



An
Coimisiún
Pleanála

Inspector's Report ABP-321968-25

Question

Whether use of the premises at 32 Sandhills, Hacketstown Road, Carlow, R93 V6K7 as a residence for International Protection Applicants constitutes development and whether, if it does, it can be considered exempted development.

Location

32 Sandhills, Hacketstown Road, Carlow, R93 V6K7

Declaration

Planning Authority

Carlow County Council

Planning Authority Reg. Ref.

S5/24/64

Applicant for Declaration

Didean Dochas Eireann Teoranta.

Planning Authority Decision

No declaration

Referral

Referred by

Carlow County Council

Owner/ Occupier

None

Observer(s)

None

Date of Site Inspection

15th January 2026

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1.0 Site Location and Description

- 1.1. The referral property is a semi-detached house located within a suburban housing development on the eastern edge of Carlow town and includes a front driveway and rear garden.
- 1.2. The internal layout of the property comprises of a living room to the front, and kitchen / dining room situated to the rear at ground floor level. The property includes 3 bedrooms at first floor level.
- 1.3. The property has side access to the rear garden area, and the house is currently occupied by a family of international protection applicants.

2.0 The Question

Whether the use of the subject premises at 32 Sandhills, Hacketstown Road, Carlow, to provide accommodation for persons seeking international protection, is or is not development and/or is or is / not exempt development.

3.0 Planning Authority Declaration

- 3.1. No declaration made by the Planning Authority. The Planning Authority on the 24th of February 2025, in accordance with Section 5(4) of the Planning and Development Act, 2000 (as amended), referred a referral to the Commission for determination.

3.2. Planning Authority Reports

3.2.1. Administrative Officer's Correspondence to ACP

- This section 5 application is one of 8 concurrent s. 5 applications made by the applicant for different properties for the same use.
- Further information was sought to clarify the nature and extent of the uses to determine whether the uses alter the character of a typical private dwelling occupancy that is material in nature which would give rise to impacts on proper planning and sustainable development.

- Further information was received. There remains an absence of clarity and detail regarding the full nature and extent of the applicant's use of the dwelling house.
- Application referred to ACP for review.

3.2.2. Planning Reports

3.2.3. The Planning Officer's Report, dated 17th February 2025, relates to 8 no. concurrent section 5 applications received by the Planning Authority, including the section 5 application referred to the commission (S5/24/64).

3.2.4. The Planner's Report includes details of the applicant, based on the application documentation and the applicant's website, the relevant statutory provisions, and the Planning Authority's Assessment. The following is a summary of the Planning Authority's Assessment.

Question of Development

- Relevant case law includes Cusack v. Minister for Local Government, McMahon v Dublin Corporation, Monaghan County Council v. Brogan, and Galway County Council v Lackagh Rock.
- The issues to consider is
 1. whether the character of the previous use as a typical dwelling house occupancy to accommodate international protection applicants has changed, and
 2. would there be potential external material impacts that would not have arisen with the previous private dwelling house.
- The applicant is accommodating international protection applicants and providing direct services to the residents in the dwelling, in a commercial capacity.
- The applicant has a portfolio of properties providing similar services.
- The applicant is contracted by the Reception and Integration Agency (RIA) for operation and management of the accommodation.

- The applicant is responsible for providing accommodation in accordance with the National Standards for Accommodation.
- The applicants' direct services are provided on a visiting basis up to 3 hours a week per person.
- The level of care encompasses a large range of services including access to public services, medical/health services, language translation services, schooling, transport, community services etc.
- It is contended that the applicant's accommodation and level of 'direct care' comes within the definition of care in Article 5(1) of the Regulations.
- The level of care is more akin to a residential care type setting, which differs from a typical private dwelling house setting.
- It is accepted that the use of the dwelling house will remain as residential, however it is considered that the accommodation is different to a typical house, due to the structured provision of care.
- Further the applicant is leasing the property for such purposes being provided to occupants with specific social needs due to their status as international protection applicants.
- It is established in planning law that changes of use within a class of exempted development may constitute a material change of use.
- Class 9 of Part 4 of Schedule 2 makes a clear distinction between a use comprising the provision of a residential accommodation and care to people in need of care and use as a house.
- A dwelling is therefore not deemed to be the same category of use as residential accommodation where care is provided to occupants.
- Class 14(h), Class 14(i) and Class 20(F) of the Regulations provide exemptions for a change of use of a long list of building types for protected persons. There is no exemption for a change of use of a dwelling house to use as residential accommodation for international protection applicants.
- Exemptions for change of use of dwelling house, or part of a dwelling house, do exist for guest accommodation (Art. 10(4)), childminding (Art. 10(5), and

residence for care of people with disability or mental illness (Class 14(f) in Part 1 of Schedule 2).

