



Question

Whether the temporary change of use of a repository / storage building ancillary to the Sea Lodge Hotel to residential accommodation for international protection applicants is or is not development or is or is not exempted development.

Location

Lower Main Street, Waterville, Co. Kerry.

Declaration

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

EX1349

Applicant for Declaration

Kieran O'Neill

Planning Authority Decision

Is not exempted development

Referral

Referred by

Kieran O'Neill

Owner/ Occupier

None

Observer(s)

None

Date of Site Inspection

16th January 2026

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1.0 Site Location and Description

- 1.1. The referral property is located on the Lower Main Street (N70), Waterville, Co. Kerry, overlooking the promenade and Ballinskelligs Bay.
- 1.2. The referral property was previously operating as a hotel and is currently used to provide accommodation for persons seeking international protection.
- 1.3. The property is two-storey in height and has surface car parking to the front.
- 1.4. The storage building the subject of the referral is located to the rear of the hotel building.

2.0 The Question

Whether the temporary change of use of a repository / storage building ancillary to the Sea Lodge Hotel, Waterville, Co. Kerry, to residential accommodation for International Protection Applicants is or is not development and/or is or is / not exempt development.

3.0 Planning Authority Declaration

- 3.1. On the 18th of March 2025, a request for a Declaration in accordance with Section 5(1) of the Planning and Development Act, 2000, as amended, was received by Kerry County Council from Kieran O'Neill.
- 3.2. The Planning Authority issued a declaration on the 14th of April 2025, to the effect that the change of use would constitute development that would come within the scope of Section 3(1) of the Planning and Development Act, 2000 (as amended), and is not exempted development in accordance with Class 20F, Part 1, Schedule 2 of the Planning and Development Regulations 2001, (as amended), as,
 1. it has not been demonstrated that the proposed change of use is by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth, and
 2. the hotel storage building subject of the referral does not fall within the list of structures to which Class 20F exemption applies.

3.3. Planning Authority Reports

3.3.1. Planning Reports

3.3.2. The Planner's Report, dated 9th April 2025, can be summarised as follows:

- There is no information provided to demonstrate that the proposed change of use is or on behalf of the Minister for Children, Equality, Disability, Integration and Youth.
- As such on the basis of information available Class 20F is not available.
- The structure the subject of the referral is a storage building ancillary to the hotel use.
- The applicants consider that the exemption is available as the building is a 'repository'. However, the Class 20F exemption applies to 'wholesale warehouse or repository'.
- The structure in question has not been used as a 'wholesale warehouse or repository', and therefore Class 20F exemption is not applicable.

3.3.3. Other Technical Reports

- None

4.0 Planning History

- L.A. Ref. 25/60512 – Permission/retention **granted**, subject to 3 no. conditions, on the 17th of October 2025 to revise internal layout of existing hotel ballroom area to allow for; 7 no. hotel bedroom suites, ancillary SPA and GYM, and for new window arrangement at southern ballroom roadside elevation and the existing steel shed in rear service yard. Note: The existing steel shed is a separate building to that of the structure the subject of this referral application.
- L.A. Ref. EX1302 – Section 5 application asking the question whether the 'mews building' located to the rear of the Sea Lodge Hotel requires planning permission for accommodation and storage use. The Council determined on the 28th of January 2025 that the proposed change of use would **constitute**

development that comes within the scope of Section 3(1) of the said Act, and the nature of the proposed change of use **would not come within the scope of exemption** provided at sub-article 10(6) of the Regulations, 2001 (as amended) as the structure concerned comprised of a store/shed prior to it being converted and would not consist of a change of use to residential use from Class 1, 2, 3, 6, or 12 of Part 4, Schedule 2 of the Regulations.

