



Question

Whether the use of the S50 multi-unit building previously occupied by students during the academic year since 2007 for accommodating asylum seekers instead of students is or is not development and is or is not exempted development.

Location

Multi-unit building at Mulligan Court, Connaughton Road, Sligo, Co. Sligo.

Declaration

Planning Authority

Sligo County Council

Planning Authority Reg. Ref.

ED544

Applicant for Declaration

John Molloy

Planning Authority Decision

No declaration

Referral

Referred by

Sligo County Council

Owner/ Occupier

Eastview Ltd
Brava Capital Ltd

Date of Site Inspection

10th February 2025

Contents

1.0 Site Location and Description	4
2.0 The Question	4
3.0 Planning Authority Declaration.....	5
Declaration	5
4.0 Planning History.....	6
5.0 Policy Context.....	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	7
6.0 The Referral.....	8
6.1. Application for Section 5(1) declaration to Sligo County Council	8
6.2. Planning Authority Referral as per Section 5(4).....	8
6.3. Owner Response	9
7.0 Relevant Referrals	11
8.0 Statutory Provisions.....	12
8.1. Planning and Development Act, 2000 (as amended).....	12
8.2. Planning and Development Regulations, 2001-2025	13
8.3. S.I. No. 306/2022 - European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022.....	17
8.4. Guidelines on Residential Developments for 3rd Level Students - Section 50 Finance Act 1999 (Dept. of Education and Science, 1999)	18
8.5. Appropriate Assessment.....	19
8.6. Environmental Impact Assessment.....	20
9.0 Assessment.....	20
9.1. Introduction	20

9.2. Is or is not development?	20
9.3. Is or is not exempted development	27
10.0 Recommendation	29
Appendix 1 - Form 1	32

1.0 Site Location and Description

This referral relates to Milligan Court, Connaughton Road, Sligo town, Co. Sligo. In terms of the spelling, the original applicant seeking the declaration refers to Mulligan Court whilst the owner's response received by An Coimisiún Pleanála refers to Milligan Court. The planning authority varies between both spellings. For the purpose of clarity, and with reference to the Eircode directory, I will use the spelling of Milligan Court.

Milligan Court comprises a part two, part three and part four storey mixed use building. The main frontage of the building is on Connaughton Road to the south, with secondary frontage to Holborn Street to the west and a cul-de-sac street called Ard na Gréine to the east. The building is predominantly made up of apartment / town house type units, some with own door street level access on Connaughton Road and Ard na Gréine. The development also comprises a retail unit at ground floor level at the southwest corner, currently occupied by a pharmacy. Access to an underground car park is off Connaughton Road.

However, from a planning perspective, and with reference to the planning history section of my report, Milligan Court comprises two distinct elements. The eastern element comprises apartments / town houses with own door access to the Connaughton Street and Ard na Gréine frontages, whilst the western element comprises retail use at ground floor level. The elements are distinguishable by the aforementioned retail ground floor use on the western end but also by the different roof designs. The declaration sought relates only to the eastern section of the building.

Adjoining properties comprise an undeveloped infill site to the north, residential to the east and west and a blocked-up car park to the south.

2.0 The Question

The question posed is raised in two different documents. The first was in the form of the original Section 5 application for a declaration submitted to Sligo County Council by John Molloy, the owner of 1 no. apartment located within the eastern side of Milligan Court. The Planning Authority referred the question to An Coimisiún Pleanála without making a determination.

The application form for the declaration by John Molloy provides the following description of development for which a declaration is sought:

The use of the Section 50 multi-unit building previously occupied by students during the academic year since 2007 for accommodating asylum seekers instead of students.

In its referral to An Coimisiún Pleanála, the planning authority poses the question as follows:

Whether the use of the Section 50 multi-unit building previously occupied by students during the academic year since 2007 for accommodating asylum seekers instead of students is or is not development and would it comprise of a material for planning purposes.

The term 'asylum seekers' does not appear in the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001 (as amended). In a response submitted to the referral on behalf of Eastview Ltd. (response further discussed under Section 6.3 below), it is stated that the property is currently accommodating people seeking international protection and managed by IPAS. On this basis, I consider that a more accurate wording of the question is as follows:

Whether the use of the Section 50 multi-unit building, previously occupied by students during the academic year since 2007, for accommodating persons seeking international protection instead of students is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

Declaration

No declaration made by the Planning Authority.

4.0 Planning History

The following relates to the referral site:

Eastern part of the building (including apartments / townhouses at street level)

P.A. Ref. 0370139 – refers to a 2004 grant of permission for a mixed development to consist of the clearing of existing site and the construction of office space/doctor's surgery: 27 no. apartments/townhouses (including a caretaker's apartment) whose use is to include Section 50 student accommodation and social housing; a laundry room; a central storage room, substation and seminar room - all with associated car parking (including one level of enclosed parking), site services and landscaping.

