



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

Registered Post

**Dom St Properties (Galway) Ltd
C/o Atlantic Building Consultants Ltd
Unit 1 Digital Hub
Merchants Quay Business Quarter
Francis Street
Kilrush
Co. Clare**

4th November 2025

Section 5 referral Reference R25-75 – Dom St Properties (Galway) Ltd

Does the use of existing houses to provide accommodation to persons seeking international protection constitute development and if so does it constitute exempted development?

A Chara,

I refer to your application received on 2nd September 2025 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 Coimisiún Pleanála of the required fee, refer a declaration for review by An Coimisiún 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.: R25-75



Comhairle Contae an Chláir
Clare County Council

Section 5 referral Reference R25-75

Does the use of existing houses to provide accommodation to persons seeking international protection constitute development and if so does it constitute exempted development?

AND WHEREAS, Dom St Properties (Galway) Ltd 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 –

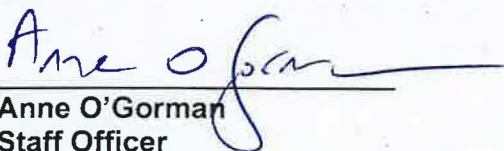
- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended;
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 14(h) of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended; and
- (d) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council has concluded:

- (a) The use of units 1-4 Harmony Row for the housing of protected persons does not constitute "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The use does not constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended, owing to the detail provided on the length of tenancies in the units.

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 units 1-4 Harmony Row for the housing of protected persons at 1-4 Harmony Row, Ennis, Co. Clare does not constitute development, as no change of use has occurred as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



Anne O'Gorman
Staff Officer
Planning Department
Economic Development Directorate

4th November 2025

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: 86562

Reference Number: R25-75

Date Referral Received: 2nd September 2025

Date Further Information Received: 16th October 2025

Name of Applicant: Dom St Properties (Galway) Ltd

Location of works in question: 1-4 Harmony Row, Ennis, Co. Clare

Section 5 referral Reference R25-75 – Dom St Properties (Galway) Ltd

Does the use of existing houses to provide accommodation to persons seeking international protection constitute development and if so does it constitute exempted development?

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 5, 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 14(h) of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended; and
- (d) The works as indicated in submitted documents from the referrer.

AND WHEREAS Clare County Council has concluded:

- (a) The use of units 1-4 Harmony Row for the housing of protected persons does not constitute "works" which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The use does not constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended, owing to the detail provided on the length of tenancies in the units.

ORDER: Whereas by Chief Executive's Order No. CE / 25/18 dated 7th October 2025, Gordon Daly, 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 Garreth 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, Garreth Ruane, Senior Executive Planner, hereby declare that the use of units 1-4 Harmony Row for the housing of protected persons at 1-4 Harmony Row, Ennis, Co. Clare **does not constitute development** as no change of use has occurred.

Signed:


GARRETH RUANE
SENIOR EXECUTIVE PLANNER 

Date:

4th November 2025

CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT 1

FILE REF:	R25-75
APPLICANT(S):	Dom St Properties (Galway) Ltd
REFERENCE:	Does the use of existing houses to provide accommodation to persons seeking international protection constitute development, and if so, is it exempted development?
LOCATION:	1-4 Harmony Row, Ennis, County Clare
DUE DATE:	05/11/2025

Site Context

The subject site comprises 4 no. existing dwellings located on Harmony Row in Ennis Town Centre, which are existing 3 storey dwellings currently in use to provide accommodation to persons seeking international protection.

It is located within the town centre, is zoned 'Mixed Use' in County Development Plan 2023-2029, and is within the Ennis Architectural Conservation Area. The site is within flood zone A, however, is on lands which benefit from flood defences in Ennis Town, and is located in close proximity to the River Fergus and the Lower River Shannon SAC.

Further Information Requested and Received

The referrer was requested to submit the following further information prior to the making of a determination on this Section 5 Declaration:

Having regard to the details as submitted with this Section V Referral application, in the absence of detail pertaining to whether the use of such units would be short-term stays or longer-term stays, the Planning Authority cannot determine whether there would be a material change of use of the subject dwellings. Therefore, the following **Further Information** is required to allow for a full assessment of this referral:

- (1) Details of the typical length of stay of residents, confirming whether short-stay emergency housing or longer-term stays.

The following information was provided in response to this further information request:

The referrer provided a cover letter indicating that the current occupancy of these units, on average, is 1.2 years, noting that the dwellings are not used as short-term accommodation stays. Details of the tenancies for each unit have been provided indicating the current length of stays for each tenant.

Assessment

The referrer has advised that the premises is currently used as accommodation for persons seeking international protection and comprises existing residential dwellings consisting of individual bedrooms across two floors, bathrooms and a kitchen/living/dining room in each unit. Each unit is currently operating independently of each other. It is stated that tenants do not receive any form of direct care facilities or services in the dwellings and there are no institutional or communal facilities provided on site.

It is noted that permission was granted in 2008 to refurbish no.'s 1 and 2 Harmony Row and create hostel suites, however, permission was subsequently sought and granted in June 2022 to refurbish these 2 dwellings as dwellings for the purpose of letting the units (no.'s 1 and 2 Harmony Row). Photographic evidence supplied in the 2022 application illustrates the units were in a state of disrepair and dereliction, lending to the understanding that the 2008 permission may have never been enacted/completed and the units do not have permission for use as part of the hostel.

Further, it is noted that unit no.'s 3 and 4 are also included in this section 5 referral, for which no planning history is noted. These units appear to have been refurbished and all units are refurbished as individual dwellings in accordance with the plans submitted.

It is stated that no works are proposed internally or externally in respect of this exemption declaration. It is stated that it is intended to continue the use as emergency accommodation for persons seeking international protection and therefore, the use is not temporary. As such Class 20(f) does not apply.

Further Information was provided to indicate that the tenancy lengths of each tenant, noting the average tenancy in each room/unit is approximately 1.2 years.

Primary Legislation

Planning and Development Act, 2000 (as amended), Section 2 and 3(1)

Having regard the details submitted, noting that the units primary use is residential dwelling and there is no short-term letting proposed, it is considered that the units are not being used for short-term letting and therefore, there is no change of use occurring.

Therefore, it is considered that the proposal does not constitute 'works' or 'development' having regard to the definition of development which includes for making of any material change in the use of any structures.

Planning & Development Regulations, 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, and noting the case examples provided, particularly ref: ABP-307077-20 which laid out that apartments (in that specific case) were not excluded as per Article 5(1) owing to the reference in Class 14(h) of 'other premises', I do not agree with this conclusion and do consider the development which relates to the change of use of 1-4 Harmony Row, from residential accommodation to use as accommodation for protected persons, would not comply with the provisions of Class 14 (h), as dwellings are considered excluded premises in accordance with Article 5(1) of the Regulations.

Conditions and Limitations for 14(h) and (i):

(h) 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.

It is noted that this use relates to the accommodation of persons seeking international protection and therefore this condition/limitation does not apply.

(j) 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.

This premises has been used for emergency accommodation of protected persons since 2022. This condition/limitation is noted.

Article 9 -Restrictions on Exemptions

'Under Article 9 (1) of the same Regulations, development to which Article 10 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.*

In respect of the permission for Units 1 and 2 Harmony Row, which was granted under Pl. Ref: 22/197, Condition no. 1 states:

1. "The development shall be carried out and completed in accordance with the drawings and particulars as received by the Planning Authority on the 7th March 2022,

except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the Planning Authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars."

The floor plans associated with this application illustrate the dwellings as two no. separate self-contained dwellings which are stated on the application form to be for private letting use, not associated with the Abbey Hostel.

While the floor plans provided by the referrer do not match those granted under application PI Ref: 22/197, the units would be and illustrate the units as subdivided apartments, with the internal configuration having been changed from the granted floor plans, with the kitchen/living/dining room at second floor, the units are illustrated as operating as a single unit rather than individual units, therefore, I am satisfied the internal reconfiguration is minor and would overall not contravene condition no. 1 of the permission.

Further, it is noted that units 3 and 4 contain a similar layout to that noted for units 1 and 2, which appears to be singular self-contained dwellings, with the kitchen/living/dining room on the 3rd floor of the building. There is no extant permission existing for these dwellings, and their established use is considered to be residential dwellings.

- (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,*

Not applicable.

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

Not applicable.

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

Not applicable.

- (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.*

Noted. No external works have been carried out or are proposed to be carried out and therefore there will be no interference with the character of the landscape, view or prospect of special amenity value or special interest.

(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,

Not applicable.

(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,

Not applicable.

(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,

The site is located adjacent to the Lower River Shannon SAC, with built development existing between the premises and the SAC and no works proposed. There are no likely significant effects 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."

Not applicable.

(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,

There is no unauthorised use associated with the development.

(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,

Not applicable.

(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,

Not applicable.

(xi) obstruct any public right of way,

Not applicable.

(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, no external works are noted to have been proposed to the protected structure.

Article 9 has been considered and there are no provisions within same that restrict the availability of the above exemption regarding the use of units 1-4 Harmony Row.

Conclusion

The applicant has specifically questioned whether the use of the dwellings at no. 1-4 Harmony Row for accommodation for persons seeking international protection is considered development and, if so, it is exempted development.

With reference to the above assessment, and the stated restrictions on exempted development, and Article 9 of the Planning and Development Regulations (as amended), the use of units 1-4 Harmony Row would not constitute a material change of use owing to short-term rentals, and therefore the works do not constitute development.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the use of 1-4 Harmony Row to provide accommodation to persons seeking international protection, constitutes development and, if so, does it constitute exempted development

The Planning Authority in considering this referral had regard to:

- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended;
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 14(h) of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended; and
- (d) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) The use of units 1-4 Harmony Row for the housing of protected persons does not constitute “works” which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) The use does not constitute “development” which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended, owing to the detail provided on the length of tenancies in the units.

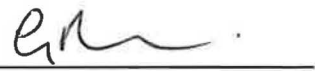
NOW THEREFORE Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides:

The use of units 1-4 Harmony Row for the housing of protected persons does not constitute development, as no change of use has occurred.

Signed



Áine Bourke
Executive Planner
Date: 04/11/2025



Garreth Ruane
Senior Executive Planner
Date: 04/11/25

15/10/2024

Applicant: Dom St Properties (Galway) Ltd
Our Reference: P_24_300_03
Address: 1-4 Harmony Row, Ennis, Co Clare
Re: R25-75 FI Response

Dear Sirs/Madam

Please see below response to Further Information letter issued 26th September for Section 5 reference R25-75

Further Information Request

- (1) Details of the typical length of stay of residents, confirming whether short-stay emergency housing or longer-term stays, and the duration of same.

Further Information Response

The following outlines the current occupancy of the 1-4 Harmony Row, Ennis, Co Clare

The current average occupancy is 1.2 years (Long term stays) as the four dwellings are not used for short term accommodation stays.

Room	Arrival	Years	House	Av Years
501	04-Mar-25	0.6	1	0.9
502	18-Apr-24	1.5		
511	28-Jul-25	0.2		
512	05-Jun-24	1.4		
601	09-Sept-24	1.1	2	1.4
602	04-Jun-24	1.4		
611	17-Apr-24	1.5		
612	17-Apr-24	1.5		
701	19-Dec-24	0.8	3	1.2
702	03-Sept-24	1.1		
703	16-May-24	1.4		
711	17-Apr-24	1.5		
712	09-Sept-24	1.1		
713	30-May-24	1.4	4	1.3
801	23-Apr-24	1.5		
802	19-Apr-24	1.5		
803	09-Sept-24	1.1		
811	17-Apr-24	1.5		
812	04-Mar-25	0.6		
813	17-Apr-24	1.5		



For all queries or clarifications in relation to the information provided in this letter, please contact the undersigned.

Yours sincerely

Mark Tubridy C.Eng MIEI, B.Eng.
Atlantic Building Consultants Ltd



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26/09/2025

Section 5 referral Reference R25-75 – Dom St Properties (Galway) Ltd

Does the use of existing houses to provide accommodation to persons seeking international protection constitute development and if so does it constitute exempted development?

A Chara,

I refer to your application received on 2nd September 2025 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

I wish to advise that in accordance with Section 5 (2) (b) of the Planning & Development Act, 2000, as amended, the following further information is required:

Having regard to the details as submitted with this Section 5 Referral application, the following further information is required to allow for a full assessment of this referral:

Having regard to the details as submitted with this Section V Referral application, in the absence of detail pertaining to whether the use of such units would be short-term stays or longer-term stays, the Planning Authority cannot determine whether there would be a material change of use of the subject dwellings. Therefore, the following **Further Information** is required to allow for a full assessment of this referral:

- (1) Details of the typical length of stay of residents, confirming whether short-stay emergency housing or longer-term stays, and the duration of same.