- L.A. Ref. 14/761 – Permission **granted**, subject to 9 no. conditions, on the 12th of February 2015 for alterations and modifications to the existing hotel.
- L.A. Ref. 07/3358 – Planning permission **refused** on the 6th of May 2008 for the demolition of the existing hotel and the construction of 30 apartments and underground car parking for 60 spaces. The reasons for refusal included (1) overdevelopment of site and lack of suitable private and public open space resulting in substandard residential development, (2) contrary to Objective 00-2 & 00-4 of the Waterville LAP, and would infringe the building line, (3) given the proximity to houses the proposal to would seriously injure residential amenities, and (4) the design and scale of the proposal would not integrate satisfactorily with neighbouring protected structures and would contravene Objective AH-2 of the Waterville LAP.
- L.A. Ref. 06/4199 – Permission **granted**, subject to 9 no. conditions, on the 19th of December 2006 for the demolition of a function / disco area at rear, and erect new two-storey block extension, alter and extend front porch and incorporate elevation changes.

5.0 Policy Context

5.1. Kenmare Municipal District Local Area Plan, 2024-2030

- 5.1.1. The referral site is zoned 'Village Centre'.
- 5.1.2. It is an objective of the Plan to promote the strengthening of Waterville as an employment and service centre commensurate with its function as a district town and as an attractive residential location, service centre and tourist town.

5.2. Natural Heritage Designations

- Ballinskelligs Bay and Inny Estuary SAC (site code 000335) – 30m west
- Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (site code 000365) – 360m east
- Ballinskelligs Bay and Inny Estuary pNHA (site code 000335) – 30m west
- Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment pNHA (site code 000365) – 360m east.

6.0 The Referral

6.1. The following is a summary of the referrer's case

Referral Context

- It is contended that the nature of development comes within the scope of the exemption provided by Class 20F of the Regulations.
- The PA's Planners Report argues that the Section 5 application included no information that demonstrates that the proposal is by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth (MCEDIY) and that as such Class 20F is not applicable.
- It is contended that confirmation from MCEDIY is not a material planning consideration as the purpose of this Section 5 application is to determine whether works to provide accommodation for persons seeking international protection are development and is or is not exempted development.
- The PA's Planners Report also argues that the Class 20F exemption is not available as the building has never been used as 'wholesale warehouse or repository'. However, the subject building use has been confirmed by the PA in the previous referral application (Reference EX1302) on the site as a storage building serving the adjacent Sea Lodge Hotel.
- Class 20F of the Regulations provides exemptions for hotels and repositories.

- Article 5 of the Regulations defines repository as ‘.....*where storage is the principal use.....*’.
- The subject building use served as a storage building / repository ancillary to the adjacent Sea Lodge Hotel, and the temporary change of use of the subject repository building to residential accommodation for IPAS on behalf of MCEDIY is exempted development having regard to Class 20F.

Grounds of Referral

- The subject building most recently served as a repository / storage building ancillary to the adjacent Waterville Sea Lodge Hotel.
- The Sea Lodge Hotel is currently used by MCEDIY to accommodate international protection applicants.
- In Section 5 application PA Ref. EX1302, the following question was asked ‘*whether the mews building located to the rear of the Sea Lodge Hotel Waterville requires planning permission for accommodation and storage use*’ .
- Kerry County Council (KCC) determined in PA Ref. EX1302 that a mews building was in use as a store for the hotel.
- KCC determined that the matter constituted development and was not exempted development. KCC determined this on the following grounds.
 - The proposed change of use would constitute development in accordance with Section 3(1) of the Act.
 - The nature of the change of use would not come within the scope of sub article 10(6) of the Regulations as the structure concerned comprised of a store / shed prior to it being converted and would not consist of a change of use to residential from Class 1, 2, 3, 6 or 12 of Part 4, Schedule 2 of the Regulations.
- The applicant considers that KCC determination in respect of EX1302 was correct as the scope of the matter submitted to KCC did not refer to the provision of residential accommodation for International Protection Applicants in accordance with the regulations.

- The existing repository / storage building will be specifically for the purpose of accommodating international protection applicants on behalf of MCEDIY.
- The change of use of the repository / storage building ancillary to the Sea Lodge Hotel to residential accommodation for international protection applicants is exempt in accordance with Class 20F of S.I. no. 376/2023.