Submitted further information included the omission of the doctor's surgery and proposed use of this space for office use only.

P.A. Ref. 0470145 / ACP Ref. PL 77.211144 – refers to a 2005 grant of permission to vary the 0370139 permission comprising the omission of the office space; provision of 18 no. additional apartments / town-houses (including a Caretaker's apartment) - bringing total no. to 45 units, whose uses are to include Section 50 student housing / social housing; the lowering of the level of the access deck to dwellings; revisions to elevations; provision of additional storey to previously granted 2 storey block at deck level.

Condition No. 2 on the grant of permission by An Bord Pleanála reduced the overall number of residential units to 33 no. (thus, 6 no. additional units).

Western end of the building (including retail unit at ground floor)

P.A. Ref. 0470055 – refers to a 2005 grant of permission for a mixed development at the corner of Holborn Street and Connaughton Road, Sligo. The development is to consist of the demolition of 2 no. existing houses and adjoining sheds and the construction of a three and four storey building containing 1 no. retail unit of 505m² and 16 no. apartments, all with associated site services and landscaping.

A third-party appeal (ref. PL.77.210035) was made but subsequently dismissed on the grounds that the appeal referred to development of lands not forming part of the application site.

P.A. Ref. 0670045 – refers to a 2006 grant of retention permission for alterations and permission for further alterations to development granted under P.A. Ref. 0470055.

P.A. Ref. 0770042 – refers to a 2007 grant of permission to sub-divide the retail element at ground floor into three separate units.

P.A. Ref. 1170009 – refers to a 2011 grant of permission for change of use of 2 no retail units to form a new unit for the provision of medical / health related services and a new unit to provide storage.

5.0 Policy Context

5.1. Development Plan

The site is governed by the policies and provisions contained in the Sligo County Development Plan 2024-2030, hereafter referred to as the Development Plan. The Development Plan took effect on the 11th November 2024 except for those parts of the Plan which are subject to a Draft Ministerial Direction. The Draft Ministerial Direction was issued on the 8th November 2024 and relates to land use zonings in a number of settlements and separately to text relating to access onto national primary roads. I am satisfied that the Draft Ministerial Direction has no direct implications for the appeal site.

The site is zoned TC1 - Town Centre Uses, the objective of which is to *Protect the historic character and of Sligo's old town core through conservation, regeneration and public realm improvements, and promote civic, retail and compatible uses that preserve the town core's identity and attractiveness.*

5.2. Natural Heritage Designations

The site is situated c. 50m east of the Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC, c. 170m northeast of the Lough Gill SAC and c. 380m southeast of the Cummeen Strand SPA.

The site is situated c. 50m east of the Cummeen Strand/Drumcliff Bay (Sligo Bay) pNHA and c. 170m northeast of the Lough Gill pNHA.

6.0 The Referral

The referral received was not determined by the Planning Authority who have referred it to An Coimisiún Pleanála under Section 5(4) of the Planning and Development Act 2000 (as amended). Sections 6.1, 6.2 and 6.3 below set out the following:

- The case as set out in the original Section 5(1) declaration application,
- The Planning Authority's referral under Section 5(4),
- A response received from the owner of the apartments which are currently being used for accommodating persons seeking international protection and which are the subject of this referral.

6.1. Application for Section 5(1) declaration to Sligo County Council

John Molloy owns 1 no. apartment (Number 17) within the Milligan Court complex. He outlines that he lets the apartment as student accommodation.

The applicant for the declaration considers that a material change of use is ongoing in the Section 50 part of the overall development for the reason that the planning permission is for student accommodation use of those apartments for the academic year.

6.2. Planning Authority Referral as per Section 5(4)

Sligo County Council referred the Section 5 application to An Coimisiún Pleanála for determination. As set out in Section 2.2 above, this referral included a slight alteration to the question posed by the original Referrer as follows:

- Whether the use of the Section 50 multi-unit building previously occupied by students during the academic year since 2007 for accommodating asylum seekers instead of students is or is not development and would it comprise of a material (change of use) for planning purposes.

The planning authority makes reference to a declaration issued by An Bord Pleanála under ref. ABP-307077-20 where it was determined that the *use as apartments, including residential accommodation for protected persons, is not development.*

Notwithstanding the above, the planning authority, without giving an opinion either way, suggests that the provision of student accommodation could be considered to be more of a commercial form of the provision of residential units which were in keeping with the standards set out in the document 'Guidelines on Residential Developments for Third Level Students (Dept. of Education and Science, 1999), and not as per residential accommodation as set out under Ref. ABP-307077-20.