Mise, le meas



Anne O'Gorman
Staff Officer
Planning Department
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CLARE COUNTY COUNCIL
SECTION 5 DECLARATION OF EXEMPTION APPLICATION
PLANNERS REPORT 1

FILE REF:	R25-75
APPLICANT(S):	Dom St Properties (Galway) Ltd
REFERENCE:	Does the use of existing houses to provide accommodation to persons seeking international protection constitute development, and if so, is it exempted development?
LOCATION:	1-4 Harmony Row, Ennis, County Clare
DUE DATE:	26/09/2025

Site Context

The subject site comprises 4 no. existing dwellings located on Harmony Row in Ennis Town Centre, which are existing 3 storey dwellings currently in use to provide accommodation to persons seeking international protection.

It is located within the town centre, is zoned 'Mixed Use' in County Development Plan 2023-2029, and is within the Ennis Architectural Conservation Area. The site is within flood zone A, however, is on lands which benefit from flood defences in Ennis Town, and is located in close proximity to the River Fergus and the Lower River Shannon SAC.

Site Inspection Photos:



The site also comprises part of Opportunity Site OP 9, which is part of Transformational Site TS2, in the Clare County Development Plan 2023-2029.

TS2:

TS2 – Abbey Riverside
Including:
OP9 Riverside site, Harmony Row and Bank Place

The Abbey Riverside strategy comprises a number of elements which when combined will support greater economic activity in the town centre, a more diverse employment base and improved amenity. The showcasing of the River Fergus will improve and upgrade the public realm offer in the town centre and enhance green infrastructure. The provision of much needed residential accommodation in the town centre alongside potential for a community centre and public plaza would help support the creation of a new community in the area. The revitalised area will link through to Harmony Row.

This Abbey Riverside Transformational site is spread over both banks of the River Fergus and is a key component of the overall approach to showcasing the river. The proposal includes the creation of an improved riparian walk on the west side of the river, complemented by an open space area on the east side of the bank. Buildings will be orientated to maximise views to the river from the surrounding area. Key features of the project are as follows:

- Residential development with public open spaces overlooking the River Fergus;
- Residential heights to fall from up to 4 storeys down to 2 storeys adjacent to the river;
- Feature balconies / communal open roof space to provide amenity and overlooking of the riverside park;
- Extended riverside walkway to provide pedestrian links to the town centre;
- Commercial/retail mixed use centre to the south east of the river, with some provision for parking;
- Mixed use residential development with retail/cafe uses on ground floor; and
- Design of the community centre (2-3 storeys in height) to be provided to the southwest of the open space to be carefully considered as it will help to define and frame the space.

TS2 sets the overall long term strategy for these lands which includes OP9 Opportunity Site. Greater detail is provided on the opportunity site below.

OP 9:

This site presents a major opportunity to provide a flagship waterfront development of outstanding design and quality to diversify and strengthen the mix of activities in the town centre. The site is located in the heart of the town with excellent links to the prime shopping streets. It is zoned for mixed use and open space uses. The site extends from Harmony Row southwards along the River Fergus to Bank Place and incorporates the site currently occupied by the library. OP9 provides an opportunity to create pedestrian links from Harmony Row to Bank Place and also presents an opportunity to create a riverside amenity space in the town centre. Due to the visually prominent location of the site, a design statement in accordance with Chapter 18 of Volume 1 of this plan shall be required as part of any future planning application.

This site can accommodate mixed use, civic, commercial and business/office developments in addition to riverside amenity space and flood defence uses. The former Presbyterian Church, now a library, (RPS 728) is a Protected Structure, and the site is located in an Architectural Conservation Area. The Protected Structure must be carefully integrated into future development proposals and any new development taking place on the site must complement the built heritage of the area.

There is potential to provide additional car parking to serve traffic accessing the town from the north and west on this site. Car parking provision on OP9 must be accessible from Harmony Row.

The site is located adjacent to the Lower River Shannon cSAC and future developments must be in compliance with the requirements of the Habitats Directive and demonstrate enhancement of ecological corridors. An otter use survey will be required to confirm the presence/absence of otter holts in the riparian vegetation along the riverbank, and a 10m habitat buffer zone along the riverbank should be included as part of any future development proposals. Development proposals must be accompanied by a landscaping plan that ensures the retention of riparian vegetation and riparian trees. A detailed tree survey will be required to demonstrate that only unsafe trees are removed.

A full bat survey of any buildings proposed for demolition will also be required, particularly in relation to Lesser Horseshoe bats. Due to the proximity of the site to the river corridor, future development proposals must demonstrate, through a light spill modelling study, that there will be no negative impacts on bat habitats or commuting corridors.

Due to the location of the site adjacent to the River Fergus and in Flood Zones A and B, a site specific flood risk assessment will be required as part of any planning application made on OP9, having regard to the information set out in Volume 10c of this plan. A construction method statement will also be required detailing how surface water run-off, especially in relation to the release of silt to the River Fergus, will be controlled during construction. Furthermore, drainage plans for surface water run-off during operation must also be submitted, ensuring run-off is treated via appropriate SuDS (petrol interceptor, silt trap, grease trap etc.) prior to discharge to any surface water features.

Recent Planning History

Onsite

05/21208 – Briarlane Developments Ltd. – is being sought for; (a) a public riverside walk (b) the construction of a pedestrian bridge from the Abbey Street carpark across the River Fergus (c) the construction of a mixed use development comprising 1 No. 3 storey block, 1 No. 2 storey block and 1 No. 5/6 storey block, arranged around a raised central podium, accommodating (i) 58 No. Apartments (4 No. 1 Bed, 51 No. 2 Bed and 3 No. 3 Bed) (ii) car parking at ground and basement totalling 238 spaces (iii) 1843 sq. m. of commercial / retail spaces in 8 units (iv) 1631 sq.m. of office space (v) ancillary circulation storage and plant areas (d) the demolition of the existing structure at No. 7 Harmony Row and existing dwelling house in the Abbey Hostel Grounds (e) a reduced rear yard to the existing dwelling house at No. 1 Harmony Row and change of use from residential to hotel (f) alterations, demolitions and extensions to the existing Abbey Hostel (County Club / Club House), a protected structure, etc. Granted Permission.

08/21124 – Briar Lane Developments Ltd – for change of use of 2 existing three storey dwellings, no.1 and No. 2 Harmony Row Ennis to four one bedroom hostel suites, with related works to comprise: (i) the demolition of existing two storey extension to no. 2 Harmony Row, (ii)

construction of a ground floor extension to the rear of No. 1 Harmony Row to include roof garden for first/second floor hostel suite at No. 1 Harmony Row, (iii) construction of flat roof to No. 2 Harmony Row for roof garden accessible to first/second floor hostel suite at no. 2 Harmony Row. Granted Permission subject to 11 no. conditions.

22/197 – Briarlane Developments Ltd – to restore two existing, three storey terraced houses, nos 1 & 2. Granted Permission subject to 6 no. conditions.

East (Abbey Hostel)

07/21144 - Briarlane Developments Ltd – for a material alteration of Abbey Hostel, Harmony Row, Ennis, Co. Clare. The development to this protected structure will consist of a new glass roof enclosure to the courtyard and change of use of the single storey link building fronting Harmony Row, from Hostel administration office and stair lobby to retail unit with new roof structure and shop front. Granted Permission subject to 8 no. conditions.

07/21176 – Briarlane Developments Ltd – to extend the protected structure of the Abbey Hostel with related works to comprise: (i) The demolition of existing outbuilding; rear eastern and southern garden walls of no.s 1 & 2 Harmony Row; and the yard gates and piers fronting Harmony Row. (ii) Partial change of use of the ground floor of the existing protected structure (where identified on plan) from hostel to wine bar. (iii) Construction of new extension on three and floor floors comprising coffee shop/restaurant, Internet café and wine bar/restaurant extension on ground floor; 120 no. bunk-bed extension to the existing hostel on the first, second and third floors, complete with all ancillary services (iv) Construction of a new pedestrian foot bridge across the River Fergus connecting the Abbey Street carpark to the western end of the proposed extension. Granted Permission.

North

16/8003 – Clare County Council – for the following proposed development: Ennis - R458 Active Travel Town (Clareabbey to Ballymaley) Works to encourage walking and cycling are proposed on parts of the R458 at 11 junctions on the R458, Club Bridge junction and Kelly's Corner as follows: 1. Improve the provision of cyclist infrastructure at junctions ie. traffic signals and roundabouts. 2. Provide on road cycle lanes/advisory cycle lanes where possible, 3. Enhance connectivity for cyclists into and through Ennis Town along the R458, part of the R352 and the R871 taking in access to schools along the route. 4. Enhance safety at junctions for cyclists and other road users. 5. Provide new cycle parking. 6. Provide directional, informational and distance signage along the route. 7. Enhance pedestrian facilities eg dropped kerbs at uncontrolled crossings. 8. Connect to R458 route to West Clare Railway Greenway at Mill Road and at Woodquay. 9. Provide an Active Travel Amenity Hub. Decision Made.

South

08/21144 – Briar Lane Developments Ltd. – for an E.S.B. Sub Station and Switch Rooms with ancillary services adjacent to the Abbey Hostel extension. Granted Permission.

18/8012 – Clare County Council – to carry out proposed works at the following Laneway locations: River Lane; Enright's Bow; Halloran's Lane; Brady's Lane; Barrett's Lane; Salthouse Lane; Brewery Lane; Howley's Lane; Fahy's Lane; Cabey's Lane; Curtin's Lane; Merchant's Square; Chapel Lane; Murry's Lane; Lysaght's Lane; Thompson's Lane; Arthur's Row; Scabby Lane; Shank's Lane; Post Office Lane; McDonnell's Row; McNamara Lane; Quin's Bow; Cooke's Lane; Westby's Lane; Bindon Lane; Old Friary Lane and Lane to Harmony Row. The development will consist of 1. Up-grading of the public realm of Parnell Street, from High Street in the east to Carmody Street in the west, including re-surfacing in natural stone materials; street furniture; replacement street lighting; replacement signage, new signage and signage restoration and all ancillary site works. 2. Up-grading of the public realm of the Laneways, including where appropriate re-surfacing in mostly natural stone materials; replacement street lighting; provision of bin stores and barrel plinths; replacement signage, new signage and signage restoration and all ancillary site works. In accordance with the Habitats Directive, Appropriate Assessment Screening has been carried out on these projects. An environmental Impact Assessment (EIA) screening determination has been made and concludes that there is no real likelihood of significant effects on the environment arising from the proposed development. . Ennis is a recorded monument and place (RMP) and is classified as a historic town by the Archaeological Survey of Ireland. These works are located within the Ennis Architectural Conservation Area (ACA) and would materially affect the character of the ACA. There are a number of Protected Structures within the vicinity. An Archaeological Impact Assessment has been carried out on the projects. Decision Made.

08/21138 – Briar Lane Developments Ltd – for the demolition of an existing dwelling with ancillary services. Granted Permission.

09/21018 – Briar Lane Developments Ltd – for a car park with 57 spaces, the demolition of a derelict dwelling, No. 7 Harmony Row and an existing shed and amendments to the public road and footpath to facilitate an acceptable access to the proposed car park. Granted Permission.

Drawings Received

- Site location map, site layout plan, as existing floor plans & elevations.
- Planning Report

Background

Planning and Development Act, 2000 (as amended)

Section 2

'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

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

S.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.

Section 4(1)(H)

Section 4 (1)(H) states that the following shall be exempted development for the purpose of the Act.-

‘development consisting for the carrying out of works for maintenance, improvement or other alterations 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 neighbouring structures’.

Planning & Development Regulations, 2001, as amended

Part 2 Exempted Development

Article 6 (1) states

‘Subject to article 9, development of a class specified in column 1 of 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 - Restrictions on Exemptions states

‘Under Article 9 (1) of the same Regulations, development to which Article 10 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,*
- (iii)(a) endanger public safety by reason of hazardous glint and/or glare for the operation of airports, aerodromes or aircraft,*
- (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.

Planning & Development Regulations, Schedule 2, Part 1, Class 14(h)

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**

Class 14(i):

(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**,

Class 14(j):

(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

Conditions and Limitations for 14(j):

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.

Assessment

The referrer has advised that the premises is currently used as accommodation for persons seeking international protection and comprises existing residential dwellings consisting of individual bedrooms across two floors, bathrooms and a kitchen/living/dining room in each unit. Each unit is currently operating independently of each other, with tenants living in the units as families.