- The provision of direct services comprising of 3 hours per week per individual would give rise to more than an average of 1 vehicle movement to/from the dwelling house each day.
- The vehicular movement would be different in nature and extent to a typical private dwelling house.
- The occupancy of the dwelling houses for international protection is more transient in nature, where the occupants can and/or will change and over the course of the year. This is different to a typical private dwelling occupancy which is more permanent and long term.
- The ABP decision in ABP-307077-20 is different to the current case in that in the ABP decision the property did not include the provision of any care services for protected persons and was just operated as apartments. As such the applicant cannot rely on ABP-307077-20 as a precedent.
- The referral site is located on land zoned 'Existing/Infill Residential' in the Carlow-Graiguecullen Joint Urban Local Area Plan, 2024 – 2030 (JULAP). The JULAP lists 'dwelling' and 'residential institution' as different uses in the 'permitted in principle' and 'open for consideration' for the land use zoning categories.
- Residential institution is only listed within the 'community/education' land use zoning objective and as 'open for consideration'. In this instance residential institution is considered to be a type of residential accommodation where care is provided.
- A planning application where care is provided for occupants would give rise to different matters being taken into account than a planning application for a typical private dwelling house.

Question of Exempted Development

- Class 14(h), Class 14(i) and Class 20F of the Regulations provide exemptions for a change of use of a long list of building types for protected persons, however there is no exemption to provide for a change of use of a dwelling

house to use as residential accommodation for persons seeking international protection.

3.2.5. The Planning Officer's report recommended that the following be addressed by way of further information.

1. Clarify the nature of the applicant and role in providing accommodation for international protection applicants.
2. Clarify the use of the dwelling house.
3. Clarify the nature of the direct care facility.
4. Whether the kitchen and dining facilities would be shared should additional occupants be accommodated.
5. Clarification whether the care facilities come within the definition of Care in Article 5(1) of the Regulations.
6. Clarify the extent of vehicular movements generated by the direct services.
7. Clarify the duration and frequency of occupancies and how this is comparable to typical private dwelling house occupancy.
8. Submit details of how ABP-307077-20 can be considered a precedent given that the referral property provides care services.

3.2.6. The Planning Officer's report assessed the further information received as follows:

- The nature and extent of the direct services provided by the applicant for each dwelling house is a commercial operation. The vehicular movement generated by the direct services would rise to more than 1 vehicle movement to/from a dwelling house.
- The dwelling house is occupied by single families and should the dwelling accommodate additional occupants the question of subdivision of two or more dwellings arises.
- The multi-occupancy of the dwelling with the provision of care would alter the character of a private dwelling occupancy use giving rise to impacts on the proper planning and sustainable development of the area.

- The further information submitted has not comprehensively addressed the nature of the direct services, such as social care services, supported living, day and community outreach services to individuals or groups. The provision of these services is considered to come within the definition of care in Article 5(1) of the Regulations.
- The additional information does not address the clear distinction between a use comprising the provision of a residential accommodation and care to people in need in care, and use as a house as set out in Class 9 in Part 4 of Schedule 2 of the Regulations.
- The further information does not address the transient nature of the occupants relative to a typical private dwelling house occupancy.
- The further information submitted does not address the issue how ABP-307077-20 can be considered a precedent given that the referral property provides care services.

3.2.7. Other Technical Reports

- None

4.0 Planning History

- P.A. Ref. 99/104 – Planning permission **granted**, subject to conditions, on the 20th of August 2000 for 385 no. houses.

5.0 Policy Context

5.1. Carlow-Graiguecullen Joint Urban Local Area Plan, 2024-2030

- 5.1.1. The referral site is zoned 'Existing Infill / Residential' whereby the land use zoning objective is, as follows.

