

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,
Unit 3 Bloom HQ,
Patrick's Street,
Mountrath,
Co. Laois,
R32 DC58.

Reference Number: DED 870
Application Received: 28th March, 2025
Name of Applicant: Didean Dochas Eireann Teoranta
Agent: Lenztech Surveying & Engineering Ltd

WHEREAS a question has arisen as to whether the use of the subject premises as a residence for International Protection Applicants at 4 Cushla Downs, Monksland, Athlone, Co. Roscommon, N37 RK31, 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 4 Cushla Downs, Monksland, Athlone, Co. Roscommon, N37 RK31, 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 4 Cushla Downs, Monksland, Athlone, Co. Roscommon, N37 RK31, 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,
A/Senior Planner,
Planning.

Date: 24th June, 2025

cc agent via email: Lenztech Surveying & Engineering Ltd
dquigley@lenztech.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: Wednesday 25 June 2025 12:51
To: Damien Quigley
Subject: DED 870 - Notification of Decision
Attachments: DED 870 - Notification of Decision.pdf

Hi Damien,

Please find attached Notification of Decision for the Section 5 Declaration of Exempted Development Application (DED 870) submitted for Didean Dochas Eireann Teornata.

Regards,

Carmel

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

✉: planning@roscommoncoco.ie | 🌐 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 870

Name and Address of Applicant: Didean Dochas Eireann Teoranta

AGENT: Lenztech Surveying & Engineering Ltd

WHEREAS a question has arisen as to whether 'the use of the subject premises as a residence for International Protection Applicants' at 4 Cusla Downs, Monksland, Athlone, Co. Roscommon 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 in Monksland, South Roscommon. The application site consists of a two-storey semi-detached dwelling.

2.0 Planning History

3363H/91: Permission for the erection of 32 dwelling houses

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 4 Cusla Downs, Monksland, Athlone, Co. Roscommon** 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 reception or an administrative centre. The Planning Authority is satisfied from the applicant's submission that it is intended that the premises 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 4 Cusla Downs, Monksland, Athlone, Co. Roscommon**, 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 4 Cusla Downs, Monksland, Athlone, Co. Roscommon**, 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 Rer.-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 4 Cusla Downs, Monksland, Athlone, Co. Roscommon is not development and I recommend that a declaration to that effect should be issued to the applicant.

Signed:



Date: 23rd June 2025

Civil Technician

Signed:



Date: 23rd June 2025

Senior Executive Planner







Comhairle Contae
Ros Comáin
Roscommon
County Council



Didean Dochas Eireann Teoranta,
Unit 3 Bloom HQ,
Patrick's Street,
Mountrath,
Co. Laois,
R32 DC58.

Date: 10th April, 2025
Planning Reference: DED 870

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 (Exempted Development) regulations 2018 at 4 Cushla Downs, Monskland, Athlone, Co. Roscommon, N37 RK31.

A Chara,

I wish to acknowledge receipt of the application which was received on the 28th March, 2025, 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. L/01/0/234074 dated 8th April, 2025, receipt enclosed herewith.

Note: Please note your Planning Reference No. is **DED 870**
This should be quoted in all correspondence and telephone queries.

Mise le meas,

Mervyn Walsh,
Administrative Officer,
Planning Department.

Roscommon County Council
Aras an Chortae
Roscommon
09086 37100

08/04/2025 09.40.34

Receipt No. : L01/0/234074

LENZTECH SURVEYING & ENGINEERING LTD
UNIT B12
PORTLAOISE
CO LAOIS

PLANNING APPLICATION FEES 80.00
GOODS 80.00
VAT Exempt/Non-vatable
DED870

Total : 80.00 EUR

Tendered :
Credit/Debit Card 80.00
9480

Change : 0.00

Issued By : Aine McDermott
From : Central Cash Office

Carmel Curley

From: Carmel Curley
Sent: Thursday 10 April 2025 12:34
To: Damien Quigley
Subject: DED 870 - Didean Dochas Eireann Teoranta
Attachments: DED 870 - Ack letter & receipt.pdf

Hi Damien,

Please find attached Acknowledgement Letter & Receipt for DED Application 870.

Regards,

Carmel

Carmel Curley, Staff Officer,
Planning Department, Roscommon County Council,
Aras an Chontae, Roscommon, Co. Roscommon, F42 VR98

☎: (090) 6637100

✉: planning@roscommoncoco.ie | 🌐 www.roscommoncoco.ie

MAP LOCATION



Sharon Kelly

From: Damien Quigley <dquigley@lenztech.ie>
Sent: Friday 28 March 2025 16:30
To: Planning Department
Cc: [REDACTED]
Subject: Section 5 Declaration - Exempted Development - 4 Cushla Downs, Monksland, Athlone, Co. Roscommon, N37 RK31
Attachments: LT25015 Section 5 Application - 4 Cushla Downs, Athlone.pdf

To Whom It Concerns,
Please find attached **Section 5** application for a declaration as to whether use of the below mentioned premises as a residence for International Protection Applicants constitutes development and whether, if it does, it can be considered exempted development:

- 4 Cushla Downs, Monksland, Athlone, Co. Roscommon, N37 RK31

Please contact the undersigned for payment of the relevant fee.

Regards,

Damien Quigley

Director, Lenztech Surveying & Engineering Ltd.

Mobile: 086 8882497 | Land Line: (057) 8510121

Email: dquigley@lenztech.ie

Web: www.lenztech.ie





Lenztech Surveying & Engineering Ltd.

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Blanchardstown, Dublin 15
D15 AKK1

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

T: + 353 (0)1 835 9729
+ 353 (0)57 8510121
E: info@lenztech.ie

YOUR REFERENCE:

OUR REFERENCE: LT25015

DATE: 28TH MARCH 2025

**The Planning Department,
Roscommon County Council,
Áras an Chontae,
Roscommon,
Co. Roscommon.**

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 4 Cushla Downs, Monksland, Athlone, Co. Roscommon, N37 RK31

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 Lenztech Surveying & Engineering Ltd of Unit B12, National Enterprise Park, Portlaoise, Co. Laois, R32 RT73 on behalf of Dídean Dóchas Eireann Teoranta with an address in the county at Unit 3 Bloom HQ, Patrick's Street, 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



The Content of this Application:

This application contains the following documents:

- This cover letter;
- The completed Section 5 application form;
- Site 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; 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.

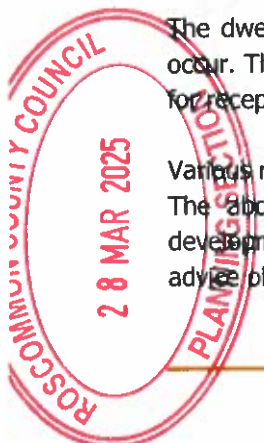
No staff are based in Dídean's homes. Dídean's team liaise with the adults of the house to assist with arranging the above while integrating into the community.

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 will be occupied by a family of international protection applicants. No internal or external modifications were undertaken to the dwelling to facilitate the use of the premises by international protection applicants.

