



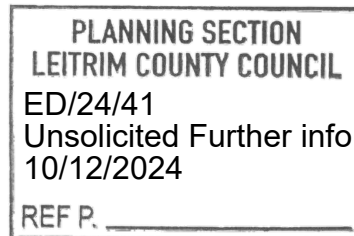
ANN MULCRONE BSC (Surv) DipEE MPhil(UDRP) MIPI
Managing Partner

CHARTERED TOWN PLANNERS
PLANNING AND DEVELOPMENT CONSULTANTS

2 CONNAUGHT PLACE, CROFTON ROAD,
DUN LAOGHAIRE, COUNTY DUBLIN, IRELAND

TELEPHONE (+353-86-) 826-4456
EMail Info@TownPlanning.ie

10th December 2024
Leitrim Co Co,
Planning Officer,
Áras An Chontae
St. Georges Terrace,
Carrick on Shannon
Co Leitrim
N41 PF67



Re: Reference for a Declaration of Exemption under Section 5 of the Planning and Development Act 2000 as to whether:

The change of use of Rossinver Convent, Gubalaun, Co Leitrim, F91 A718 from established use as a convent to *use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate protected persons* is or is not exempt development and whether any minor works to the property to facilitate such use are exempt.

Your ref ED 24-41

Dear Sir/Madam,

We act on behalf of Goodwill Properties Ltd, Suite 35 Clifton House, Fitzwilliam Street Lower, Dublin 2, CRO 772740.

We refer to the reference above and hereby submit supplementary information and clarification of the nature of the established use as a convent.

Planning Ref. no. 04/1708 refers to planning permission for replacement of flat roofs with pitched roof and replacement of a front porch with a conservatory to front of Rossinver Convent.

Concerning use the planning register records that the authorized use of the property is as a convent and as the structure was built in the 1930's it has established use as a Convent pre the enactment of the 1963 Planning Act.

I reviewed myplan.ie planning applications record and there do not appear to be any further applications relating to this property.

There are no changes to the interior of the convent and the chapel and sacristy and other elements of the convent remain in situ determining that the established use of the structure de facto remains as a convent.

We have consulted with Michael O'Donnell BL and we hereby enclose a copy of his Opinion in respect of the nature of the established use of the premises as a Convent.

The Legal Opinion concludes as follows please see extracts below:

2.8 It can therefore be concluded that the existing established and authorised use of this structure is a convent within the meaning of class 14(h) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

6.1 This opinion only deals with whether the use of an existing convent known as Rossinver Convent for use as a centre for protected persons constitutes "development" for the purposes of Section 3 of the Planning and Development Act 2000.

6.2 In my opinion, having regard to the language of Class 14 of Part I of Schedule 2 of the Planning and Development Regulations 2001, the use does not amount to "development" as it does not amount to a material change of use.

6.3 In the alternative, if it were to be considered "development" it would amount to an exempted development having regard to the same provision of Class 14 and no planning permission is required for the said use.

6.4 When final plans are prepared in respect of any such use, which amounts to works for the purpose of Section 2 of the Planning And Development Act 2000 I can advise further. However, it seems to me as a preliminary issue that any works as are proposed for the structure would fall within the ambit of section 4(1)(h) of the Act.

The question of Building Regulations and Fire Cert and any necessary upgrade to the septic tank will be addressed under separate codes.

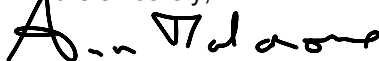
Having considered the question of the upgrade of the septic tank with Michael O'Donnell B.L. it is considered that it did not form part of the reference which is concerned with use and that notwithstanding as it comprises a structure and as any upgrade of that structure would not materially alter the character of the structure, in so far as it appears that any works to be carried out will have no effect on the external appearance of the structure that prima facie it would fall within the provisions of Section 4(1)(h) of the Planning and Development Act as amended.

Section 4.—(1) The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

We look forward to a favourable decision in due course.

Yours sincerely,



Ann Mulcrone

MICHAEL O'DONNELL
Barrister-at-Law
Law Library Building, P.O. Box 4460, 158-159 Church Street, Dublin 7.
T: +353 (0)1 8174735 M: +353 (0)86 8147204 F: +353 (0)1 8175151 D.X. 815107

Goodwill Properties
Clifton House,
Fitzwilliam Street Lower,
Dublin 2
D02 XT91

9 December 2024

Your Ref:

Re: Rossinver Convent, Gubalaun, Rossinver, Co. Leitrim, F91 A718

Agent: Reid Associates

OPINION

1. Introduction

1.1. This opinion relates to whether the use of a convent to accommodate protected persons amounts to development for the purpose of Section 3 of the Planning and Development Act 2000 (as amended) and if it is development can it be considered as an exempted development for the purpose of Section 4 of the said Act.

1.2. Protected person is defined in the Planning and Development Regulations under Article 5 as set out below

“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;

1.3. The issue therefore can be summarised as to whether the use of a convent at Gubalaun, Rossinver, Co Leitrim amounts to a material change in the use of that structure and if it is not such as to amount in a material change in use then it does not amount to development for the purpose of the Planning and Development Act and there is no requirement therefore to consider whether the use amounts to an exempted development.