6.3. Owner Response

As noted above, the original declaration request to Sligo County Council was made by John Molloy, the owner of 1 no. apartment within Milligan Court. Sligo County Council did not make a determination and subsequently made its own referral on the matter to An Coimisiún Pleanála. Pursuant to Section 129 of the Planning and Development Act 2000 (as amended), An Coimisiún Pleanála provided a copy of Sligo County Council's referral and the original declaration request to the other property owner within Milligan Court. A response was received from a planning consultant on behalf of Eastview Ltd, whom, it is stated, controls 47 no. units within the overall Milligan Court complex. The response includes a barrister's legal opinion on the referral. The pertinent points made in the response can be summarised as follows:

- It is understood that the Section 50 reference in the original declaration request relates to Section 50 of the Finance Act 1999 which provided 'for scheme of tax relief for rented residential accommodation for third level students' with reference to Guidelines on Residential Development for 3rd Level Students, 1999, Section 1.
- The declaration sought refers to Section 50 apartments. This indicates that the scope of the request is confined to the 33 no. apartments granted under pl. ref. 0370139 as amended by 0470145 (ACP Ref. PL 77.211144).
- The use of the building applied for under pl. ref. 0370139 was identified as residential, with varying forms of potential occupants indicated – student accommodation, elderly housing and social housing.
- The application as lodged did not specify which units would be used for student accommodation and which would be used for social housing. Section 8 of the

submitted planning application form (gross floor space of buildings) refers to apartments / townhouses (including social /elderly housing units).

- Condition 2 on the ACP Ref. PL 77.211144, a permission which varied the parent permission 0370139, stated that *'This permission is in respect of a development incorporating a total of 33 number residential units'*, with the permission making no reference to or qualification based on Section 50 of the Finance Act 1999.
- The 33 units are therefore permitted as residential units.
- The subject units are currently accommodating people seeking international protection and are being managed by IPAS in line with all appropriate legislative and regulatory requirements. The lease in place is directly comparable to previous leases with Sligo County Council for social housing tenant accommodation.
- Section 3(1) of the Planning and Development Act 2000 (as amended) defines 'development' as *the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land,*
- No structural works took place to facilitate the occupancy by persons seeking international protection and question of 'works' did not arise in the declaration request.
- Section 3(1) does not define the phrase 'material change of use' and as such in order to determine the materiality of any change, the practical impacts and effects of the proposed change of use must be considered by An Coimisiún.
- In this regard, reference is made to *Monaghan County Council v Brogan*, where Keane J., in considering the question as to whether a change of use is a material one, stated that the issues of relevance to the question are: *'the matters which the planning authority would take into account in the event of a planning application being made for the use. If these matters are materially different (from the original use), then the nature of the use must be materially different'*.

- The occupancy of Milligan Court by IPAS is fully consistent with the previous occupancy of the units by Sligo County Council for social housing tenancy and student accommodation, all being residential in nature.
- The use of the existing accommodation by IPAS persons is not a change of use or therefore 'development' within the meaning of Section 3(1) of the Planning Act.

Summary of legal opinion submitted

- By reference made by the original referrer to Section 50 apartments, the declaration is confined to the 33 units granted under pl. ref. 0370139 and pl. ref. 0470145 (ACP Ref. PL 77.211144).
- Based on the terms of the planning permissions granted, with particular reference to ACP Ref. PL 77.211144, it is considered that all apartments in Milligan Court have permitted residential use.
- It is denied that there is any use which might be described as 'commercial residential' relevant to this referral as may be suggested by the planning authority sufficient to justify the Commission departing from its decision in ABP-307077-20, or at all.
- In the same way as was stated by the Planning Inspector in ABP-307077-20, Milligan Court '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.
- In this case, there is no development (change of use) and the question of whether or not such development is exempted development does not arise.

7.0 Relevant Referrals

The following referrals, the subject of declarations by An Bord Pleanála, are considered relevant in the context of submissions made:

ABP Ref: 307077-20: An Bord Pleanála determined that the use of apartments for protected persons was not development, as the permitted use of the apartments was

not abandoned, and the current use of the premises was as apartments, and therefore no material change of use was involved.

8.0 Statutory Provisions

8.1. Planning and Development Act, 2000 (as amended)

Section 2(1) defines "Works" as follows: 'includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...'.

It further states the following regarding "use": 'in relation to land, does not include the use of the land by the carrying out of any works thereon'

Section 2(1) defines "student accommodation" as a building or part thereof used, or to be used, for the sole purpose (subject to paragraph (b)) of providing residential accommodation to students during academic term times, whether or not provided by a relevant provider (within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012), and that is not used, or to be used,—

(a) as permanent residential accommodation, or

(b) as a hotel, hostel, apart-hotel or similar type accommodation other than for the purposes of providing residential accommodation to tourists or visitors outside of academic term times.