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 dwelling 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 premises as part of a wider housing scheme under planning applications reg. ref. 3363H/91. A number of relatively standard planning conditions were attached to the overall development. It should be noted that no conditions were attached to the final grant of planning permission restricting the subject premises 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 Residential 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 international 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 the use for international protected persons 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. Where 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,

Damien Quigley

Damien Quigley,
Senior Engineer, MIEI
Director, Lenztech Surveying & Engineering

COMPLETED SECTION 5 APPLICATION FORM





Comhairle Contae
Ros Comáin
Roscommon
County Council



Áras an Chontae,
Roscommon,
Co. Roscommon.

Phone: (090) 6637100

Email: planning@roscommoncoco.ie

Roscommon County Council

Application for a Declaration under Section 5 of the

Planning & Development Act 2000 (as amended), regarding Exempted Development

Name of Applicant(s)	Dídean Dóchas Eireann Teoranta
Name of Agent	Lenztech Surveying & Engineering Ltd
Nature of Proposed Works	A determination of the above under Section 5 of the Planning and Development Act 2000, as amended. This Section 5 is for the use of the subject property and there are no physical building works proposed.
Location & Address of Subject Property to include, Eircode (where applicable), Townland & O.S No.	4 Cushla Downs, Monksland, Athlone, Co. Roscommon, N37 RK31
Floor Area: a) Existing Structure b) Proposed Structure	a) <u>N/A</u> b) <u>N/A</u>
Height above ground level:	N/A - No works to take place
Total area of private open space remaining after completion of this development	N/A - No works to take place
Roofing Material (Slates, Tiles, other) (Specify)	N/A - No works to take place

Roscommon County Council

Application for a Declaration under Section 5 of the

Proposed external walling (plaster, stonework, brick or other finish, giving colour)	N/A - No works to take place
Is proposed works located at front/rear/side of existing house.	N/A - No works to take place
Has an application been made previously for this site	Yes
If yes give ref. number (include full details of existing extension, if any)	3363 H/91
Existing use of land or structure	Residential
Proposed use of land or structure	N/A - No works to take place
Distance of proposed building line from edge of roadway	N/A - No works to take place
Does the proposed development involve the provision of a piped water supply	N/A - No works to take place
Does the proposed development involve the provision of sanitary facilities	N/A - No works to take place

Planning & Development Act 2000 (as amended), regarding Exempted Development

Signature: Damien Quigley

Date: 28/03/2025

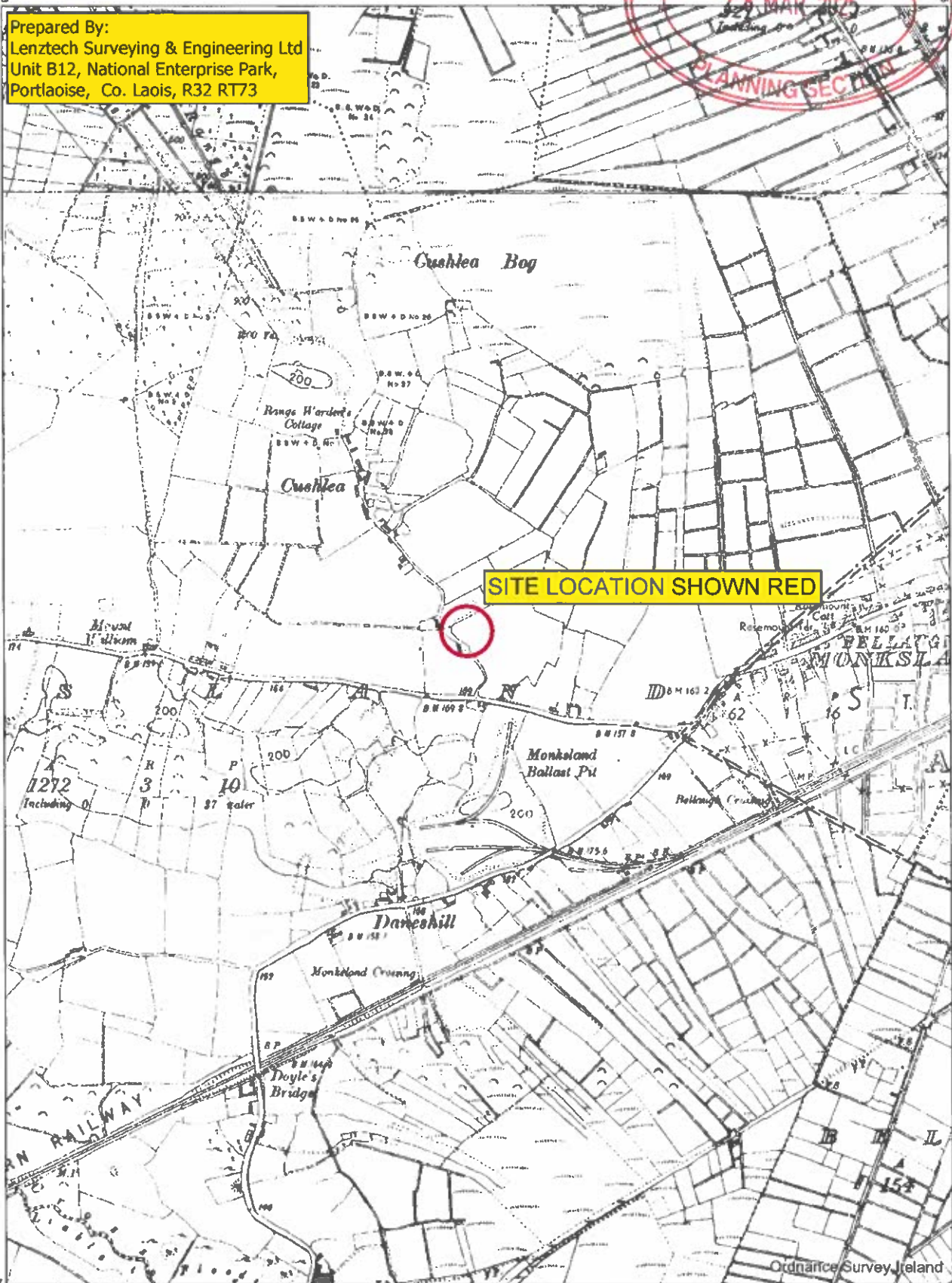
Note: This application must be accompanied by: -

- (a) €80 fee
- (b) Site Location map to a scale of 1:2500 clearly identifying the location
- (c) Site Layout plan to the scale of 1:500 indicating exact location of proposed development
- (d) Detailed specification of development proposed



Site Location Map

Prepared By:
Lenztech Surveying & Engineering Ltd
Unit B12, National Enterprise Park,
Portlaoise, Co. Laois, R32 RT73



0 100 200 300 400 Metres
0 150 300 450 600 750 Feet

OUTPUT SCALE: 1:10,560



COMPILED AND PUBLISHED BY:

Taitte Éireann,
Phoenix Park,
Dublin 8,
Ireland.
D08F6E4

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CENTRE
COORDINATES:
ITM 601417.741518

PUBLISHED:
28/03/2025

MAP SERIES:
6 Inch Raster
6 Inch Raster
6 Inch Raster

ORDER NO.:
50457437_1

MAP SHEETS:
RN049
RN052
WH029

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SITE LAYOUT PLAN

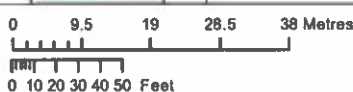


Planning Pack Map

Prepared By:
Lenztech Surveying & Engineering Ltd
Unit B12, National Enterprise Park,
Portlaoise, Co. Laois, R32 RT73



Site Extents Outlined in BLUE
Existing Subject Property Outlined in RED



OUTPUT SCALE: 1:1,000



COMPILED AND PUBLISHED BY:

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Dublin 8,
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CENTRE
COORDINATES:
ITM 801417,741518

PUBLISHED:
28/03/2025

MAP SERIES:
1:2,500

ORDER NO.:
50457437_1

MAP SHEETS:
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www.tailte.ie

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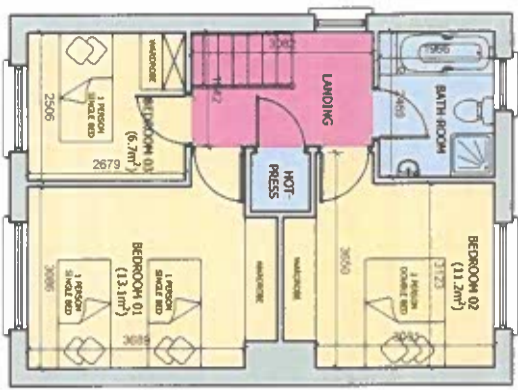
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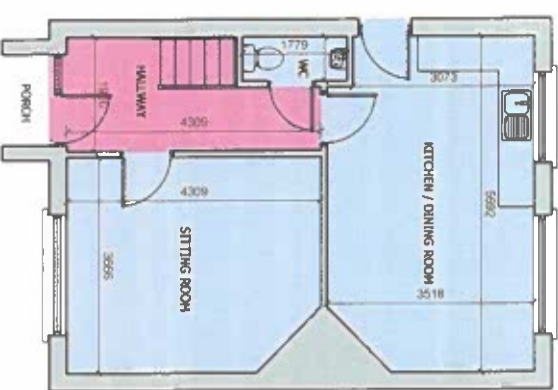
Tailte
Éireann

**EXISTING FLOOR PLAN AND EXISTING ELEVATIONS WHICH ALSO CONSTITUTE THE
PROPOSED FLOOR PLAN AND ELEVATIONS AS THERE ARE NO CHANGES TO EITHER THE
INTERNAL LAYOUT OR THE EXTERIOR OF THE SUBJECT DWELLING**

