



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Jude Kirk
C/o Frank Curran
16 Main St
Cahersiveen
Co. Kerry**

20th December 2024

Section 5 referral Reference R24-94 – Jude Kirk

Does the Burren Atlantic Hotel qualify for an exemption from Planning for the housing of asylum seekers under Section 14(h)?

A Chara,

I refer to your application received on 5th December 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at www.pleanala.ie.

Mise, le meas

**Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúirthóireacht Forbairt Gheilleagrach**
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department
Economic Development Directorate**
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



DECLARATION ISSUED UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)

Reference No.: R24-94



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R24-94

Does the Burren Atlantic Hotel qualify for an exemption from Planning for the housing of asylum seekers under Section 14(h)?

AND WHEREAS, Jude Kirk has requested a declaration from Clare County Council on the said question.

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6, and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 14 (h) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- (d) The planning history and established use of the site.

And whereas Clare County Council has concluded:

- (a) The use of the Burren Atlantic Hotel and associated 22 no. holiday homes for the housing of asylum seekers is considered development which is exempted under Class 14 (h) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

THEREFORE: The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the use of the Burren Atlantic Hotel and associated 22 no. holiday homes for the housing of asylum seekers at Burren Atlantic Hotel, Ballyvaughan, Co. Clare constitutes development which is exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in blue ink, appearing to read 'Anne O'Gorman', is written over a horizontal line.

Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

20th December 2024

CLARE COUNTY COUNCIL

SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED

DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT

Chief Executive's Order No: 84715
Reference Number: R24-94
Date Referral Received: 5th December 2024
Name of Applicant: Jude Kirk
Location of works in question: Burren Atlantic Hotel, Ballyvaughan, Co. Clare

Section 5 referral Reference R24-94 – Jude Kirk

Does the Burren Atlantic Hotel qualify for an exemption from Planning for the housing of asylum seekers under Section 14(h)?

AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6, and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 14 (h) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.
- (d) The Planning history and established use of the site.

AND WHEREAS Clare County Council has concluded:

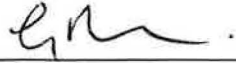
- (a) The use of the Burren Atlantic Hotel and associated 22 no. holiday homes for the housing of asylum seekers is considered development which is exempted under Class 14 (h) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended.

ORDER: Whereas by Chief Executive's Order No. HR 152 dated 9th April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

NOW THEREFORE pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the use of the Burren Atlantic Hotel and associated 22 no. holiday homes for the housing of asylum seekers at Burren Atlantic Hotel,

Ballyvaughan, Co. Clare is considered development which is exempted development.

Signed:



GARETH RUANE
SENIOR EXECUTIVE PLANNER

Date:

20th December 2024

**SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT**

FILE REF: 24/ 94
APPLICANT(S): Jude kirk
REFERENCE: Whether the use of the Burren Atlantic Hotel and associated 22 holiday homes for the housing of asylum seekers is considered development and if so it is exempted development having regard to Class 14 (h) of the Planning and Development Regulations 2001 as amended (Schedule 2 Article 6 Part 1) .
LOCATION: Ballyvaughan , County Clare
DUE DATE: 09/ 01/25

Site Location

The subject site is occupied by the Burren Atlantic Hotel and associated 22no. holiday homes. The building is not a protected structure.

Designations and Zonings

Under the Clare Co Development Plan 2023- 29, the site is zone for tourism (Tou4) the objective for which is :

Land zoned for tourism development shall be used for a range of structures and activities which are primarily designed to facilitate tourism development and where uses are mainly directed at servicing tourists/holiday makers and visiting members of the public.

Recent Planning History on Site.

There is extensive planning history on site. The most recent are:

04/ 2600 Megcourt Developments Ltd. Permission granted for the construction of a tourism development comprising of a 20 bedroom hotel with associated bar and restaurant with adjoining leisure and sea water spa facility: 22 No. associated holiday houses managed by the hotel; one conference/meeting centre: temporary on-site waste water treatment unit, and all ancillary on-site and off-site development works