It is stated that tenants do not receive any form of direct care facilities or services in the dwellings and there are no institutional or communal facilities provided on site.

It is noted that permission was granted in 2008 to refurbish no.'s 1 and 2 Harmony Row and create hostel suites, however, permission was subsequently sought and granted in June 2022 to refurbish these 2 dwellings as dwellings for the purpose of letting the units (no.'s 1 and 2 Harmony Row). Photographic evidence supplied in the 2022 application illustrates the units were in a state of disrepair and dereliction, lending to the understanding that the 2008 permission may have never been enacted/completed and the units do not have permission for use as part of the hostel.

Further, it is noted that unit no.'s 3 and 4 are also included in this section 5 referral, for which no planning history is noted. These units appear to have been refurbished and all units are refurbished as individual dwellings in accordance with the plans submitted.

No detail has been provided in respect of whether this is being carried out in association with the Dept of Children Equality, Disability, Integration and Youth.

It is stated that no works are proposed internally or externally in respect of this exemption declaration.

It is stated that it is intended to continue the use as emergency accommodation for persons seeking international protection and therefore, the use is not temporary. As such Class 20(f) does not apply.

Primary Legislation

Planning and Development Act, 2000 (as amended), Section 3(1)

Having regard the details submitted, noting that the units primary use is residential dwelling, it is unclear whether the proposal constitutes 'development' having regard to the definition of development which includes for making of any material change in the use of any structures, noting the length of stays in the units are not stated, and therefore, it is unclear whether there would be any material change of use. Further information is requested on this matter.

Planning & Development Regulations, 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, and noting the case examples provided, particularly ref: ABP-307077-20 which laid out that apartments (in that specific case) were not excluded as

per Article 5(1) owing to the reference in Class 14(h) of 'other premises', I do not agree with this conclusion and do consider the development which relates to the change of use of 1-4 Harmony Row, from residential accommodation to use as accommodation for protected persons, would not comply with the provisions of Class 14 (h), as dwellings are considered excluded premises in accordance with Article 5(1) of the Regulations.

Conditions and Limitations for 14(h) and (j):

(h) 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.

It is noted that this use relates to the accommodation of persons seeking international protection and therefore this condition/limitation does not apply.

(j) 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.

This premises has been used for emergency accommodation of protected persons since 2022. This condition/limitation is noted.

Article 9 -Restrictions on Exemptions

'Under Article 9 (1) of the same Regulations, development to which Article 10 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.*

In respect of the permission for Units 1 and 2 Harmony Row, which was granted under Pl. Ref: 22/197, Condition no. 1 states:

1. *"The development shall be carried out and completed in accordance with the drawings and particulars as received by the Planning Authority on the 7th March 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the Planning Authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars."*

The floor plans associated with this application illustrate the dwellings as two no. separate self-contained dwellings which are stated on the application form to be for private letting use, not associated with the Abbey Hostel. It is unclear in this referral; whether the use of these units would be for long-term living or shorter-term emergency stays, and therefore, is unclear whether compliance with this condition is adhered to.

While the floor plans provided by the referrer do not match those granted under application PI Ref: 22/197, the units would be and illustrate the units as subdivided apartments, with the internal configuration having been changed from the granted floor plans, with the kitchen/living/dining room at second floor, the units are illustrated as operating as a single unit rather than individual units, therefore, I am satisfied the internal reconfiguration is minor and would overall not contravene condition no. 1 of the permission.

Further, it is noted that units 3 and 4 contain a similar layout to that noted for units 1 and 2, which appears to be singular self-contained dwellings, with the kitchen/living/dining room on the 3rd floor of the building. There is no extant permission existing for these dwellings, and their established use is considered to be residential dwellings.

- (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,*

Not applicable.

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

Not applicable.

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

Not applicable.

- (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.*

Noted. No external works have been carried out or are proposed to be carried out and therefore there will be no interference with the character of the landscape, view or prospect of special amenity value or special interest.

- (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,

Not applicable.

(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,

Not applicable.

(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,

The site is located adjacent to the Lower River Shannon SAC, with built development existing between the premises and the SAC and no works proposed. There are no likely significant effects 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."

Not applicable.

(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,

There is no unauthorised use associated with the development.

(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,

Not applicable.

(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,

Not applicable.

(xi) obstruct any public right of way,

Not applicable.

(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, no external works are noted to have been proposed to the protected structure.

Article 9 has been considered and there are no provisions within same that restrict the availability of the above exemption regarding the use of units 1-4 Harmony Row.

Conclusion

The applicant has specifically questioned whether the use of the dwellings at no. 1-4 Harmony Row for accommodation for persons seeking international protection is considered development and, if so, it is exempted development.

With reference to the above assessment, and the stated restrictions on exempted development, and Article 9 of the Planning and Development Regulations (as amended), the use of units 1-4 Harmony Row remains unclear in respect of the use of the units for long-term or short-term living, and therefore, Further Information is required prior to making a determination on this Section 5 referral.

Recommendation

The following questions have been referred to the Planning Authority:

Whether the use of 1-4 Harmony Row to provide accommodation to persons seeking international protection, constitutes development and, if so, does it constitute exempted development

The Planning Authority in considering this referral had regard to:

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

- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 14(h) of Part 3 of Schedule 2 of the Planning and Development Regulations 2001, as amended; and
- (d) The works as indicated in submitted documents from the referrer.

And whereas Clare County Council (Planning Authority) has concluded:

- (a) The use of units 1-4 Harmony Row for the housing of protected persons does not constitute “works” which come within the scope of section 2 (1) of the Planning and Development Act 2000, as amended;
- (b) It is unclear whether the said works constitute “development” which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended, owing to the lack of detail pertaining to the length of tenancies or stays in the units.

Having regard to the details as submitted with this Section V Referral application, in the absence of detail pertaining to whether the use of such units would be short-term stays or longer-term stays, the Planning Authority cannot determine whether there would be a material change of use of the subject dwellings. Therefore, the following **Further Information** is required to allow for a full assessment of this referral:

- (1) Details of the typical length of stay of residents, confirming whether short-stay emergency housing or longer term stays, *and the duration of same.*

Please submit these details to allow for continued assessment of this Section V Referral.

Signed


Áine Bourke
Executive Planner
Date: 26/09/2025


Garreth Ruane
Senior Executive Planner
Date: 26/09/25.

Appropriate Assessment & Determination

STEP 1. Description of the project/proposal and local site characteristics:	
(a) File Reference No:	R25/75
(b) Brief description of the project or plan:	Use of existing housing to provide accommodation for protected persons
(c) Brief description of site characteristics:	Existing buildings in Ennis Town Centre.
(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
Lower River Shannon SAC (002165)	<u>Annex I habitats:</u> • Sandbanks which are slightly covered by sea water all the time [1110] • Estuaries [1130] • Mudflats and sandflats not covered by seawater at low tide [1140] • *Coastal lagoons [1150] • Large shallow inlets and bays [1160] • Reefs [1170] • Perennial vegetation of stony banks [1220] • Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]	Adjacent to the River Fergus and SAC	None	No

- *Salicornia* and other annuals colonizing mud and sand [1310]
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) [1330]
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410]
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitricho-Batrachion* vegetation [3260]
- *Molinia* meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]
- *Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]

Annex II species:

- Freshwater Pearl Mussel *Margaritifera margaritifera* [1029]
- Sea Lamprey *Petromyzon marinus* [1095]
- Brook Lamprey *Lampetra planeri* [1096]
- River Lamprey *Lampetra fluviatilis* [1099]
- Atlantic Salmon *Salmo salar* (only in fresh water) [1106]
- Bottlenose Dolphin *Tursiops truncatus* [1349]
- Otter *Lutra lutra* [1355]

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. • 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 – no works stated to be proposed internally or externally.
Operational phase e.g. • 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:

- 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

None

(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 the 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.

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.	☒	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.	☐	☐ Request further information to complete screening ☐ Request NIS ☐ Refuse planning permission
(iii) Significant effects are likely.	☐	☐ Request NIS ☐ Refuse planning permission
Signature and Date of Recommending Officer:	 24/09/2025	
Signature and Date of the Decision Maker:		



COMHAIRLE | CLARE
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Dom St Properties (Galway) Ltd
C/o Atlantic Building Consultants Ltd
Unit 1 Digital Hub
Merchants Quay Business Quarter
Francis Street
Kilrush
Co. Clare**

2/09//2025

Section 5 referral Reference R25-75 – Dom St Properties (Galway) Ltd

Does the use of existing houses to provide accommodation to persons seeking international protection constitute development and if so does it constitute exempted development?

A Chara,

I refer to your application received on 2nd September 2025 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

**Caroline Fahy
Planning Department
Economic Development Directorate**

**An Roinn Pleanála
An Stiúrthóireacht 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





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

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BUSINESS CENTRE, FRANCIS ST,
KILRUSH, CO. CLARE

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

Total : 80.00 EUR

Tendered :
CREDIT CARDS 80.00

Change : 0.00

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

R25-75

P07 Request for a Declaration on Development and Exempted Development (March 2017)

P07

**CLARE COUNTY COUNCIL
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,
Economic Development Directorate,
Clare County Council,
New Road, Ennis,
Co. Clare,
V95DXP2

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



**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	DOM ST PROPERTIES (GALWAY) LTD ORANMORE HOUSE MAIN STREET, ORANMORE GALWAY
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	Mark Tubridy Atlantic Building Consultants Ltd Unit 1 Digital Hub. Merchants Quay Business Quarter Francis St Kilrush, Co Clare



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 use of existing houses to provide accommodation to persons seeking international protection constitute development, and if so, does it constitute exempted development

Use of residential houses as temporary accommodation for persons seeking international protection does not constitute "development" as it does not involve altering the nature of occupancy from general residential use to accommodation for protected persons.

Where it is determined by Clare County Council that the use of the subject dwellings does constitute "development", that such a change is exempted under Class 14(h) Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) where it meets the prescribed conditions below:

- The proposal aligns with Class 14(h), as the site is already permitted for residential use.
- No works are proposed that would contravene existing planning conditions.
- The use as accommodation for protected persons complies with local zoning and planning policy, including social inclusion objectives.

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

The existing premises comprises four x three storey terraced dwellings.

The dwellings have been used to provide overnight accommodation to persons seeking international protection since February 2023.

Refer to attached Planning Report which outlines the basis for this request for declaration in development of exempted development.

Pursuant to Section 5 of the Planning and Development Act 2000, the Applicant respectfully requests that the Clare County Council provide by way of Section 5 Declaration response to the following:

PRIMARY POSITION

"The use of 1-4 Harmony Row, Co Clare as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use."

ALTERNATIVE POSITION

"Should the Council determine the proposal constitutes 'Development', it is hereby confirmed as exempted development under Class 14(h), Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended)."

(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)

- Cover Letter
- Site Location Map
- Site Layout Map
- Floor Plans
- Elevations
- Section



3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	1-4 Harmony Row Ennis Co Clare
(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?	There are no works proposed to the existing property either internally or externally. A section 57 declaration has not been sought as the change of use does not affect the protected structure. This exemption declaration is submitted to regularise its current use as emergency accommodation for persons seeking international protection only.
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	DOM ST PROPERTIES (GALWAY) LTD – Full 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>	N/A _____ _____ _____
(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? If so please supply details:	NO
(g) Were there previous planning application/s on this site? If so please supply details:	YES
(h) Date on which 'works' in question were completed/are likely to take place:	Not applicable. No alteration works proposed

SIGNED:

P. McDonagh

DATE:

01/09/2025

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:	



REQUEST FOR SECTION 5 DECLARATION OF EXEMPTED DEVELOPMENT

@

**No 1-4 Harmony Row
Ennis, Co Clare**

Atlantic Building Consultants Ltd
1 Digital Hub, Merchants Quay Business Quarter,
Frances Street, Kilrush, Co. Clare, Ireland V15 FN53

Email: info@atlanticbc.ie
Website: www.atlanticbc.ie

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DOCUMENT CONTROL SHEET

Project Title	Request for Section 5 Declaration of Exempted Development
Project Subject	No 1-4 Harmony Row
TE Reference	P_25_300_01
Revision	01
Status	Final Report
Control Date	1 st September 2025

Record of Issue

Issue	Status	Date
1/1	Final	01/09/2025

Distribution

Organisation/Person	Status
Clare County Council	Submission

1. INTRODUCTION

1.1. Executive Summary

Atlantic Building Consultants Ltd, have prepared this Report to accompany a request for a Declaration pursuant to Section 5 of the Planning and Development Act, 2000, as amended, on behalf of our client, Dom Street Properties Ltd (Galway) , concerning four (4) terraced houses located in 1-4 Harmony Row, Ennis, Co Clare

We submit the following in relation to these dwellings:

Use of residential houses as temporary accommodation for persons seeking international protection does not constitute "development" as it does not involve altering the nature of occupancy from general residential use to accommodation for protected persons.