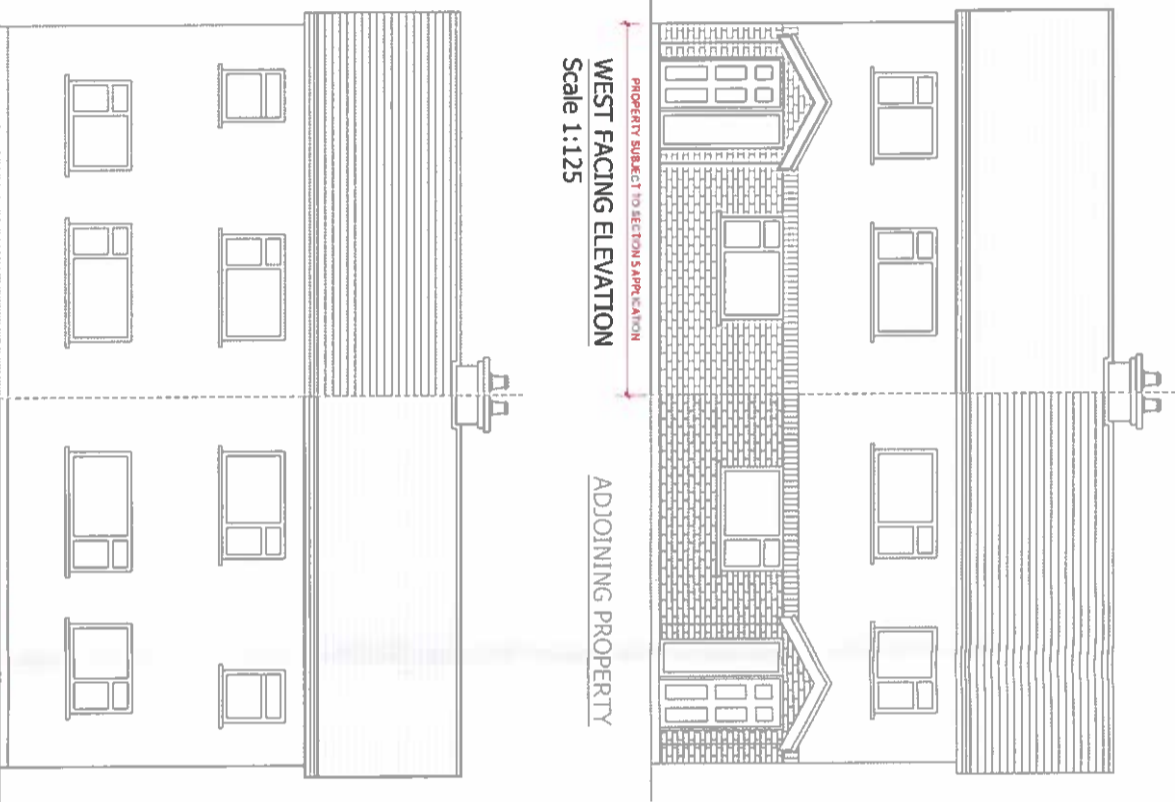




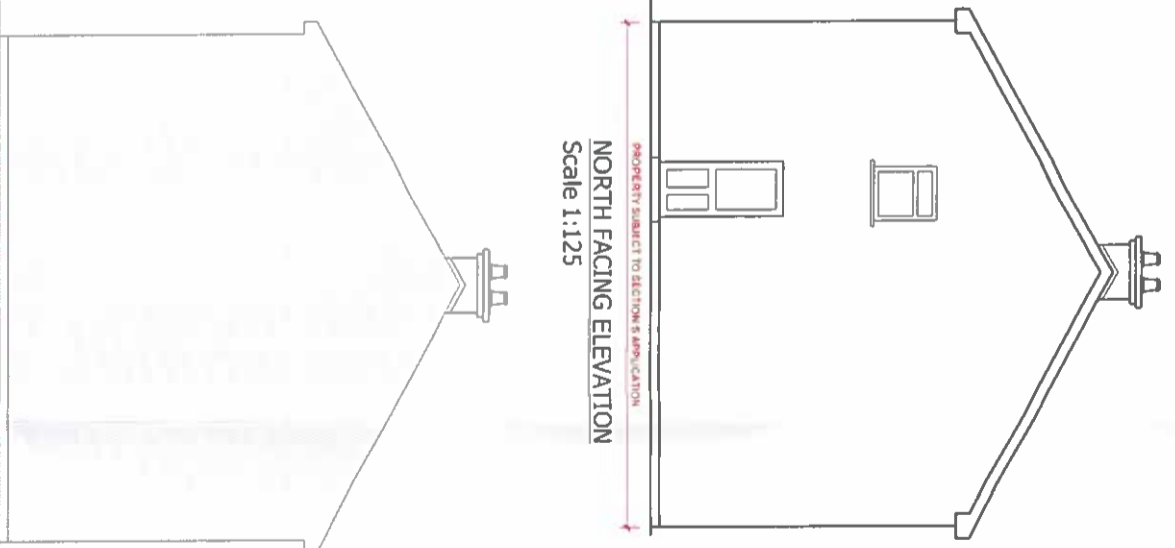
FIRST FLOOR PLAN
Scale 1:125



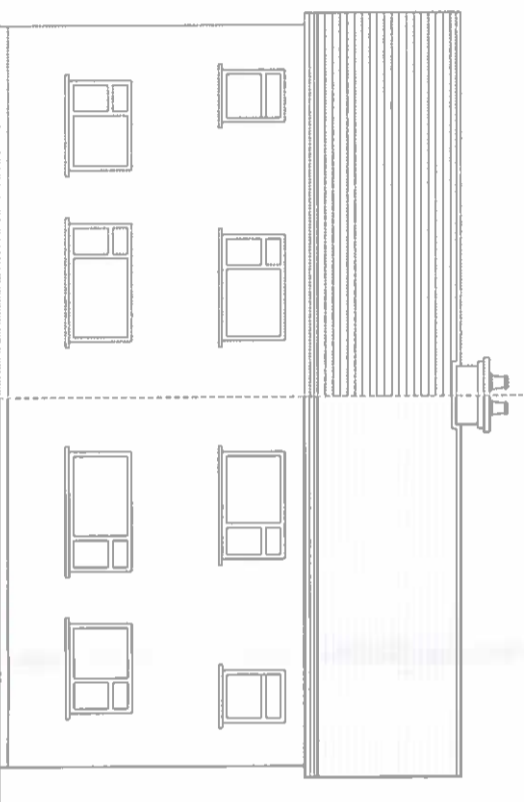
GROUND FLOOR PLAN
Scale 1:125



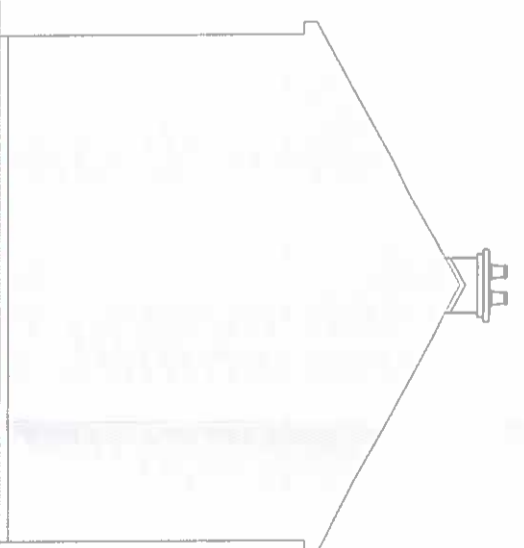
WEST FACING ELEVATION
Scale 1:125



NORTH FACING ELEVATION
Scale 1:125



EAST FACING ELEVATION
Scale 1:125



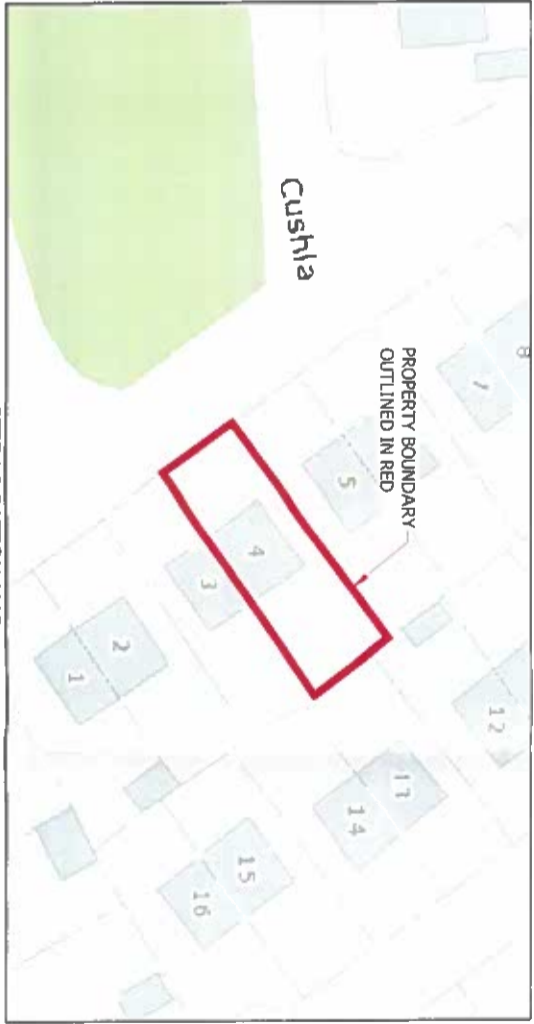
SOUTH FACING ELEVATION
Scale 1:125

FLOOR AREAS:

GROUND FLOOR	44.5sqm
FIRST FLOOR	42.5sqm
Total	87.0sqm

LEGEND

	COMMUNAL SPACES		BEDROOMS
	CIRCULATION AREA		



SITE LOCATION MAP



Didean
PARTNERSHIP | INTEGRATION | INCLUSION

REV	DATE	DESCRIPTION	BY	CHKD
R1	15/03/25	Issued for report	DD	DD
R2	15/03/25	Revised for report	DD	DD
R3	15/03/25	Revised for report	DD	DD
R4	15/03/25	Revised for report	DD	DD
R5	15/03/25	Revised for report	DD	DD
R6	15/03/25	Revised for report	DD	DD
R7	15/03/25	Revised for report	DD	DD
R8	15/03/25	Revised for report	DD	DD
R9	15/03/25	Revised for report	DD	DD
R10	15/03/25	Revised for report	DD	DD
R11	15/03/25	Revised for report	DD	DD
R12	15/03/25	Revised for report	DD	DD
R13	15/03/25	Revised for report	DD	DD
R14	15/03/25	Revised for report	DD	DD
R15	15/03/25	Revised for report	DD	DD
R16	15/03/25	Revised for report	DD	DD
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R18	15/03/25	Revised for report	DD	DD
R19	15/03/25	Revised for report	DD	DD
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R21	15/03/25	Revised for report	DD	DD
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R98	15/03/25	Revised for report	DD	DD
R99	15/03/25	Revised for report	DD	DD
R100	15/03/25	Revised for report	DD	DD

