant Development carried out for the purposes of identification of visible structural defects attributed to potential Pyrite and Mica minerals found within granular material used within the products and materials during the construction of the property.

The assessment was undertaken with consideration to the associated third party Opinion on Compliance prepared at the time of substantial construction completion insofar as the relevant statutory regulations and acts applicable at the time of construction commencement.

It is not a report on the condition or structure of the Relevant Development.

This opinion does not in any way warrant, represent or take into account any of the following matters:-

- (a) Reactive pyrite in sub-floor hardcore or any hardcore material identifiable only through testing and categorisation protocol, as published by the National Standards Authority of Ireland
- (b) It is not an opinion of compliance with any consequential amendments of the Regulations or Acts on or after the date of substantial completion

**Definitions:**

**"Visual Inspection"** means an inspection of the Relevant Development as existed on the Inspection Date. No opening up was carried out. The inspection was superficial only and therefore took no account of works which were covered up, inaccessible or otherwise obscured from view.

***Dated This: 17<sup>th</sup> May 2024***

***Signed:***

*Kevin Staunton*

**Kevin Staunton, BEng, CEng, MIEI**  
Chartered Engineer  
For and on behalf Lenztech Surveying & Engineering Ltd.



**Schedule A-**

***Building Condition Assessment Report***





**LENZTECH**  
**SURVEYING & ENGINEERING**  
consulting engineers & project management

Unit B12 National Enterprise Centre, Portlaoise Tel: 057 8510121 /  
Unit 208 Ashbourne Business Centre, Co. Meath 01 8358729  
www.lenztech.ie E-mail: info@lenztech.ie

**Building Condition Assessment Report**

(in accordance with NSAI I.S 465:2018)

**Information on the building**

Address: 29 Ross Ard, Athlone Eircode: N37 A8R9

Type of building: Semi-detached

Description of site location e.g. in a residential estate or private site: Residential

Orientation: South Facing

Year built:

Floor area (m<sup>2</sup>):

Year defects first appeared: None

Weather at time of assessment: Dry

Current owner:

Other information e.g. brief history of development of damage:

**Site inspection of damage**

Chartered Engineer carrying out the inspection:

Kevin Sturanton

Date: 17/02/24

Qualifications: C.Eng, MIEI

**Circumstantial Evidence**

Source of concrete block materials:

Is there information that the blocks in the dwelling came from manufacturer(s) reported to have supplied blocks to other dwellings exhibiting damage likely to have arisen from deleterious material in concrete blocks?	Yes <u>No</u>
Was the dwelling constructed within the date range of constructions mentioned in the Report of the Expert Panel on Concrete Blocks [1], and in the geographic areas reported to be affected?	Yes <u>No</u>
Is there documented information (e.g. Chartered Engineer's Report) that other dwellings in the same estate or locale have exhibited signs of damage likely to have arisen from deleterious material in concrete blocks?	Yes <u>No</u>
Are other houses in the same estate exhibiting signs of damage likely to have arisen from deleterious material in concrete blocks?	Yes <u>No</u>







Notes:

External sketches

Site plan

No Defects  
Noted

Notes:

→ Note general site features  
i.e. level/sloping site,  
orientation/local exposure conditions  
→ Provide key (see example below)  
Photograph Ref No.

Front elevation

No Defects  
Noted

Notes:

Web like cracking	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Pattern like cracking (combined horizontal and vertical)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Disintegrated blocks leaving void in external leaf	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Outward bowing of external leaf	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Wide vertical crack, typically 200 mm from corner	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Displacement at window/door reveals	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Render blown or missing	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Horizontal cracks (possibly attributable to day joint in blockwork)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



### Rear elevation

No Defects  
Noted

### Notes:

Web like cracking ☐ Yes  
☒ No

Pattern like cracking (combined horizontal and vertical) ☐ Yes  
☒ No

Disintegrated blocks leaving void in external leaf ☐ Yes  
☒ No

Outward bowing of external leaf ☐ Yes  
☒ No

Wide vertical crack, typically 200 mm from corner ☐ Yes  
☒ No

Displacement at window/door reveals ☐ Yes  
☒ No

Render blown or missing ☐ Yes  
☒ No

Horizontal cracks (possibly attributable to day joint in blockwork) ☐ Yes  
☒ No

### Side elevation

No Defects  
Noted

### Notes:

Web like cracking ☐ Yes  
☒ No

Pattern like cracking (combined horizontal and vertical) ☐ Yes  
☒ No

Disintegrated blocks leaving void in external leaf ☐ Yes  
☒ No

Outward bowing of external leaf ☐ Yes  
☒ No

Wide vertical crack, typically 200 mm from corner ☐ Yes  
☒ No

Displacement at window/door reveals ☐ Yes  
☒ No

Render blown or missing ☐ Yes  
☒ No

Horizontal cracks (possibly attributable to day joint in blockwork) ☐ Yes  
☒ No



## 2.6 Predicted Radon Levels





## Lenztech Surveying & Engineering Ltd.

Unit 20B,  
Ashbourne Business Centre,  
Ballybin Road, Ashbourne,  
Co. Meath,  
A84 RH51

Unit B12  
National Enterprise Park,  
Portlaoise,  
Co. Laois,  
R32 RT73

T: + 353 (0)57 8510121  
E: info@lenztech.ie

YOUR REFERENCE:

OUR REFERENCE: LT24003-R01-03

DATE: 17<sup>th</sup> MAY 2024

**FIONA DELANEY**  
**CHIEF FINANCIAL OFFICER**  
DÍDEAN  
UNIT 3 BLOOM HQ  
PATRICK'S STREET,  
MOUNTRATH,  
CO. LAOIS

### Re: TGD-Part A & C Structure, Site Preparation and Resistance to Moisture- Radon Levels

I Kevin Staunton, Chartered Engineer, BEng, MIEI, have completed a desktop study comprising of a review of EPA mapping sources (*Post May 22*) and consider the property at **29 Ross Árd, Athlone, N37 A8R9**, is within an area where it is predicted that 1 in 10 homes will exceed the reference level of 200 becquerels per cubic metre (Bq/m<sup>3</sup>). We recommend that a radon consultant should be engaged and radon testing carried out for the subject property.



**Signed:**

*Kevin Staunton*

**Kevin Staunton, BEng, CEng, MIEI**  
Chartered Engineer  
For and on behalf Lenztech Surveying & Engineering Ltd



## 2.7 Conservation of Fuel and Energy (Part L)- Compliance





## Lenztech Surveying & Engineering Ltd.

Unit 20B,  
Ashbourne Business Centre,  
Ballybin Road, Ashbourne,  
Co. Meath,  
A84 RH51

Unit B12  
National Enterprise Park,  
Portlaoise,  
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E: info@lenztech.ie

YOUR REFERENCE:

OUR REFERENCE: LT24003-R01-04

DATE: 17<sup>th</sup> MAY 2024

**FIONA DELANEY**  
**CHIEF FINANCIAL OFFICER**  
DÍDEAN  
UNIT 3 BLOOM HQ  
PATRICK'S STREET,  
MOUNTRATH,  
CO. LAOIS

**Re: TGD-Part L Conservation of Fuel and Energy – Dwellings**  
**29 Ross Árd, Athlone, N37 A8R9**

I **Kevin Staunton, Chartered Engineer, BEng, MIEI**, have inspected insulation upgrade works completed at the subject property. The water tank in the attic space has been covered and insulated and all water pipes in the attic space and hot-press have been lagged. The existing oil fired boiler has also been serviced within this property.

Thereby the upgrade together with insulation works currently provided within the property comply with TGD Part L2.

**Signed:**

*Kevin Staunton*

**Kevin Staunton, BEng, CEng, MIEI**  
Chartered Engineer  
For and on behalf Lenztech Surveying & Engineering Ltd.





## **2.7.1 Conservation of Fuel and Energy (Part L)- BER Cert**



# Building Energy Rating (BER)

BER for the building detailed below is:

**C2**

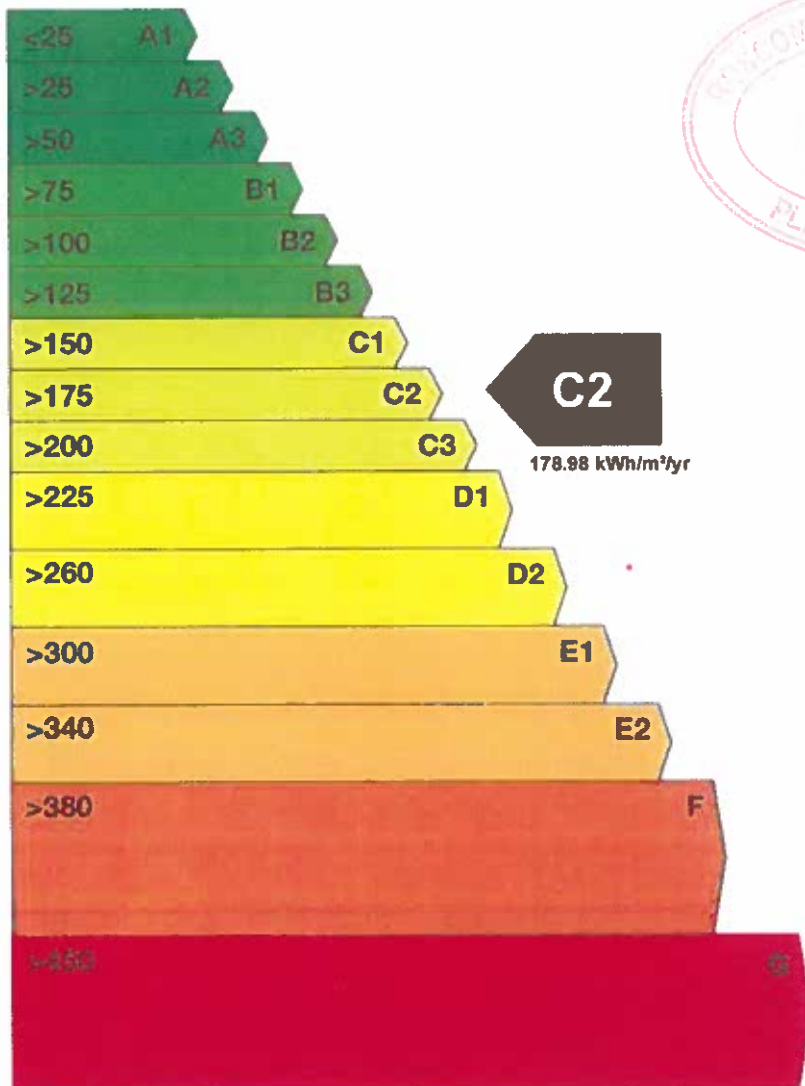
Address 29 ROS ARD  
MONKSLAND  
ATHLONE  
CO. ROSCOMMON