Legislative Context

- Section 3(1) of the Act defines development.
- Section 2 of the Act defines works.
- S.I. No. 605/2022 amended the exempted development regulations to provide new Class 20F which permits change of use of certain specified structures for the purpose of providing the necessary facilities and accommodation for international protection applicants.
- S.I. No. 376/2023 amended the regulations to extend the exemption to 31st December 2028 to allow MCEDIY greater flexibility in agreeing leases with potential accommodation providers for international protection applicants.
- The structures include hotels and repositories.
- A repository is categorised in Class 20F of S.I. 376/2023, as such the use of the subject property for International Protection Applications is exempted development.

Conclusion

- The subject property has been identified as suitable for temporary accommodation for International Protection Applications on behalf of MCEDIY.
- It is submitted that having regard to Sections 2, 3 and 4 of the Act and Articles 5, 6 and 9 and Class 20F of the Regulations that the change of use of the repository / storage building ancillary to the Sea Lodge Hotel, to temporary residential accommodation for International Protection Applicants is development and is exempted development.

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,</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

<p>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</p>	<p>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.</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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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:-

- “repository” means –
 - a structure (excluding any land occupied therewith) where storage is the principle use and where no business is transacted other than business incidental to such storage.
- “wholesale warehouse” means –

a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business.

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. Section 2(1) of the Planning and Development Act 2000, as amended, defines “works” as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....’.
- 9.2.2. Section 3(1)(a) of the Act 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 and in effect relates to both works and the material change in the use of land or structures.
- 9.2.3. Kerry County Council’s determination in section 5 application P.A. Ref. EX103 specifically noted that the existing building comprised of a store / shed. The PA’s Planner’s Report noted from its site inspection, in respect of P.A. Ref. EX103, that the building in question, based on Google Street View images from 2009, has been modified from a shed /store structure to habitable accommodation and the building includes two entrance doors and velux rooflights.
- 9.2.4. Although the subject building has been modified, the referrer accepts that the use of the referral building is repository / storage and as noted above this is consistent with the conclusion in the PA’s Planners Report. Accordingly, there is no difference of opinion between the respective parties as to the established use of the building.
- 9.2.5. In conclusion and based on the above definition in s. 3(1)(a) of the Act a material change of use occurred at the subject building, from that as storage to residential accommodation, and both change of use and the external and internal works constitute ‘works’ and are ‘development’.

9.3. Is or is not exempted development

- 9.3.1. Development can be exempt from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000, as amended, or by Article 6 of the Planning and Development Regulations, 2001, as amended (hereafter referred to as the Regulations). Section 4(1) of the Act has primacy over the exempted development provisions of the Regulations.
- 9.3.2. The referrer is claiming an exemption for the proposed change of use on the basis that the subject building is a repository / storage building, ancillary to the Sea Lodge Hotel, and is thus exempted development in accordance with Class 20F of the Regulations. Class 20F of Schedule 2, Part 1 of the Regulations provides an exemption for a change of use as follows.

*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*

- 9.3.3. The PA, in their planning report, note that the relevant structure is a storage building ancillary to the Sea Lodge Hotel. Further I would note that the PA submits that Class 20F exemption applies to 'wholesale warehouse or repository', and that the referral building does not have such a use and therefore Class 20F exemption is not applicable in this instance.
- 9.3.4. On the contrary the referrer submits that Class 20F exemption would be applicable, on the basis that the use of the subject building is ancillary storage to a hotel, as confirmed by the PA in a previous section 5 application on the subject site. The referrer asserts having regard to the definition of 'repository' in Article 5 of the Regulations that the subject building which is used for storage purposes would fall

within the same definition of 'repository', and therefore the change of use to accommodation for persons seeking international protection from repository is consistent with the provisions of the Class 20F exemption.

9.3.5. For clarity, Article 5 of the Regulations defines 'repository' as,

'a structure (excluding any land occupied therewith) where storage is the principle use and where no business is transacted other than business incidental to such storage'.

9.3.6. I would consider that Class 20F of the Regulations is clear in terms of the uses that would provide an exemption from a change of use to accommodate or support displaced persons or persons seeking international protection. Class 20F clearly refers to repository within the context of *'wholesale warehouse or repository'*.