ARCHITECT
LENZTECH SURVEYING & ENGINEERING LTD



PROJECT
PROPERTIES
ATHLONE

TITLE
4 CUSHLA DOWNS MONKSLEIGH ATHLONE
CO ROSCOMMON, N27 RK31 - ELEVATIONS &
FLOOR PLANS

REPORT ISSUE

DESIGN	DD	DATE	DD
CHK BY	KS	APP BY	SH
DATE	28/03/25	DATE	28/03/25
AT SCALE	AS SHOWN	LT	LT25015
REV			
25015-R-01			R1



LEGAL OPINION

– OPINION –

QUERIST: *Dídean Dóchas Éireann Teoranta*

AGENT: *Cunnane Stratton Reynolds Ltd*

SUBJECT: *68 Barrowvale, Graiguecullen, Carlow, Co Laois*

I NATURE OF OPINION

1. Counsel have been requested by Agent to jointly advise on whether the use of a dwelling at the above address (No. 68 Barrowvale) by ‘protected persons’ constitutes development. Counsel have also been asked to advise on other associated matters. These matters are considered below.

II BACKGROUND

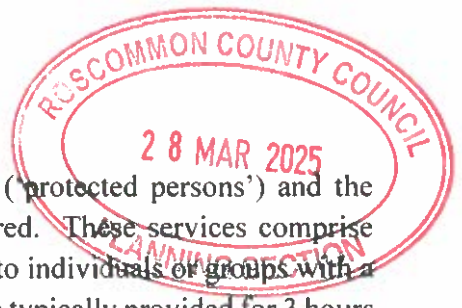
2. Querist owns no. 68 Barrowvale which is a dwelling that is in use for the provision of accommodation for protected persons. The dwelling was permitted as part of a wider scheme as a residential house under Laois County Council Ref. 01/582. Counsel have not inspected the plans and particulars associated with that planning application but note that no conditions were attached to the Final Grant of planning permission restricting the use of the dwelling to single families. Condition 34 restricts its use to residential purposes. It provides:

“34. Use of the proposed dwellings shall be restricted to residential purposes only. No business, trade or other non-residential use shall take place within the proposed residential premises.”

3. The reason given for the imposition of this condition is *“in the interests of proper planning and residential amenities”*. The permission was amended under Ref. 04/54. The local planning authority has surveyed the premises and no. 68 is not subject to any enforcement action save for the enforcement Warning Letter from Laois County Council under their reg. ref. no. UD240106, dated 22nd March 2024.

No. 68 forms part of a property portfolio of second-hand residential dwellings owned by Querist. These comprise of 2, 3 and 4 bed dwellings in typical residential communities, dispersed across a wide geographical area; they are not concentrated in any particular housing estate of any village/town/city. The property at no. 68 Barrowvale is a three bedroom semi-detached dwelling intended for accommodating 6-8 persons who may or not be from the same family (the 6-8 occupants would include infants of the occupants). Querist provides, and wishes to continue to provide,





residential accommodation for people seeking asylum ('protected persons') and the facilitation of visiting services or support where required. These services comprise supported living, day and community outreach services to individuals or groups with a range of complex support requirements. The services are typically provided for 3 hours per week. It is confirmed by Querist that there is on average one vehicle movement going to No. 28, and one vehicle movement coming from it, each day. This equates to a typical number of vehicle movements that one would associate with use as a residential dwelling.

5. Protected persons are typically housed for 6-18 months at a time until such time as their applications for international protection are processed. 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. No physical modifications were or are required to no. 68 to facilitate the current use of the subject property. Agent has confirmed that the property does not contain any reception and/or lobby areas or administrative component that might alter the character and/or nature of Querist's property. A schedule of accommodation is as follows:
 - Hallway;
 - Sitting Room;
 - Dining Room/Kitchen;
 - Utility Room;
 - Downstairs WC;
 - 3 no. Bedrooms including 1 no. Ensuite Toilet/Shower;
 - First Floor Bathroom/Toilet; and
 - Hot Press.
7. It appears that Laois County Council considers that use of dwellings for emergency accommodation for persons of protected status is a change of use, constitutes development, is not considered exempted development and would consequently require planning permission.
8. A Warning Letter dated 22nd March 2024 has issued from the Council in connection with no. 68 Barrowvale alleging "... *unauthorised development comprising of, but not limited to, a change of use...* "
9. Against this background the following questions are being posed to Counsel (and are later addressed in the Opinion):

- 1) Does the use of a domestic dwelling for accommodation of “protected persons” as defined in legislation 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 envisaged, through visits 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) if applied to international protection applicants?
- 5) Counsel are also requested to advise 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 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)

10. There is no definition of “*material change of use*” or of 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 a 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."

11. 'Development' is defined in section 3 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]

12. Section 3(3) provides that the use of a house as two or more dwellings is a material change of use, and use of a dwelling for short term lettings is a material change of use in certain circumstances (section 3A):

"(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)]

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

13. It is clear that the intended use of no. 68 is not a "short term letting", as this is defined in 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."

14. 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”

15. Section 4(2) of the 2000 Act further empowers the Minister to provide, by regulations, certain classes of exempted development.
16. 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, 2001-2023 (as amended)

17. 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”

18. ‘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;”

19. 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.

20. 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 carriage way of which exceeds 4 metres 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..."

21. Article 10 concerns certain changes of use. 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...”

22. 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)”

23. 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 limitations¹) 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,²

(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

¹ 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.”

² Emphasis added.

part thereof, to use as an emergency reception and orientation centre for protected persons... ”

24. 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

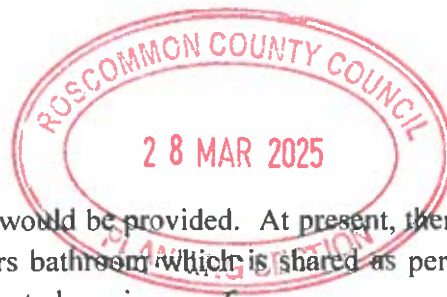
Does the use of a domestic dwelling for accommodation of “protected persons” as defined in legislation constitute development?

25. The question of whether the use of a dwelling for accommodation of protected persons is development depends on whether it involves works and/or constitutes a material change of use.
26. We are advised that no works have been undertaken to the permitted dwelling at no. 68 Barrowvale. We are also advised that the dwelling was constructed in accordance with the terms of Ref. 01/582.
27. The residual issue is therefore whether the use of no. 68, a dwelling, by protected persons represents a material change of use or alternatively a material intensification of permitted residential use.