Eircode N37A8R9  
BER Number 105550818  
Date of Issue 24/05/2023  
Valid Until 24/05/2033  
Assessor Number 100488  
Assessor Company No 100488

The Building Energy Rating (BER) is an indication of the energy performance of this dwelling. It covers energy use for space heating, water heating, ventilation and lighting, calculated on the basis of standard occupancy. It is expressed as primary energy use per unit floor area per year (kWh/m<sup>2</sup>/yr).

'A' rated properties are the most energy efficient and will tend to have the lowest energy bills.

## Building Energy Rating kWh/m<sup>2</sup>/yr MOST EFFICIENT



## Carbon Dioxide (CO<sub>2</sub>) Emissions Indicator kgCO<sub>2</sub>/m<sup>2</sup>/yr

BEST  
0

Calculated  
annual CO<sub>2</sub>  
emissions

43.84 kgCO<sub>2</sub>/m<sup>2</sup>/yr

WORST  
>120

The less CO<sub>2</sub> produced,  
the less the dwelling  
contributes to global  
warming.

**IMPORTANT:** This BER is calculated on the basis of data provided to and by the BER Assessor, and using the version of the assessment software quoted below. A future BER assigned to this dwelling may be different, as a result of changes to the dwelling or to the assessment software.

### 3. SAFETY STATEMENT





**SAFETY STATEMENT**

<b>VERSION 2.0</b>	<b>UPDATED 25 JANUARY 2024</b>



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- 1.1. Safety Legislation
- 1.2. The Health & Safety Statement
- 1.3. Didean Safety Policy
- 1.4. Structure and Organisation (Organogram)
- 1.5. Safety Management System
- 1.6. Document Control and Revision Procedure

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- 2.2. Safety Management Team
- 2.3. Responsibilities
- 2.4. Cooperation of Employees
- 2.4. Contractor Responsibilities

### **SECTION 3:CONSULTATION,COMMUNICATION AND REPRESENTATION**

- 3.1. Consultation
- 3.2. Communication
- 3.3. Representation
- 3.4. Safety Statement

### **SECTION 4:SAFETY MEASURES**

- 4.1. Introduction
- 4.2. Hazard and Risk Reporting
- 4.3. Accident Reporting & Investigation



## SECTION 1 INTRODUCTION

### 1.1 SAFETY LEGISLATION

The Safety, Health, and Welfare at Work Act 2005, (SI No. 10 2005), governs health and safety in the workplace. Dídean management must ensure, so far as reasonably practicable, that the workplace is safe, that the equipment provided is safe, that staff are properly trained and that they work under a system of work that will help to ensure their health and safety whilst at work. Staff must co-operate with these systems of work and the arrangements that are provided, for health and safety reasons.

The company must consult with staff on health and safety issues and is entitled to their cooperation in the development of safe systems and safe arrangements for the workplace.

The Safety, Health and Welfare at Work (General Application) Regulations 2007 will also be adhered where applicable.

### 1.2 DIDEAN HEALTH & SAFETY STATEMENT

A provision of the 2005 Safety, Health and Welfare at Work Act, requires that employers prepare a Health and Safety Statement. This Statement must describe the organizational and physical arrangements for safety, including the assignment of responsibilities to individuals and a statement of the co-operation required from employees to maintain those standards.

The Statement must refer to the particular hazards in the workplace concerned and must indicate the risks associated with those hazards and the arrangements for control of the particular hazard. This document has been prepared to comply with the company's duty under this provision of the Act.



1.3 DÍDEAN HEALTH AND SAFETY POLICY

Dídean recognises that it has responsibilities under the Safety, Health and Welfare at Work Act 2005, the Safety, Health & Welfare at Work (General Applications) Regulations 2007 to 2023 (as amended) and current health and safety legislation for the health and safety of its workforce whilst at work and others who could be affected by its work activities. We will assess the hazards and risks faced by our workforce in the course of their work and take action to control those risks to an acceptable, tolerable level.

Our Managers and Social Care Team or Social Care Management Team are made aware of their responsibilities and required to take all reasonable precautions to ensure the safety, health and welfare of our workforce and anyone else likely to be affected by the operation of our business.

This business intends meeting its legal obligations by providing and maintaining a safe and healthy working environment so far as is reasonably practicable. This will be achieved through;

- the provision of health and safety leadership in identifying and controlling health and safety risks so identified;
- consultation with our employees on matters affecting their health and safety;
- the provision and maintenance safe plant and equipment;
- ensuring the safe handling and use of substances;
- the provision of necessary information, instruction and training for our workforce, taking account of any who do not have English as a first language;
- making sure that all workers are competent to do their work, and giving them appropriate training;
- the prevention of accidents and cases of work related ill health;
- the active management and supervision of health and safety at work issues;
- having access to competent advice;
- the provision of the necessary resource, financial and other, required to make this policy and our health and safety arrangements effective;
- aiming for a continuous improvement in our health and safety performance and management through a process of regular audit and review; and
- reviewing this policy and associated arrangements on a periodic basis using findings from the audit process, staff consultations and incident investigation to guide change.

We also recognise;

- our duty to co-operate and work with other employers when we work at premises or sites under their control to ensure the continued health and safety of all those at work; and
- our duty to co-operate and work with other employers and their workers, when their workers come onto our premises or sites to do work for us, to ensure the health and safety of everyone at work.

To help achieve our objectives and ensure our workforce recognise their duties under health and safety legislation whilst at work, we will also remind them of their duty to take reasonable care for themselves and for others who might be affected by their activities. These duties are explained on first employment at induction and also set out in an Employee Safety Handbook, given to each worker, which sets out their duties and includes our specific health and safety rules. In support of this policy we have prepared a responsibility chart and specific arrangements.

Signature *Fiona Delaney* ..... Date 16-May-24 | 5:03 AM PDT .....

Position Chief Financial Officer

Signature *Colleen Wall* ..... Date 16-May-24 | 3:49 AM PDT .....

Position Chief Operations Officer

The policy is reviewed on a periodic basis.







1.4 ORGANISATION

Health and Safety Management Structure

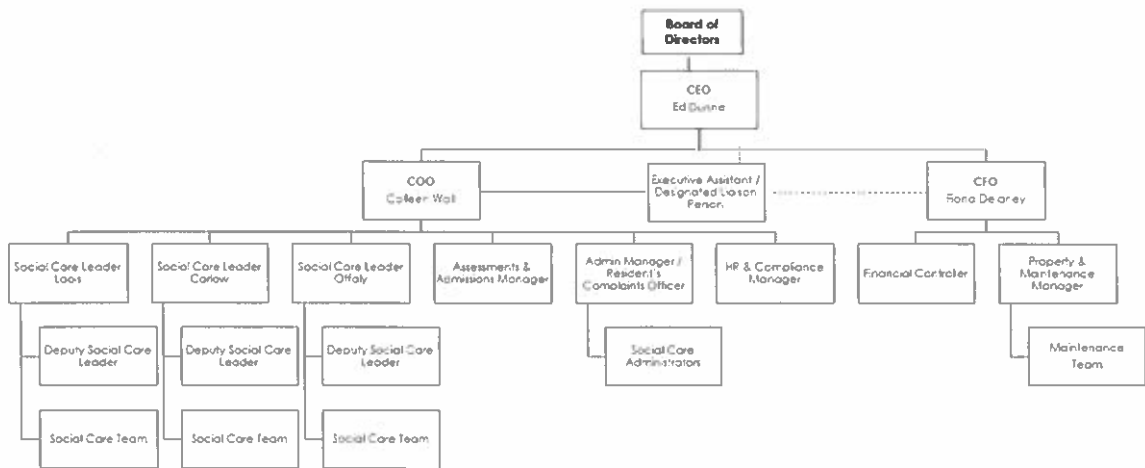
Introduction

The Board of Directors have overall responsibility for the implementation of this policy.

The policy is executed through key personnel who have been allocated specific responsibilities for managing health and safety.

Emphasis is placed on recognising potential hazards and taking steps to minimise their effect on employees and others.

The organisational structure set out below shows the key personnel with health and safety responsibilities.



Dídean

## SECTION 2 RESPONSIBILITIES IN RELATION TO HEALTH & SAFETY

### 2.1 INTRODUCTION

This section outlines the Safety Organisation in place in Dídean and the responsibilities of individuals in relation to safety.