9.3.7. I would note separately in the Regulations that *'wholesale warehouse or repository'* is categorised as a specific use class in Class 5 of Part Four of Schedule 2. Article 10(1) of the Regulations, in accordance with Part Four (Exempted Development – Classes of Use) of Schedule 2, allows exemptions for change of use within any one of the classes of use specified in Part 4 of Schedule 2.

9.3.8. As such, in my opinion the intent of the legislation is that *'wholesale warehouse or repository'* is seen as a single use class, and further to avail of the exemption in Class 20F, repository as a use must be seen within the context of *'wholesale warehouse or repository'*, having regard to Part Four of Schedule 2 of the Regulations.

9.3.9. Having regard to the above considerations, I would consider, that the Article 5 definition, in the Regulations, reflects the meaning of 'repository' in isolation, however in the context of wholesale warehouse (or wholesale repository) it is a facility defined in Article 5 of the Regulations, as follows.

a structure where business, principally of a wholesale nature is transacted, and goods are stored or displayed incidentally to the transaction of that business.

9.3.10. The subject building use is ancillary storage to the hotel use and I would not consider, based on the documentation on the file and a site assessment, that the use of the building can be categorised as wholesale warehouse or repository for which

Class 20F provides for an exemption for a change of use from wholesale warehouse or repository to accommodation for persons seeking international protection.

- 9.3.11. In addition to the above, and notwithstanding the foregoing considerations, and as confirmed by both parties, the principal use on the site is hotel, and the storage building is an ancillary use to the primary use, whereas the definition of 'repository' in Article 5 of the Regulations refers to '*where storage is the principal use*'. On this basis I would not consider that an ancillary storage use on site is a repository as defined in Article 5 of the Regulations.
- 9.3.12. Separately to the above considerations, 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 (MCEDIY). The PA in their assessment determined that no relevant information was included with the application demonstrating that the proposed change of use is by or on behalf of the MCEDIY. As part of the referral application to the Commission, the applicant includes a letter from the MCEDIY confirming that the Department is utilising the subject property for the accommodation of International Protection Applicants. I would therefore consider that the applicant has adequately demonstrated that the development meets this specific requirement in respect of the Class 20F exemption.
- 9.3.13. Notwithstanding that the proposed change of use is by or on behalf of the MCEDIY, the existing ancillary storage building on the referral site is not in use as 'wholesale warehouse or repository', and accordingly, does not come within the exempted development provisions of Class 20F, Schedule 2, Part 1 of the Regulations.

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 regard I have assessed the use to provide accommodation for persons seeking international protection in respect of the relevant Article 9 restrictions, and I

would conclude that should Class 20F apply in this instance that Article 9 would not de-exempt the said exemptions.

10.0 EIA Screening

10.1.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

11.0 Appropriate Assessment

11.1. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the Ballinskelligs Bay and Inny Estuary SAC (site code 000335) and the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 000365) in view of the conservation objectives of these sites and is therefore excluded from further consideration. Appropriate Assessment is not required.

11.2. This determination is based on:

- Location-distance from nearest Natura 2000 habitats.
- The scale of the development site.
- The location of the development in a serviced urban area.

12.0 Water Framework Directive

12.1. 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.

12.2. 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 temporary change of use of a repository / storage building ancillary to the Sea Lodge Hotel, Waterville, Co. Kerry, to residential accommodation for International Protection Applicants is or is not development and/or is or is / not exempt development:

AND WHEREAS Kieran O'Neill requested a declaration on this question from Kerry County Council and the Council issued a declaration on the 14th day of April 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Kieran O'Neill referred this declaration for review to An Coimisiún Pleanála on the 12th day of May 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)(a) of the Planning and Development Act, 2000, as amended,
- (c) Section 4(1) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (e) Section 4(3) of the Planning and Development Act, 2000, as amended,
- (f) article 5, 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (g) Parts 1 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (h) the planning history of the site,
- (i) The documentation on the file, including the submission on behalf of the requestor Kieran O'Neill,
- (j) the pattern of development in the area:
- (k) the report and recommendation of the Inspector:

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The alterations to the ancillary storage building constitutes development, as it involves the carrying out of ‘works’,
- (b) the existing use of ancillary storage and the proposed use as residential accommodation for persons seeking international protection constitutes a material change of use from the existing use and, therefore, constitutes development,
- (c) the existing ancillary storage building is not in use as ‘wholesale warehouse or repository’,
- (d) accordingly, the existing ancillary storage building does not come within the exempted development provisions of Class 20F, Schedule 2, Part 1 of the Planning and Development Regulations 2001, (as amended), and
- (e) does not come within any of the other exempted development provisions of the Act or Regulations.