'To protect and improve existing residential amenity; to provide for appropriate infill residential development; to provide for new and improved ancillary services'.

5.2. Natural Heritage Designations

- River Barrow and River Nore SAC – (site code 002162) – 2 km west
- Oakpark pNHA (site code 001080) – 3.1 km north

6.0 The Referral

6.1. The following is a summary of the applicant's case, submitted to the Planning Authority.

The applicant

- The applicant has a portfolio of 2, 3 and 4-bed properties providing residential accommodation for those awaiting political asylum in a variety of locations including typical residential communities.
- The applicant facilitates a visiting service or support where required.
- The applicant also provides support living, day and community outreach services to both children and adults, as a household or family.
- Accommodation is provided to international protection applicants on a 6 to 18-month basis
- Direct services are provided on occasional basis (c. 3 hours a week on a visiting basis) ranging from social care services including arranging school places, sourcing doctors, arranging medical cards, IPAS appointments, medical assessments.
- No staff are based in the applicant's properties.
- The services are provided on a visiting basis and are not different to a traditional domestic setting, e.g. elderly or infirm occupants of a dwelling.
- The applicant's properties accommodate between 3 and 8 persons.
- Overcrowding does not occur. The properties are used for residential purposes and will not be used for reception or administrative purposes.
- Various nationalities are accommodated in the applicant's properties (but no persons of Ukrainian nationality).

- The advice from Senior Counsel is that the use is not development.

The Subject Premises

- The property is occupied by a family of international protection applicants.
- No internal or external modifications were undertaken.

The Subject Proposal

- To provide residential accommodation and direct services for persons seeking international protection.
- Provision of visiting services/or support. The services include a range of supported living, day and community outreach services. The services are provided up to 3 hours a week.
- There is on average one vehicle movement to the subject site.
- The occupants do not have the use of a car.
- The level of car usage is low.
- The property does not include a reception, or lobby or administrative component.
- The premises will continue to operate as a single residential unit, and has not been, nor will it be, subdivided.

Planning History

- There are no physical works inside or outside the property.
- The focus of the application is on the use and whether this use constitutes an intensification of the permitted use, or a material change of use.
- Planning permission was originally granted (PD3698 99/104) for the subject premises as part of a wider housing scheme.
- No conditions were attached to the original permission restricting the subject premises to single families or non-nationals.

Planning Context

- The planning history of the property establishes the scope of the residential use.
- The subject site is zoned residential, and the existing use is a residential use.

- The Joint Opinion of Counsel concludes that no material change of use has occurred, and no works were undertaken at the property.
- The property is not unauthorized as such the continued use of the property is not unlawful.
- No other impact would occur including noise impact or visual impact that would impair existing residential amenity.
- The subject property is not a hostel requiring a change of use.
- The legal opinion concludes that there is no evidence of an intensification at the property nor is there a concentration of other similar accommodation in the immediate locality.
- The provision of direct services is not sufficient to alter the character of the use of the premises as residential.
- The Ballinamore Section 5 Declaration made to ABP would indicate that where no reception or administrative function is provided, and in the absence of any additional material off-site impacts, there is no material change of use from a dwelling.
- There is no change of use, no intensification, no development and no requirement to obtain planning permission.
- An attached recent Section 5 application¹ from Laois County Council confirms that the use for persons seeking international protection, in similar circumstances to the current S. 5 application, is not development.

The Applicants' Case

- The Joint Legal Opinion concludes as follows:
 - The use does not give rise to a material change of use
 - There are no conditions or limitations imposed on the planning permission of the property limiting the use.
 - No works undertaken at the property.
 - There is one kitchen and one living / sitting room serving all residents within the context of a single dwelling. The bathroom is also shared.

¹ L.A. Ref. S5/2024/26

- Currently one family occupies the property.
- Any additional occupants who would be accommodated at the property, sharing the kitchen and living room facilities, would not give rise to a material change of use unless it was accompanied by a material increase in site impacts.
- There is no increased car ownership that would result in increased traffic or car parking demand.
- There is no intention to provide a reception or administrative centre at the site.
- The issue of intensification does not arise. Nonetheless it is only when an intensification gives rise to material planning impacts that a material change of use has occurred.
- The Ballinamore Section 5 Declaration confirms that the use of a residential property by residents seeking international protection is not development.