### 2.2. SAFETY MANAGEMENT TEAM

The Safety Management Team is the senior management team in Dídean. The Safety Management Team will meet on a bi-monthly basis or when necessary. The following are permanent members:

Fiona Delaney, CFO

Colleen Wall, COO

Safety Committee



The Safety Management Team is cross-functional and should be seen as a forum for safety discussions. The meetings are open to observers.

The overall responsibility of the Safety Management Team is to:

- Promote a proactive safety culture in Dídean.
- Communicate all safety objectives.
- Constantly monitor and evaluate safety performance.
- Ensure that the Safety Statement and related safety documents are being revised and updated when necessary.
- Evaluate and approve purchase of safety equipment or safety related activities.
- Deal with current concerns and seek to anticipate future issues.

### 2.3 HEALTH AND SAFETY MANAGEMENT RESPONSIBILITIES

The Board of Directors have overall responsibility for health and safety matters. We have identified a need for and taken action on the key issues below.

#### THE MANAGEMENT OF HEALTH AND SAFETY

##### General

- Provide and resource an effective health and safety management system.
- Provide a suitable means of consultation with employees on health and safety matters.
- Ensure that adequate Employers' Liability Insurance cover is arranged and maintained.
- Ensure that health and safety implications are considered when acquiring new equipment and machinery.
- Ensure that contractors (when employed) are competent and monitored during work.
- Ensure that a process is in place to identify and report hazards.
- Ensure that all employees are provided with appropriate health and safety training.
- Provide measures to protect the health and safety of employees working alone.
- Monitor the health and safety performance of the organisation.

##### Occupational Health

- Ensure that adequate procedures are in place to identify and address occupational health risks.
- Ensure that the measures required to reduce and control employees' exposure to occupational health risks are in place and used.
- Implement measures to reduce stress within the workplace.

##### Accidents, Incidents and First Aid

- Record accidents and incidents.
- Complete accident and incident investigations, identify causes and measures for prevention.

Dídean



- Ensure that applicable injuries, diseases, and dangerous occurrences are reported to the Enforcing Authority.
- Ensure that adequate first aid arrangements are in place.

### **Fire and Emergency Arrangements**

Ensure that;

- Adequate arrangements are in place to deal with fire safety at our premises or at our client's premises.
- Employees are aware of the fire and evacuation arrangements and other emergency procedures.
- Emergency equipment is provided, tested, and maintained appropriately.
- Adequate Fire Risk Assessments are completed.

### **Risk Assessment**

Ensure that;

- Risk assessments are undertaken and Safe Systems of Work are produced for all activities that pose a significant risk of harm.
- Risk assessments are documented.
- The outcomes of risk assessments are communicated effectively to employees and others.

### **Premises**

- Provide a suitable and safe working environment for employees with adequate welfare facilities.
- Ensure that the fixed electrical installation is adequately installed and maintained.
- Introduce and maintain measures to control and manage the risks posed by asbestos.
- Ensure good housekeeping standards are instigated and maintained.
- Provide suitable and sufficient maintenance of the facilities provided within the workplace.

### **Equipment**

Ensure that;

- All equipment provided by the organisation is suitable and properly used.
- All work equipment is adequately maintained and safe.
- Portable electrical appliances are adequately maintained, inspected, and tested.
- Appropriate hand tools are provided and maintained.
- Any Personal Protective Equipment (PPE) provided gives suitable protection, is used and that employees are given information, instruction, and training on its use.

### **Substances**

Ensure that;

- All substances are used safely.
- All substances are appropriately stored.

The Responsibility Table on the next page identifies the specific health and safety responsibilities and identifies the individuals they are allocated to. Employees with allocated responsibilities should refer to the associated Safety Arrangements which are available following the responsibility table within this document.

### **EMPLOYERS RESPONSIBILITIES INCLUDE**

- A commitment to managing and conducting our work activities in order to protect your health and safety.
- Providing a safe place of work which is adequately designed and maintained.
- Providing safe means of access and egress to and from the place of work.
- Providing safe plant, equipment, and machinery.
- Providing safe systems of work, e.g. operating procedures.
- Preventing improper conduct likely to put an employee's safety and health at risk.
- Preventing risk to health from any article or substance (including plant, tools, machinery, chemical substances, and equipment) as applicable to the place of work.

### Dídean

- Providing appropriate information, instruction, training, and supervision, taking account of the employee's capabilities, when an employee begins work or is transferred to new tasks, and when new technology is introduced.
- Providing suitable protective clothing and equipment where hazards cannot be eliminated.
- Preparing and revising emergency plans.
- Designating staff to take on emergency duties as necessary.
- Providing and maintaining welfare facilities for example toilets, changing rooms, canteen area etc.
- Providing, where necessary, a competent person to advise and assist us in securing the safety, health, and welfare of all of our employees.

## 2.4 EMPLOYEES RESPONSIBILITIES INCLUDE

- Complying with relevant health and safety legislation.
- Ensuring that you are not under the influence of an intoxicant while working as this could endanger your safety, health, and welfare or that of others.
- Ensuring that you do not engage in improper conduct or other behaviour that is likely to endanger your safety, health, and welfare or that of others.
- Co-operating with your employer and any other person to help us and any other person to comply with their legal duties.
- Use in such a manner so as to provide the protection intended, any suitable appliance, protective clothing, convenience, equipment or other means provided (whether for your use alone or for use in common with others) for securing your safety, health and welfare while at work.
- To report to your employer or immediate supervisor, without unreasonable delay, any defects in plant, equipment, place of work or system of work that might endanger safety, health, or welfare at work of any employee or that of any other person of which you become aware.
- No person(s) shall intentionally or recklessly interfere with or misuse any appliance, protective clothing, convenience, or equipment provided in pursuance of any of the relevant statutory provisions or otherwise, for securing the safety, health and welfare of persons arising out of work activities.
- Attend training as may be required or as may be prescribed relating to safety, health and welfare at work or relating to work carried out by you.

## MONITORING

The operation of this policy and arrangements is actively monitored through the periodic review of our completed Safety Record Forms and also by using Periodic Workplace Checklists. The Board of Directors have overall responsibility for this, but some of the routine tasks may be delegated. We also undertake an annual health and safety management review to determine whether our existing health and safety procedures and arrangements are adequate. This is achieved by completing an Annual Health and Safety Review form.

The continual review of the completed Annual Health and Safety Review records and the Periodic Workplace Checklists, along with our comprehensive Safety Records, helps us to check the effectiveness of our Safety Management System.

## SECTION 3. CONSULTATION, COMMUNICATION AND REPRESENTATION

### 3.1. CONSULTATION

The consultative process concerning health and safety matters is a two-way flow of information. The employees are actively encouraged to participate in the consultation process and all reasonable issues will be dealt with quickly and effectively. The Safety Advisor is available for advice, interpretation and consultation and he will facilitate the movement of information from both management and the employees. Each employee should initially contact their line manager with regard to the safety issue and if they fail to gain satisfaction they should continue to raise the matter with the Management.

21 OCT 2024

Dídean

### 3.2. COMMUNICATION

All employees and sub-contractors will be made aware of the company's safety statement and safety management system. This will be communicated through the site induction on commencement of employment with Dídean. Employees will also be informed of any relevant changes to the safety statement by safety bulletins. In addition to induction process there will be periodic Key working Session's covering the various sections of the safety statement. Health and Safety including Safety Statement is placed as a standing item on all team meeting agendas.

### 3.3. REPRESENTATION

Employees have the opportunity to elect a safety representative if desired. A safety representative must be elected or appointed when there are twenty or more personnel working on a site.

### 3.4. SAFETY STATEMENT

**A version of the company safety statement is available to all Dídean employees.**

## SECTION 4. SAFETY MEASURES

## 4.1. INTRODUCTION

This section outlines additional safety measures to ensure a safe working environment. It also outlines procedures for Hazard and Risk Reporting as well as Accident Reporting and Investigation.

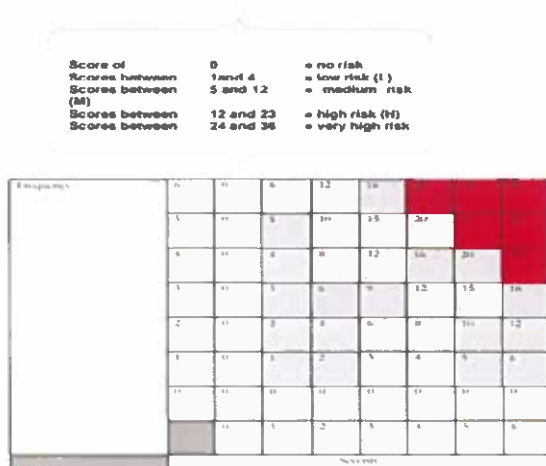
## 4.2. HAZARD AND RISK REPORTING

All employees have a responsibility to report any hazards observed in Dídéan. Hazard and risk reporting are integral components of a company's risk management strategy, often documented in a comprehensive risk register. This register serves as a centralised repository, systematically cataloguing potential hazards and associated risks that the organization may encounter. Please find a link to the risk register:

[Shared Drive - Risk Register and Risk Assessment - All Documents \(sharepoint.com\)](#)

It is essential to acknowledge that the risk register may not be exhaustive, as new risks can emerge, and the business environment is dynamic, the register provides a framework for on-going risk assessment and management.