07/ 1650 Megcourt Development Ltd. Permission granted for the erection of signage elements detailed hereafter and ancillary site works currently under construction consequent to Permission Ref: P04/2600 & Pl.03.213223: 1. Individual raised lettering and logo to external walls adjacent to both bar entrances, wellness center entrance and hotel reception entrance. 2. Individual raised lettering within restaurant shop front. 3. Aluminium signage panels

between two cast iron posts, illuminated from above/ground lit, along front boundary to public road. (3.0m x 1.7m). 4. Aluminium signage panel between two stone posts, illuminated from above/ground lit to front of hotel (2.0m x 2.0m). 5. 3 no. limestone rocks with signage carved on smooth face (circa. 1.0m x 1.4m) along front boundary to public road, adjacent to conference centre and adjacent to wellness centre. 6. 3 no. Aluminium flag poles to front of hotel. (4.0m high)

Other Planning History

98/1817

97/ 1712

97/1713

97/ 1714

96/902

94/1022

93/ 1121

Background to Referral

This Referral under Section 5(3)(a) of the Planning and Development Act 2000 (as amended) has been made by Jude Kirk who is the owner of the development.

The applicant is seeking a Section 5 Declaration as to whether the use of the Burren Atlantic Hotel and associated 22no. holiday homes for the housing of asylum seekers is considered development and if so it is exempted development.

DETAILS SUBMITTED

Site location map scale 1: 2500 with the subject site outlined in red.

No drawings have been submitted. I am inferring from this that the scope of the query relates only to use.

Statutory Provisions

Planning and Development Act, 2000 (as amended)

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

Section 2(1) – Interpretation

In this Act, except where the context otherwise requires –

“structure” as any building, structure, excavation or other thing constructed or made on, in or under any land, or part of a structure so defined, and where the context so admits, includes the land on, in or under which the structure is situate

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

‘works’ are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

“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.***

Exempted Development

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;

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

Class 14 of Part 1, Schedule 2, of the Planning and Development Regulations 2001, as amended, which provides for the following Exempted Development provision;

Class 14 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,**

(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

(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

Subject to the following condition and limitation

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.

Schedule 2, Part 1, Class 20(f)

Note; Class 20F is inserted by article 2 of S.I. No. 605 Planning and Development (Amendment)(No. 4) Regulations 2022

Class 20(f)

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.

Conditions and limitations

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 accommodating persons seeking international protection in accordance with paragraph 3 of this class.*
5. *The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.*
6. *'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.*
7. *'international protection', for the purpose of this class, has the meaning given to it in [section 2 \(1\)](#) of the [International Protection Act 2015](#) (No. 66 of 2015)*
8. *'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001."*

Article 9 of the Planning and Development Regulations 2001, as amended, relates to restrictions on exemptions.

Under Article 9 (1) of the same Regulations, *development to which Article 6 relates shall not be exempted development for the purposes of the Act:*

(a) if the carrying out of such development would –

(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 compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

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

(iv) 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.

Assessment

The agent has advised the following in the documents submitted:

Particulars of the Development

- Site location map
- Completed Application form

The applicant has advised that the premises currently provides accommodation for Ukrainians, but there is additional capacity to accommodate protected persons which he intends doing in association with the Dept of Children Equality, Disability, Integration and Youth. The applicant has not specified that the use is temporary and as such class 20 (f) does not apply.

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.***

The definition of development includes the making of any material change in the use of a structure and as such the proposal constitutes the making of a material change in the use of the hotel and associated holiday homes.

Schedule 2, Part 1, Class 14 (h)

Class 14 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,***

Having regard to the information received the development complies with the provisions of Class 14 (h).

Schedule 2, Part 1, Class 20(f)

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.

The use is not temporary and as such class 20 (f) does not apply.

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.

Noted.

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

Noted. The applicant is not seeking temporary use.

*Noted. * "international protection" means status in the State either—*

(a) as a refugee, on the basis of a refugee declaration, or

(b) as a person eligible for subsidiary protection, on the basis of a subsidiary protection declaration;

4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class.

Noted.

*5. The relevant local authority must be notified of locations where change of use is taking place **prior** the commencement of development.*

In this instance the applicant has advised of his intention to accommodate protected persons by making a section 5 query. However the query relates only to Class 14 (h) .

6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.

7. 'international protection', for the purpose of this class, has the meaning given to it in [section 2 \(1\) of the International Protection Act 2015](#) (No. 66 of 2015).

8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001."

The definitions of limitation 6,7, and 8 above are noted.

Under Article 9 (1) of the same Regulations, *development to which Article 6 relates shall not be exempted development for the purposes of the Act:*

(b) 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

Condition no 2 of ABP ref. PI 03/ 213223 stated that 'All of the holiday units (as detailed on the site layout plan received by the planning authority on the 30th day of May, 2005) in the proposed development shall be used for short-term tourist accommodation as part of a managed holiday home scheme associated with the principle hotel use on site and no change of use shall take place without a further grant of planning permission.

