

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 24/109

NAME OF APPLICANT: Didean

ADDRESS FOR CORRESPONDENCE: C/O Cunnane Stratton Reynolds Ltd, Ginsboro House, 24 Suffolk Street, Dublin 2.

NATURE OF APPLICATION: request for declaration under section 5 of the planning & development act 2000, as amended as to whether the 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.

LOCATION OF DEVELOPMENT: 50 Ballin Rí, Tullamore, Co. Offaly, R35 Y2F1

WHEREAS a question has arisen 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 50 Ballin RI, Tullamore, Co. Offaly, R35 Y2FI

AS INDICATED on the particulars received by the Planning Authority on the 1st November 2024.

AND WHEREAS Didean C/O Cunnane Stratton Reynolds Ltd, Gainsboro House, 24 Suffolk Street Dublin 2, D02 KF65 requested a declaration on the said question from Offaly County Council.

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- The plans and particulars submitted.
- The details within the application which state that the premises is occupied by a family of International Protection applicants. Consideration in this decision is based on 'family' being singular, as opposed to multiple occupancy or provision of managed accommodation, provision of care etc.
- 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.

AND WHEREAS Offaly County Council has concluded that the use of the subject premises as a residence for International Protection Applicants **does not** constitute development under the Planning and Development Act 2000 (as amended)

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the use of the residential premises at 50 Ballin RI, Tullamore, Co. Offaly, R35 Y2FI as a residence for International Protection Applicants **does not** constitute development as defined under Section 2(1) of the Planning & Development Act 2000 as amended and is exempted development.

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.



Administrative Officer

27/11/24

Date

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

Planning Report

Section 5 Declaration

File Reference:	Dec. 24/109
Question:	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.
Applicant:	Didean C/O Cunnane Stratton Reynolds Ltd
Correspondence Address:	Ginsboro House, 24 Suffolk Street, Dublin 2
Location:	50 Ballin RI, Tullamore, Co. Offaly, R35 Y2FI

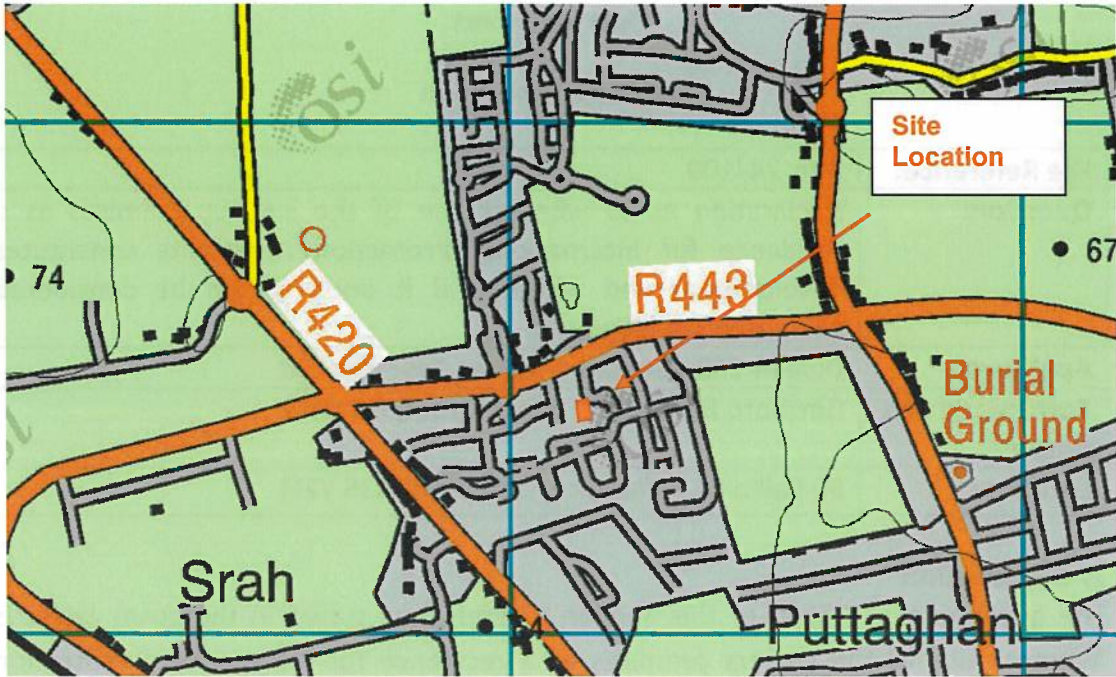
1. Introduction

The question the subject of this Section 5 referral as stated in the cover letter is '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'.

2. Background

The subject site is located at no. 50 Ballin RI, Tullamore, Co. Offaly, R35 Y2FI and comprises a 3 bedroom semi detached dwelling within the residential estate.





Figs 1: Site Location (Discovery Series)



Figs 2: Site Location



Figs 3: Aerial image of location of site

3. Site History:

TU/378402: Graham Developments were **Granted** permission for demolition of derelict dwelling and out building, provision of 16 no. detached bungalows and 138 no 2-storey semi detached dwellings together with ancillary roads, drainage infrastructure, parking areas, fencing, walls, general siteworks, temporary signage and landscaping subject to 11 conditions.

4. Legislative Context

In order to assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

Planning and Development Act 2000 (as amended).

Section 2 (1) – Definitions

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

“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 the curtilage and their interiors, and*
 - (iv) all fixtures and features which would form part of the interior or exterior of any structure or structures referred to in subparagraphs (i) to (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) – Development

In this Act “development” means except where the context otherwise requires the carrying out of any works, on, in, over or under land or making any material change in the use of any structures or other land.

Planning and Development Regulations 2001, (as amended).