I note that the above definition for student accommodation was introduced by the *Planning and Development (Large Scale Residential Developments) Act 2021 (40/2021), s. 2, S.I. No. 715 of 2021*.

Section 3(1)(a) defines "Development" as, '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 outlines various forms and circumstances in which development is exempted for the purposes of the 2000 Act, including Section 4(1)(h) which refers to works that do not materially affect the external appearance of the structure as to render it inconsistent with the character of the structure or of neighbouring structures.

In addition to specified exemptions in the 2000 Act, Subsection 4(2) provides that the Minister may by regulations provide for any class of development being exempted development.

Section 181 of the Act was updated in 2022 to include specified class or classes of exempted development for temporary accommodation for displaced persons from Ukraine, carried out on or behalf of a State Authority under section 181 of the Act.

181.—(1) (a) The Minister may, by regulations, provide that, except for this section [and sections 181A to 181C], the provisions of this Act shall not apply to any specified class or classes of development by or on behalf of a State authority where the development is, in the opinion of the Minister, in connection with or for the purposes of public safety or order, the administration of justice or national security or defence and, for so long as the regulations are in force, the provisions of this Act shall not apply to the specified class or classes of development.

8.2. Planning and Development Regulations, 2001-2025

Article 6(2) of the Regulations provides that, subject to Article 9, specific classes of development shall be exempted development, provided that the development complies with any conditions and limitations in set out in column 2 of that relevant class.

Class 14	Conditions and Limitations
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	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.

overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,

(i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons, and

(j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the

Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of

premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both.	use specified in Class 14(h) or (i) or both, whichever date is the earliest.
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Statutory Instrument 376 of 2023 titled Planning and Development (Exempted Development) (No. 4) Regulations 2023 is an amendment to the 2001 Regulations which inserted a new Class 20F to Part 1 of Schedule 2 of the 2001 Regulations. Class 20F is set out as follows:

Class 20F	Conditions and Limitations
Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop,	<ol style="list-style-type: none"> 1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection. 2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001. 3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028. 4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes

<p>office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction</p>	<p>of accommodating persons seeking international protection in accordance with paragraph 3 of this class.</p> <p>5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.</p> <p>6. ‘displaced persons’, for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.</p> <p>7. ‘international protection’, for the purpose of this class, has the meaning given to it in section 2 (1) of the International Protection Act 2015 (No. 66 of 2015).</p> <p>8. ‘temporary protection’, for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001.</p>
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Article 10 legislates for a change of use and article 10(1) states the following:

“Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.”

8.3. S.I. No. 306/2022 - European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022

“displaced persons” means persons to whom temporary protection applies in accordance with Article 2 of the Council Implementing Decision;

“relevant period” means the period commencing on the making of these Regulations and ending when the temporary protection introduced by the Council Implementing Decision comes to an end in accordance with Article 6 of the Council Directive;

“State authority” means –

- (a) a Minister of the Government, or
- (b) the Commissioners of Public Works in Ireland;

“temporary protection” has the same meaning as it has in the Council Directive.

3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons.

(2) A reference to “proposed development” in sections 181A to 181C of the Act of 2000 shall include a reference to development of a class specified in the Schedule to which section 181A(1) of the Act of 2000 would apply if it was development of a class specified in regulations made under section 181(1)(a) of the Act of 2000.

SCHEDULE

Article 3

1. Reception and integration facilities.
2. Residential accommodation, including ancillary recreational and sporting facilities.
3. Medical and other health and social care accommodation.
4. Education and childcare facilities, including ancillary recreational and sporting facilities.
5. Emergency management coordination facilities.

6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.

7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

8.4. Guidelines on Residential Developments for 3rd Level Students - Section 50 Finance Act 1999 (Dept. of Education and Science, 1999)

The guidelines outline that Section 50 of the Finance Act, 1999 provides for a scheme of tax relief for rented residential accommodation for third level students and that the purpose of the guidelines is to assist developers and designers in formulating proposals for student residential development. Guidance included the following:

Qualifying Areas

Properties qualifying for relief under the scheme should be located within qualifying areas. For the purposes the scheme qualifying areas are: (1) Campus areas of the educational institutions, or (2) Areas, within an 8 km radius of the main campus, which are approved by the certifying educational institution as being an area within which a qualifying development may take place.