Reason: In the interest of residential amenity, orderly development and the proper planning and sustainable development of the area'.

It is considered that this condition applies to changes of use that require the benefit of planning permission but does not apply to developments (including changes of use) that are specifically described as constituting exempted development by way of Planning and Development Regulations .

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

N/A

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

N/A

(iv) *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.*

N/A

(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,*

N/A

(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,*

N/A

(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,*

N/A- The hotel is served by an existing wwtp. No adverse impact on the integrity of the nearby SACs and SPAs are envisaged.

(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."

N/A

(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,

N/A

(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,

N/A

(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,

N/A

(xi) obstruct any public right of way,

N/A

(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.

N/A

Article 9 has been considered and there are no provisions within same that restrict the availability of the above exemption regarding the use of the subject property.

Assessment

The applicant has specifically questioned whether the use of the Burren Atlantic Hotel and associated 22 holiday homes for the housing of asylum seekers is considered development and if so it is exempted development having regard to Class 14 (h) of the Planning and Development Regulations 2001 as amended (Schedule 2 Article 6 Part 1). Having regards to the details submitted the development complies with the provisions of Class 14 (h). In this instance the provisions of Class 20 (f) do not apply because this particular relates to temporary use only and the applicant has not advised that the occupation will be temporary. It is therefore understood that the applicant is not relying on the provisions of Class 20 (f) but instead on Class 14 (h) .

Conclusion

With reference to the above assessment, and the stated restrictions on exempted development, and Article 9 of the Planning and Development Regulations (as amended) that the proposed development can be considered exempted development as per Section 5.

Recommendation

Having regard to Articles 6, and 9 of the Planning and Development Regulations (as amended) and Class 14 (h) of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended

~~and~~ WHEREAS a question has arisen as to whether the use of the Burren Atlantic Hotel and associated 22no. holiday homes for the housing of protected persons is considered development and if so is it exempted development having regard to Class 14 (h) of the Planning and Development Regulations 2001 as amended (Schedule 2 Article 6 Part 1)

AND WHEREAS Clare County Council in considering this referral, had regard particularly to -

(a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended

(b) Articles 6, and 9 of the Planning and Development Regulations, 2001-2011

(c) Class 14 (h) of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended:

(d) the planning history and established use of the site,

AND WHEREAS Clare County Council has concluded that –

The use of the Burren Atlantic Hotel and associated 22no. holiday homes for the housing of protected persons is considered development which is exempted under Class 14 (h) of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 as amended:

NOW THEREFORE Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides :

The use of the Burren Atlantic Hotel and associated 22no. holiday homes for the housing of protected persons is considered development which is exempted development .



Ellen Carey
Executive Planner

Date: 19-12-24



Garreth Ruane
Senior Executive Planner

20/12/24

Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	R24/94
(b) Brief description of the project or plan:	Change of use of hotel and associated 22 no holiday homes for the housing of asylum seekers
(c) Brief description of site characteristics:	Buildings and artificial surface
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	None

STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.				
European Site (code)	List of Qualifying Interest/Special Conservation Interest ¹	Distance from proposed development ² (km)	Connections (Source-Pathway-Receptor)	Considered further in screening Y/N
Inner Galway Bay SPA	Great northern diver <i>Gavia immer</i> [A003] wintering <input type="checkbox"/> Cormorant <i>Phalacrocorax carbo</i> [A017] wintering + breeding <input type="checkbox"/> Grey heron <i>Ardea cinerea</i> [A028] <input type="checkbox"/> Light-bellied brent goose <i>Branta bernicla hrota</i> [A046] wintering <input type="checkbox"/> Wigeon <i>Anas Penelope</i> [A050] - wintering <input type="checkbox"/> Teal <i>Anas crecca</i> [A052] wintering	Opposite side of the R477	None	No