6.2. The applicant's case includes a legal opinion, prepared by Eamon Galligan SC, and Conor Sheehan BL. The following is a summary of the legal opinion.

- No works have been undertaken to the permitted dwelling.

Material Change of Use

- The subject dwelling will not be subdivided into two or more dwellings.
- A material change of use occurs, first, where there is a change in use and, second, where that change is material. The act of development relates to the change rather than the use itself.
- Relevant case law includes Monaghan County Council v Brogan [1987] IR 333, Esat Digifone v South Dublin County Council (2002) 3 IR 585, Galway County Council v Lackagh Rock (1985), Westmeath County Council v Quirke (1996), Dublin Corporation v Moore (1984).
- There is no Irish case law that determines that the use of a dwelling for accommodating protected persons is a material change of use.

- In referral case ABP-397077-20 the Board determined that 25 own door apartments for use of protected persons did not constitute a material change of use or development.
- In the case of *Panayi v Secretary of State for the Environment* (England) (1985) it was concluded that the use of self-contained flats amounted to a change to hostel use, on the basis of the presence of dormitories and/or communal or shared facilities.
- Other factors for consideration included whether the premises accommodated specific categories of people, e.g. the young or the homeless, whether the premises is serviced, supervised, whether payment is nightly and whether residents are transient.
- In the case of the subject property, the following are relevant considerations,
 - No dormitories or communal facilities are installed.
 - The property is for protected persons, and not a specific age category.
 - The property is not a receptionist facility / administrative centre.
 - No carers are based in the dwelling.
 - No staff are located on the site supervising the occupants.
 - Payment is not made nightly.
 - Accommodation is not provided for the short-term basis (occupants are accommodated for a period of 6 – 18 months).
- No traffic impacts arise from the use of the dwelling over above what would normally be associated with visitors to a house.
- Any services provided to the residents is 3 hours a week on a visiting basis.
- The intended occupancy of the dwelling is 5 – 8 persons.
- The original permission pertaining to the house did not limit the use of the house to any specific category of persons.
- The use has not changed, the use of the dwelling continues for the provision of residential accommodation.

Material Intensification of Use

- Having regard to case law *Cork County Council v Slattery Pre-Cast Concrete* it is considered that the use of a dwelling by protected persons is not a material intensification of the permitted use, such that it gives rise to a material change of use.

Does the Use Constitute Development

- No development has occurred on the basis that there is no works or a material change of use.

Other Issues

- Planning does not focus on the class or type of persons carrying out a particular use but focusses instead on planning and environmental impacts.
- The occupancy by persons without family or other connections where kitchen and other facilities are shared, may operate no differently in planning terms to occupation by a family / household with a lodger provided.
- Class 9 of the Regulations does not apply to the subject property.
- As the provision of services would not give rise to planning impacts of a material nature, then the introduction of such a use cannot be considered to be material in planning terms.
- The weekly care visits are considered ordinarily incidental to the primary use as a dwelling.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended.

7.1.1. 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'

7.1.2. 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’.

7.1.3. Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.

7.1.4. Section 4(4) provides that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

7.2. Planning and Development Regulations, 2001, as amended.

7.2.1. Article 6(1) of the Planning and Development Regulations 2001, as amended, (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’.

7.2.2. 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’.

7.2.3. 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
<p>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</p>	<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 of accommodating persons seeking international protection in accordance with paragraph 3 of this class. 5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.

<p>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>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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7.2.4. As provided for in Article 9(1)(a), the development to which article 6 relates, shall not be exempted development, under certain circumstances and the restrictions and limitations are outlined in this Article.

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

- '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.

7.2.6. 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.