Total Floor Areas of Qualifying Premises

Accommodation under the scheme shall be provided by groupings of study bedrooms in "house" units. Each unit shall consist of a minimum of 3 bed spaces and an overall minimum gross floor area of 55 sq. metres, up to a maximum of 8 bed spaces and a maximum of 160 sq. metres.

Bedrooms

These will be used as study bedrooms requiring desk space, and storage. Therefore, one of the following minimum areas shall apply depending on provision of bathroom facilities:

- Single study bedroom 8sq.m
- Single study bedroom with ensuite shower, toilet and basin 12sq.m
- Twin study bedroom 15sq.m

- Twin study bedroom with ensuite shower, toilet and basin 18sq.m
- Single Disabled study bedroom, with ensuite disabled shower, toilet and basin 15sq.m

Communal Facilities and Amenities

Communal facilities to service the needs of student residents should be provided for. The definition of qualifying developments includes "house" units and ancillary spaces including:

- caretaker/security office and apartment;
- centralised storage;
- laundry facilities;
- drying rooms and utility rooms;
- and a seminar room.

8.5. Appropriate Assessment

I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.

The site is not situated within or directly adjacent to any European Site. The site is situated c. 50m east of Sligo Bay estuary, which is designated an SAC, called the Cummeen Strand/Drumcliff Bay (Sligo Bay) SAC.

The proposed development comprises the use of an existing building.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The nature of the existing development in a serviced urban area,
- The screening determination made by Sligo County Council in the report furnished to the Commission.

I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

8.6. Environmental Impact Assessment

Refer to Appendix 1 (EIA Form 1 - Pre-Screening). The subject referral relates to the use of an existing building. The change of use does not constitute a project for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings.

9.0 Assessment

9.1. Introduction

It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the accommodation use and any associated building alterations in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development. Likewise, planning enforcement is a matter for the planning authority and does not fall within the jurisdiction of the Commission.

As set out under Section 2.0 of this report, the question upon which my assessment is based is as follows:

Whether the use of the Section 50 multi-unit building, previously occupied by students during the academic year since 2007, for accommodating persons seeking international protection instead of students is or is not development or is or is not exempted development.

9.2. Is or is not development?

- 9.2.1. 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'.
- 9.2.2. Both the original declaration request and the planning authority's referral query whether a material change of use has arisen.
- 9.2.3. The key consideration centres on the use permitted by the parent planning permission granted by the planning authority in 2004 (pl. ref. 0370139) and the subsequent grant

of permission in 2005 by An Bord Pleanála for amendment to same under ref. PL 77.211144.

- 9.2.4. In terms of background, Section 50 of the Finance Act, 1999 provided for a scheme of tax relief for rented residential accommodation for third level students. Section 50 of the Finance Act, 1999 refers to qualifying criteria in terms of qualifying areas and design parameters set out in Guidelines to be published by the Minister for Education and Science in consultation with the Minister for the Environment and Local Government and with the consent of the Minister for Finance. On foot of this legislation, the *Guidelines on Residential Developments for 3rd Level Students - Section 50 Finance Act 1999 (Dept. of Education and Science, 1999)* were published, the purpose being to assist developers and designers in formulating proposals for student residential development and to ensure that the overall standard of design and construction of accommodation being provided would promote the objectives of the Student Residential Accommodation tax incentives.
- 9.2.5. The original referrer, being the owner of one apartment in the complex, which he states is let for student accommodation, contends that the use of the apartments for housing asylum seekers constitutes a material change of use on the basis that the permissions pertaining to the complex is for student accommodation during the academic year.
- 9.2.6. Meanwhile, the response received from the owner of the remaining element of Milligan Court, for which there would appear to be an IPAS related contract in place, outlines that this entity controls 47 no. units in Milligan Court and that apart from 22 no. units let as social housing, the remainder were used for student accommodation. The response further states that student accommodation ceased in 2023, all units vacant by June 2004 and IPAS tenants took up residency in September 2024. The response contends that whilst the applications pertaining to pl. ref. 0370139 and pl. ref. 0470145 / ACP ref. PL 77.211144 refer to Section 50 student accommodation, the relevant permissions granted are for residential units noting that conditions attached to the permissions do not refer to student accommodation, and on this basis no change of use has occurred.
- 9.2.7. The public notices for Pl. ref. 0370139 refer to, ‘...27 no. apartments / townhouses (including a caretaker’s apartment) whose use is to include Section 50 student accommodation and social housing...’. Public notices for the subsequent application

for amendments, for which An Bord Pleanála granted permission (ref. PL 77.211144), refer to, ‘...*The proposed variations are: omission of office space; provision of 18 no. additional apartments / townhouses (including 1 no. caretaker’s apartment) – bringing total no. to 45 units, whose uses are to include Section 50 student housing / social housing...*’. Noting that Condition 2 on the permission reduced the number of units to 33 no. and required amended plans to be submitted and agreed with the planning authority.