**Key for rating on risk register:**



Dídean

**4.3. ACCIDENT REPORTING & INVESTIGATION**

The following procedure must be applied when an accident has occurred. It should also be applied if a near miss has been identified. A near miss is an unplanned or unforeseeable event that could have resulted, but did not result in human injury, property damage or other form of loss. The reporting of an accident or a near miss must start an investigation in order to prevent similar and related accidents in the future. The Procedure and associated forms are available at the below link in sharepoint:

[Policies and Procedures - Policy and Procedures - All Documents \(sharepoint.com\)](#)

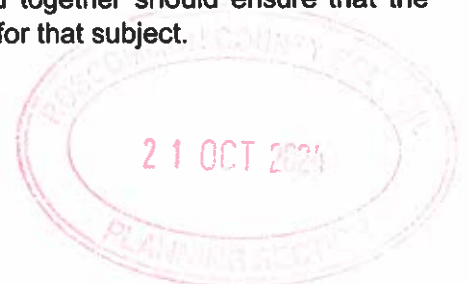
**LIST OF PERSONS TO WHOM HEALTH AND SAFETY RESPONSIBILITIES HAVE BEEN ALLOCATED**

We are required to identify, by name, managers and supervisors who have responsibility for specific workplace functions. Listed here are the functions and named member of staff responsible for their management and implementation. This list will be updated whenever functions are reassigned or transferred to new personnel.

<b>Location:</b> 29 Ross Árd, Monksland, Athlone, Co. Roscommon, N37 A8R9	
<b>Date Completed:</b>	15/05/2024
FUNCTION	NAME
Responsibilities	
Directors	Edward Dunne, Fiona Delaney, Colleen Wall
Chairman	Jimmy Tolan
Chief Executive Officer	Edward Dunne
Chief Financial Officer	Fiona Delaney
Chief Operations Officer	Colleen Wall
Social Care Leaders	Social Care Leaders
HR & Compliance Executive	Fiona Lawless

**Note:** Those persons who have been allocated responsibilities for health and safety issues should ensure that the required risk assessments and safety records are completed, either by them or by other persons and that the required control measures are implemented when work activities take place.

Where more than one person has been assigned responsibility to a particular subject, each should ensure that they have completed records for the areas under their control and together should ensure that the organisation has, collectively, covered all aspects of safety management for that subject.





Dídean

## APPENDIX 1 EMPLOYEE CONFIRMATION OF RECEIPT AND CONTENT OF SAFETY STATEMENT

Please read the notes below, then sign and date this form

### Part 1

Dídean has prepared a Safety Statement as required under Section 13 of the Safety, Health and Welfare at Work Act 2005 requires that an organisation produce a written programme to safeguard, the safety and health of employees while they work & the safety and health of other people who might be at the workplace.

The Safety Statement represents Dídean's commitment to their employees' health and safety. It states how we will ensure your health and safety and states the resources necessary to maintain and review health and safety laws and standards. Please read the Safety Statement carefully and ensure you take the time to understand it. If you are unsure of any part of this safety statement, please raise questions about the content with your manager. Once you are satisfied that you understand the safety statement in full, please then read the declaration at Part 2.

### Part 2

I have read the Safety Statement. I understand, accept and will comply with the contents. I understand that compliance with the conditions set out forms part of my contract of employment. I will keep myself aware of its contents and any updates I am advised about.

Employee signature: .....

Date: .....

Name: .....

Department: .....

Note: By law employers have to make available to employees relevant information about their health and safety policies, procedures and safe working systems. The same legislation requires employees to follow safety rules, procedures and instructions set by their employer and should confirm that they understand these matters. In the event of refusal to sign this document, arrangements will be made to have the contents read to you and this will be recorded by your manager.





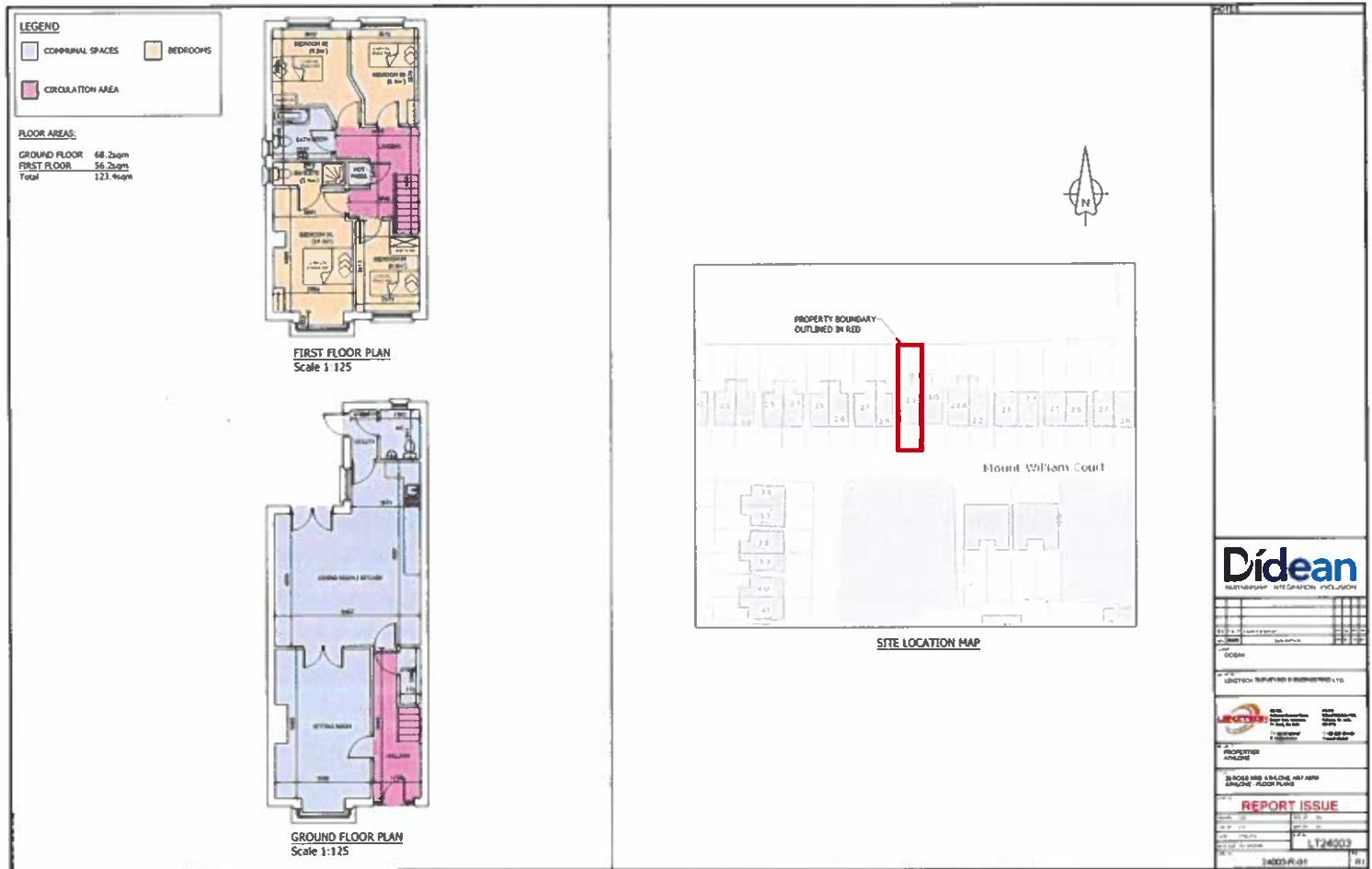
Didean



## APPENDICES

### Drawings - Floor Plan Layout







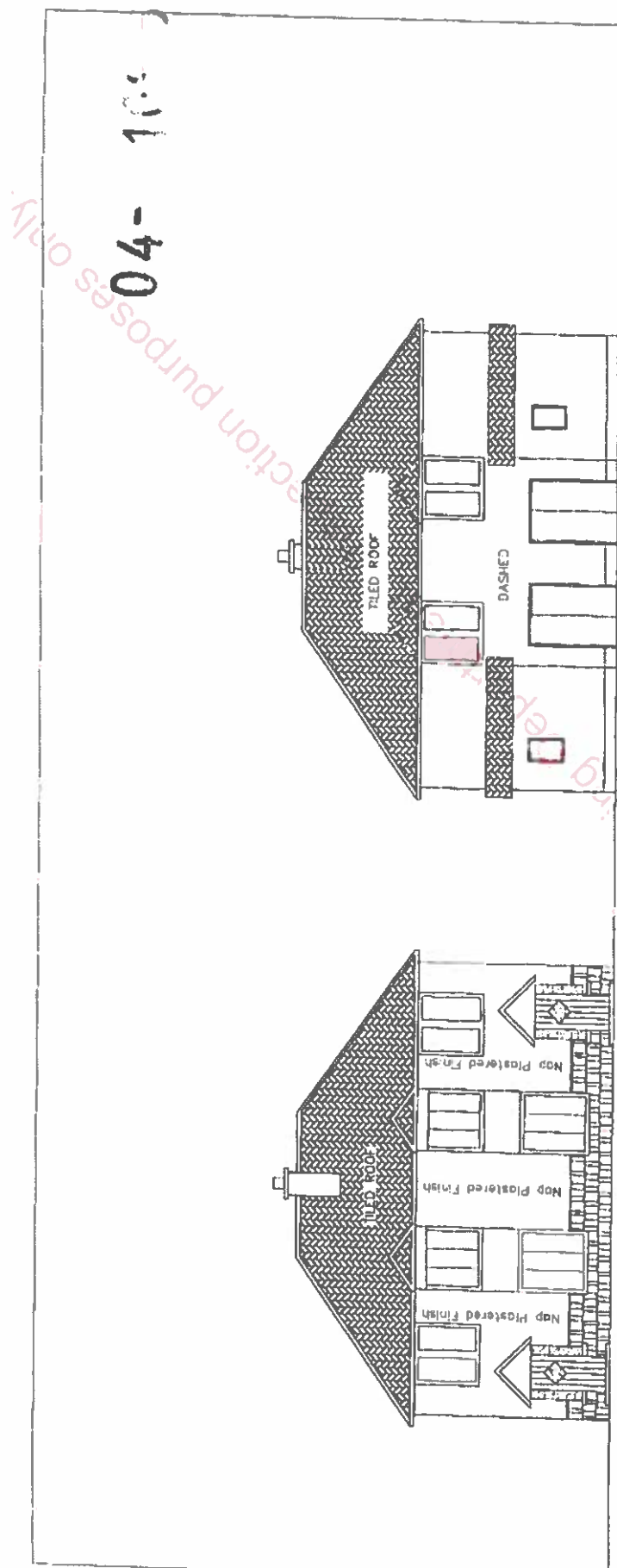


### SITE LOCATION MAP



FLOOR AREAS:

GROUND FLOOR	68.2sqm
FIRST FLOOR	56.2sqm
<b>Total</b>	<b>123.4sqm</b>



Front Elevation

Rear Elevation



21 OCT 2021

No	Revision/Issue	Date

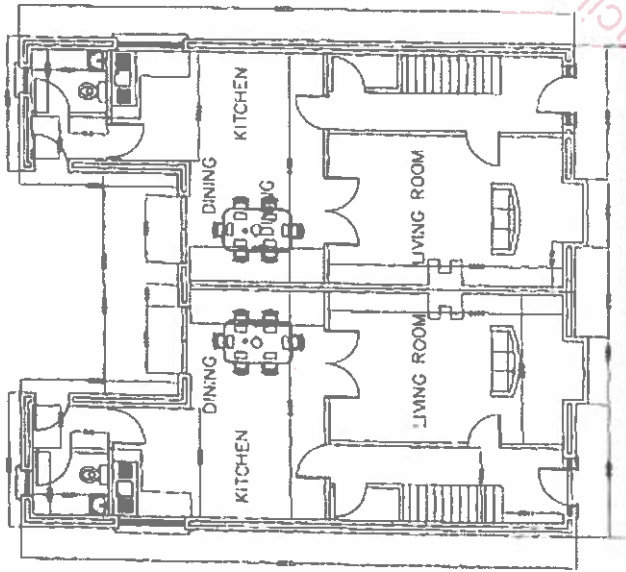
Drawn by:  
**Mark Pichy & Associates**  
 Consulting Engineers  
 Quarry Road,  
 Monksland,  
 Co. Galway.  
 Tel: 091 860034  
 mobile: 087 9192293

Client Name and Address  
**MONKSLAND, ATHLONE.**  
**HOUSE TYPE No. 2**

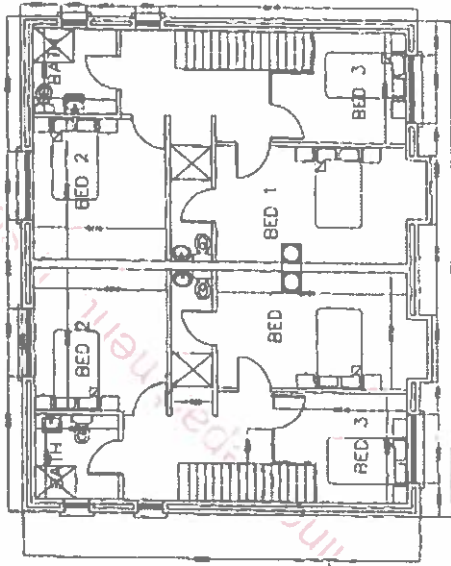
Drawing Title  
**Front & Rear Elevations**

Project	Sheet

Scale 1:100



Ground Floor Plan



First Floor Plan



No.	Revision/Issue	Date

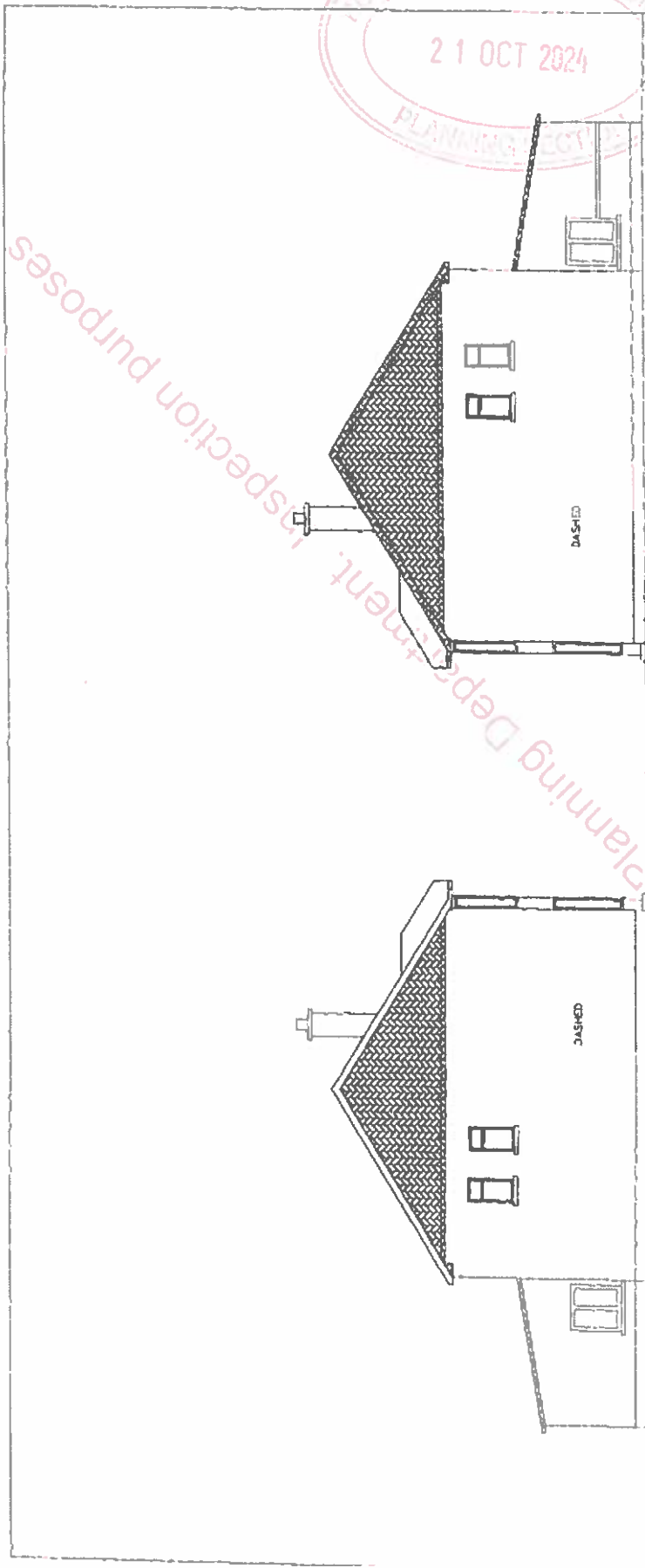
Drawn By  
Mark Tully & Associates  
Consulting Engineers  
Query Room  
01 2600314  
01 2600314  
01 2600314  
mobile: 087-9102793

Client Name and Address  
MONKS LAND, ATHLONE,  
HOUSE TYPE No. 2

Drawing Title  
Ground & First Floor  
Plans

Project	
Date	
Scale	1:100





21 OCT 2024  
PLANNING DEPARTMENT

30 JUN 2024

Project	Sheet
Client	
Name	1:100

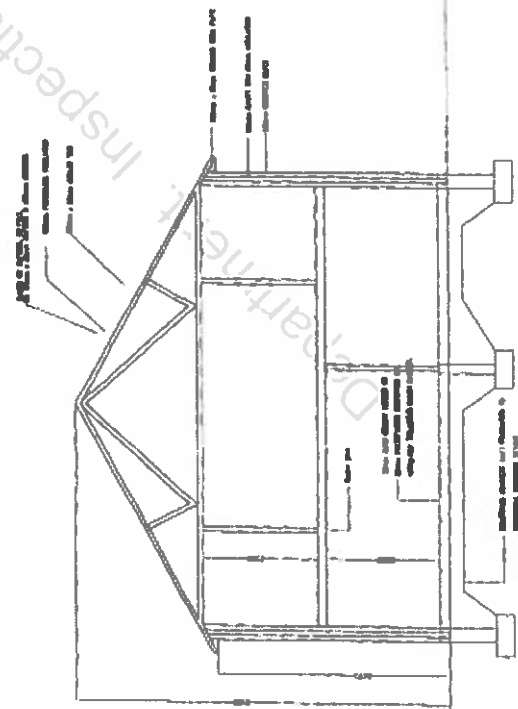
Drawing Title
Side Elevations

Client Name and Address
WONKSLAND, ATHLONE
HOUSE TYPE No. 2

Drawn by
Mark Fahy & Associates
Consulting Engineers
County Road,
County,
Phone 081 908034
Mobile 087 9192293

No.	Revision/Issue	Date

4002 NOV 01



Section

		Date
Nt.	Revision/Issue	

draw by:  
**Mark Fahy & Associates**  
**Consulting Engineers**  
O'Leary Road,  
Carrigrohane,  
Co. Galway,  
Ireland  
phone: 091-760054  
mobile: 087-9192793

Client Name and Address  
MONKSLAND, ATHLONE.  
HOUSE TYPE No. 2

During This  
Section

Project	Smart
Date	
Scale	1:100



**COMHAIRLE CHONTAE LAOISE**  
**LAOIS COUNTY COUNCIL**

Áras an Chontae  
Portlaoise,  
Co Laois  
R32 EHP9

Registered Post

Our Reference: S5/2024/26

RECEIVED 24 SEP 2024

Dídean,  
c/o Eamonn Prenter,  
Cunnane Stratton Reynolds,  
Gainsboro House,  
24 Suffolk Street,  
Dublin 2



19<sup>th</sup> September, 2024

**Re : Section 5 Declaration** - whether use of the subject premises as a residence for International Protection Applicants constitutes development and whether, if it does, it can be considered exempted development at **Barrowvale, Portlaoise Road, Carlow, Co. Laois R93C9P0?**

A Chara,

I refer to your application for a Section 5 Declaration of Exempted Development under the Planning & Development Acts 2000 (as amended) and subsequent correspondence received.