8.0 Relevant Referrals

8.1.1. ABP-321373-24: The Board determined on the 14th of April 2025 that the use of a guesthouse at Dun a Ri House Hotel, Kingscourt, County Cavan, to provide accommodation for persons seeking international protection, is development and is exempted development. The Board determined that the change of use from guesthouse to provide accommodation for persons seeking international protection constitutes a material change of use and therefore development, having regard to Class 6 of Part Four of Schedule 2 of the Planning and Development Act, 2001 (as amended) which does not include the provision of accommodation for international protection applicants as a use in that Class. Further the Board noted that the change of use from guesthouse to the provision of accommodation for International Protection Applicants has been specifically provided for as a class of exempted development in the legislation.

- 8.1.2. ABP-318709-23: The Board determined on the 17th of February 2025 that the use of the buildings/properties/structures located at the Former Great Southern Hotel, for the purposes of accommodating persons seeking international protection is development and is not exempted development.
- 8.1.3. In this case works on a permitted use on site, i.e. nursing home, had commenced but was not completed in its entirety as permitted. The Board determined that the completion of such works to the building/properties/structures on site for any use other than a nursing home would, therefore, (i) contravene a condition attached to a permission under the Planning and Development Act, 2000, as amended, and (ii) be inconsistent with a use specified in a permission under that Act, and be de-exempted under Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as amended, and pending the completion of these works, there are no other exemptions available.
- 8.1.4. ABP-320219-24: The Board determined on the 20th of November 2024 that the proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection is development and is exempted development and Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) is the relevant exemption. The Board also determined that works consisting of the replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door is development and is exempted development.
- 8.1.5. ABP-320031-24: The Board determined on the 19th of November 2024 that the change of use of a dwelling house to accommodation, where care is not provided, for protected persons is development and is not exempted development. The Board concluded that a change of use from a dwelling house to provide accommodation, for protected persons is material change of use.
- 8.1.6. ABP-307077-20: The Board determined in December 2020 that the use of the premises at Cannaboe Street, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons, is not development. The Board determined that 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.

9.0 Assessment

9.1. Introduction

- 9.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the dwelling use 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.

9.2. Is or is not development

- 9.2.1. I acknowledge that the referral submission confirms that no internal or external modifications were undertaken to the house, and this assertion is not contested by the planning authority.
- 9.2.2. I would acknowledge from information on the file that planning permission was granted (P.A. Ref. 99/104) for 385 no. houses, and the subject property is a semi-detached dwelling within this development. Furthermore, and having regard to the planning history on the subject site, there was no subsequent planning permissions altering the property, in terms of use or layout.
- 9.2.3. I am therefore satisfied, based on a visual inspection of the property and the documentation on the file, that the established residential house has not been altered or modified internally or externally. I would therefore conclude that development has not occurred on the referral site due to works.
- 9.2.4. I noted from my site assessment and the documentation on the file that the subject dwelling is currently used to accommodate a family seeking international protection. I would therefore consider that the key question for the Commission to determine in this referral case is whether the use of the existing dwelling to accommodate persons seeking international protection represents a change of use, and if that is the case whether a material change of use has occurred, which would therefore be

development in accordance with Section 3 of the Act. I will firstly consider whether a change of use has occurred.

9.2.5. Change of Use

As noted above no. 32 Sandhills is used as residential accommodation for persons seeking international protection. Based on my site assessment the house appears to be operating solely for residential accommodation purposes, and there is no reception orientation or on-site care facilities within the property. The referrer also submits that no staff are based in the applicant's property.

9.2.6. I can confirm, based on my site assessment, that the dwelling is not subdivided into multiple units. The existing residential accommodation on the site operates as a single occupancy unit and as such is no different to that of the permitted use. The residential accommodation includes a driveway to the front which can accommodate 2 no. car parking spaces, which again is standard for a domestic residential property.

9.2.7. The PA considers that the accommodation on the referral property is different to that of a typical house, however I have outlined the character of the subject dwelling above, and on this basis, I would consider that the character of the referral property is no different to that of a standard domestic dwelling.

9.2.8. I note that the PA contends that the property, given the applicant's portfolio of properties, is operating on a commercial capacity. Although I would acknowledge that the applicant owns several properties providing accommodation for persons seeking international protection, I would consider that the tenancy or occupancy of the referral property is no different to that of a residential property rented to tenants on a commercial basis.