	<input type="checkbox"/> Shoveler <i>Anas clypeata</i> [A056] wintering <input type="checkbox"/> Red-breasted merganser <i>Mergus serrator</i> [A069] wintering <input type="checkbox"/> Ringed plover <i>Charadrius hiaticula</i> [A137] wintering <input type="checkbox"/> Golden plover <i>Pluvialis apricaria</i> [A140] wintering <input type="checkbox"/> Lapwing <i>Vanellus vanellus</i> [A142] wintering <input type="checkbox"/> Dunlin <i>Calidris alpina</i> [A149] wintering <input type="checkbox"/> Bar-tailed godwit <i>Limosa lapponica</i> [A157] wintering <input type="checkbox"/> Curlew <i>Numerius arquata</i> [A160] wintering <input type="checkbox"/> Redshank <i>Tringa tetanus</i> [A162] wintering <input type="checkbox"/> Black-headed gull <i>Chroicocephalus ridibundus</i> [A179] wintering <input type="checkbox"/> Common gull <i>Larus canus</i> [A182] wintering <input type="checkbox"/> Sandwich tern <i>Sterna sandvicensis</i> [A191] breeding <input type="checkbox"/> Common tern <i>Sterna hirundo</i> [A193] breeding <input type="checkbox"/> Wetland and water birds [A999]			
Galway bay Complex SAC	Annex I habitats: <input type="checkbox"/> Mudflats and sandflats not covered by seawater at low tide [1140] <input type="checkbox"/> *Coastal lagoons [1150] <input type="checkbox"/> Large shallow inlets and bays [1160] <input type="checkbox"/> Reefs [1170]	As above	None	No

	<input type="checkbox"/> Perennial vegetation of stony banks [1220]			
	<input type="checkbox"/> <i>Salicornia</i> and other annuals colonising mud and sand [1310]			
	<input type="checkbox"/> Atlantic salt meadows (Glauco-Puccinnetalia maritimae) [1330]			
	<input type="checkbox"/> Mediterranean salt meadows (<i>Juncetalia maritima</i>) [1410]			
	<input type="checkbox"/> *Turloughs [3180]			
	<input type="checkbox"/> <i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130]			
	<input type="checkbox"/> Semi-natural dry grasslands and scrubland facies on calcareous grasslands (Festuco-Brometalia)(*Important orchid sites) [6210]			
	<input type="checkbox"/> Calcareous fens with <i>Cladium mariscus</i> and species of the Caricion davallianae [7210]			
	<input type="checkbox"/> Alkaline fens [7230]			
	Annex II Species <input type="checkbox"/> Otter <i>Lutra lutra</i> [1355]			
	<input type="checkbox"/> Harbour seal <i>Phoca vitulina</i> [1365]			

¹ Short paraphrasing and/or cross reference to NPWS is acceptable – it is not necessary to reproduce the full text on the QI/SCI.

² If the site or part thereof is within the European site or adjacent to the European site, state here.

STEP 3. Assessment of Likely Significant Effects

(a) Identify all potential direct and indirect impacts that may have an effect on the

conservation objectives of a European site, taking into account the size and scale of the project under the following headings:

Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
Construction phase e.g. <ul style="list-style-type: none"> ● Vegetation clearance ● Demolition ● Surface water runoff from soil excavation/infill/landscaping (including borrow pits) ● Dust, noise, vibration ● Lighting disturbance ● Impact on groundwater/dewatering ● Storage of excavated/construction materials ● Access to site ● Pests 	None
Operational phase e.g. <ul style="list-style-type: none"> ● Direct emission to air and water ● Surface water runoff containing contaminant or sediment ● Lighting disturbance ● Noise/vibration ● Changes to water/groundwater due to drainage or abstraction ● Presence of people, vehicles and activities ● Physical presence of structures (e.g. collision risks) ● Potential for accidents or incidents 	None
In-combination/Other	None

(b) Describe any likely changes to the European site:

Examples of the type of changes to give consideration to include:	None
---	------

- Reduction or fragmentation of habitat area
- Disturbance to QI species
- Habitat or species fragmentation
- Reduction or fragmentation in species density
- Changes in key indicators of conservation status value (water or air quality etc.)
- Changes to areas of sensitivity or threats to QI
- Interference with the key relationships that define the structure or ecological function of the site

(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?

Yes No

Step 4. Screening Determination Statement


The assessment of significance of effects:

Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

The query relates to change of use of existing buildings for the housing of asylum seekers. No new development is proposed. No significant effects are envisaged on the European sites in view of their conservation objectives. The development is served by an on site wwts and it noted that development has commenced on 23/ 60259 Irish water municipal waste water treatment plant to serve Ballyvaughan.

Conclusion: The change of use is not likely to have significant effects on European

site(s) in view of its conservation objectives.