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 alterations and change of use to the ancillary storage building is development and is not exempted 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

17th February 2026

Form 1 - EIA Pre-Screening

Case Reference	ABP-322526-25
Proposed Development Summary	Whether the temporary change of use of a repository / storage building ancillary to the Sea Lodge Hotel to residential accommodation for international protection applicants is or is not development or is or is not exempted development.
Development Address	Lower Main Street, Waterville, Co. Kerry.
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. 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 development under Article 8 of the Roads Regulations, 1994. No Screening required.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	Class 10(b)(i) of Part 2: threshold 500 dwelling units. Class 10(b)(iv) of Part 2: threshold 2 ha.

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)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____

Form 2 - EIA Preliminary Examination

Case Reference	ABP-322526-25
Proposed Development Summary	Whether the temporary change of use of a repository / storage building ancillary to the Sea Lodge Hotel to residential accommodation for international protection applicants is or is not development or is or is not exempted development.
Development Address	Lower Main Street, Waterville, Co. Kerry.
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
<p>Characteristics of proposed development</p> <p>(In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The development involves alterations to an existing storage shed both internally and externally to provide accommodation for persons seeking international protection.</p> <p>During the construction phase in respect of the modifications the development would generate waste. However, given the moderate size of the development, I do not consider that the level of waste generated would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the construction or operational phase due to the nature of the use. Any potential contamination arising from the existing use would be limited in scale, having regard to the modest scale of the use and would have a localised impact. No demolition works are proposed. The development, by virtue of its residential type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change.</p>
<p>Location of development</p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The subject site is not located within or adjoins any environmentally sensitive sites or protected sites of ecological importance, or any sites known for cultural or historical significance.</p> <p>The nearest designated European Sites to the referral site are the Ballinskelligs Bay and Inny Estuary, situated approximately 30m east of the referral site, and the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC located approximately 360m west of the referral site.</p> <p>Given that there are no hydrological connections I have concluded in my AA Screening that the development</p>

	<p>would not likely have a significant effect on any European site.</p> <p>I consider that there is no real likelihood of significant cumulative impacts having regard to other existing and/or permitted projects in the adjoining area.</p>
<p>Types and characteristics of potential impacts</p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>Having regard to the scale and nature of development in question, its location removed from any sensitive habitats / features, the likely limited magnitude and spatial extent of effects, and the absence of in combination effects, there is no potential for significant effects on the environment.</p>
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	N/A
There is a real likelihood of significant effects on the environment.	N/A

Inspector: _____ Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)

Appendix 2 – Appropriate Assessment Screening

Screening for Appropriate Assessment Test for likely significant effects

Step 1: Description of the project and local site characteristics

Case file ABP-322526-25

Brief description of project	<p>Section 5 Referral</p> <p>Whether the temporary change of use of a repository / storage building ancillary to the Sea Lodge Hotel to residential accommodation for international protection applicants is or is not development or is or is not exempted development.</p>
Brief description of development site characteristics and potential impact mechanisms	<p>The referral site is located on the Lower Main Street (N70), Waterville, Co. Kerry. The property on referral site is currently used to provide accommodation for persons seeking international protection and was previously operating as a hotel (Sea Lodge Hotel).</p> <p>The referral relates to a single storey shed / storage structure located to the rear of the site.</p> <p>The nearest designated European Sites to the referral site are the Ballinskelligs Bay and Inny Estuary (site code 000335), situated approximately 30m east of the referral site, and the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 000365) located approximately 360m west of the referral site.</p>
Screening report	<p>N</p> <p>The PA has not screened for AA.</p>
Natura Impact Statement	<p>N</p>