9.2.9. The PA argues that the occupants are transient in nature which would change the character of the property, however on the contrary the applicant indicates that accommodation is provided to international protected applicants on a 6 to 18-month basis. I would consider that this duration of tenancy is similar to that of rented accommodation in the private market and would not be as transient as other types of residential accommodation, such as a guest house or hostel, which would have different planning considerations in terms of use.

- 9.2.10. In addition to the above, I note that the applicant's submitted legal opinion refers to case law, *Dublin Corporation v Moore (1984)*, which infers that the social status of residents is not a planning consideration. Further, the applicant's legal opinion submits there is no Irish case law specifically considering whether the use of a dwelling as accommodation for protected persons is a material change of use.
- 9.2.11. Furthermore, the PA submits that the direct services provided by the applicant to the residents is a form of residential care, on the basis that the level of care encompasses a large range of services including access to medical/health services, language translation services, schooling, transport, community services etc.
- 9.2.12. I would note that the applicant provides accommodation and social care support within normal community settings. In the referral to the PA the applicant (Didean) outlines that in some instances the applicant provides supported living, day and community outreach services to both children and adults, as a household or family member, or to individual or groups with a range of support requirements otherwise known as 'direct services' (or essentially a social care plan) to the occupants of the property. Although the applicant notes that the property is not used as health centre facility or as asylum centre. The application documentation indicates that the 'direct services' are provided on occasional basis (c. 3 hours a week on a visiting basis) ranging from social care services including,
- arranging school places,
 - sourcing doctors,
 - arranging medical cards,
 - IPAS appointments.
- 9.2.13. The accommodation, in my view, facilitates residents to live independent lives while integrating into the local community and I would consider that the intensity, and in turn the external impacts, of the 'direct services' is no different to a domestic setting whereby care services are typically provided for elderly residents. Separately I note that there are no details on the file confirming whether the applicant is or is not a registered care provider.
- 9.2.14. I would consider that the provision of direct services, on the basis of the services provided over a weekly period, i.e. 3 hours per individual, is low, and I would

consider them as support services to the primary residential use. As such the direct services, in my view, are ancillary in nature and would be no different to a domestic setting which might include carers visiting a property on a daily basis.

- 9.2.15. I would concur with the applicant's legal opinion which concludes that the weekly care visits are considered ordinarily incidental to the primary use as a dwelling. I would accept that the position would be viewed differently if residential care were being provided permanently on site.
- 9.2.16. In addition to the argument above by the PA, the PA also asserts that the level of care provided in the referral property is consistent with that of the definition of 'care' in the Planning Regulations. I note that Article 5 of the Planning and Development Regulations, 2001, as amended, defines 'care' as '*means personal care, including help with physical, intellectual or social needs*'. I would consider that the definition of care in the Regulations relates more to an institutional setting rather than incidental support services provided at the referral property, where there is no full-time staff present.
- 9.2.17. The PA refers to the Regulations in arguing the case that a house is deemed a different category to accommodation providing care. In this respect the PA refers to Class 9, Part 4, Schedule 2 of the 2001 Regulations as evidence that a house and residential accommodation with care are separate categories. I would not accept the PA's argument in relation to Class 9, Part 4, Schedule 2 of the Regulations, as the types of residential accommodation envisaged in Class 9, such as nursing home, residential school, in my opinion, are larger in scale than a single dwelling unit, and the level of care is also a completely different scale to that provided in the referral property as set out in this section 5 application. I would consider that the provisions in Class 9 are not relevant to the current application, as the referral property care is ancillary to the primary use.
- 9.2.18. Furthermore, the PA submits that there are available exemptions for a change of use from a house which would demonstrate that care cannot be provided within a house without requiring a change of use. This includes Article 10(4) (Guest Accommodation), Article 10(5) (Childminding) and Class 14(F) of the Part, 1 Schedule 2. The above provisions, in my opinion, allow exemptions for specific development types, none of which are relevant to the support services provided in

the current referral application. Having regard to the ancillary nature of the support services I would not consider that a change of use is required in this instance.