Where it is determined by Clare County Council that the use of the subject dwellings does constitute "development", that such a change is exempted under Class 14(h) Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) where it meets the prescribed conditions below:

- a) The proposal aligns with Class 14(h), as the site is already permitted for residential use.*
- b) No works are proposed that would contravene existing planning conditions.*
- c) The use as accommodation for protected persons complies with local zoning and planning policy, including social inclusion objectives.*

1.2. Applicant

This report has been commissioned by Dom Street Properties Ltd (Galway) ,

1.3. Location

The existing site is located 1-4 Harmony Row, Ennis, Co Clare and includes four (4) x three (3) storey dwellings.

- 1 Harmony Row, Co Clare, V95 CPK4
- 2 Harmony Row, Co Clare, V95 TK4D
- 3 Harmony Row, Co Clare, V95 E090
- 4 Harmony Row, Co Clare, V95 WP73

1.4. Consultant

This report and supporting application have been compiled and submitted on behalf of the applicant by Atlantic Building Consultants Ltd.

1.5. Supporting Documents

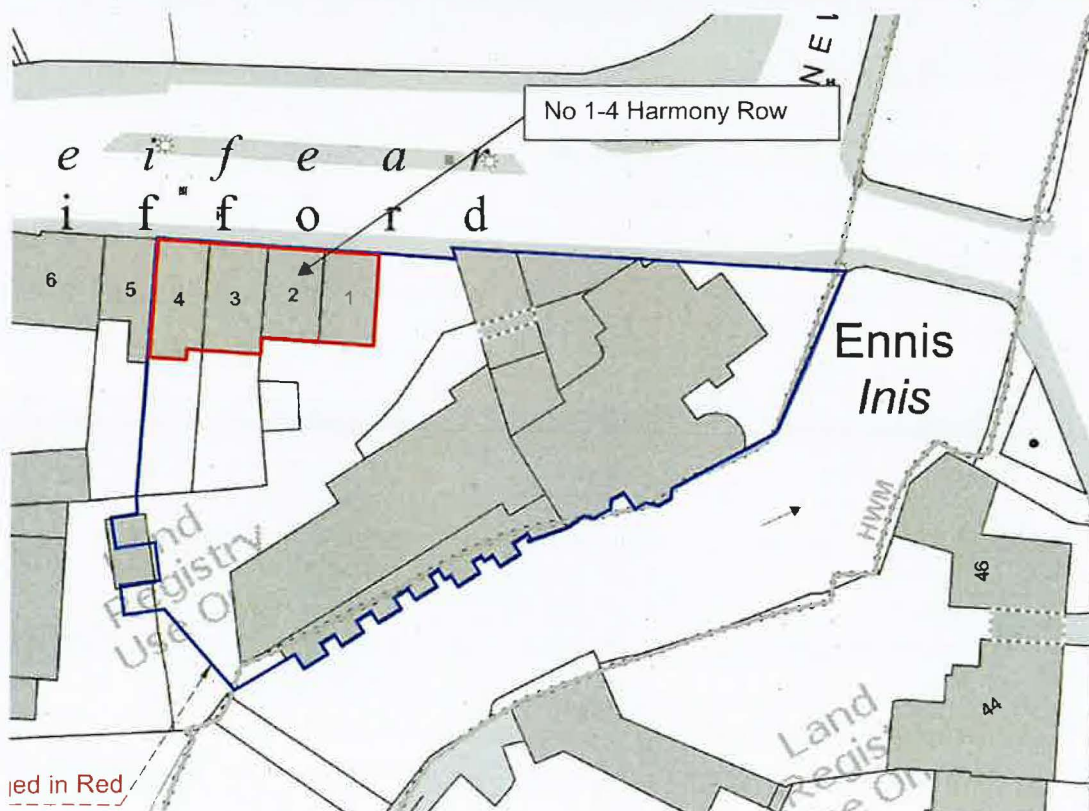
Document	Reference	Description
Declaration Form	Appendix A	Completed Section 5 Declaration
Inspectors Report	ABP-307077-20	An Bord Plenala Report
Section 5 Referral Report	Ref. No: S524/105	Robbinson Hall Apartments
Location Map	P_24_300_01_02	OSI Map – Scale 1:2500
Site Map	P_24_300_02_02	Site Map – Scale 1:500
Floor plans, elevations and Section	P_24_300_09 - 10	Scale plans, elevations and section of No 1-4 Harmony Row

2. SITE DESCRIPTION

The subject site is located in 1-4 Harmony Row, Ennis, Co Clare. The dwellings are located adjacent to Abbey Hostel.

The dwellings subject to this application are outlined in red in the below image and represent four (4) x three (3) storey terraced dwellings.

The dwellings are currently utilised to provide accommodation to persons seeking international protection.



3. PLANNING HISTORY

The following table demonstrates the planning history for the site pertaining to the No 1-4 Harmony Row which is applicable to this request for a Section 5 Declaration of Exempted Development. As is evidenced below, the applicable site area is approved for residential use since 2005.

Planning Reference	Description	Approved Use
0521208	is being sought for; (a) a public riverside walk (b) the construction of a pedestrian bridge from the Abbey Street carpark across the River Fergus (c) the construction of a mixed use development comprising 1 No. 3 storey block , 1 No. 2 storey block and 1 No. 5/6 storey block, arranged around a raised central podium, accommodating (i) 58 No. Apartments (4 No. 1 Bed, 51 No. 2 Bed and 3 No. 3 Bed) (ii) car parking at ground and basement totalling 238 spaces (iii) 1843 sq. m. of commercial / retail spaces in 8 units (iv) 1631 sq.m. of office space (v) ancillary circulation storage and plant areas (d) the demolition of the existing structure at No. 7 Harmony Row and existing dwelling house in the Abbey Hostel Grounds (e) a reduced rear yard to the existing dwelling house at No. 1 Harmony Row and change of use from residential to hotel (f) alterations, demolitions and extensions to the existing Abbey Hostel (County Club / Club House), a protected structure, etc	Residential
0821124	for change of use of 2 existing three storey dwellings, no. 1 and No. 2 Harmony Row Ennis to four one bedroom hostel suites , with related works to comprise: (i) the demolition of existing two storey extension to no. 2 Harmony Row, (ii) construction of a ground floor extension to the rear of No. 1 Harmony Row to include roof garden for first/second floor hostel suite at No. 1 Harmony Row, (iii) construction of flat roof to No. 2 Harmony Row for roof garden accessible to first/second floor hostel suite at no. 2 Harmony Row.	Hostel Suites
22197	to restore two existing, three storey terraced houses, no's 1 & 2	Residential

4. PLANNING PRECEDENTS

The following Planning Precedents have been set in County Leitrim (via An Bord Pleanála) and Co Donegal in relation to the use of residential dwellings for accommodation for persons seeking international protection.

a) The Rock Centre,

Description:

The referral site is located to the southeast side of Ballinamore town centre in County Leitrim and currently comprises a two-three storey mixed-use development, including upper-level residential use and ground-floor retail and commercial uses that are anchored by a Tesco supermarket. The majority of the retail and commercial units at ground floor are vacant at present and the development has been subject of three recent planning permissions. The development is currently served by two expansive surface-level car parks on the northeast side and the rear of the main building, as well as a basement car park. The upper-floor residences are accessed solely by a gated stairs off Cannaboe Street and served by a management and security suite. Each of the 25 residences are own-door residences served by a central courtyard marking out individual amenity areas by raised planters and featuring seating areas and play areas.

Address:

Ballinamore, Co. Leitrim

Reference:

Reg. Ref. 307077-20

Planning Authority:

Leitrim County Council

Decision:

Following a referral to An Bord Pleanála, it was declared that the use of apartments for protected persons and works to the apartments is not development.

Inspector's Report Noted:

"I am satisfied that the subject block of apartments can therefore be considered under the term 'other premises' for the purposes of Class 14, providing residential or overnight accommodation. Accordingly, I consider that the use of the apartments for the reception and care of protected persons or as accommodation for protected persons comes within the scope of the exempted development provided for under Classes 14(h) and (i) of Part 1 of Schedule 2 to the Regulations".

The Inspector further noted upon visiting the referral site, *"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"*.

b) Robinson Hall Apartments

Description: Residential development comprising a mix of self-contained dwelling & common areas. The building comprises multiple self-contained units, each designed to offer private living spaces with essential amenities. The units are equipped with kitchen facilities, living areas, and private bathrooms, ensuring residents have the autonomy and comfort necessary for daily activities.

Address: Port Road, Letterkenny, Co Donegal

Reference: Ref: S5 24/105

Planning Authority: Donegal County Council

Decision: "The proposal IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT"

Planners Report Concluded:

The Planning Authority concluded that The proposal IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT, as the development falls within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) and in considering this referral, had regard particularly to:

- a) *Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).*
- b) *Articles 6(3), 9(1), and Class 14(H) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).*
- c) *The planning history, current use of the subject site, and Section 5 declarations by An Bord Pleanála.*

5. STATUTORY PROVISIONS

Section 2(1) of the Planning and Development Act 2000 as amended states the following:

- a) "development" has the meaning assigned to it by Section 3
- b) "works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal"

Section 3(1) of the Planning and Development Act 2000 as amended states the following

- a) "development" means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land'.

Article 6(1) of the Planning and Development Regulations 2001-2025 (hereinafter referred to as 'the Regulations') provide 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 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'.

Schedule 2 of Part 1 of the Regulations, sets out the classes of exempted development, including "Class 14" allowing for "development consisting of a change of use":

- a) "(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;
- b) (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".

Article 5 of the Regulations sets out certain definitions, the following of which are relevant to the referral questions:-

- a) any structure which was designed for use as one or more dwellings, except such a structure which was used as business premises immediately before 1 October 1964 or is so used with permission under the Act.

'care' means personal care, including help with physical, intellectual or social needs.

'protected person' - (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.

6. CLARE DEVELOPMENT PLAN 2023 - 2029

The Ennis municipal district in Clare Development Plan 2023-2029 designates the area applicable to this application as "Mixed Use". Note location as OP9 in below map.

This plan sets out the overall Development Strategy and Planning Policy Objectives for the Town for the period 2023 to 2029.

The following is provided to demonstrate the approved land use along with adherence to the policy objectives of Clare County Council for the ongoing use of the subject dwellings to accommodate persons seeking international protection.

The subject site is located adjacent to arrow in map below.

Link: [Volume 3a Ennis Municipal District-Clare County Development Plan 2023-2029 \(INTERIM\)](#)

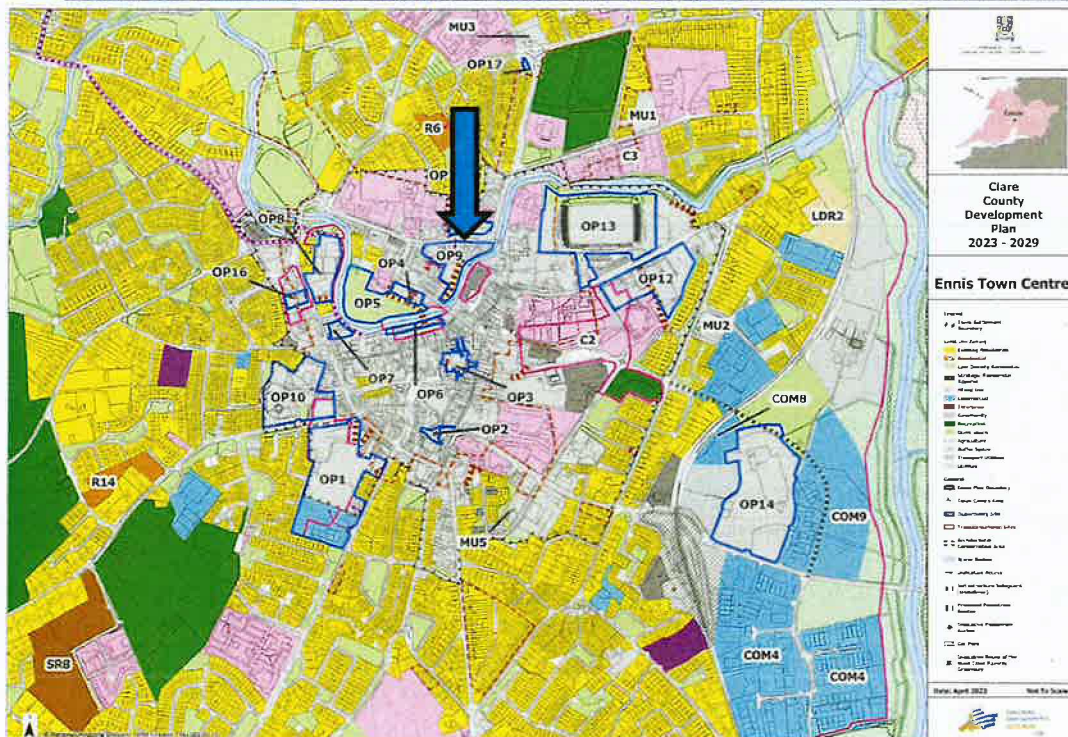


Figure 2: Map 1A Land Use Zoning Plan

Under the Plan Objectives set out in section 10.5 and CDP10.4 of Clare County Development Plan 2023-2029, the following is stated:

"It is an objective of Clare County Council:

a) To plan for a more diverse and socially inclusive society which:

i) Recognises the positive contribution of migrants and persons seeking international protection to multi-cultural communities and the economic life of an area and supports the Government's Migrant Integration Strategy;

b) To work with all relevant stakeholders to help tackle disadvantage and social exclusion, to secure improvements in the quality of life for all citizens and to promote equality of access to public and social services; and

c) To work with all target groups, including older persons, young people, the disabled, the traveller community, refugees, asylum seekers and migrants, to advance their physical, social and cultural integration.