2. Rossinver Convent

- 2.1. The building known as Rossinver Convent was constructed in the early 1930's and therefore has an existing established use as a convent which was an established use at the date of the coming into effect of the Local Government (Planning and Development) 1963 Act, on the 1st October 1964. The provisions of that Act deem in effect that any use established before the coming in to effect of the Act is deemed to have as a matter of law and fact an established use for that purpose.
- 2.2. The use continued until the early 2000's when the building was sold subsequent to the making of an application in 2002 under ref no. 02/758 for the retention of an extension to the building, which application was made by the Franciscan Sisters of Attonement.
- 2.3. There was a subsequent application by a prospective purchaser under planning ref 04/1708 to carry out certain works including the replacement of flat roofs with pitched roofs, the demolition of the existing front porch and the addition of a conservatory to the existing Rossinver Convent.
- 2.4. That application therefore established the continued use of the structure as a convent which is the manner in which the use for which the works described were being provided and where there was no application for a change of use from the existing established convent use to any other use.
- 2.5. The structure as set out in the documentation had at that time 11 bedrooms but provided for the retention of a number of other uses in the structure including a chapel, sacristy, study room, kitchen, dining and other reception rooms and therefore at all material times the manner in which the structure was intended to be used particularly through the retention of the chapel and sacristy established the intention that it is remain in use as a convent. There was no proposal for example to discontinue the use of the rooms within the convent as a chapel, sacristy, study rooms etc. Indeed the contrary is the case.
- 2.6. The absence of any application to change the use combined with the continued retention of the various elements of the convent use establishes that there was no intention that the use of the structure as a convent was to cease and indeed every evidence points to the use of the Convent continuing with the building being maintained as such and no other use inconsistent with the established use has been carried out within the building.
- 2.7. It appears from the plans and documents reflecting the current layout that have been examined that the nature of this use in terms of the layout of the convent has not changed.
- 2.8. It can therefore be concluded that the existing established and authorised use of this structure is a convent within the meaning of class 14(h) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001.

3. Maintenance of use

- 3.1. The issue therefore is whether the use of a convent to accommodate protected persons amounts to a material change of use such as to constitute development for the purpose of Section 3 of the Act 2000.

- 3.2. Class 14(h)¹ of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 provides that a change of use “*from a..... convent, ... monastery or part thereof to use for the accommodation of protected persons*” shall be deemed to be an exempted development. That provision therefore must be construed as concluding that where an existing established use of a building as a convent is to be used as a centre for accommodation of protected persons as defined in the Planning and Development Regulations under Article 5 it does not amount to development in circumstances where the two uses are, in planning terms, indistinguishable as such as not to require planning permission.
- 3.3. The provision contained in Class 14(h) does not contain any limitations or restrictions, for example of a type in class 20(F) of Part I, Schedule 2, and therefore the only consideration that is required to be applied is the category of persons that are intended to be accommodated in the building and the nature of the use that has been established.
- 3.4. In my opinion the nature of the use established is that of a convent. The nature of the person to be accommodated falls into the category of protected person and accordingly the said use not being a change of use much less a material change of use does not amount to development for the purpose of the Planning and Development Act and therefore it is not necessary to consider whether the proposed development amounts to an exempted development.

4. Exempted Development

- 4.1. While it is unnecessary to deal with the issue of exempted development, it does appear that if such an issue were to be considered then the provisions of Class 14(h) of Part I, Schedule 2 would provide for the said use to be an exempted development. In my opinion given that use and works should never overlap arising from the definition of “*use*” in Section 2 of the Planning and Development Act 2000 (as amended) it is more appropriate to address this by way of whether the use amounts to development for the purpose of Section 3 as opposed to exempted development under the provisions of Section 4.

5. Development as works

- 5.1. This opinion, therefore primarily considers whether the use of Rossinver Convent amounts to a material change of use for the purposes of Section 3 of the Planning and Development Act and concludes that it does not amount to a development and the issue of any works that are required must be dealt with separately.
- 5.2. Insofar as works which may be required, these can only amount to exempted development as the works proposed are works for the maintenance or improvement or other alteration of the structure and the said works are such as to be either internal works or works which do not affect the external appearance of the structure or insofar as they affect the external appearance of the structure are consistent with the character of the structure and not inconsistent with the character of neighbouring structures.

¹ Class 14(h) allows for development consisting of a change of use: -

‘(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,

- 5.3. From the plans that have been developed, it appears that any works to be carried out will have no effect on the external appearance of the structure and will be generally confined to the interior and are as a consequence exempted development having regard to section 4(1)(h) of the Planning and Development Act 2000.
- 5.4. Section 4(1)(h)² provides for a statutory exemption in respect of the carrying out of works to the interior of a structure without qualification or restriction and where works are confined to the interior and where the building is not a protected structure the said works are exempt development.
- 5.5. Insofar therefore it is necessary to do so if the works are confined to interior works then they are entitled to take the statutory exemption provided in section 4(1)(h) and accordingly all such works are exempted development.

6. Conclusion

- 6.1. This opinion only deals with whether the use of an existing convent known as Rossinver Convent for use as a centre for protected persons constitutes “*development*” for the purposes of Section 3 of the Planning and Development Act 2000.
- 6.2. In my opinion, having regard to the language of Class 14 of Part I of Schedule 2 of the Planning and Development Regulations 2001, the use does not amount to “*development*” as it does not amount to a material change of use.
- 6.3. In the alternative, if it were to be considered “*development*” it would amount to an exempted development having regard to the same provision of Class 14 and no planning permission is required for the said use.
- 6.4. When final plans are prepared in respect of any such use, which amounts to works for the purpose of Section 2 of the Planning And Development Act 2000 I can advise further. However, it seems to me as a preliminary issue that any works as are proposed for the structure would fall within the ambit of section 4(1)(h) of the Act.

Nothing further occurs.

Yours faithfully,

sent by e-mail thus bears no signature

Michael O’ Donnell BL

² Section 4.—(1) The following shall be exempted developments for the purposes of this Act—

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;