- 9.2.19. In respect of the point raised by the PA that there is a distinction in the Carlow-Graigucullen Joint Urban Local Area Plan, 2024-2030, in relation to the 'permitted' and 'open for consideration' uses in the land use zoning objectives of the Plan. In this regard 'dwelling' and 'residential institution' are categorised as different uses within the land use zoning objectives. Notwithstanding, I have set out above that I would not consider that the accommodation provided, the subject of this referral, is the same category as residential institution.
- 9.2.20. In respect of Board decision ABP-307077-20, the Board determined that the use of a premises as apartments, including residential accommodation for protected persons, is not development. In this particular case the Planning Inspector reported the apartments are 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.
- 9.2.21. I have also given consideration to previous Board decision ABP-307031-24, in which case the Board concluded that the use of a dwelling house to accommodate persons seeking international protection was a material change of use. In this case the Planning Inspector's report noted that the accommodation was different in character to that of a dwelling house, with a large number of families and individuals sharing communal facilities, as opposed to each household living in one individual dwelling unit.
- 9.2.22. The proposed use, before the Commission, does not include shared facilities such as kitchen, dining rooms or laundry rooms for multi-occupancies, which would, in my opinion, change the nature of the use.
- 9.2.23. Having regard to the above considerations I am of the view that the use of the existing semi-detached dwelling for residential accommodation for protected persons does not represent a change of use from the permitted use and, therefore, does not constitute development.
- 9.2.24. Although I have concluded above that a change of use has not occurred, for completeness and should the Commissioners conclude otherwise, I will consider the

factors in respect of a material change of use relevant to the question before the Commission.

9.2.25. Material Change of Use

There is no definition of 'material change of use' in the Act, or any other statute, however case law has addressed the tests of materiality. I have considered all the case law referenced in PA's planning report and the applicant's submission to the PA. I would note that in Simons on Planning Law (2021), Browne refers to the case law, Galway County Council v Lackagh Rock, and Browne refers that Barron J. stated, in relation to material change of use, as follows,

'to test whether or not the uses are materially different, it seems to me, that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use. If these matters are materially different, then the nature of the use must equally be materially different'.

- 9.2.26. Having regard to case law, the intensification per se cannot be a material change in use, and that it must also be established that the intensification has affected the proper planning and development of the area.
- 9.2.27. In this referral, the PA argues that the provision of direct services at the dwelling will give rise to more than an average of 1 vehicle movement to/from the dwelling house each day, and that such vehicular movement would be different in nature and extent to a typical private dwelling house. I note that the file documentation indicates direct services amounts to 3 hours per week for each of the residents. The subject residential dwelling has car parking provision located to the front of the property where there is sufficient space to accommodate two vehicles.
- 9.2.28. The applicant submits that the occupants do not have the use of a car and the level of car usage is low. Further the applicant submits that there is on average one vehicle movement from the site each day.
- 9.2.29. I would consider, given the space to accommodate vehicles to the front of the property, that the traffic generation of one vehicle is low and that this vehicle generation at the property does not demonstrate, in my opinion, an intensification of

use. Further I would note that it is not uncommon for suburban residential properties to have 3 or 4 vehicles associated with a single property.

9.2.30. I do not consider that the nature and the characteristics of the residential accommodation for persons seeking international protection, would have different planning considerations in relation to traffic generation, waste collection, noise or impacts on adjacent amenities generally, relative to the occupation of this single residential property, either on a rented or owner occupier basis, as permitted on the referral site. As such the use of the dwelling for protected persons would not be materially different to that of the permitted use on the referral site.

9.2.31. I am satisfied that development has not occurred, however should the Commission consider otherwise I have set out considerations in relation to exempted development.

9.3. Is or is not exempted development

9.3.1. As noted above in para. 7.0 (statutory provisions) exemptions exist for change of use from various premises to use for accommodation for protected persons under the Regulations under Class 14(h) and Class 14(i) of Part 1 of Schedule 2.

9.3.2. Class 14(h) and Class 14(i) refers to a list, as follows, *'hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential accommodation, or part thereof'*. I would consider that the provision *'or other premises'* is part of the larger provision *'or other premises or residential institutions providing overnight accommodation'* and must be considered in the context of the list as a whole. Notwithstanding the fact that a house provides overnight accommodation, a house is not the kind of residential institution envisaged in this exemption. It is my view, and similar to the Board's determination in referral case ABP-320031-24, which I have summarised in para. 8.1.5 above, that the exemptions would not apply to this dwelling house.