9.2.8. The legal opinion submitted with the property owner’s response places great emphasis on the term ‘*to include*’ in the development description, the use of which, according to the legal opinion, merely sought to clarify that such residential uses was *to include* Section 50 student accommodation. Under the same response received, and in the same context as the legal opinion, the planning consultant contends that the use of the building was identified as residential with varying forms of potential occupants indicated – student accommodation, elderly housing and social housing.

9.2.9. I consider that there are a number of key facts specific to this case that assist in determining the permitted use.

- In 2004, under Pl. ref. 0370139, Sligo Borough Council granted permission for office floor space (183sq.m) and 27 no. apartments/townhouses (including a caretaker’s apartment) whose use is to include Section 50 student accommodation and social housing; a laundry room; a central storage room, substation and seminar room.

The cover letter submitted with the application outlined that the applicant intended to offer 8 no. units to meet the 20% Part V requirement for the application site and the adjoining site, which was subject to a separate planning application, and that it was the applicant’s particular desire to see 4 no. of the Part V units being used as independent housing for the elderly, and further down within the same cover letter expresses a desire to see all 8 no. Part V units being provided as elderly / independent living units, and potentially a further 15 no. units being used for elderly / independent living.

Condition 1 required the development to be carried out strictly in accordance with those plans and particulars submitted.

Condition 12 required agreement for the provision of Part V social and affordable housing.

- In 2005, under ref. PL 77.211144 (Pl. Ref. 0470145), An Bord Pleanála granted permission for variations to pl. ref. 0370139. The application sought to omit the office space and to increase the number of units from 27 no. permitted to 45 no. in total, thus an increase of 18 no. units. The grant of permission by An Bord Pleanála allowed for 33 no. apartments in total (with reference to Condition 2) and the omission of the office space.

Section 2.1 of the Inspector's Report under PL 77.211144 refers to a cover letter submitted with the application, which outlined that the project is a tax incentive based project, and that the proposed Section 50 development was not financially viable given the number of units (27 no.) previously granted, and as a result permission was being sought for additional units.

The cover letter also refers to the Part V obligation, offering either 9 no. townhouses (20% of the proposed increase to 45 no. units) or alternatively, an offer to pay a contribution in lieu. There was no reference made to the previous desire for elderly / independent living units, either as Part V or otherwise.

While the description of development refers to variations, the permission granted was stand alone with no conditions tying it back to the permission granted under Pl. ref. 0370139.

In addition to the 33 no. apartments, the permission included a caretaker's apartment, office, central store, laundry room and seminar room. With reference to the drawings submitted for compliance with Condition 2 on PL 77.211144 (available on public file), the majority of units comprise single and twin bedrooms, noting that three units had one bedroom only. The type of accommodation and facilities provided generally accords with the standards set out in the '*Guidelines on Residential Developments for 3rd Level Students - Section 50 Finance Act 1999 (Dept. of Education and Science, 1999)*'

Condition 1 required the development to be carried out in accordance with those plans and particulars submitted including amended plans received by An Bord Pleanála, and with further revisions required by Condition 2.

Condition 2 states that '*This permission is in respect of a development incorporating a total of 33 number residential units*' and required further amendments with drawings to be submitted to the planning authority for agreement.

Condition 10 required agreement for the provision of Part V social and affordable housing.

- 9.2.10. As noted above, the referral response, as received on behalf of the owner of the units which are subject to an IPAS contract, argues that the reference made to the Section 50 student accommodation sought to merely clarify that the residential uses was to include Section 50 student accommodation. Additionally, and as also noted above, the planning consultant's report submitted points out that the use of the building applied for under pl. ref. 0370139 was identified as residential, with varying forms of potential occupants indicated – student accommodation, elderly housing and social housing.
- 9.2.11. I acknowledge that the cover letter under the first permission (pl. ref. 0370139) does refer to the possibility that further units, beyond the Part V provision, could be used for elderly accommodation, however, I would firstly note that the reference in this regard is made in the context of the entire development, including the adjoining site, which was subject to a separate planning permission for 15 no. residential units (P.A. Ref. 0470055), with no reference made to Section 50 student accommodation, and, secondly, this same vision for elderly accommodation was not, in my view, carried through to the subsequent application (to which PL 77.211144 relates) which sought to amend the parent permission by omitting office space and making provision for additional units. By reference to the cover letter submitted with that application, this move to increase unit numbers would appear to have been commercially motivated and directly linked to the Section 50 tax incentive scheme.
- 9.2.12. The legal opinion submitted with the referral response also draws attention to Condition 2 on An Bord Pleanála's decision under ref. PL 77.211144 (amendment application), the first sentence of which reads that '*This permission is in respect of a development incorporating a total of 33 number residential units*', which, according to the legal opinion indicates that the permitted use is residential with no reference to Section 50 student accommodation. In my view, the purpose of the reference to 33 no. residential units under Condition 2 is to confirm the number of units permitted

rather than confirm the intended use, noting the remainder of the same condition outlines the associated changes required to the plans including the various unit numbers to be omitted.