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
(iii) Significant effects are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
Signature and Date of Recommending Officer:	19/12/24	 Name: Ellen Carey E.P.
Signature and Date of the Decision Maker:		



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Jude Kirk
C/o Frank Curran
16 Main St
Cahersiveen
Co. Kerry

09/12/2024

Section 5 referral Reference R24-94 – Jude Kirk

Does the Burren Atlantic Hotel qualify for an exemption from Planning for the housing of asylum seekers under Section 14(h)?

A Chara,

I refer to your application received on 5th December 2024 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

Brian Fahy
Planning Department
Economic Development Directorate

CONTAE

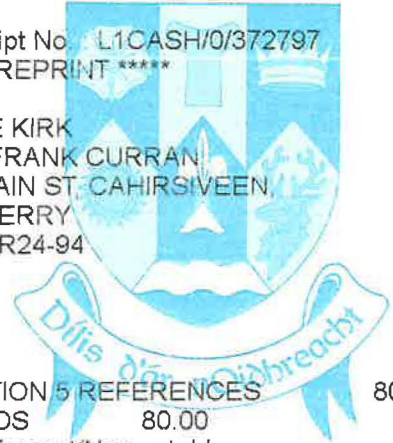
Clare County Council
Aras Contae an Chlair
New Road
Ennis
Co Clare

AN CHLÁIR

06/12/2024 09:56:34

Receipt No: L1CASH/0/372797
***** REPRINT *****

JUDE KIRK
C/O FRANK CURRAN
16 MAIN ST CAHIRSIVEEN,
CO KERRY
REF. R24-94



SECTION 5 REFERENCES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total : 80.00 EUR

COMHAIRLE

Tendered :
CHEQUES 80.00

CONTAE

Change 0.00

AN CHLÁIR

Issued By : L1CASH - Colm Murphy
From : MAIN CASH OFFICE LODGEMENT AF
Vat reg No. 0033043E

P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare.
T95DYP2

Telephone No. (065) 6821616
Fax No. (065) 6892071
Email: plano@clarecoco.ie
Website: www.clarecoco.ie



R24-94

**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT
(Section 5 of the Planning & Development Act 2000 (as amended))**

FEE: €80

This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	JUDE KIRK BURREN ATLANTIC HOTEL BALLYVAUGHAN CO. CLARE H91 T44P
(b) Telephone No.:	(- -)
(c) Email Address:	-
(d) Agent's Name and address:	FRANK CURRAN 16 MAIN ST., CAHERSIVRAN CO. KERRY

2. DETAILS REGARDING DECLARATION BEING SOUGHT

(a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT
Note: only works listed and described under this section will be assessed.

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

DOES THE BURREN ATLANTIC HOTEL QUALIFY FOR
AND EXEMPTION FROM PLANNING FOR THE HOUSING
OF ASYLUM SEEKERS UNDER SECTION 14H.

(b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

JUDE KIRK IS SEEKING AN EXEMPTION FROM
PLANNING TO USE THE BURREN ATLANTIC
HOTEL AND 22 HOLIDAY HOUSES FOR
ACCOMMODATION FOR ASYLUM SEEKERS UNDER
SECTION 14H.

(c) List of plans, drawings etc. submitted with this request for a declaration:

(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)

SITE LOCATION MAP SCALE 1:2500

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	BURREN ATLANTIC HOTEL BALLYVAUGHAN CO. CLARE. H91 T44P.
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No.
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWNER.
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question: <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	YES.
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No.
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	07/1650 04/2600
(h) Date on which 'works' in question were completed/are likely to take place:	IN JUNE/JULY 2025.

SIGNED: 

DATE: 4/12/24.

GUIDANCE NOTES

This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,
Economic Development Directorate,
Clare County Council
Aras Contae an Chlair,
New Road,
Ennis,
Co. Clare
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

FOR OFFICE USE ONLY

Date Received:	Fee Paid:
Date Acknowledged:	Reference No.:
Date Declaration made:	CEO No.:
Decision:.....			



To: Directors of Planning in each local authority

CC: Chief Executives
Senior Planners
An Bord Pleanála
Office of the Planning Regulator
Directors of Regional Assemblies

Circular Letter PL 10/2022

1 December 2022

Re: Planning and Development (Amendment)(No. 4) Regulations 2022 [S.I. 605/2022]

I have been asked by Mr. Peter Burke, T.D., Minister of State for Planning and Local Government to advise that he has signed the above set of Regulations which have immediate effect. A copy of the Regulations is attached for information.