Article 5 (1) of the Planning and Development Regulations 2001 (as amended) defines:

“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.*

Article 6 of the Planning and Development Regulations 2001 (as amended) states, *inter alia*, that:

“Subject to Article 9, development of a class specified in Column 1, Part 1 of Schedule 2 shall be exempted development for the purposes of the Act provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that Class in the said Column 1”.

Article 9

Article 9 sets out restrictions on exemptions.

Circular Letter PL09/2023 relates to the adoption of Planning and Development (Exempted Development) (No. 4) Regulations 2023 (S.I. 376/2023). These regulations have inserted a new class 20F exemption. This new Class permitted the change of use of certain specified structures for the purpose of providing the necessary facilities and accommodation for international protection applicants.

Class 20F

Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.

1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.

2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001².

3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.

4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of

	<p>accommodating persons seeking international protection in accordance with paragraph 3 of this class.</p> <p>5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.</p> <p>6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.</p> <p>7. 'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015).</p> <p>8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001</p>
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<p>Change of use CLASS 14 Development consisting of a change of use—</p> <p>(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</p>	<p>Where a premises is used during the relevant period for the sale of food for consumption off the premises in accordance with Article 3, then, upon the expiration of the relevant period –</p> <p>(a) the premises may be used for the sale of food for consumption on the premises in accordance with the permission that applied in respect of that premises immediately before the commencement of the relevant period, and</p> <p>(b) the use of the premises for the sale of food for consumption off the premises shall not be exempted development.</p>
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<p>said premises or institution, or part thereof, to use as accommodation for protected persons,</p> <p>(i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons, and</p> <p>(j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both.</p>	<p>Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.</p>
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5. APPROPRIATE ASSESSMENT (AA)

The subject site is located 1.63km from SAC 000571-Charleville Woods

Having regard 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 50 Ballin RI, Tullamore, Co. Offaly and due to a lack of any pathway to a European site it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

6. EIA SCREENING:

No Screening required, see appendix A attached.

7. OTHER SCREENING:

The proposed development is not contrary to the RSES and so it was not referred to the Eastern and Midland Regional Assembly

8. PLANNING ASSESSMENT

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 (as amended).

It is noted 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.

Does the question constitute development?

Assessment will be made under Section 3(1) of the Planning and Development Act 2000 (as amended), which states *“development” means except where the context otherwise requires the carrying out of any works, on, in, over or under land or making any material change in the use of any structures or other land.*

It is noted that no physical works to the subject dwelling are proposed or were carried out to facilitate the use of the dwelling by international protection applicants.

It is noted that the property is currently occupied by a family of international protection applicants at present. The details submitted states that the accommodation is used for residential purposes and are not used and will not be used for reception or administrative centre purposes. This is an important consideration, in that the details specify a ‘family’ as opposed to say multiple occupancy. This will therefore form part of the material considerations in the recommended decision.

The application informs that the accommodation is provided for international protection applicants on a 6-18 months basis through a Government Department contracted, with Didean’s staff providing visiting services/support where required.

The details provided states that on an occasional basis these visiting services/support provided by the applicant for c.3 hours per week, such support includes arranging school places, sourcing doctors, medical card applications, IP Applicant Services appointments to occupants of the dwelling, etc.

It is noted that no staff are based in the property, the applicant considers that “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 question is whether the use of the dwelling constitutes either an intensification of the existing permitted use, or constitutes a material change of use.

Planning permission was granted for this dwelling under planning reference TU378402. I note that no condition was included to prohibit certain occupants.

Having reviewed the details, it is noted that the dwelling has planning permission to be used for residential purposes. The occupants are using the dwelling for the same residential purposes, for which permission was granted.

Further regard has been given as to whether the provision of support services by way of a visitation c. 3 hours a week would amount to a material change of use. It is considered that due to the low level of service supports provided, in addition to the fact that the dwelling is not used for reception or administrative centre and it does not have a reception/lobby area, that the use of the dwelling would be of similar character and intensity to that which was permitted and accordingly, it is considered that it would not result in a material change of use. Therefore, there is no contravention of a condition as per Article 9 of the Planning and Development Regulations 2001 (as amended), also this section 5 referral is not considered to consist of development as prescribed under Section 3 of the Planning and Development Act 2000 (as amended).

Accordingly, as no material change of use has occurred this referral does not constitute development, therefore there is not a requirement to consider it further under Class 14 or Class 20F of the Planning and Development Regulations 2001 (as amended).

7. Conclusion

It is considered that the subject premises at 50 Ballin RI, Tullamore, Co. Offaly, R35 Y2FI as a residence for International Protection Applicants does not constitute development as defined under Section 2(1) of the Planning & Development Act 2000 as amended and is exempted development.

Declaration on Development and Exempted Development
Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen 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 50 Ballin RI, Tullamore, Co. Offaly, R35 Y2FI

AS INDICATED on the particulars received by the Planning Authority on the 1st November 2024.

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AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

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

AND WHEREAS Offaly County Council has concluded that the use of the subject premises as a residence for International Protection Applicants **does not** constitute development under the Planning and Development Act 2000 (as amended).

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that:

- The use of the residential premises at 50 Ballin RI, Tullamore, Co. Offaly, R35 Y2FI as a residence for International Protection Applicants does not constitute development as defined under Section 2(1) of the Planning & Development Act 2000 as amended and is exempted development.

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

Michael Duffy

Michael Duffy

Acting Senior Executive Planner

25th November 2024

Appendix A

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	Dec24/109
Development Summary:	Declaration as to whether the 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.
Was a Screening Determination carried out under Section 176A-C?	No, Proceed to Part A
A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1 , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
No	Proceed to Part B
B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2 , of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)	
No, the development is not a project listed in Schedule 5, Part 2	No Screening required

