



An  
Bord  
Pleanála

## Inspector's Report ABP-307077-20

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<b>Question</b>	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
<b>Location</b>	The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim
<b>Declaration</b>	
Planning Authority	Leitrim County Council
Planning Authority Reg. Ref.	ED-19-31
Applicant for Declaration	Liam Madden
Planning Authority Decision	Split
<b>Referral</b>	
<b>Referred by</b>	Liam Madden
<b>Owner/Occupier</b>	Remcoll 2 Ltd.
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	30 <sup>th</sup> November 2020
<b>Inspector</b>	Colm McLoughlin

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## **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 31<sup>st</sup> 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 14<sup>th</sup> 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 9<sup>th</sup> 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 7<sup>th</sup> 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 29<sup>th</sup> 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 31<sup>st</sup> 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 14<sup>th</sup> 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

8<sup>th</sup> December 2020