These new Regulations amend provisions in the Planning and Development Regulations 2001, as amended (the Principal Regulations), to assist the Minister for Children, Equality, Disability, Integration and Youth (MCEDIY) in meeting Ireland's legal obligation to provide accommodation to international protection applicants.

New Class of Exempted Development

The Regulations amend Part 1 of Schedule 2, entitled 'Exempted Development - General', to the Planning and Development Regulations 2001, as amended, to insert a new Class 20F exemption.



This new Class permits the change of use of the following structures for the purpose of providing the necessary facilities for international protection applicants:

“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.”

This provision is a temporary measure and will expire on 31 December 2024; the use of such structures shall cease on the expiry of the regulation.

Where a proposed change of use would materially affect a protected structure, the exemption is removed and planning permission is required in accordance with Section 57 of the Planning and Development Act 2000, as amended.

Notification Requirement

A planning authority must be notified in writing of the details of the development prior to the commencement of the proposed change of use.

Compliance with Building Regulations

In this context, as with the planning system generally, neither the granting of planning permission or the provision of an exemption from the requirement to obtain planning permission, removes the requirement to comply with any other code, particularly in relation to the Building Regulations, including fire safety. The aim of the Building Regulations is to provide for the safety and welfare of people in and about buildings. It is important to note in the context of these exempted development provisions that



compliance with the Building Regulations 1997 to 2021 must still be achieved and Building Control procedures will still apply.

Under the Building Control Acts 1990 to 2020, primary responsibility for compliance with the requirements of the Building Regulations rests with the owners, designers and builders of buildings. In particular, the Building Control (Amendment) Regulations 2014 (where they apply) require greater accountability in relation to compliance with Building Regulations in the form of statutory certification of design and construction by registered construction professionals and builders, lodgement of compliance documentation, mandatory inspections during construction and validation and registration of certificates.

Any queries in relation to this Circular letter should be emailed to planning@housing.gov.ie.

Terry Sheridan

Principal

Planning Policy and Legislation

Attachment for information:

Planning and Development (Amendment)(No. 4) Regulations 2022

S.I. No. 376/2023 - Planning and Development (Exempted Development) (No. 4) Regulations 2023

Notice of the making of this Statutory Instrument was published in

"Iris Oifigiúil" of 21st July, 2023.

WHEREAS I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, am of the opinion that development to which the following regulations apply would not offend against principles of proper planning and sustainable development by reason of the nature and limited effect of development belonging to that class on its surroundings;

AND WHEREAS a draft of the following regulations has been laid before each House of the Oireachtas and a resolution approving that draft has been passed by each such House;

NOW I, DARRAGH O'BRIEN, Minister for Housing, Local Government and Heritage, in exercise of the powers conferred on me by sections 4 (2) and 262 of the Planning and Development Act 2000 (No. 30 of 2000) (as adapted by the Housing, Planning and Local Government (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 408 of 2020)), hereby make the following regulations:

Citation and construction

1. (1) These Regulations may be cited as the Planning and Development (Exempted Development) (No. 4) Regulations 2023.

(2) These Regulations shall be included in the collective citation Planning and Development Regulations 2001 to 2023.

Amendment of Part 1 of Schedule 2 to Planning and Development Regulations 2001

2. Part 1 of Schedule 2 to the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) (as amended by Regulation 2 of the Planning and Development (Exempted Development) (No. 4) Regulations 2022 (S.I. No. 605 of 2022)) is amended by the substitution for the matter set out at CLASS 20F the following:

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CLASS 20F

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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, 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 accommodating persons seeking international protection in accordance with paragraph 3 of this class.

5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.

6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in

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accordance with Article 2 of Council
Implementing Decision (EU) 2022/382 of 4
March 2022.

7. 'international protection', for the
purpose of this class, has the meaning
given to it in section 2 (1) of the
International Protection Act 2015 (No. 66
of 2015).

8. 'temporary protection', for the purpose
of this class, has the meaning given to it in
Article 2 of Council Directive 2001/55/EC
of 20 July 2001."