9.3.3. Similarly, in Class 20F, there is a long list of building types, but houses are not listed.

9.3.4. Separately, Class 20F provides an exemption for a temporary change of use to accommodate or support displaced persons or persons seeking international protection by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth. I would note from the applicant's submission to the PA, and their

supporting legal opinion, that the accommodation is provided to international protection applicants through a contract with a Government Department, and I acknowledge that the PA has not questioned the basis of this contract. I would therefore consider, on the basis of the information available, that the applicant has demonstrated that the development meets this specific requirement in respect of the Class 20F exemption.

- 9.3.5. Notwithstanding the above, a house is not the kind of residential institution envisaged in this exemption, and as such, there is no exemption under the Act or under the Regulations that can be availed of.

9.4. Restrictions on exempted development

- 9.4.1. I have noted above that there are no relevant exempted development provisions in respect of the referral before the Commission. Notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations 2001 (as amended) refers to restrictions on exempted development.
- 9.4.2. In this respect I have assessed the use to provide accommodation for persons seeking international protection having regard to the relevant Article 9 restrictions, and I would conclude that should Classes 14(h), 14(i) and/or 20F apply in this instance that Article 9 would not de-exempt the said exemptions.

10.0 EIA Screening

- 10.1. The proposed development does not come within the definition of a 'project' for the purposes of EIA, that is, it does not comprise construction works, demolition or intervention in the natural surroundings. (Refer to Form 1 in Appendix 1 of report).

11.0 Appropriate Assessment

- 11.1. I have considered case ABP-321968-25 in light of the requirements S177U of the Planning and Development Act 2000, as amended.
- 11.2. The closest European Sites, part of the Natura 2000 Network, is the River Barrow and River Nore SAC located approximately 2 km west of the referral site.

11.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.

11.4. The reason for this conclusion is as follows:

- Location-distance from nearest European site.
- The nature and scale of the development and the location of the site on developed serviced lands.
- The absence of any ecological pathway from the development site to the nearest European Site.

11.5. I conclude, on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

11.6. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

12.0 **Water Framework Directive**

12.1.1. I have individually assessed the subject development use and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface and ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the subject use, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

The reason for this conclusion is as follows.

- The minor nature and scale of development.
- The location of the site on developed serviced lands.
- The absence of any hydrological connections.

12.1.2. I conclude that on the basis of objective information, that the subject development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

13.0 Recommendation

13.1. 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 subject premises at 32 Sandhills, Hacketstown Road, Carlow, to provide accommodation for persons seeking international protection, is or is not development and/or is or is / not exempt development:

AND WHEREAS Didean Dochas Eireann Teoranta requested a declaration on this question from Carlow County Council and the Council did not make a declaration in this instance.

AND WHEREAS Carlow County Council referred this declaration for review to An Coimisiún Pleanála on the 24th day of February, 2025:

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

- (d) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (e) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (f) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (g) Relevant case law,
- (h) Previous referrals to the Commission, including ABP-307077-20,
- (i) the planning history of the site,
- (j) The documentation on the file, including the submission on behalf of the requestor Didean Dochas Eireann Teoranta
- (k) the pattern of development in the area:
- (l) the report and recommendation of the Inspector:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) the permitted use of the house and the current use of the premises as residential accommodation for persons seeking international protection, 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.
- (b) The of use of the buildings as residential accommodation for person seeking international protection, does not raise planning considerations that are materially different to planning considerations relating to the permitted use,

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the use

of a house to provide accommodation for persons seeking international protection, is not development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Senior Planning Inspector

10th February 2026

Form 1 - EIA Pre-Screening

Case Reference	ACP-321968-25
Proposed Development Summary	Whether use of the premises as a residence for International Protection Applicants constitutes development and whether, if it does, it can be considered exempted.
Development Address	32 Sandhills, Hacketstown Road, Carlow, Co. Carlow.
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 type="checkbox"/> Yes, it is a ‘Project’. Proceed to Q2.
	<input checked="" 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. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<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 type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	<p>Class 10(b)(i) of Part 2: threshold 500 dwelling units.</p> <p>Class 10(b)(iv) of Part 2: threshold 2 ha.</p>

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____