7. ASSESSMENT

a) Description of Property and Use

The subject property is a purpose-built three storey residential block of terraced units. The dwellings subject to this section 5 declaration of exempted development comprise 4 terraced three storey dwellings located at 1-4 Harmony Row, Ennis, Co Clare.

Each of the subject dwellings function independently and are self-contained, with private kitchen, bathroom, and habitable rooms, operating as standard residential units for families and persons who are seeking international protection.

Residents are free to enter the individual dwellings as they wish, in a manner consistent with standard tenancies.

The subject dwellings have operated continuously as residential accommodation, and the use of these dwellings to provide accommodation to persons seeking international protection involves no structural alterations, no intensification of use, and no new impacts on the surrounding area.

The applicant provides no direct care facilities or services for the residents of the dwellings. There are no institutional or communal facilities onsite.

This use aligns with the original planning permissions (0521208 and 22197), which do not restrict occupancy based on residents' legal or socioeconomic status.

b) Material Change of Use

Under Section 3(1) of the Planning and Development Act 2000, development is set out as a "material change of use". Such a "material change requires a shift in the functional character or planning impacts of the property (*Westminster City Council v British Waterways Board* [1985]). In this case there is:

- i) **No Functional Change:** the dwellings remain residential in nature, irrespective of occupants being persons seeking international protection. In Donegal County Council Ref. S5 24/105, the use of apartments for protected persons was deemed identical in function to general residential use, as both involve "overnight accommodation by households." In this case, the dwellings remain private homes with no communal facilities, management offices or intensification of use.
- ii) **No Planning Impact:** The use does not introduce new traffic, noise, or infrastructural demands beyond those of typical residential occupancy. There will be no change to waste or visual character.
- iii) **Legal Precedent:** The Supreme Court in *Dublin Corporation v Moore* [1984] ILRM 339 affirmed that demographic differences among residents (such as legal status) are irrelevant to planning assessments and held that "the socioeconomic profile of residents is irrelevant to materiality."

Accordingly, any variation in the demographic profile of the occupants such as their legal status or background should not be considered when determining whether a change of use is material, and the current use does not constitute a material change.

c) Development & Exempted Status

The applicant does not intend to carry out any works to the subject dwellings that will materially change the existing layout, elevations or use. Under Section 2(1) of the *Planning and Development Act 2000* (as amended), "development" requires either:

- i) Physical works (none proposed), or
- ii) Material change of use (none identified).

Even if the Council determines the use to be development, it would then qualify as exempted development under Class 14(h) Schedule 2 of the Planning Regulations as:

- i) the dwellings are "other premises providing overnight accommodation", and
- ii) the use aligns with residential zoning (Ennis Municipal District Development Plan 2023-2029) and complies with all conditions of original permissions.

Precedent: An Bord Pleanála (Ref. 307077-20) and Donegal County Council (Ref. S5 24/105) have ruled similar cases as exempt.

d) Policy Synergy & Strategic Alignment

The existing use demonstrates full compatibility with Ireland's integrated planning and social inclusion framework. At the local level, it directly supports:

- i) Ennis Municipal District Development Plan 2023-2029 "Mixed Use" zoning and provides "*A vibrant and culturally rich Ennis area with a revitalised town centre and strong economic growth balanced with enhanced social inclusion, accessibility, sustainable neighbourhoods and a high level of environmental quality, to ensure an excellent quality of life for all*".
- ii) Clare County Development Plan 2023-2029 Section 10.5 by providing "*Accessible living, working and leisure environments are necessary so that people of all backgrounds and circumstances can achieve equality of access to the facilities/services they require to fulfil their potential. The recognition of the positive contributions of minority groups to communities and economic life and the promotion of social inclusion are important roles of the Development Plan and the Plan includes a range of strategies to address issues such as access to housing, community facilities and amenities, and increased participation in cultural and social life*"

Nationally, it aligns with:

- i) Housing for All (NPO 37): "Provision of suitable accommodation for international protection applicants."
- ii) Social Inclusion Policy (DEHLG 2020): "Universal access to housing as a fundamental right."

Internationally, it fulfills:

- i) EU Reception Conditions Directive (2013/33/EU): Article 18(1) on "dignified housing standards for applicants."
- ii) UN Sustainable Development Goal 11: "Inclusive, safe, and sustainable human settlements."

This multi-tiered policy congruence eliminates any planning justification to oppose the use, as it simultaneously preserves residential zoning integrity, advances statutory social obligations, and implements Ireland's humanitarian commitments.

8. CONCLUSION

Based on the comprehensive assessment above, Atlantic Building Consultants Ltd., on behalf of Dom Street Properties Ltd (Galway), conclusively asserts the following to support this Declaration request:

a) Definitive Absence of Development

- i) The existing use to provide accommodation for persons seeking international protection for the dwellings located at 1-4 Harmony Row, Ennis, Co Clare remains residential under current planning regulations. The subject properties retain their essential residential character without modification to their physical state or functional use.
- ii) There are no works proposed for existing dwellings located at 1-4 Harmony Row, Ennis, Co Clare that would constitute "Development" per the meaning derived from Section 3(1) of the Planning and Development Act 2000.
- iii) The current use to provide accommodation for persons seeking international protection for the dwellings located at 1-4 Harmony Row, Ennis, Co Clare do not contravene any local or planning policies for the town of Ennis.
- iv) Jurisprudence confirms (*Dublin Corporation v Moore* [1984]) that occupant demographics cannot constitute a material change in planning terms.
- v) No intensification of use occurs, as the dwellings continue to operate at their approved residential capacity without institutional features.

b) Unqualified Exemption Under Class 14(h)

Should the Council adopt a conservative interpretation, all requirements for exemption are categorically met:

- i) **Premises Type:** The dwellings are unequivocally "other premises providing overnight accommodation" as established in *The Rock Centre* determination (ABP 307077-20) and *Robinson Hall* decision (Donegal CC S5 24/105).
- ii) **Regulatory Compliance:** There is no breach of original planning conditions (0521208 and 22197) or zoning objectives.
- iii) **Policy Synergy:** There is full alignment with Clare County Development Plan 2023-2029, National Policy Objective 37 (Housing for All), and Ireland's obligations under the EU Reception Conditions Directive 2024/1346.
- iv) **Precedent-Based Certainty:** The unbroken consensus of planning authorities and An Bord Pleanála affirms that:
 - Residential use for protected persons equals no material change
 - Or
 - If development, there is an automatic exemption under Class 14(h)

9. DECLARATION REQUEST

Pursuant to Section 5 of the Planning and Development Act 2000, the Applicant respectfully requests that the Clare County Council provide by way of Section 5 Declaration response to the following:

PRIMARY POSITION

"The use of 1-4 Harmony Row, Ennis, Co Clare as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use."

ALTERNATIVE POSITION

"Should the Council determine the proposal constitutes 'Development', it is hereby confirmed as exempted development under Class 14(h), Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended)."

SECTION 5 REFERRAL REPORT – Ref. No: S524/105

Donegal County Council

1.0 COMMENTS

The subject site, Robinson Hall Apartments, Port Road, Letterkenny, Co. Donegal, is an existing apartment complex. The current referral seeks to determine whether the proposed use of the residential apartments as long-term residential accommodation for protected persons, constitutes development and, if so, whether it is exempted development.

The site is not included on the Council's Record of Protected Structures nor on the National Inventory of Architectural Heritage. The site is located within a Town Centre zoning designation under the Letterkenny Plan and Local Transport Plan 2023-2029, where residential uses are considered open for consideration.

2.0 EVALUATION

Statutory Provisions

Planning and Development Act, 2000 (as amended)

- **Section 2(1):**
 - Defines "structure" and "works" relevant to development considerations.
- **Section 3(1):**
 - States that development includes the carrying out of works or a material change in the use of any structure or land.
- **Section 4:**
 - Outlines categories of development that may be exempt from requiring planning permission.

Planning and Development Regulations, 2001 (as amended)

Class 14(H) of Schedule 2, Part 1:

- Permits a change of use "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... to use as accommodation for protected persons."
- Protected persons are defined under the International Protection Act 2015.
- Conditions of exemption include:

- Compliance with the definition and purpose of "protected persons."
 - No contravention of planning conditions or zoning regulations.
-

3.0 ASSESSMENT

3.1 Consideration of Proposed Development

- 1. Existing Use:**
 - The property currently consists of residential apartments within a multi-unit complex.
 - 2. Proposed Use:**
 - The change of use is proposed to accommodate protected persons under Class 14(h).
 - Protected persons are defined in Section 2(1) of the International Protection Act 2015.
 - 3. Analysis of Development:**
 - The proposed change constitutes a material change of use, as it involves altering the nature of occupancy from general residential use to accommodation for protected persons, fulfilling the statutory definition of "development" under Section 3(1) of the Act.
 - However, such a change is explicitly exempted under Class 14(h) provided it meets the prescribed conditions.
 - 4. Compliance with Class 14(h) Conditions:**
 - The proposal aligns with Class 14(h), as the site is already a permitted residential complex.
 - No works are proposed that would contravene existing planning conditions.
 - The use as accommodation for protected persons does not conflict with local zoning or planning policy.
-

3.2 Appropriate Assessment

- As the development constitutes a change of use without physical works, there is no requirement for an Appropriate Assessment under Section 177U(9) of the Planning and Development Act 2000 (as amended).
-

3.3 Environmental Impact Assessment (EIA)

- No significant environmental impacts arise from this proposed change of use, and the development is not within a class of projects requiring EIA under Schedule 5, Parts 1 and 2 of the Planning and Development Regulations 2001 (as amended).

It is considered that:

- ## 5.0 RECOMMENDATION

IS Development

&

IS Exempted Development within the meaning of the above act.

The proposal to:

(i) Use the apartments as long-term accommodation for protected persons as provided for under Schedule 2, Part 1 Class 14(h) of the Planning & Development Regulations 2001 (as amended) ;

The Planning Authority, in considering this referral, had regard particularly to:

- Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).
- Articles 6(3), 9(1), and Class 14(H) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).
- The planning history, current use of the subject site, and Section 5 declarations by An Bord Pleanála.

And concluded that:

The proposal IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT, as the development falls within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).



Executive Planner
20/01/2025



Frank Sweeney
Senior Executive Planner
Community Development & Planning Services
21/01/2025

Chief Executive's Order No: 2025PH0177

Planning and Development Acts 2000 (as amended)

SECTION 5:-

Request received 17th December 2024 from JMA Ventures Limited, C/O Kevin Hughes, Hughes Planning & Development Consultants, 85 Merrion Square, Dublin 2, D02 FX60 in relation to use of residential apartments as long-term residential accommodation for protected persons at Robinson Hall Apartments, Port Road, Letterkenny, Co. Donegal.

SUBMITTED:-

Written request received 17th December 2024 as above and report dated 20th January 2025 from the Executive Planner (Ref. No: S5 24/105 refers).