Please find attached amended Section 5 Declaration which states that; It is considered that the subject premises (68 Barrowvale, Portlaoise Road, Carlow, Co. Laois, R93 C9P0) as a residence for International Protection Applicants **does not** constitute development under the Planning and Development Act 2000 (as amended).

Trusting the above is in order.

Is mise le meas,

Marie Murray  
Senior Staff Officer  
Planning Department

cc. Nathan Smith, David O'Hara Planning Dept.



**LAOIS COUNTY COUNCIL**  
**DECLARATION UNDER SECTION 5**  
**OF THE PLANNING AND DEVELOPMENT ACT, 2000 as amended**

FILE REF: S5/2024/26

C.E.O: 2024/575

**NAME OF APPLICANT:** Dídean

**NATURE OF APPLICATION:** whether the use of a dwelling that is in use for the provisions of accommodation for International Protection applicants constitutes exempt development?

**LOCATION OF DEVELOPMENT:** at 68 Barrowvale, Portlaoise Road, Carlow, Co. Laois  
R93 C9P0

It is hereby decided in accordance with the documents submitted, in pursuance of the above Act and by order dated 19<sup>th</sup> September 2024 that the subject premises (68 Barrowvale, Portlaoise Road, Carlow, Co. Laois, R93 C9P0) as a residence for International Protection Applicants **does not** constitute development under the Planning and Development Act 2000 (as amended).



David O'Hara

**SENIOR PLANNER**

**DATE:** 19<sup>th</sup> September 2024

**NOTE:** Any appeal against a Declaration of a Planning Authority under Section 5, subsection 3(a) of the Planning & Development Act 2000 (as amended) may be made to An Bord Pleanála within four weeks beginning on the date of issue of the Declaration.

For more information on appeals contact An Bord Pleanála, 64 Marlborough Street, Dublin 1.  
[www.pleanala.ie](http://www.pleanala.ie) or email [bord@pleanala.ie](mailto:bord@pleanala.ie)



– OPINION –

**QUERIST:** *Dídean Dóchas Éireann Teoranta*

**AGENT:** *Cunnane Stratton Reynolds Ltd*

**SUBJECT:** *Dídean Existing Residential Dwellings Nationwide*



**I NATURE OF OPINION**

1. Counsel have been requested by Agent to jointly advise on whether the use of residential dwellings, either owned or under the control of Querist, by 'international protection' applicants constitutes development. Counsel have also been asked to advise on other associated matters. These matters are considered below.

**II BACKGROUND**

2. Querist owns and/or controls a portfolio of second-hand residential properties in the State. These are used for the provision of residential accommodation for persons in international protection (IPAs) at present. These generally comprise 2, 3 and 4 bed dwellings in typical residential communities, mostly dispersed across a wide geographical area in villages/towns/and cities across the State. Some of these properties are adjacent to and/or are located close to (within c. 100m) of each other. Querist's properties mostly comprise three-bedroom semi-detached dwellings and Querist intends to accommodate and/or is accommodating c. 4-8 persons in each property, depending on the size of the property. The persons occupying the property may or not be from the same family but share a single kitchen, and other bathroom and sitting room facilities.
3. Querist provides, and wishes to continue to provide, residential accommodation for people seeking asylum and the facilitation of visiting services or support where required ('Services').
4. Counsel are advised that the Services comprise supported living, day and community outreach services to individuals or groups with a range of complex support requirements. The Services are typically and initially provided for a maximum of 3 hours per person per week by Querist's staff and reduce over time. The Services typically concern: orientation, integration including advice on accessing schooling, and on connecting with medical and health teams, including GPs and hospital services. The Services are not exclusively provided during staff visits and are sometimes communicated remotely via telephone calls, and emails etc. Where Querist's properties are located in close proximity to each other staff can make trips to multiple properties in one day. Counsel are further advised that there is, on average, approximately one vehicle movement going to each property, and one vehicle movement coming from it, associated with the

services each day, and that this equates to a typical number of vehicle movements that one would associate with use as a residential dwelling. In the event of shared trips where there is more than one dwelling at a particular location, this is likely to reduce the number of trips.

5. The occupants are typically housed for 6-18 months at a time. No accommodation is provided to Ukrainians (who benefit from temporary protection pursuant to the Temporary Protection Directive 2001/55 EC, activated by EU Council Decision EU 2022/382). The Services are provided through a contract with a Government Department rather than to families, individuals or groups themselves.
6. Agent has confirmed that none of Querist's properties being used for the provision of residential accommodation to IPAs contain any reception areas or administrative components that might alter the character and/or nature of Querist's properties as domestic dwellings. A typical generalised schedule of accommodation in each property is as follows:
  - Hallway;
  - Sitting Room;
  - Dining Room/Kitchen;
  - Utility Room;
  - Downstairs WC;
  - 3-4 bedrooms, often including Ensuite Toilet/Shower;
  - First Floor Bathroom/Toilet; and
  - Hot Press.
7. We are instructed that no physical modifications were or are required to any of their properties in order to facilitate the specific use of the properties by international protection applicants and our opinion is based on this premise.
8. This opinion is furnished on the basis of the assumption that the use of the properties for housing international protection applicants is not in breach of any condition of any planning permission relating to the use of the premises and that the immediately preceding permitted or established use was a dwelling, which was an authorised use.
9. The purpose of this opinion is primarily to address situations where an enforcement complaint is made to the planning authority on the basis that the commencement of use of dwellings for emergency accommodation for persons of protected status amounts to a change of use, constitutes development, is not considered exempted development and would consequently require planning permission.
10. Against this background the following questions are posed to Counsel (and are later addressed in the Opinion):



- 1) Does the use of a domestic dwelling for accommodation of international protection applicants constitute development?
- 2) Would a single dwelling, occupied by non-related residents, for international protected applicants, require planning permission?
- 3) Does the provision of Services, through visits by Querist's staff to those under international protection, in an existing dwelling, in itself constitute a change of use from use as a dwelling?
- 4) Does the provision of part time or occasional services envisaged attending a residence fall within Use Class 9 (a) (of the Planning and Development Regulations, 2001, as amended) if applied to international protection applicants?
- 5) Counsel are also requested to opine as to whether the care of persons in their own dwelling on an occasional basis would be regarded as 'ordinarily incidental' to the use of a dwelling under Section 4(1)(j) of the Planning and Development Act, 2000 as amended ('2000 Act') in that the use would be 'incidental to the enjoyment of the house as such'.

### III RELEVANT STATUTORY PROVISIONS

#### Planning and Development Act, 2000 (as amended)

11. There is no definition of "*material change of use*" or a "*dwelling*" in the 2000 Act. '*House*' is, however, defined under section 2(1) of the 2000 Act and that definition includes a reference to use as a '*dwelling*'. '*Structure*', '*use*' and '*works*' are also defined in section 2 of the 2000 Act:


*"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 two or more dwellings or a flat, an apartment or other dwelling within such a building;"*

*"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);*







*“use”, in relation to land, does not include the use of the land by the carrying out of any works thereon;*

*“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.”*

12. ‘Development’ is defined in section 3(1) of the Planning and Development Act, 2000, as amended (“the 2000 Act”) in the following terms:

*“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 (b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).” [emphasis added]*

13. Section 3(3) provides that the use of a house as two or more dwellings is a material change of use::

*“(3) For the avoidance of doubt, it is hereby declared that, for the purposes of this section, the use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use of the structure and of each part thereof which is so used.” [section 3(3)]*

14. Section 3A(1) provides that the use of a dwelling for short term lettings is a material change of use in certain circumstances:

*“(1) The use of a house or part of a house situated in a rent pressure zone for shortterm letting purposes is a material change in use of the house or part thereof, as the case may be.” [section 3A]*

15. The intended use of each of Querist’s properties is not as a “short-term letting”, as this is defined under Section 3(5) of the 2000 Act as meaning:

*“the letting of a house or part of a house for any period not exceeding 14 days, and includes a licence that permits the licensee to enter and reside in the house or part thereof for any such period in consideration of the making by any person (whether or not the licensee) of a payment or payments to the licensor.”*

16. Section 4(1) sets out various statutory categories of exempted development. Section 4(1)(j) of the 2000 Act refers to the following type of development as being exempted development:

*“development consisting of the use of any structure or other land within the curtilage of a house of any purpose incidental to the enjoyment of the house as such”*

17. Section 4(2) of the 2000 Act further empowers the Minister to provide, by regulations, certain classes of exempted development.
18. Section 5 of the 2000 Act empowers a person to seek a declaration from the relevant planning authority on what, in any particular case, is or is not development, or is or is not exempted development.