Material Change of Use

28. A material change of use can occur by operation of law: section 3 of the 2000 Act provides 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. Agent has confirmed that No. 68 is in occupation by one family as a single dwelling at present and, were it to accommodate additional occupants, that it would not be subdivided into two or more dwellings, and





that no additional cooking facilities or toilets would be provided. At present, there is one kitchen, one living room and one upstairs bathroom which is shared as per the schedule of accommodation for no. 68, as set out above in para. 6.

29. 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.
30. The question of whether there has been a material change of use addressed in the Supreme Court judgment in *Monaghan County Council v. Brogan* [1987] I.R. 333³ 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.
31. Jurisprudence also illustrates that the focus of a planning authority must be on the practical effects of the 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”

32. In a similar vein Barron J in *Galway County Council v Lackagh Rock* [1985] IR 120 at 127 stated that:

“... 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 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.”

³ Referred to more recently in, inter alia, *Stanley v An Bord Pleanála* [2022] IEHC 177.

33. In *Westmeath County Council v Quirke* (unreported, High Court, 23rd 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."

34. 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.]

35. We are not aware of any Irish case law specifically considering whether the use of a dwelling as accommodation for protected persons is a material change of use.
36. 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 our 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 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 7th day of November, 2019, states that the Minister for Justice and Equality has not entered into any contract to establish an EROC in Ballinamore. Subsequent correspondence between these parties dated the 29th November, 2019, clarifies that 25 families would occupy the subject 25 apartments, which would be used on an 'own-door independent living basis', with no communal living facilities. Having visited the referral site, it is clear that **the residential***





accommodation is being operated in a manner similar to other apartment developments, with gated access and servicing by a management and security suite. Facilities beyond those that would normally form part of an apartment complex were not in evidence and the facility does not feature any particular additional reception, orientation or care services. The facility is not operating as an emergency reception for the care of protected persons, it is being operated as residential accommodation, as per the permitted use and the status or personal circumstances of the apartment residents is not a material planning issue. I am satisfied that the current use of the apartments is not as a facility for the reception and care of protected persons and does not constitute a change of use from the permitted use and, therefore, does not constitute development."

[Emphasis added]

37. While under different statutory provisions, and not dealing with the issue of 'protected persons', in *Panayi v Secretary of State for the Environment* (1985) 50 P&CR 109, (Queens Bench Division - England) in assessing if the use of four self-contained flats amounted to a change to 'hostel' use, Kennedy J held that the Planning Inspector had been entitled to conclude that the premises were being used as a "hostel" and 2) that he had also been entitled to conclude 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.
38. In the case of No. 68 Barrowvale it is understood that: a) no dormitories or communal facilities have been installed to facilitate the use - the permitted kitchen and living room in the house are unaltered; b) the subject accommodation is for protected persons. However, its use is not limited to young or old occupants. Furthermore, the accommodation provided by Querist is not a reception facility, nor is the dwelling used as an administrative centre. Rather the house is in residential use; c) no carers are based in the dwelling and there are no staff located on site supervising the occupants; 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.

39. We are advised by Agent that no traffic impacts arise from the use of the dwellings over and above what would normally be associated with visitors to a house. It follows that an intensification of use of the dwelling in terms of off-site traffic impacts does not occur as a result of the occupation by protected persons. Any services provided to the occupants by Querist are on an occasional basis, up to a maximum of,3 hours per week per person on a visiting basis only, and there is no concentration of any similar use in the locality. In this regard, we are instructed that no other dwelling in the residential estate in which the dwelling is situate is used to provide accommodation to protected persons). We are further advised that the intended occupancy level of no. 68 by 5-8 persons is consistent with its permitted use as a dwelling.
40. Based on a planning search dated 7th December 2023 No. 68 Barrowvale is zoned 'Residential 1. Established' and permission was granted for residential use and the conditions attached to the permission Carlow County Council Ref. 01/582 (as amended) did not limit the use of any house permitted pursuant to that permission to any specific category of persons. Residential use is consistent with the above zoning.
41. In this context, it is considered that, in principle, the use has not changed and that the 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.

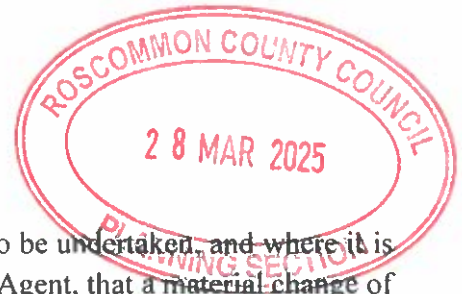
Material Intensification of Use

42. The remarks of Clarke J (as he then was) in *Cork County Council v Slattery Pre-Cast Concrete* [2008] IHC 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."

43. For the reasons outlined above, and on the basis of the facts as furnished by Agent to Counsel, it is considered that the use of the dwelling by protected persons does not represent a material intensification of the permitted use such as to give rise to a material change of use.





Does the Use Constitute Development?

44. On the basis that no works have been or are required to be undertaken, and where it is not evident to Counsel, based on the fact presented by Agent, that a material change of use or a material intensification of use has occurred, it is considered that the use of No. 68 for the accommodation of 'protected persons' is not development within the meaning of the Act.

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

45. Specific exemptions have been provided in legislation to allow 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, in our opinion, 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]

46. No condition restricting the use of No. 68 to a particular class or category of person is attached to the planning permission Carlow County Council Ref. 01/582 under which no. 68 was permitted. Planning does not generally focus on the class or type of persons carrying out a particular use, but focusses instead on the planning or environmental impacts. Planning permission enures for the benefit of the land under section 38(2) of the 2000 Act.

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

47. The 2000 Act provides that use as two or more dwellings of any house previously used as a single dwelling involves a material change in the use (see also short-term letting under section 3A) which is development and, unless such use was exempted development, it would require planning permission irrespective of the political status of the residents. 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 with a lodger provided that the planning and environmental impacts are no different. The off-site impacts are often the same, as indicated above, although occupancy by unrelated persons/non-family units can sometimes generate a higher car parking requirement and , therefore, potentially higher off-sit impacts, such a consideration would not appear to arise in the context of occupation by '*protected persons*', most of whom would not be expected to have cars. We are instructed that this issu does not arise in respect of no. 68.

48. Aside from where a material change of use occurs by operation of the 2000 Act, if the use of the dwelling gives rise to a material intensification of the existing use or a material change of use then it would require planning permission, irrespective of the political status of the residents.

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?

49. 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."*

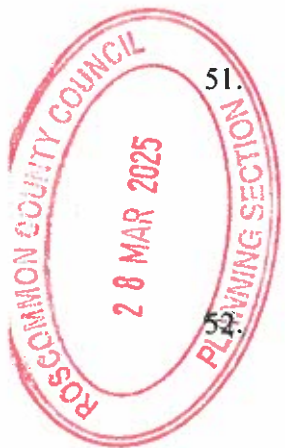
50. Class 9 does not apply as Querist's property is in residential use and is a '*house*' for the purposes of the 2001 Regulations.