ORDER:-

Having considered the said request, the report of the Executive Planner, and the record forwarded to the Council by An Bord Pleanála in compliance with Sub-Section 6(c) of the said Section I have concluded that a declaration on the questions in the said request should be made in the terms of that in the Schedule to this Order, the main reasons and considerations therefore being detailed therein. I therefore Order that the declaration issue to the said requester and the owners/occupiers of the land concerned and, further, that it be entered in the Council's Planning Register in compliance with Sub-Section (5) of the said Section.


SENIOR EX. PLANNER

DATED THIS 22nd DAY OF JANUARY 2025

9

Chief Executive's Order No: 2025PH0177

Ref.No: S5 24/105

SCHEDULE

IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE

IS Development

IS Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The Planning Authority in considering this referral, had regard particularly to:

- Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).
- Articles 6(3), 9(1), and Class 14(H) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

And concluded that:

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS EXEMPTED DEVELOPMENT** as the development falls within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

JS 22/10/1



**Comhairle Contae
Dhún na nGall**
Donegal County Council

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Ref. No: S524/105

21st January 2025

JMA Ventures Limited,
C/O Kevin Hughes,
Hughes Planning & Development Consultants,
85 Merrion Square,
Dublin 2,
D02 FX60

Re: Use of residential apartments as long-term residential accommodation for protected persons at Robinson Hall Apartments, Port Road, Letterkenny, Co. Donegal.

A Chara,

I refer to your request received on 17th December 2024 under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,


For Senior Ex. Planner
Planning Services
/RMcC

Planning and Development Acts, 2000 (as amended)
(Declaration and Referral on Development and Exempted Development)

DECLARATION

Chief Executive's Order No: 2025PH0177

Reference No: S5 24/105

Name of Requester: JMA Ventures Limited,
C/O Kevin Hughes,
Hughes Planning & Development Consultants,
85 Merrion Square,
Dublin 2,
D02 FX60

Summarised Description of development the subject matter of request:

Use of residential apartments as long-term residential accommodation for protected persons

Location: Robinson Hall Apartments, Port Road, Letterkenny, Co Donegal.

IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE

IS Development

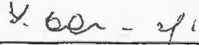
IS Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The Planning Authority in considering this referral, had regard particularly to:

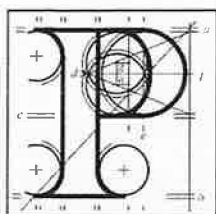
- Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).
- Articles 6(3), 9(1), and Class 14(H) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS EXEMPTED DEVELOPMENT** as the development falls within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).



**For Senior Examiner
Planning Services**

Dated this 21st day of January 2025



An
Bord
Pleanála

Inspector's Report ABP-307077-20

Question

Whether use of incomplete apartments as apartments or as apartments for protected persons and works to the apartments is or is not development or is or is not exempted development

Location

The Rockquarter, Cannaboe Street,
Ballinamore, County Leitrim

Declaration

Planning Authority

Leitrim County Council

Planning Authority Reg. Ref.

ED-19-31

Applicant for Declaration

Liam Madden

Planning Authority Decision

Split

Referral

Referred by

Liam Madden

Owner/Occupier

Remcoll 2 Ltd.

Observer(s)

None

Date of Site Inspection

30th November 2020

Inspector

Colm McLoughlin

Contents

1.0 Site Location and Description	3
2.0 The Question	3
3.0 Planning Authority Declaration.....	4
4.0 Planning History.....	6
5.0 Policy & Context	7
6.0 Statutory Provisions.....	8
6.1. Planning and Development Act 2000, as amended	8
6.2. Planning and Development Regulations 2001-2020	9
6.3. Other Legislative Definitions.....	11
7.0 The Referral.....	11
8.0 Assessment	13
8.1. Introduction	13
8.2. Is or is not development?	14
8.3. Is or is not exempt development?	16
9.0 Recommendation.....	18

1.0 Site Location and Description

- 1.1.** The referral site is located to the southeast side of Ballinamore town centre in County Leitrim and currently comprises a two-three storey mixed-use development, including upper-level residential use and ground-floor retail and commercial uses that are anchored by a Tesco supermarket. The majority of the retail and commercial units at ground floor are vacant at present and the development has been subject of three recent planning permissions. The development is currently served by two expansive surface-level car parks on the northeast side and the rear of the main building, as well as a basement car park. The upper-floor residences are accessed solely by a gated stairs off Cannaboe Street and served by a management and security suite. Each of the 25 residences are own-door residences served by a central courtyard marking out individual amenity areas by raised planters and featuring seating areas and play areas.

2.0 The Question

- 2.1.** The following are questioned by the referrer:
- 'whether the use of the then incomplete and abandoned apartments at 'The Rock', Ballinamore, County Leitrim for use as apartments is or is not development and is or is not exempted development';
 - 'whether the change of use of the then incomplete and abandoned apartments and partly completed on foot of planning permission 04/1546 at 'The Rock', Ballinamore, County Leitrim to 'The Reception and Care of those seeking International Protection' is or is not development and is or is not exempted development';
 - 'whether the built works carried out internally and externally at the above then incomplete apartments currently in use as 'The Reception and Care of those seeking International Protection' are or are not development and are or are not exempted development'.
- 2.2.** Noting information gathered during my site inspection and following a review of the submitted information, in the interest of clarity and to comprehensively address

matters raised by the referrer, it is considered appropriate that the questions referred to the Board be reworded and addressed by the following questions:

- whether the use of previously incomplete and abandoned apartments, as apartments, and;
- whether the use of previously incomplete and abandoned apartments to use for the reception and care of protected persons, and;
- whether the works to complete the previously incomplete and abandoned apartments, in order to use the apartments for the reception and care of protected persons,

at The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim, is or is not development or is or is not exempted development.

2.3. I intend to proceed with my assessment on the basis of the reworded questions.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. The planning authority initially advised the referrer that they required additional time under section 5(2)(ba)(ii) of the Planning & Development Act 2000, as amended (hereinafter referred to as 'the Act'), in order to make a determination regarding the question, which the referrer subsequently responded to. Following this, the planning authority engaged with the High Courts regarding the information submitted by the referrer and also with the Department of Justice and Equality, requesting clarification on a contractual agreement between the owner of the referral site and the Minister for Justice and Equality. The planning authority subsequently declared the following on the 31st day of March, 2020:

- use of the then incomplete and abandoned apartments for use as apartments is development and is exempted development;
- change of use of the then incomplete and abandoned apartments and partly completed on foot of planning permission P04/1546 to 'The Reception and Care of those seeking International Protection' is not development;

- the built works carried out internally and externally at incomplete apartments currently in use as 'The Reception and Care of those seeking International Protection' are development and are exempted development.

3.1.2. Pursuant to Section 5 of the Act, this Declaration has now been referred to the Board for review.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The recommendation within the report of the Planning Officer (March 2020) reflects the Declaration issued by the planning authority. The planning report can be summarised as follows:

- photographs taken in 2009 by the Council's Enforcement Officer reveal that the subject structure was sealed and watertight, the primary structure was, therefore, complete in 2009 and only the internal fit out of the apartments remained incomplete;
- abandonment of the permitted residential apartment use did not arise;
- internal fit out works are exempted development under section 4(1)(h) of the Act;
- the subject previously permitted apartments are currently being used to provide residential accommodation to applicants seeking international protection, which remains solely a residential use;
- change of use does not equal a change in tenure, therefore development has not occurred by the provision of the accommodation for persons seeking international protection;
- the external works elements are incidental to the use and the provision of services and open spaces completing the building, and, therefore, can come within the terms of section 40(2)(a)(iii) and (iv) of the Act.

3.2.2. Other Technical Reports

- None received.

4.0 Planning History

4.1. Referral Site

4.1.1. The planning history associated with the referral site, includes the following planning applications:

- Leitrim County Council (LCC) Ref. P04/1546 – a ten-year permission was granted by the planning authority in June 2005 for a supermarket with a service yard, five retail units, two office units, 21 residential units, a crèche and play area, 141 parking spaces and a car showroom;
- LCC Ref. P05/544 – permission was granted in November 2005 by the Planning Authority for revisions to the parent permission LCC Ref. P04/1546 primarily comprising revised elevations and floor areas to the retail and commercial units, as well as revisions to provide for 22 residential units in total;
- LCC Ref. P07/585 – permission was granted in January 2008 by the Planning Authority for revisions to the parent permission LCC Ref. P04/1546 primarily providing for an increased ground floor area, six additional retail and four additional office units at first floor, a total of 25 residential units, change of use of crèche to residential unit and an increased ground-floor area;
- ABP ref. 306621-20 (LCC ref. P19/255) – permission was granted by the Board in June 2020 for a change of use of a retail unit to a pharmacy;
- ABP ref. 306577-20 (LCC ref. P19/254) – permission was granted by the Board in June 2020 for a café and alterations to the entrance area;
- ABP ref. 306549-20 (LCC ref. P19/243) – permission was granted by the Board in June 2020 for a three-storey office building over the existing basement structure on the northeast end of the site.

4.2. Relevant Referrals

4.2.1. The following referrals subject of declarations by the Board are considered relevant:

- ABP Ref. 301688 – in February 2019 the Board decided that the conversion of the premises at Nos.57, 59 & 61 Cabra Road (Protected Structure), Dublin 7 to a supported homeless accommodation facility is development and is exempted development;
- ABP Ref. PL68.RL2685 – in May 2010 the Board decided that the change of use of the first and second floors of a hotel at Nos.58 & 59 Main Street, Longford, to a hostel to accommodate refugees is development and is not exempted development;
- ABP Ref. PL79.RL2503 – in August 2008 the Board decided that the refurbishment and change of use of a residential unit at 56 Mitchel Street, Thurles, County Tipperary, for use as emergency accommodation for not more than six persons deemed to be homeless is development and is exempted development;
- ABP Ref. PL11.RF0969 – in April 2001 the Board decided that the change of use of a convent in Stradbally, County Laois, to accommodate refugees and/or asylum seekers is development and is not exempted development.

5.0 Policy & Context

5.1. Leitrim County Development Plan 2015-2021

- 5.1.1. Leitrim County Development Plan 2015-2021 is the statutory plan for this area. The Development Plan identifies Ballinamore as a tier 2A settlement in the land-use strategy for the County, with the referral site identified as being within an area zoned for 'Mixed-use'. Objective OBJ 7 of the Plan seeks the development of lands zoned 'Mixed Use' for commercial residential, health, community, educational, cultural, retail and related uses. The site and surrounding area does not have any conservation status. The Housing Strategy appended to the County Development Plan outlines that Leitrim County Council will work with voluntary organisations and other government agencies, in ensuring accommodation is available to all. The Development Plan also notes that persons continue to move to the County for housing, economic and refugee purposes.

5.2. Natural Heritage Designations

- 5.2.1. The nearest designated sites to the referral site is the Cuilcagh - Anierin Uplands Special Area of Conservation (SAC) (Site Code: 000584), which is located approximately 6.9km to the northwest of the development site.

6.0 Statutory Provisions

6.1. Planning and Development Act 2000, as amended

- 6.1.1. Section 2(1) of the Act states the following:

- 'development' has the meaning assigned to it by Section 3;
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'

- 6.1.2. Section 3(1) states that:

- 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land'.

- 6.1.3. Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including Section 4(1)(h) providing for the carrying out of works for the maintenance, improvement or alteration of any structure that only affect the interior of the structure or which do not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.

- 6.1.4. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001-2020.

- 6.1.5. Section 40 of the Act places limits on the duration of a permission and these limits shall not apply following the expiration of the appropriate period, under subsection (2)(a)(iii):

- in the case of a house, shop, office or other building which itself has been completed, in relation to the provision of any structure or works included in the

relevant permission and which are either necessary for or ancillary or incidental to the use of the building in accordance with that permission.

6.2. Planning and Development Regulations 2001-2020

6.2.1. Article 6(1) of the Planning and Development Regulations 2001-2020 (hereinafter referred to as 'the Regulations') provide 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 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'.

6.2.2. Schedule 2 of Part 1 to the Regulations set out the classes of exempted development, including 'Class 14' allowing 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,

(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'.

6.2.3. As provided for in Article 9(1)(a), the following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, inter alia:

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;

(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.