**Planning and Development Regulations, 2001-2024 (as amended)**

19. Article 5 of the Planning and Development Regulations 2001 (as amended) (‘the Regulations’) defines a ‘protected person’ as:

*“(a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013), (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996”*

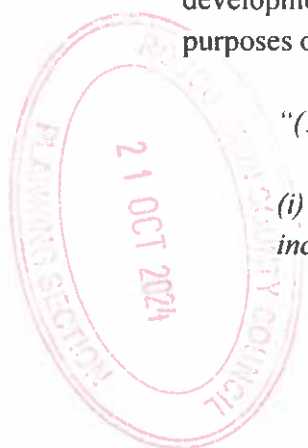
20. ‘Care’ is defined in Article 5 of the Regulations in the following terms:

*““care” means personal care, including help with physical, intellectual or social needs;”*

21. Article 6 of the Regulations concerns exempted development and provides, *inter alia*, that subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purpose 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.
22. Article 9 concerns restrictions on exempted development and provides that development to which article 6 relates shall not be exempted development for the purposes of the Act:

*“(1)(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,*



(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 meters in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iiia) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft

(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,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(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,*

*(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.*

*(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,*

*(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,*

*(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

*(xi) obstruct any public right of way,*

*(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area 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 and the development would materially affect the character of the area... ”*

23. Article 10 concerns changes of use within the Use Classes specified in Part 4 of Schedule 2. It provides, *inter alia*, that:



*“(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—*

*(a) involve the carrying out of any works other than works which are exempted development,*

*(b) contravene a condition attached to a permission under the Act,*

*(c) be inconsistent with any use specified or included in such a permission, or*

*(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

*(2) (a) A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use...”*

24. Class 9 of Part 4 of Schedule 2 (linked to Article 10) refers to:

*“Use for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)”*

25. Class 14 of Part 2 of Schedule 1 of the Regulations refers to changes of use of types of development that are exempted development (subject to conditions and limitations<sup>1</sup>) including:

*(f) from use as a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons;*

*(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,<sup>2</sup>*

*(i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or*

*part thereof, to use as an emergency reception and orientation centre for protected*

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<sup>1</sup> Limitations in column 2 include that the *“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.”*

persons...”

26. Class 20F of Part 2 of Schedule 1 of the Regulations provides that the following is exempted development (subject to conditions and limitations):

*“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.”*

#### IV OPINION ON LEGAL ISSUES

***Does the use of a domestic dwelling for accommodation international protection applicants (IPAs) constitute development?***

27. The question of whether the use of a residential dwelling for accommodation of IPAs is development depends on whether it constitutes a material change of use. In some instances, the carrying out of works could suggest a change of use if the purpose of the works was to facilitate subdivision of a dwelling so that it involved the creation of one or more additional dwelling units.
28. Querist confirms that no works have been, or are intended to be undertaken, at Querist’s properties for the purposes of accommodating IPAs other than minor works of maintenance or repair, which would fall within the scope of Section 4(1)(h) of the Planning and Development Act 2000, as amended. We are specifically advised that no works providing for subdivision e.g. by providing an extra kitchen or kitchenette, have been carried out to any of the dwellings.
29. The core issue to be addressed is therefore whether the use of Querist’s properties by IPAs represents a material change of use from the immediately preceding use as a dwelling.





### Material Change of Use

30. As indicated above by reference to the statutory provisions, a material change of use can occur by operation of law. Section 3 of the 2000 Act provides, *inter alia*, that the use of a house as two or more dwellings is a material change of use. Short-term letting of property in rent pressure zones can also represent a material change of pursuant to section 3A of the 2000 Act.
31. Our instructions are that Querist's properties are not currently and are not intended in the future to be subdivided into two or more dwellings. Agent has also specifically confirmed that no additional kitchen or kitchenette facilities or toilets would be provided in any of Querist's properties.
32. A material change of use occurs, first, where there is a change in use and, second, where that change is material. The act of development relates to the change rather than the use itself.
33. The question of whether there has been a material change of use was addressed in the Supreme Court judgment in *Monaghan County Council v. Brogan* [1987] I.R. 333<sup>2</sup> where the court confirmed that the term "material" in this context means material in planning terms; that is, whether the issues raised by the change of use would raise matters that would normally be considered by a planning authority if it were dealing with an application for planning permission, such as "*residential amenity, traffic safety or policy issues in relation to statutory plans*" The Court also held in that case that the continuation of a use does not, in general, amount to development.
34. The focus of planning law is on the practical effects of a change of use, including off-site impacts, in particular, when determining whether a use is materially different from the prior use. In *Esat Digifone v South Dublin County Council* [2002] 3 IR 585 the High Court stated:

*"The consideration to be taken into account in determining materiality must at least be relevant to "proper planning and development and the preservation of amenities" which are the two objectives of the preamble to the legislation. The question is whether there were sufficient planning considerations raised by the change in activity to justify its submission to development control."*

35. In a similar vein, Barron J in *Galway County Council v Lackagh Rock* [1985] IR 120 stated (at p.127):

*"...To test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for*

<sup>2</sup> Referred to more recently in, *inter alia*, *Stanley v An Bord Pleanála* [2022] IEHC 177



*the use on the appointed day or for the present use. If these matters are materially different, then the nature of the use must equally be materially different. Since no evidence has been adduced to indicate that the applicant would have taken any different matters into consideration in determining an application for planning permission made now rather than on the appointed day, I accept the respondent's contention that there has been no material change of use."*

36. In *Westmeath County Council v Quirke* (unreported, High Court, 23<sup>rd</sup> May 1996) the Court noted that:


*"Many alterations in the activities carried out on the land constitute a change of use, however, nor all alterations will be material. Whether such changes amount to a material change of use is a question of fact..... Consideration of the materiality of a change in use means assessing not only the use itself but also its effects."*

37. The fact that the use of a property is not welcomed by local residents is not determinative as to whether a material change of use has occurred. For example, in the Supreme Court judgment in *Dublin Corporation v Moore* [1984] ILRM 339 which concerned the question of whether the keeping of an ice-cream van in a driveway amounted to an unauthorised material change of use the court noted:

*"I can well understand the objection voiced by Mr Heneghan in his affidavit, to which I have referred – the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin – yet other for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law – if they were, they might well offend against rights of equality."* [Emphasis added.]

38. We are not aware of any Irish case law specifically considering whether the use of a dwelling as accommodation for protected persons/IPAs is a material change of use.
39. However, it is noted that in a section 5 referral (ABP-397077-20), the Board concluded that the use of 25 own door apartments in Ballinamore by protected persons did not constitute a material change of use or development. In Counsels' view, this declaration strongly supports the view that the use of dwellings by protected persons does not give rise to a material change of use of those dwellings. While this declaration would not be binding on a Court, the reasoning of the Board's Inspector appears, in our opinion, to be correct. At §8.2.7 of his report, the Inspector stated:

*"Correspondence between representatives of the referrer and the Chief State Solicitor's Office dated the 7<sup>th</sup> 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 29<sup>th</sup> 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."* [Emphasis added]

40. We also note that a recent Section 5 declaration by Laois County Council (ref. S5/2024/26) (September 2024 confirms that the use of one of Querist's residential properties (68 Barrowvale, Portlaoise road, Carlow, Co. Laois) "*as a residence for International Protection Applicants does not constitute development under the Planning and Development Act 2000 (as amended).*"
41. The use of dwellings in Querist's portfolio is an entirely different use from use as a hostel but it is perhaps instructive to consider the characteristics of the latter use. While under different statutory provisions, and in a different jurisdiction, in *Panayi v Secretary of State for the Environment* (1985) 50 P&CR 109, (Queens Bench Division - England) the court considered whether the use of four self-contained flats amounted to a change of use to 'hostel' use. Kennedy J held that the Planning Inspector had been entitled to conclude: (i) that the premises were being used as a "hostel"; and (ii) that a material change of use had taken place from the use for which planning permission had been granted. It was argued in that case that the presence of some of the features below combined were sufficient to distinguish the use of the premise as that of a hostel:
- a) The presence of dormitories and/or communal or shared facilities.
  - b) The use of the premises in accommodating specific categories of people, e.g., the young, or the homeless.
  - c) Whether the premises are serviced and/or supervised.
  - d) Whether payment is made by the local authority.
  - e) Whether payment is on a nightly basis
  - f) Whether the residents are transient in the sense that they are 'placed' in accommodation whilst awaiting accommodation elsewhere.

42. In the case of each of Querist's properties it is understood that:

- (a) No dormitories or communal facilities have been installed to facilitate the use - the permitted kitchen and living room in each house is unaltered.
- (b) The subject accommodation in each instance is for international protection applicants. However, its use is not limited to young or old occupants. Furthermore, the accommodation provided by Querist is not a reception facility, nor are the dwellings used as an administrative centre, in any instance. Rather each house is in residential use.
- (c) No carers are based in any of Querist's dwellings and there are no staff located on site supervising occupants/residents.
- (d) Payment is made by a Government Department;
- (e) Payment is not made on a nightly basis;
- (f) Accommodation is not being provided on a short-term basis – occupants are being accommodated for a period of c. 6–18 months at a time.