Relevant submissions	None
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Step 2. Identification of relevant European sites using the Source-pathway-receptor model

European Site (code)	Qualifying interests Link to conservation objectives (NPWS, date)	Distance from proposed development	Ecological connections	Consider further in screening Y/N
Ballinskelligs Bay and Inny Estuary (site code 000335)	<p>Mudflats and sandflats not covered by seawater at low tide</p> <p>Atlantic salt meadows</p> <p>Mediterranean salt meadows</p> <p>Petalophyllum ralfsii</p> <p><u>Conservation Objectives</u> https://www.npws.ie/protected-sites/sac/000335</p>	30m east	Weak indirect surface water connection.	Y
Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 000365)	<p>Oligotrophic waters containing very few minerals of sandy plains</p> <p>Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea</p> <p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitricho-Batrachion vegetation</p> <p>Northern Atlantic wet heaths with Erica tetralix European dry heaths</p>	360m west	No direct connection	N

	<p>Alpine and Boreal heaths</p> <p>Juniperus communis formations on heaths or calcareous grasslands</p> <p>Calaminarian grasslands of the <i>Violetalia calaminariae</i></p> <p>Molinia meadows on calcareous, peaty or clayey-silt-laden soils</p> <p>Blanket bogs (* if active bog)</p> <p>Depressions on peat substrates of the Rhynchosporion</p> <p>Old sessile oak woods with Ilex and Blechnum in the British Isles</p> <p>Alluvial forests with Alnus glutinosa and Fraxinus excelsior</p> <p>Taxus baccata woods of the British Isles</p> <p>Kerry Slug</p> <p>Freshwater Pearl Mussel</p> <p>Marsh Fritillary</p> <p>Sea Lamprey</p> <p>Brook Lamprey</p> <p>River Lamprey</p> <p>Salmon</p> <p>Lesser Horseshoe Bat</p> <p>Otter</p> <p>Slender Naiad</p> <p>Killarney Shad</p>			
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	<p>Killarney Fern</p> <p><u>Conservation Objectives</u> https://www.npws.ie/protected-sites/sac/000365</p>			
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Further Commentary / discussion

There is no source-pathway-receptor connectivity between the proposed development and the designated site Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (site code 000365). Further, having regard to the local topography, whereby the elevations rises steadily from the referral site towards the designated site I am satisfied that it is highly unlikely that the proposed development could generate impacts of a magnitude that could affect habitat quality within the designated site.

Step 3. Describe the likely effects of the project (if any, alone or in combination) on European Sites

AA Screening matrix

<p>Site name Qualifying interests</p>	<p>Possibility of significant effects (alone) in view of the conservation objectives of the site*</p>	
	<p>Impacts</p>	<p>Effects</p>
<p>Site 1 Ballinskelligs Bay and Inny Estuary (site code 000335)</p> <p>Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p>	<p>The proximity of the subject site to the designated site and the potential for run-off surface water connection.</p>	<p>The SAC is designated for coastal habitats which in accordance with the conservation objectives are all located within the confines of the Inny Estuary, approximately 3.2km from the referral site.</p> <p>There is no source-pathway-receptor connectivity between the proposed development and the protected habitats. I am satisfied that it is highly unlikely that the proposed development could generate impacts of a magnitude that could affect habitat quality within the SAC.</p>

Petalophyllum ralfsii (Petalwort) [1395]		Conservation objectives would not be undermined.
	Likelihood of significant effects from proposed development (alone): No	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects? No	
Step 4 Conclude if the proposed development could result in likely significant effects on a European site		
<p>I conclude that the proposed development (alone) would not result in likely significant effects on the Ballinskelligs Bay and Inny Estuary SAC (site code 000335) and the Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (site code 000365). The proposed development would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required for the project. No mitigation measures are required to come to these conclusions.</p>		

Screening Determination

Finding of no likely significant effects

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on the Ballinskelligs Bay and Inny Estuary SAC (site code 000335) and the Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (site code 000365) in view of the conservation objectives of these sites and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- Location-distance from nearest Natura 2000 habitats.
- The scale of the development site
- The location of the development in a serviced urban area.