6.2.4. Article 5 of the Regulations sets out certain definitions, the following of which are relevant to the referral questions:-

- 'business premises' means –

'(a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons,

(b) a hotel, hostel (other than a hostel where care is provided) or public house, or

(c) any structure or other land used for the purposes of, or in connection with, the functions of a State authority'

- 'excluded premises' means –

(a) any premises used for purposes of a religious, educational, cultural, recreational or medical character,

(b) any guest house or other premises (not being a hotel or a hostel) providing overnight guest accommodation, block of flats or apartments, club, or boarding house, or

(c) any structure which was designed for use as one or more dwellings, except such a structure which was used as business premises immediately before 1 October, 1964 or is so used with permission under the Act.

- 'care' means personal care, including help with physical, intellectual or social needs.

6.2.5. For the purposes of Schedule 2, the Regulations provide the following definition of a 'protected person' -

(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.

6.3. Other Legislative Definitions

- 6.3.1. A person who has made an application to the Minister for Justice and Equality for a declaration under Section 8 of the Refugee Act, 1996 is defined as 'a person who arrives at the frontiers of the State seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution'. Section 3 of the Immigration Act, 1999, includes those 'persons whom the Minister proposes to make a deportation order in relation to or whom has been notified of same'. A 'programme refugee' is defined in the Refugee Act, 1996, as 'a person to whom leave to enter and remain in the State for temporary protection or resettlement as part of a group of persons has been given by the Government and whose name is entered in a register established and maintained by the Minister for Foreign Affairs, whether or not such person is a refugee within the meaning of the definition of refugee'.

7.0 The Referral

7.1. Referrer's Case

- 7.1.1. The referrer's submission was received by An Bord Pleanála on the 14th day of April, 2020, and can be summarised as follows:
- the first-floor corrals and internal and external works to the semi-derelict apartments are development;
 - the parent permission for the development expired, therefore, the development was unauthorised and exemptions do not apply;
 - the declaration should be considered in light of referrals relating to the use of apartments at Chancery Hall in Dublin for short-stay accommodation (ABP ref. 302856, 302857, 302858, 302859, 302861, 302862, 302865 and 302866);

- the use of incomplete or abandoned apartments for residential purposes requires planning permission regardless of whether or not this is for short-stay or long-stay accommodation;
- the use of the incomplete apartments as a reception and care for those seeking international protection is development and their use for refugees is a material change of use;
- the change of use does not come within the terms of Class 14(h) as the incomplete, semi-derelict and never-occupied apartments are not and never were premises or a residential institution providing overnight accommodation;
- there is no exemption to allow a change of use from apartments to housing of protected persons;
- there is no fire safety certificate for four of the apartments and legal development works cannot be undertaken to an illegal building.

7.2. Planning Authority's Response

7.2.1. The Planning Authority did not respond to the referrer's case.

7.3. Owner / Occupiers Response

7.3.1. The owner / occupiers response to the Board with respect to the referral can be summarised as follows:

- of relevance to this case are the planning applications relating to the site that were recently decided by the Board (ABP refs. 306621-20, 306577-20 & ABP ref. 306549-20);
- no unauthorised use arises, as the residential aspect of the premises is in use as residential accommodation and it is not appropriate or correct to assert that the identity of the end-user vitiates the permitted use;
- the referrer has a history of objecting;
- investment to complete and occupy the development has been undertaken and the referral is a clear attempt to stymie the regeneration of the area.

7.4. Observations

- 7.4.1. None received.

7.5. Further Submissions

- 7.5.1. Following consultation by An Bord Pleanála with the Minister for Justice and Equality and the Chief State Solicitor's Office, no responses were received.

8.0 Assessment

8.1. Introduction

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area, but rather whether or not the matters in question constitute development, and if so fall within the scope of exempted development within the meaning of the relevant legislation. The Board should be aware that much of the information presented by the referrer relates to matters that are outside the jurisdiction of this section 5 referral, given that they relate to assertions regarding enforcement and other regulatory regimes, such as building and fire safety regulations.
- 8.1.2. The referral to the planning authority was accompanied by a cover letter which addressed the recent planning and development history of the referral site, contractual matters, enforcement matters and information relating to refugees, asylum seekers, migrants, direct provision centres and emergency residential orientation centres (EROCs). The referral was also accompanied by details relating to a High Court case pertaining to the referral site, including affidavits, a copy of the Planning and Development Regulations 2015 (S.I. No.582 of 2015), copies of legal correspondence, including letters from the Chief State Solicitor's Office and a Memorandum of Agreement relating to contracts for using part of the referral site, copies of newspaper articles, land registry details and company details, as well as planning correspondence, documentation and drawings relating to the referral site.
- 8.1.3. Each of the questions raised relate to the completion and use of the 25 own-door apartments accessed at first-floor level in the subject development. These

residential units were initially the subject of a grant of planning permission in 2005 under LCC ref. P04/1546 and were subject of revisions that were permitted under LCC ref. P05/544 in 2005 and LCC ref. P07/585 in 2008.

8.2. Is or is not development?

- 8.2.1. Section 3 of the Act defines development as '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'. As defined in section 2(1) of the Act, works include 'any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'.

Works

- 8.2.2. The three questions put forward involve a slight variation of the preceding question, although each of the questions would appear to initially question whether the completion of the works to the subject apartments after the expiration of their appropriate period would or would not involve development. The appropriate period for the relevant permissions would have expired on the 9th day of June, 2015. The Planning Authority has outlined that their records reveal that the development was substantially complete in 2009. I am satisfied that there is a permission for the apartments and that their consequent recorded completion, including subsequent fit-out necessary and ancillary or incidental to the use of the permitted building, would have come under section 40 of the Act and, therefore, do not come within the scope of section 5 of the Act. Consequently, whether the permitted works to complete the previously incomplete and abandoned apartments is or is not development, is not a matter for this section 5 referral.

Change of Use

- 8.2.3. Each of the questions also query whether a change of use of the apartments has arisen and if a change of use has arisen, is this material for planning purposes. The referrer asserts that as the apartments were not completed within the lifetime of the parent permission, their permitted use had been abandoned and to bring the apartments into use would comprise a material change of use. Consequently, the questions relate to whether or not the residential apartment use has been abandoned or if the permitted use as apartments can be resumed.

8.2.4. High Court judgement (IEHC 74 – 2004) 'Molloy & Others - v - The Minister for Justice, Equality and Law Reform & Others' is applicable in the consideration of this aspect of the question. This concluded that where the use in the original permission can still apply and is capable of being implemented, it could therefore be resumed, since there had been no material structural alteration to the property, and as it did not involve an intensification of use. The original valid planning permission cannot be lost or abandoned if such a case arises. I consider that the Molloy case is applicable in the consideration of the circumstances presented in this referral case, for the following reasons:-

- the parent permission relating to the site was a ten-year planning permission granted in June 2005 for a mixed-use development under LCC Ref. P04/1546 and subject to permitted revisions under LCC refs. P05/544 and P07/585;
- I am not aware of the permitted residential aspect of the development being used for non-residential purposes and permission was not sought for their alternative use;
- the internal and external works undertaken to the premises following the expiration of the appropriate period and prior to the occupation of the residential aspect, involving fit-out works and the provision of services, did not involve construction work;
- substantive evidence to show that the owner/occupiers intended to abandon the use of the apartments has not been provided;
- having inspected the premises internally and externally, there are no material structural alterations that restricted the permitted use of the premises as apartments;
- the use as apartments would be of similar character and intensity to that which was permitted.

8.2.5. Accordingly, it follows from the assessment above that the use of the apartments as apartments is not abandoned and is not a material change from the permitted use and, therefore, the use as apartments is not development.

8.2.6. The next issue to consider from the questions, is whether or not the current use of the permitted apartments conforms to a change of use that would be material. The

referrer states that the current use of the facility is for 'the reception and care of those seeking international protection' or as stated in the reworded questions 'the reception and care of protected persons'. Various references to potential use as an EROC are also provided throughout the referral documentation. EROCs are centres for asylum seekers in Ireland, where in addition to offering accommodation, ancillary services to facilitate relocation and resettlement would be provided. EROCs serve as temporary accommodation facilities for persons arriving into the country through relocation and resettlement, providing medical services, language training, education, cultural orientation and social protection services.

- 8.2.7. 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.

8.3. Is or is not exempt development?

- 8.3.1. I am satisfied that in response to the referrer's questions, development has not currently taken place on the referral site. However, should the Board consider otherwise and to comprehensively address the changes that were not in evidence, although they were asserted by the referrer to have taken place, below I consider the

provisions set out within Articles 5(1), 6(1), 9(1) and 10(1) of the Regulations and whether any exemptions would apply.

- 8.3.2. I am satisfied that Article 10(1) of the Regulations would not provide for an exemption to allow the apartments change to a reception and care centre for protected persons, as this change would not consist of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 to the Regulations.
- 8.3.3. Part 1 of Schedule 2 to the Regulations deals with general exempted development, including the conditions and limitations to the exemptions, if any. Development consisting of a change of use from various guest accommodation, religious, defence barracks and other premises, as well as residential institutions providing overnight accommodation, to use for accommodation for protected persons and use as an EROC for protected persons is exempt under Classes 14(h) and (i). There are no conditions or limitations listed beside these exemption classes. The exemption does not specifically refer to a change from residential accommodation, apartments or a category to which the subject permitted use would reasonably fall into, but the exemption does refer to a change from 'other premises'. The Regulations do not specifically define a 'premises', but they do define a 'business premises' and an 'excluded premises'. Based on the definitions, a block of apartments is an 'excluded premises' and therefore not a 'business premises' for the purposes of the Regulations. A standard dictionary definition for a 'premises' is as a house or other building and the land on which it is built. I am satisfied that the subject block of apartments can therefore be considered under the term 'other premises' for the purposes of Class 14, providing residential or overnight accommodation. Accordingly, I consider that the use of the apartments for the reception and care of protected persons or as accommodation for protected persons comes within the scope of the exempted development provided for under Classes 14(h) and (i) of Part 1 of Schedule 2 to the Regulations.
- 8.3.4. If the carrying out of development would contravene a planning condition or be inconsistent with any permitted use, the Class 14 exemptions for the aforementioned changes of use are restricted under Article 9(1)(a)(i) of the Regulations. Condition 1 of the parent permission LCC ref. P04/1546 states the following:

- Notwithstanding the exempted development provisions of the Planning and Development Regulations, any proposed change of use or occupancy, or any other form of exempted development i.e. outbuildings, boundary walls, etc., shall be subject to the written agreement of the Planning Authority or Permissions as may be required.

8.3.5. Accordingly, if it had been considered that a material change of use or occupancy had arisen from that which was permitted, this condition would restrict the exemption provided for under Article 9(1)(a)(i) of the Regulations.

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS questions have arisen as to:

- whether the use of previously incomplete and abandoned apartments, as apartments, and
- whether the use of previously incomplete and abandoned apartments to use for the reception and care of protected persons, and
- whether the works to complete the previously incomplete and abandoned apartments, in order to use the apartments for the reception and care of protected persons,

at The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim, is or is not development or is or is not exempted development:

AND WHEREAS Liam Madden requested a declaration on this question from Leitrim County Council, and the Council issued a declaration on the 31st day of March, 2020, stating the following:

- use of the then incomplete and abandoned apartments for use as apartments is development and is exempted development;

- change of use of the then incomplete and abandoned apartments and partly completed on foot of planning permission 04/1546 to 'The Reception and Care of those seeking International Protection' is not development;
- the built works carried out internally and externally at incomplete apartments currently in use as 'The Reception and Care of those seeking International Protection' are development and are exempted development.

AND WHEREAS Liam Madden requested a declaration on this question on the 14th day of April, 2020, from An Bord Pleanála:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2(1), 3(1), 4, 5 and 40 of the Planning and Development Act 2000, as amended,
- (b) articles 5(1), 6(1), 9(1) and 10(1) of the Planning and Development Regulations 2001-2020,
- (c) the planning and development history of the site,
- (d) the nature of the current use of the site,
- (e) the submissions of the Referrer,
- (f) the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the provision of works to complete the apartments, included in the relevant permission and which are either necessary for or ancillary or incidental to the use of the building permitted, come within the scope of Section 40 of the Planning and Development Act 2000, as

amended, and do not come within the scope of Section 5 of the Planning and Development Act 2000, as amended;

- (b) the permitted use of the apartments was not abandoned and the current use of the premises as apartments, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, does not constitute development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides 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.

