



**Question**

Whether the change of use from retail/commercial (shop) to Temporary International Protection Accommodation is or is not development or is or is not exempted development.

**Location**

Unit 8 (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo.

**Declaration**

Planning Authority

Mayo County Council

Planning Authority Reg. Ref.

257

Applicant for Declaration

SagJoin Partnership.

Planning Authority Decision

Is not exempted development

**Referral**

**Referred by**

SagJoin Partnership.

**Owner/ Occupier**

None

**Observer(s)**

None

**Date of Site Inspection**

2<sup>nd</sup> April 2026

# Contents

1.0 Site Location and Description .....	4
2.0 The Question .....	4
3.0 Planning Authority Declaration.....	5
3.2. Planning Authority Reports .....	5
4.0 Planning History.....	7
5.0 Policy Context.....	8
5.1. Mayo County Development Plan, 2022 – 2028.....	8
5.3. Retail Planning – Guidelines for Planning Authorities 2012 .....	9
5.4. Natural Heritage Designations .....	9
6.0 The Referral.....	9
6.3. Planning Authority Response.....	13
7.0 Statutory Provisions .....	13
7.1. Planning and Development Act, 2000, as amended .....	13
7.2. Planning and Development Regulations, 2001, as amended. ....	14
8.0 Referral Precedents.....	17
9.0 Assessment.....	19
9.1. Introduction .....	19
9.2. Is or is not exempted development .....	22
9.3. Restrictions on exempted development.....	25
10.0 EIA Screening.....	26
11.0 Appropriate Assessment .....	27
12.0 Recommendation .....	27
Appendix 1 – Form 1: EIA Pre-Screening	
Appendix 2 – Form 2 - EIA Preliminary Examination	

## 1.0 Site Location and Description

- 1.1. The referral site relates to the first-floor unit of an established Retail / Commercial Park, known as the N5 Business Park, in Castlebar, Co. Mayo. The Business Park is located approximately 1.3 km from the town centre, off the R373.
- 1.2. The Business Park comprises mainly of retail units at ground floor level, and Unit no. 8 (the subject of this referral) is located to the rear of the business park, and comprises of ground floor retail units, including a charity shop and a door shop. There is also an office use, for a construction company, in operation at ground floor level.
- 1.3. The first floor of Unit no. 8 is not currently in use and the entire first floor area is partially fitted out for accommodation for persons seeking international protection.

## 2.0 The Question

- 2.1. The question for consideration is as follows.

*Whether the change of use from retail/commercial (shop) to Temporary International Protection Accommodation at Unit 8, (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo is or is not development or is or is not exempted development.*

- 2.2. Having regard to the content of the PA's Planner's Report, and the Referrer's submission I would recommend to the Commissioners that the question above is reformatted slightly, as follows:

*Whether the change of use from retail/commercial (shop) to Temporary International Protection Accommodation at Unit 8, (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo, **and associated internal works**, is or is not development or is or is not exempted development.*

- 2.3. I would note, for the purpose of clarification to the Commissioners, that a similar question to the current referral was submitted to the PA as a Section 5 application and the planning reference no. for this case was L.A. Ref. P24/451. However, the current Section 5 application and referral is different to that of L.A. Ref. P24/451, as the current question for the change of use is from retail / commercial (shop) whereas

the previous Section 5 application related to a change of use from office. Accordingly, I would not consider that the *Naracanon Trust v An Bord Pleanála* judgement would be relevant in this instance.

### 3.0 Planning Authority Declaration

- 3.1.1. On the 13<sup>th</sup> of January 2025 a request for a Declaration in accordance with Section 5(1) of the Planning and Development Act, 2000, as amended, was received by Mayo County Council from SagJoin Partnership.
- 3.1.2. The Planning Authority issued a declaration on the 12<sup>th</sup> of May 2025, to the effect that the change of use from retail/commercial (shop) at Unit 8, (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo, to provide accommodation for persons seeking international protection is development and is not exempted development.

### 3.2. Planning Authority Reports

- 3.2.1. The Planner's Report, dated 6<sup>th</sup> of February 2025, can be summarised as follows:

#### Previous Proposal

- A previous declaration was sought in respect of this site (P24/451) and the PA determined that this is development and is not exempted development.
- The grounds for this determination concluded that no previous office use operated at the relevant property and therefore Class 20F does not apply.
- It was also concluded that the provisions of Article 6 shall not be exempted if the carrying out such development would endanger public safety by reason of traffic hazard or obstruction of road users.

#### Current Proposal

- The revised section 5 application relates to the same site as the previous s. 5 application.
- The applicant claims that the previous application incorrectly referenced an office use whereas the permission granted was for a retail / commercial use. The PA accepts this.

- The PA contends that the permission for retail / commercial was never acted upon and as such there was never any recognised office / retail / commercial use at first floor level at the site.
- The applicant was requested to submit commercial lease agreements and/or any other type of evidence such as photograph evidence, advertisements, website links, confirming nature and duration of the use.
- In the absence of the above documentation the PA are unable to adjudicate.
- The first floor works to Unit 8, as indicated on the documentation submitted on the 13<sup>th</sup> of January 2025. These works are the subject of retention permission, or retention and completion planning permission.
- In respect of traffic hazard, the PA concluded that development exempted by Article 6 shall not be exempted if the carrying out such development would endanger public safety by reason of traffic hazard or obstruction of road users.