"



GIVEN under my Official Seal,

19 July, 2023.

DARRAGH O'BRIEN,

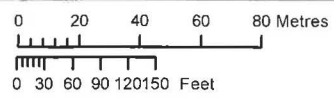
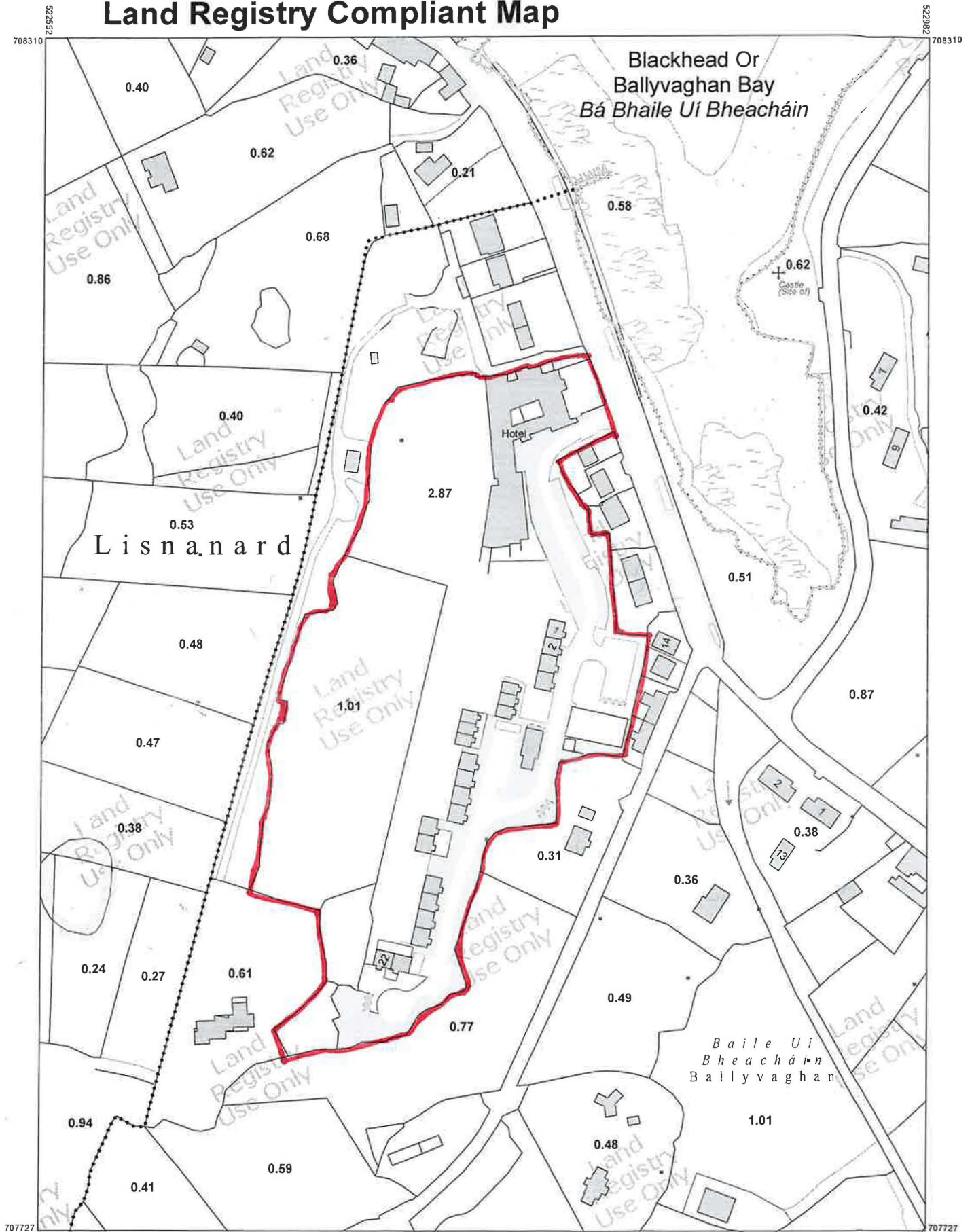
Minister of Housing, Local Government and Heritage.

1 OJ No. L 71, 04.03.2022, p. 1.

2 OJ No. L 212, 07.08.2001, p. 12. 7

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Land Registry Compliant Map



OUTPUT SCALE: 1:2,500



CENTRE COORDINATES:
ITM 522767,708019

PUBLISHED: 03/12/2024
MAP SERIES: 1:2,500
ORDER NO.: 50437654_1
MAP SHEETS: 3680-D, 3738-B

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