Colm McLoughlin
Planning Inspector

8th December 2020

Land Registry Compliant Map



**Tailte
Éireann**

**CENTRE
COORDINATES:**
ITM 533806,677697

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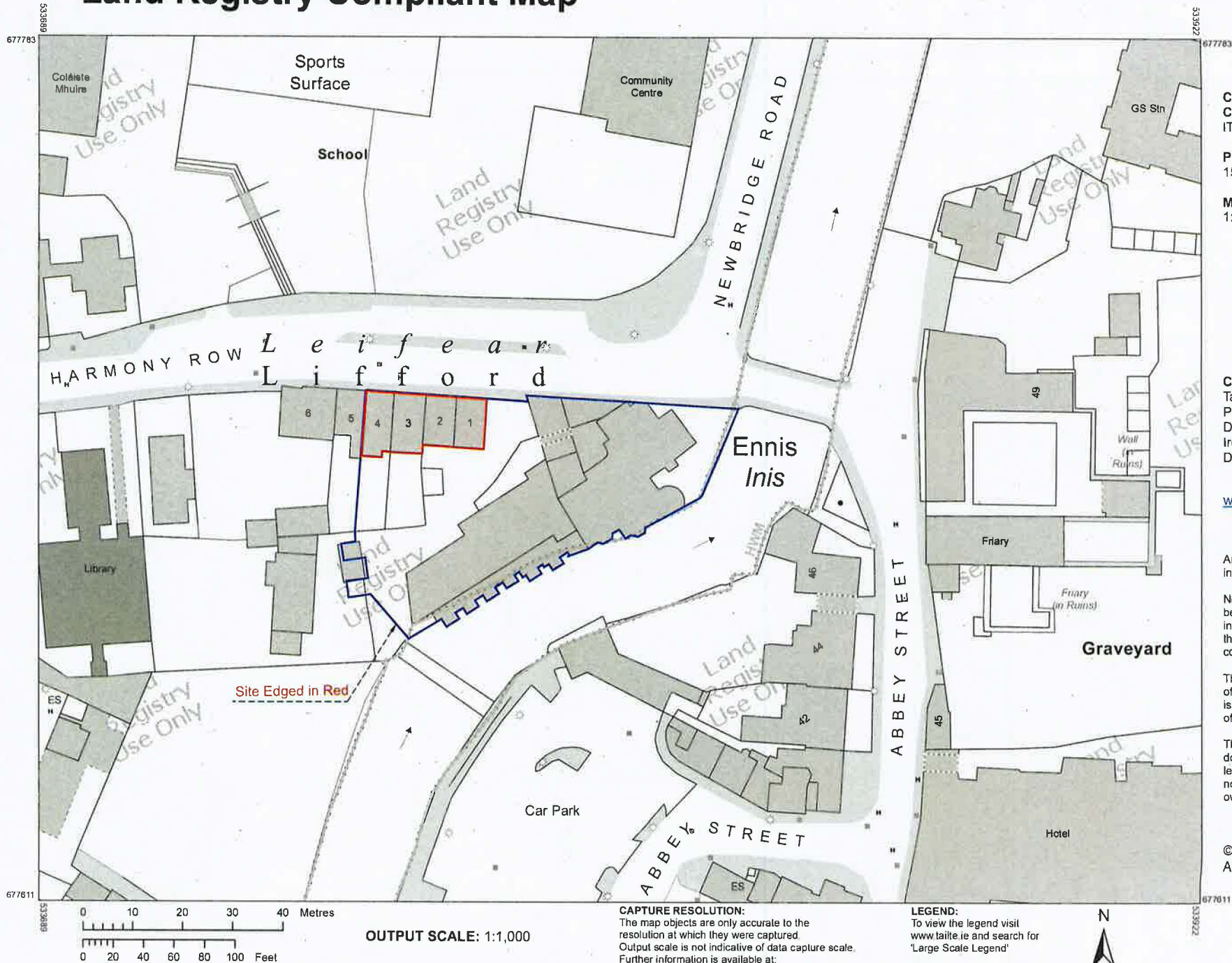
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Title - Site Layout Plan
Project - Section 5 Application

Client - Abbey Hostel Ennis
Address - Harmony Row, Ennis Co Clare

Scale - 1:500
Size - A3

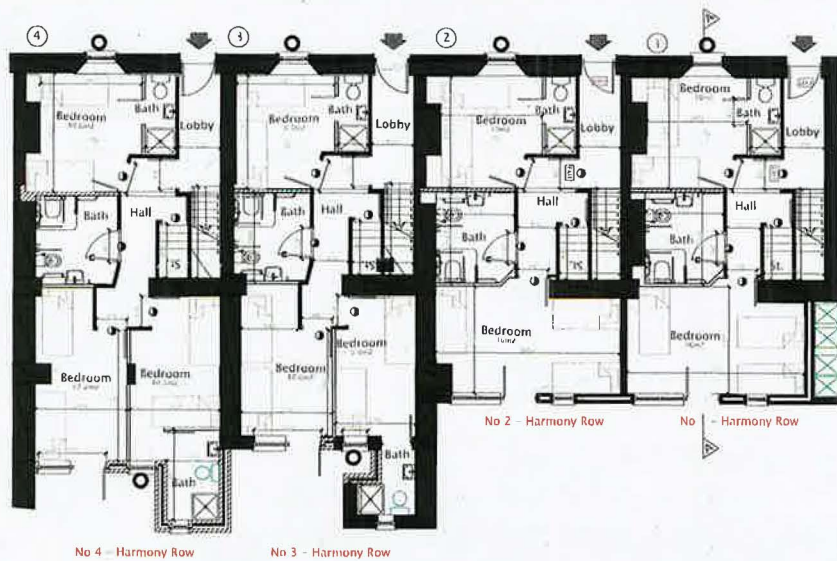
ATLANTIC BUILDING CONSULTANTS LTD
 Unit 1 Digital Hub, Merchants Quay Business
 Quarter, Princes Street, Kildare Co. Dub.

P/24/300/02

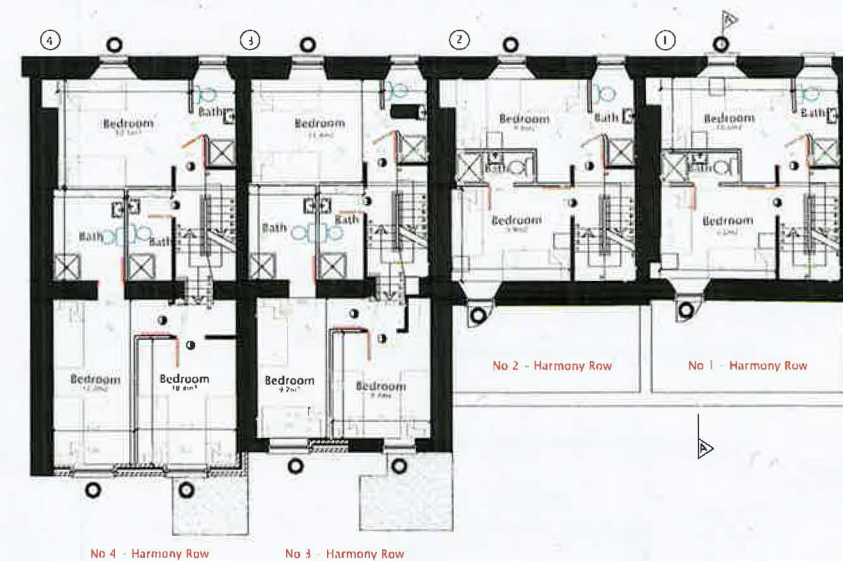
P-02

01.09.25

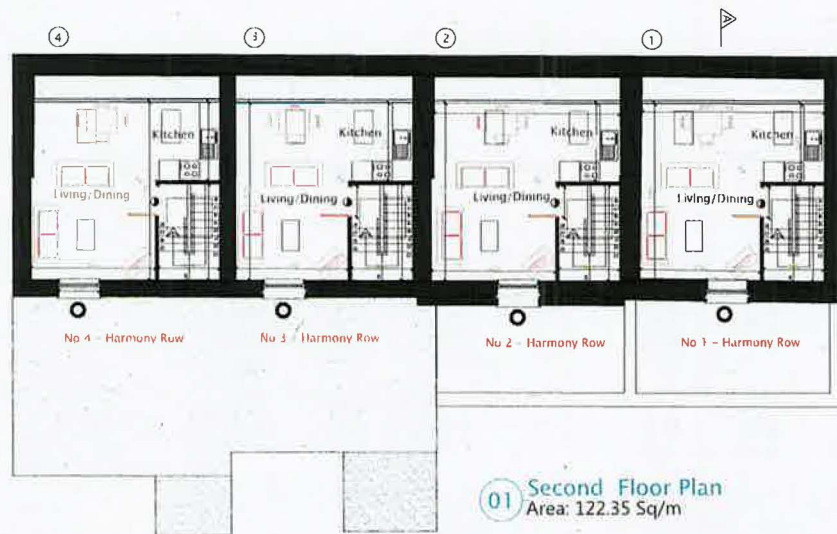
A B C



01 Existing Ground Floor Plan
Area: 239,65 Sq/m



01 First Floor Plan
Area: 195.16 Sq/m



01 Second Floor Plan
Area: 122.35 Sq/m

Title - Floor Plans
Project - Section 5 Application

Client - Dom St Properties (Galway) Ltd
Address - Harmony Row, Ennis Co. Clare

Scale - 1:150
Size - A3

ATLANTIC BUILDING CONSULTANTS LTD
Unit 1 Digital Hub, Merchants Quay Business
Quartier, Frances Street, Kilrush, Co. Clare

P/24/300/10

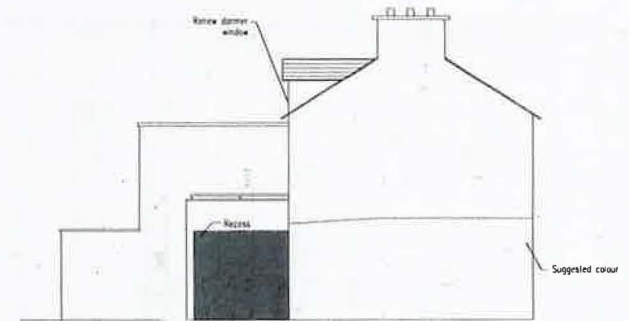
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01.09.25

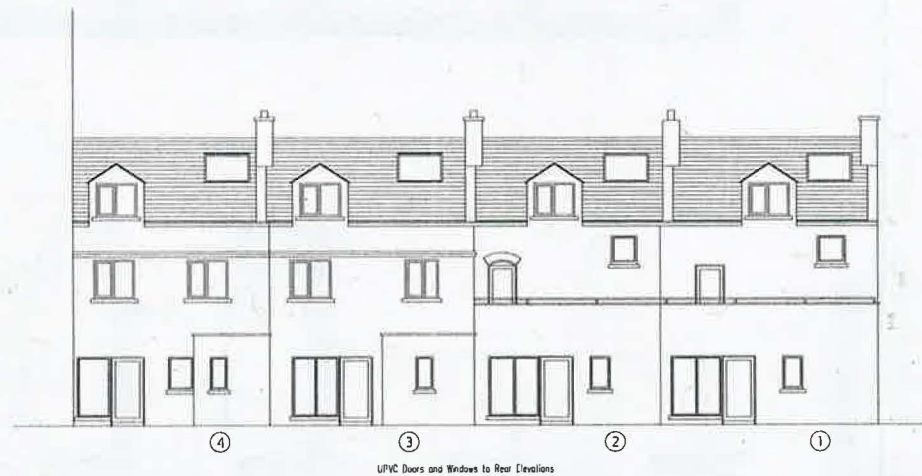
A B C



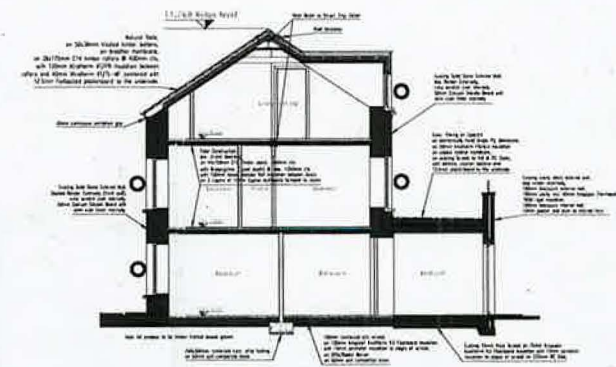
Ground Floor Plan



Side Elevation



Rear Elevation



Section A-A

Title - Elevations -Section	Client - Abbey Hostel Ennis	Scale - 1:150	ATLANTIC BUILDING CONSULTANTS LTD Unit 1 Digital Hub, Merchants Quay Business Quarrier Frances Street, Kesh, Co. Clare	P/24/300/09	A B C
Project - Section 5 Application	Address - Harmony Row, Ennis Co.clare	Size - A3		P-02 01.09.25	