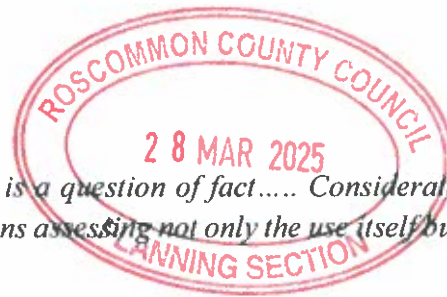
Does the provision of the services, through visits to those under international protection, in an existing dwelling, in itself constitute a change of use?

51. The question of whether the provision of a three-hour provision of services per person per week amounts to a change of use or a material change of use is a question of fact and degree. 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 automatically trigger a change of use.

52. In *Westmeath County Council v Quirke* (unreported, High Court, 23rd 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."

53. If the provision of the services does not give rise to planning impacts of a material nature, then the introduction of such a use should not be regarded as material in planning terms, provided the provision of direct services does not extend significantly beyond occasional use or give rise to material off-site impacts which would not occur in the normal use of dwellings. On the basis of the low level of services supplied, we are of the opinion that no change of use has occurred in relation to the use of no. 68.

Please advise 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'.

54. 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"

55. Insofar as exemptions are to be strictly construed, on one reading section 4(1)(j) applies not to the 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]

56. 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 would be viewed differently if the residential care were being provided permanently on site.
57. The introduction of services in terms of the use of the 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. There are no other houses in the control of Querist within the subject estate and no off-site impacts would increase as a consequence of the occupation of no. 68 by protected persons.





V CONCLUSION

58. Having regard to the foregoing considerations, and subject to any qualifications or assumptions expressed above, our principal conclusions are as follows:
- It is considered that the use of No. 68 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. A full schedule of accommodation, very much the norm for such a sized property is set out in para. 6 above.
 - 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 it is understood that Querist does not intend to provide a reception or administrative centre for those seeking international protection at this location.
 - Based on our instructions and the information furnished in terms of the level of occupancy (6-8 persons), 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.
 - The Board's decision and Inspector's Report on the Ballinamore referral supports the view that the use of residential accommodation by protected persons does not constitute development.
59. This opinion is confined to a consideration of the particular circumstances of No. 68 Barrowvale.

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

Conor Sheehan BL
Eamon Galligan SC

19 June 2024





ARCHITECTURAL OPINION ON PLANNING COMPLIANCE

LIAM O'DOHERTY ARCHITECTS

Telephone (0902) 92891 & 89108

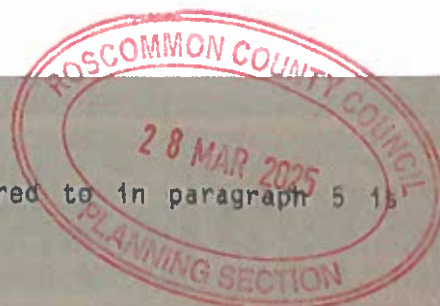
62 Connaught Street
Athlone

CERTIFICATE OF COMPLIANCE

I, Liam O'Doherty certify as follows:

1. I am an architect having qualified as such at The Polytechnic of Central London and Cambridge University, England in the year 1974. I am a Member of the Royal Institute of British Architects and the Royal Institute of the Architects of Ireland.
2. I have been in independent private practice on my own account since the year 1978 or thereabouts.
3. I am the Architect retained by Buckley Construction Company Limited to inspect No. 4 Cushla Downs, situate at Monksland, Athlone, Co. Roscommon. Such building or works being referred to as 'the relevant works'.
4. The Grant of Permission - Decision Order No. 3363 H/91 dated the 27th of March 1992 relates to the relevant works.
5. The relevant works and services thereof were designed by others in substantial conformity with the Building Regulations made pursuant to the Building Control Act 1990.
6. I am informed by Roscommon County Council that a Commencement Notice of the intention to undertake the Relevant Works was issued in accordance with the Building Control Regulations, 1991 and such Notice contained or was accompanied by the information and particulars prescribed by the said Regulations.
7. I have inspected the relevant works and, in my opinion, the construction thereof complies substantially with the Permission/Approval mentioned in paragraph 5.
8. The position of the relevant works and of the site is in substantial compliance with the estate layout presented to the Planning Authority insofar as the estate has been completed.





9. No Planning Permission other than that referred to in paragraph 5 is pertinent to the relevant works.
10. The Conditions of the Permission/Approval referred to in paragraph 5 relating to the estate of which the relevant works form part have been substantially complied with insofar as is reasonably possible BUT this paragraph is not to be taken as extending to conditions for the payment of financial contributions or the giving of security for satisfactory completion compliance with which is not within my competence to certify.
11. In the event that the relevant works and the site works pertaining thereto have not been built and/or laid out exactly in accordance with the said Permission/Approval any disparity is unlikely to affect the Planning and development of the area as envisaged by the Planning Authority and expressed through such Permission/Approval.
12. I did not supervise the construction of the relevant works and my inspection thereof, which was made on _____ was visual only. This inspection did not entail the opening up of works, which had been fully/substantially completed on the said date. To the extent that such inspection allowed and, not taking into account matters which were inaccessible to me, on my inspection I found no reason to believe the works were not in accordance with the Building Regulations.

Take note that this Certificate is issued solely with a view to providing evidence for title purposes of the compliance of the relevant works with the requirements of planning legislation and the design of the building in respect of the Building Control Act 1990 and the Regulations thereunder. Except insofar as it relates to compliance with the said requirements and Regulations it is not a report or survey on the physical condition or on the structure of the relevant works NOR does it warrant, represent or take into account the following matters:-

The accuracy of dimensions in general, save where arising out of the conditions of the Permission/Approval or the Building Regulations aforesaid.

The following conditions, compliance with which cannot be established:

Planning Reference No.

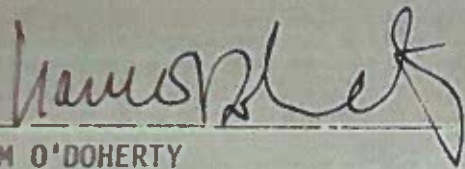
Matters in respect of private rights or obligations.

Matters of financial contribution and bonds.

Development of the relevant works which may occur after the date of the said inspection.

Dated the 22nd day of October 1993.

Signed:-


LIAM O'DOHERTY



LAOIS COUNTY COUNCIL'S RECENT SECTION 5 DECLARATION REG. REF. S5/2024/26



**LAOIS COUNTY COUNCIL
PLANNING DEPARTMENT**

PLANNING REPORT



**SECTION 5 PLANNING
REPORT**

Planning Ref:	S5/2024/26
Applicant Name:	Didean
Development Description:	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.
Development Address:	68 Barrowvale, Portlaoise Road, Carlow, Co. Laois, R93 C9P0
Decision Due Date:	6 th August 2024
Recommendation	Does not constitute development

Introduction

This is a request for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) 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.

Site Location

The subject site is located at no. 68 Barrowvale, Portlaoise Road, Carlow, Co. Laois, R93 C9P0 and comprises a 3 bedroom semi detached dwelling within the residential estate. There are areas of hardstanding to the front, and a garden area to the rear.