43. When one considers these characteristics of hostel use it can readily be concluded that the use of Querists' properties does not fit into this category of use. We are advised by Agent that no traffic impacts arise from the use of any of the dwellings over and above what would normally be associated with visitors to a house. It follows that there is no *material* intensification of use of the dwelling in terms of off-site traffic impacts as a result of the occupation by IPAs. Any services provided to the occupants by Querist are on an occasional basis. The intended occupancy level of each unit (i.e.) by c.4-8 persons are consistent with the typical level of occupancy of a 3-4 bedroom dwelling. In terms of level of occupancy, therefore, no issue of intensification would appear to arise. However, we will consider the issue of intensification of use in more detail below.
44. In principle, the use has not changed in that each dwelling continues to be used for the provision of residential accommodation where the use does not have material off-site planning impacts, including, in particular, traffic impacts associated with any occasional (non-business related) services provided on a visiting basis.

#### **Material Intensification of Use**

45. As briefly mentioned above, an increase in the intensity of use of itself is not sufficient to give rise to the need to obtain permission. The intensification must be material in planning terms when its impacts on the locality are considered. The remarks of Clarke J (as he then was) in *Cork County Council v Slattery Pre-Cast Concrete* [2008] IEHC 291 are of relevance in determining whether an intensification of an established use is material:

*"The assessment of whether an intensification of use amounts to a sufficient intensification to give rise to a material change in use must be assessed by reference to planning criteria. Are the changes such that they have an effect on the sort of matters which would properly be considered from a planning or environmental perspective? Significant changes in vehicle use (and in particular heavy vehicle use (that might not otherwise be expected in the area)) are one such example, changes in the visual amenity or noise are others."*



46. For the reasons outlined above, and on the basis of the facts as furnished by Agent to Counsel, there are no off-site or other impacts on the locality which are material in planning terms. The houses will essentially be used in the same way as they were used as dwellings prior to their occupation by IPAs. It is therefore considered that the use of these dwellings by IPAs for the provision of residential accommodation does not represent a material intensification of the permitted use such as to give rise to a material change of use.

***Can the planning code make a distinction between residents or occupants of a different political status (i.e. those internationally protected and those not?).***

47. Specific exemptions have been provided in legislation to allow for the conversion of certain non-residential premises to house protected persons. The Irish planning system specifically enables distinctions to be drawn/conditions to be attached to planning permissions restricting the use of structures to persons of a particular class or description. However, this restriction can only be imposed where it serves a planning purpose. Section 38(2) of the 2000 Act provides:

*"Where permission is granted under this Part for a structure, the grant of permission may specify the purposes for which the structure may or may not be used, and in case the grant specifies use as a dwelling as a purpose for which the structure may be used, the permission may also be granted subject to a condition specifying that the use as a dwelling shall be restricted to use by persons of a particular class or description and that provision to that effect shall be embodied in an agreement under section 47". [Emphasis added]*

48. A working assumption has been made that there are no conditions restricting the use of any of Querist's properties to use for a particular class or category of persons attached to any planning permission. In general, planning is not concerned with the class or type of persons carrying out a particular use, but focusses instead on the planning or environmental impacts. Planning permission ensures for the benefit of the land under section 38(2) of the 2000 Act, i.e. it runs with the land.

***Would a single dwelling, occupied by non-related residents, who are internationally protected applicants, require planning permission?***

49. If there is occupancy by persons without family or other connections where kitchen and other facilities are shared, this may operate no differently in planning terms to occupation by a family/ household provided that the planning and environmental impacts are no different. Occupancy by unrelated persons/non-family units could potentially generate a higher car parking requirement and, as a consequence, potentially greater off-site traffic impacts. However, such a consideration would appear unlikely to arise in the context of occupation by IPAs, most of whom would not be expected to have cars, given the manner of their arrival in the country.

*Does the provision of remote, part time or occasional services envisaged attending a residence fall within Use Class 9 (a) if applied to international protection applicants?*

50. Class 9 provides that a change between the following types of use are exempted development:

*"Use—*

*(a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),*

*(b) as a hospital or nursing home,*

*(c) as a residential school, residential college or residential training centre."*

51. Class 9 does not apply as each of Querist's properties is a 'house' for the purposes of the 2001 Regulations.

*Does the provision of the services, through visits to those under international protection, in an existing dwelling, in itself constitute a change of use?*

52. The question of whether the maximum provision of three-hours of care services per person, per week, sometimes provided remotely, amounts to a change of use or a material change of use depends on the planning impacts. On the basis of the services provided, it is considered that this level of provision of care would be akin to a visiting nurse providing 'in the community' care and as such would not give rise to a change of use. Moreover, unless there were any material planning impacts, e.g. in terms of traffic generated etc., it could not be regarded as a *material* change of use. We are instructed that in terms of trip generation there will be just one vehicular movement in and one movement out per day associated with the provision of care services. It is difficult to see how this could be regarded as a change of use which was material in planning terms. Such a level of trip generation would be regarded as ordinarily incidental to the use of a typical dwelling.

53. In *Westmeath County Council v Quirke* (unreported, High Court, 23<sup>rd</sup> May 1996) the Court noted that:

*"Many alterations in the activities carried out on the land constitute a change of use, however, not all alterations will be material. Whether such changes amount to a material change of use is a question of fact..... Consideration of the materiality of a change in use means assessing not only the use itself but also its effects."*

54. On the basis of the low level of care services supplied, we are therefore of the opinion that no material change of use of Querist's properties occurs as a result of the provision of care services.

*Please opine on whether you hold the view that the provision of services to persons*

*in their own dwelling on an occasional basis would be regarded as 'ordinarily incidental' to the use of a dwelling under Section 4(1)(j) of the Act in that the use would be 'incidental to the enjoyment of the house as such'.*

55. Section 4(1)(j) provides the following development is exempted development:

*"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"*

56. Insofar as exemptions are to be strictly construed, on one reading section 4(1)(j) applies not to a house itself but to any structure or other land within the curtilage of a house. On this basis, the use of the house itself for the provision of care is not incidental to the use of other land within the curtilage of a house. If it does apply to the house itself, a care use would, in our opinion, be incidental to the enjoyment of the dwelling house as such. Occasional visits to the home by friends or family or by care professionals making house visits is part of the ordinary or normal use of a dwelling house provided that the visits are at a level which do not give rise to any disamenity and are subordinate in land use terms to the primary use as a dwelling. The position might change if there were significant off-site impacts associated with the secondary use. The test usually applied in UK case law is whether the use is reasonably or ordinarily incidental to the use of the dwelling house in this sense. In *Emin v Secretary of State for the Environment* [1989] JPL 909, Eyre QC (sitting as a deputy High Court judge) stated:

*"The fact that such a building had to be required for a purpose associated with the enjoyment of a dwelling house could not rest solely on the unrestrained whim of him who dwelt there but connoted some sense of reasonableness in all the circumstances of the particular case. That was not to say that the arbiter could impose some hard objective test so as to frustrate the reasonable aspirations of a particular owner or occupier so long as they were sensibly related to his enjoyment of the dwelling. The word 'incidental' connoted an element of subordination in land use terms in relation to the enjoyment of the dwelling house."* [Emphasis added]

57. If the correct interpretation is that the exemption does not apply to the main house itself, the analysis does not change much as the issue is as to whether the provision of occasional care visits in a domestic setting is ancillary to the primary use of the dwelling as a residence. To be ancillary, the applicable test is generally considered to be whether the use in question is 'ordinarily incidental' or, to put it another way, a use which is *normally* incidental to the primary use as a dwelling. In our opinion, weekly care visits are ordinarily incidental to the primary use as a dwelling. The position might be viewed differently if the residential care were being provided permanently in each dwelling.
58. The introduction of services in terms of the use of a dwelling under consideration should not be material if it does not give rise to any material off-site impacts. As indicated above,

the number of vehicular trips likely to be generated by the provision of these direct services is no different to that expected for a house in occupation as a dwelling.





## V CONCLUSION

59. Having regard to the foregoing considerations, and subject to any qualifications or assumptions expressed above, it is considered that the use of Querist's portfolio of dwellings for the accommodation of IPAs does not give rise to a material change of use from their use as dwellings and, therefore, does not constitute 'development' requiring planning permission for the following reasons:

- a. Querist's properties are being and are intended to be used solely for residential purposes which is essentially the same use as their preceding use as dwellings prior to their occupation by IPAs.
- b. Querist's properties are not being used either as reception or administrative centres for those seeking international protection and do not contain any such facilities internally.
- c. In many instances there is just one family living in Querist's properties. Where additional occupants are accommodated, who are not related, they share the same kitchen and living room facilities. Therefore, the occupation by IPAs would not of itself give rise to any material change of use, unless it were accompanied by a material increase in off-site impacts such as significantly increased traffic, which, for the reasons discussed above would appear highly unlikely. The position might be different if there was significant car ownership among IPAs, leading to increased traffic or car parking demand, but this would not normally be expected given the manner of arrival of these persons.
- d. Based on our instructions and the information furnished in terms of the level of occupancy (typically 4-8 persons in 3-4 no. bedrooms), the issue of intensification does not appear to arise. Moreover, it is only where an intensification of use gives rise to material planning impacts that a *material* change of use by reason of intensification could be taken to have occurred. In the absence of any material vehicular or other off-site impacts in the present case, it is our opinion that there is no material change of use in this respect in the current or intended use of any of Querist's properties.
- e. The Board's decision and related planning Inspector's Report on the Ballinamore (Co. Leitrim) referral and more recent Section 5 declaration by Laois County Council (S5/2024/26) dated September, 2024 in respect of No. 68 Barrowvale, Graigecullen, Co. Laois, also support the conclusions of this opinion that the use of residential dwellings by protected persons does not constitute development.

60. Nothing further occurs at this time. We can advise further if required.

**Conor Sheehan BL**  
**Eamon Galligan SC**

25<sup>th</sup> September 2024