9.2.13. I would also note that the word 'Residential' is not defined in its own right under the Planning and Development Act 2000 (as amended) or the Planning and Development Regulations 2001-2025. Whilst a later addition to the 2000 Planning Act, I note that Section 2 of the Planning and Development Act 2000 (as amended) defines large-scale residential development, in the context of large-scale residential development (LRD) projects as being development that includes, *inter alia*, (a) the development of 100 or more houses, (b) the development of student accommodation that includes 200 or more bed spaces, (c) both the development of 100 or more houses and of student accommodation, or (d) both the development of student accommodation that includes 200 or more bed spaces and of houses. As such, I am satisfied that in the context of the subject site, the term 'residential units' has the effect of covering all forms of residential use.

9.2.14. In my view, the critical consideration is Condition 1 of PL 77.211144 and its reference to the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála. Looking at the application objectively, and notwithstanding the arguments put forward in the referral response received, the plans and particulars submitted with the application, including public notices, cover letter and drawings, refers to a development laid out for student accommodation, and is thus, in my view, permitted as such. This includes a caretaker's apartment, seminar room, office, laundry room, and with the majority of apartment units laid out with 3 no. bed spaces in a twin and single room format, all attributes necessary to comply with the *Guidelines on Residential Developments for 3rd Level Students - Section 50 Finance Act 1999 (Dept. of Education and Science, 1999)* and thus qualify for tax relief under Section 50 of the Finance Act 1999.

9.2.15. On the basis of the above, I consider that the permitted use of the 33 no. apartments, which are the subject of this referral, is student accommodation, a development which has been implemented. Any units within the scheme that were subject to a Part V social and affordable housing agreement with the local authority would be, in my view, suitably excluded from the student accommodation use, however, whilst the referral response makes reference to previous social housing related occupancy, there is no

information on file with regards to any Part V agreement in place with respect to the permissions granted for the site. I do not envisage that the grant of planning permission gave flexibility to change the type of use on an on-going basis.

- 9.2.16. In order for a change of use to be considered development, it must be a material change in the use as per the definition of development provided in Section 3(1)(a) of the 2000 Act.
- 9.2.17. Having regard to the nature of the use, it is my view that student accommodation is materially different to private residential dwellings, particularly by reason that the layout of accommodation and associated facilities was informed by the *Guidelines on Residential Developments for 3rd Level Students - Section 50 Finance Act 1999*. Whilst the development pre-dated the definition of student accommodation set out under Section 2 of the 2000 Act, as amended, it is still, in my view, a useful reference point. It is my opinion, therefore, that the change of use of the building from student accommodation to a residential use to accommodate persons seeking international protection is a material change of use which constitutes development.
- 9.2.18. On this point, the submitted legal opinion considers that the precedent set under ABP-307077-20 is applicable in this case. ABP-307077-20 relates to a declaration sought, *inter alia*, as to whether the change of use of apartments to residential accommodation for protected persons is or is not development. The development, to which the declaration under ABP-307077-20 related, was originally approved by Leitrim County Council under P.A. Ref. 041546, with further permissions amending same including P.A. P05/544 and P.A. Ref. 07/585, with permissions referring to the provision of residential units which, in my view, communicates no ambiguity with regards the intended use other than conventional residential dwellings. As noted earlier in my report, the declaration issued by An Bord Pleanála under ref. ABP-307077-20 determined that the *use as apartments, including residential accommodation for protected persons, is not development*. The legal opinion submitted in response to this current referral before the Commission considers that the precedent set under ABP-307077-20 is applicable in this case on the basis that the accommodation of persons seeking international protection is within the permitted residential use of Milligan Court, thus there is no development (by change of use). However, as outlined above, it is my view that the permitted use of the relevant apartments at Milligan Court is student accommodation, a use which is materially different than residential use in its

conventional form of private residential. Therefore, in my view, a material change of use has occurred, which constitutes development.

9.3. Is or is not exempted development

9.3.1. Finally, this section of the report will determine if that development is exempt development or not. There are potentially three classes of development to assess as set out previously, Class 14, Class 20F and S.I. No. 306/2022.