Figure. 1: Aerial View of subject site (Google maps)



Description of Proposed Development

The referral relates 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 at 68 Barrowvale, Portlaoise Road, Carlow, Co. Laois, R93 C9P0

Relevant Planning History

The following are considered to be pertinent in the consideration of this Section 5 Declaration.

- 04/54 Dan Fitzpatrick granted permission to build extension to existing granted houses no. 65/66/67/68 at Barrowvale, Graiguecullen, Carlow, Co. Laois. Previous planning permission granted on this site: 01/582.
- 01/582 Valen Construction granted permission to construct 33 no. 2 storey detached, 104 no. 2 storey semi-detached and 16 terrace dwellings. 47no. conditions

Relevant Statutory & Regulatory Provisions

Planning and Development Act 2000 (as amended)

Section 2

"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.



- 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.

Planning and Development Regulations 2001 (as amended)

Exempted Development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) and further prescribed under Article 6 of the Planning and Development Regulations 2001 (as amended).

Assessment

I have taken into consideration the applicant's case. For the purposes of S.I. No. 582/2015 - Planning and Development (Amendment) (No. 4) Regulations 2015 this states:

(3) Article 5(1) of the Principal Regulations is amended by inserting after the definition of "painting" the following definition:

" 'protected person', for the purposes of Schedule 2, means—

(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;".

It is considered that this Section 5 declaration is best assessed initially under the provisions of Section 3 (1) of the Planning and Development Act 2000.

I note that Class 14 and 20f would need be considered where there is "development consisting of a change of use".

However, the initial question is whether the premises being used by those seeking international protection constitutes development.

Development?

Section 3(1) states that *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.*

Planning permission was granted for this property under permission reference 01/582, subject to 47no. conditions. Condition 34 states:



"34. Use of the proposed dwellings shall be restricted to residential purposes only. No business, trade or other non-residential use shall take place within the proposed residential premises."

I note that no physical works to the dwelling in question, namely 68 Barrowvale Portlaoise Road, Carlow, Co. Laois, R93 C9P0 is referred.

I also note that one family is currently living in the property, and that the applicant is not proposing to provide a reception or administrative centre for those seeking international protection at this location.

It is understood that the applicant would provide visiting services or support where required. These services comprise supported living, day and community outreach services to individuals or groups with a range of complex support requirements.

I have also considered the matter regarding whether the support services provided by the applicant, where there would be a visitation to the property for c 3 hours per week. In this instance it would not, and would not be regarded as a material change of use because given the low level (1 visit per week), this would not give rise to material off site impacts.

It is also noted that protected persons are housed for 6-18 months or until such time as their application for international protection is processed.

The property in question is being used for the purpose it was intended for, namely a residential dwelling, and there are no conditions within 01/582 or 04/54, which limits who may use the property for its intended purpose.

Having reviewed the matter in detail, it is noted the dwelling has planning permission to be used for residential purposes. The occupants of the dwelling will still be using it for that purpose, and therefore consequently it would not result in a material change of use. There is no contravention of a condition, as per Article 9 .

Therefore as no material change of use has occurred, this does not constitute development and there is no need to consider it further under Class 14 and 20f of the Planning and Development Regulations, 2001 (as amended).

Section 5(7) EIA Screening

The proposed development is not specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001(as amended). In any event, it is considered, having regard to nature, size and location, the proposed development would not be likely to have significant effects on the environment. Therefore, EIA is not required.

AA Screening

A screening for Appropriate Assessment Report was prepared and is appended to this report. It concludes that no likely significant impacts are predicted due to the nature of the proposed development.

Conclusion and Recommendation

Having regard to:

Section 5 Application - P & D Act 2000 (as amended)



- Section 2, and 3 of the Planning and Development Act 2000 (as amended);
- Article 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- The planning history of the site;

It is recommended that the applicant be informed that:

It is considered that the 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).



Nathan Smith
Senior Executive Planner

26th July 2024

Date



**APPROPRIATE ASSESSMENT SCREENING REPORT
AND
DETERMINATION**

(A) Project Details

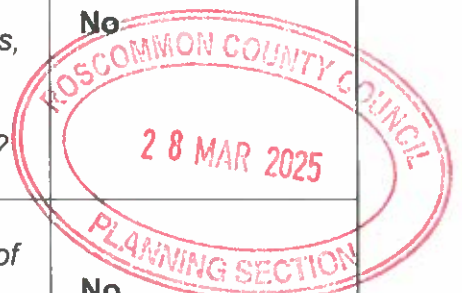
Planning File Ref	S5/2024/26
Applicant name	Didean
Development Location	68 Barrowvale, Portlaoise Road, Carlow, Co. Laois, R93 C9P0
Site size	N/A
Application accompanied by an EIAR (Yes/No)	No
Distance from Natura 2000 site in km	The site is c. 900m to the west of the River Barrow and Nore SAC

Description of the project/proposed development –

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.

(B) Identification of Natura 2000 sites which may be impacted by the proposed development

			Yes/No If answer is yes, identify list name of Natura 2000 site likely to be impacted.
1	Impacts on sites designated for freshwater habitats or species. <u>Sites to consider:</u> River Barrow and Nore	<i>Is the development within a Special Area of Conservation whose qualifying interests include freshwater habitats and/or species, or in the catchment (upstream or downstream) of same?</i>	No
2	Impacts on sites designated for wetland habitats - bogs, fens, marshes and heath.	<i>Is the development within a Special Area of Conservation whose qualifying interests include wetland habitats</i>	No



	<u>Sites to consider:</u> River Barrow and Nore	(bog, marsh, fen or heath)	
3	Impacts on designated terrestrial habitats. <u>Sites to consider:</u> River Barrow and Nore	<i>Is the development within a Special Area of Conservation whose qualifying interests include woodlands, dunes or grasslands, or within 100m of same?</i>	No
4	Impacts on birds in SPAs <u>Sites to consider:</u> River Nore	<i>Is the development within a Special Protection Area?</i>	No

Conclusion:

If the answer to all of the above is **No**, significant impacts can be ruled out for habitats and bird species.

No further assessment in relation to habitats or birds is required.

If the answer is **Yes** refer to the relevant sections of C.

(G) SCREENING CONCLUSION STATEMENT

Selected relevant category for project assessed by ticking box.

1	AA is not required because the project is directly connected with/necessary to the conservation management of the site	
2	No potential significant affects/AA is not required	X
3	Significant effects are certain, likely or uncertain. Seek a Natura Impact Statement Reject proposal. (Reject if potentially damaging/inappropriate)	

Justify why it falls into relevant category above (based on information in above tables)

Having regard to the proximity of the nearest SAC/SPA and given the nature and extent of the proposed development, with no direct connections to the hydrology of the SAC/SPA, it is not considered there would be potential for significant effects on the Natura 2000 network.

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Date:	26/07/2024