Class 14

9.3.2. The Planning and Development (Amendment) (No.4) Regulations 2015 (S.I No 582/2015) amend Part 1 of Schedule 2, entitled 'Exempted Development - General' to insert a new section in Class 14 (h), (i) and (j) exemption to allow a change of use of certain class/use of building for protected persons (i.e. an applicant for international protection).

9.3.3. Of relevance is Class 14(h) which relates to development consisting of 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, 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.

9.3.4. Class 14(h) does not include a reference to student accommodation, therefore this class of exemption is not relevant to the referral case.

Class 20F

9.3.5. The Planning and Development (Amendment) (No. 4) Regulations 2022 (S.I 605 of 2022) amended Part 1 of Schedule 2, entitled 'Exempted Development - General' to insert a new Class 20F exemption to allow the temporary use of a certain class/use of building to accommodate persons seeking international protection.

9.3.6. Class 20F was subsequently updated by the Planning and Development (Exempted Development) (No. 4) Regulations 2023 (SI No. 376/2023) to include "displaced persons" as being those persons displaced due to the Ukraine war and to extend the exemption from 31st of December 2024 to 31st of December 2028.

- 9.3.7. Class 20F relates to a temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.
- 9.3.8. Class 20F does not include a reference to student accommodation, therefore this class of exemption is not relevant to the referral case.

S.I. No. 306/2022

- 9.3.9. This legislation provides for the non-application of the Planning and Development Act 2000 (as amended) for certain classes of development including Article 3, class 2 which provides for development comprising temporary residential accommodation for displaced persons from Ukraine.
- 9.3.10. The referral response received on behalf of Eastview Ltd. states that there is a contract to provide accommodation within Milligan Court for protected persons on behalf of IPAS. There is no documentation on file to indicate that the use of the building is to temporarily accommodate displaced persons from Ukraine.
- 9.3.11. On the basis of submitted documentation, it is my view that the exemptions provided under S.I. 306/2022 do not apply in this case.

Conclusion

- 9.3.12. Having regard to the provisions of Section (4) of the Planning and Development Act, 2000 (as amended), the provisions of Article 6(1) and Part 1 of Schedule 2 of the Planning and Development Regulations, 2001-2025, and the provisions of S.I. No. 306/2022 - European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022, there are no provisions, in the Act

and Regulations made thereunder, or other relevant legislation, whereby such development would constitute exempted development.

10.0 Recommendation

10.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the use of the Section 50 multi-unit building previously occupied by students during the academic year since 2007 for accommodating persons seeking international protection instead of students is or is not development or is or is not exempted development.

AND WHEREAS John Molloy requested a declaration on this question from Sligo County Council and the Council did not issue a declaration;

AND WHEREAS Sligo County Council referred this declaration for review to An Coimisiún Pleanála on the 4th day of November, 2024;

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h) of the Planning and Development Act, 2000, as amended,
- (d) Section 181 of the Planning and Development Act, 2000, as amended, and SI 306/2022 'European Union (Planning and

Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022'

- (e) article 6(1), article 9(1) and article 10(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Class 14 and Class 20F of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) the referral response, including legal opinion, submitted to the Commission on the 13th January 2025 on behalf of Eastview Ltd.
- (h) the planning history of the site,
- (i) the pattern of development in the area:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The permitted use of the 33 no. apartments, which are the subject of this referral, is student accommodation, a development which has been implemented, and
- (b) The use of apartments for accommodating persons seeking international protection instead of students constitutes a material change of use, thus constitutes development pursuant to Section 3(1) of the Planning and Development Act 2000 (as amended), and
- (c) Having regard to the provisions of Section (4) of the Planning and Development Act, 2000 (as amended), the provisions of Article 6(1) and Part 1 of Schedule 2 of the Planning and Development Regulations, 2001-2025, there are no provisions in the Act and Regulations made thereunder, or other relevant legislation, whereby such development would constitute exempted development.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) (b) and section 5 (4) of the 2000 Act, hereby decides that the use of the Section 50 multi-unit building previously occupied by students during the academic year since 2007 for accommodating

persons seeking international protection instead of students is development and is not exempted development.

Inspectorate

11th December 2025

Appendix 1 - Form 1

EIA Pre-Screening

Case Reference	ABP-321202-24
Proposed Development Summary	Whether the use of the S50 multi-unit building previously occupied by students during the academic year since 2007 for accommodating asylum seekers instead of students is or is not development and is or is not exempted development.
Development Address	Multi-unit building at Mulligan Court, Connaughton Road, Sligo, Co. Sligo.
In all cases check box /or leave blank	
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed	No Screening required.

road development under Article 8 of the Roads Regulations, 1994.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.	
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.	

Inspectorate

11th December 2025