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

- Submit details of commercial lease agreements and/or any other type of evidence such as photograph evidence, advertisements, website links, confirming nature and duration of the commercial activity previously undertaken at the site.
- Indicate whether the first floor, as submitted with the plans, is in situ, not in situ or part in situ.
- Submit photographs of the internal area of Unit 8 as it currently exists covering the entire first floor area.
- The PA advised that traffic safety would need to be demonstrated.

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

- The PA is of the opinion that there has never been a retail / commercial use on the first floor of unit 8, N5 Business Park, Moneen Park that would avail of the Class 20F exemption.

- The previous determination under PA Ref. 24/451 remains valid save the office reference is changed to retail / commercial.

#### 3.2.4. Other Technical Reports

- None.

## 4.0 Planning History

### 4.1.1. Section 5

- PA Ref. 24/451 – Note: No decision details available on file or the Council's website. The Planner's Report (as summarised in section 3 above) notes that previous Section 5 application on the site requested a determination on whether a change of use from office to the provision of accommodation for persons seeking international protection. The Council determined that as there was no previous office use on the subject site that the Class 20F exemption is not available. In addition, the Council concluded that any exemptions in Article 6 would not be available if the carrying out of development would endanger public safety by reason of traffic safety or obstruction of road users. The Council declared that it is development and not exempted development.

### 4.1.2. Planning Applications

- PA Ref. 98/1335 – Permission granted, on the 21<sup>st</sup> of August 2000, subject to 22 no. conditions, for the construction of a retail / commercial park. The following conditions are relevant.
  - Condition no. 9 states as follows; *The retail units shall be used only for the sale of bulky goods such as electrical appliances, DIY stores, building supplies, furniture, tiles, repair shops, kitchen/bathroom shops or showrooms, carpet sales, computer stores, engineering types of sales i.e. fireplaces/garden machinery, light engineering (wrought ironwork or custom-made works). Retail activities which will not be allowed include textiles, clothing and footwear, sports shops (but excluding golf shops), any food retailing, including restaurants, chemists, any service outlets such as professional services and*

*financial institutions, bookshops, general retailing. The applicant shall notify Mayo County Council of the occupants and the nature of business proposed for each retail unit and the written agreement of Mayo County Council to such uses shall be obtained before trading commences. Retail activity or uses which would normally be associated with the town centres will not be permitted. (No convenience or high street comparison shopping). Reason: To protect the existing town centre retail function.*

- Condition no. 10 states as follows; *The minimum net (shop space) floor area for any single retail unit shall be set at 400 sq. metres. No retail unit shall be sub-divided to provide multiple units with a floor area of less than this threshold figure. Reason: To protect the existing town centre retail function.*

## **5.0 Policy Context**

### **5.1. Mayo County Development Plan, 2022 – 2028**

- 5.1.1. In the County's Settlement Hierarchy (Map 2.3 'Settlement Hierarchy Map') Castlebar is designated as a 'Key Town', which is Tier 1 of the settlement tier in the County. The description for 'Key Towns' in the CDP is *'regionally, strategic employment centres of significant scale that can act as regional drivers that complement and support the higher-order urban areas within the settlement hierarchy'*.

### **5.2. Castlebar Local Area Plan, 2023 – 2029**

- 5.2.1. The referral site is zoned 'Enterprise and Employment' in accordance with the 'Land Use Zoning Map' of the LAP. The objective for the 'Enterprise and Employment' zoning objective is stated as follows.

*'To provide land for industrial, enterprise and employment uses'*.

### 5.3. Retail Planning – Guidelines for Planning Authorities 2012

#### 5.3.1. Annex 1 of the Guidelines provides a Glossary of Terms

Bulky Goods are goods generally sold from retail warehouses - where DIY goods or goods such as flatpack furniture are of such size that they would normally be taken away by car and not be portable by customers travelling by foot, cycle or bus, or that large floorspace would be required to display them, e.g.

- repair and maintenance materials;
- furniture and furnishings;
- carpets and other floor coverings;
- household appliances;
- tools and equipment for the house and garden;
- bulky nursery furniture and equipment including perambulators;
- bulky pet products such as kennels and aquariums;
- audio-visual, photographic and information processing equipment;
- catalogue shops and other bulky durables for recreation and leisure.

The list is not exhaustive – bulky goods not mentioned in the list should be dealt with on their merits in the context of the definition of bulky goods.

#### 5.4. Natural Heritage Designations

- River Moy SAC (site code 002298) – 3.4 km north.
- Newport River SAC (site code 002144) – 9.1 km northwest.
- Dambaduff Lough (site code 001491) – 7.4 km southwest

### 6.0 The Referral

#### 6.1. The following is an outline of the referrer's case.

##### Planning Context

- The site is zoned 'enterprise and employment' in the LAP.

- The current use on the site is retail / commercial (shop) which is considered a use that contributes to the enterprise and employment zoning objective of the site.
- The section 5 application (PA Ref. 24/451) requested a determination whether a change of use from office to IPAS is or is not development/ exempted development. Incorrect information was provided to the Council stating that the use of building was office, however this was inaccurate and the PA accept this error.

#### Mayo County Council S. 5 Declarations

- It is submitted that a low rate of Section 5 applications for change of use to provide Temporary Accommodation for International Protection Applicants were deemed exempted development. This amounts to 4 applications deemed exempted development out of 12 applications submitted.
- The current Section 5 application has the support of the Department of Children, Equality, Disability, Integration and Youth (DCEDIY). The application includes a supporting letter from DCEDIY.

#### Grounds of Referral

- It is submitted the reasons for the Council's Section 5 Declaration have been incorrectly applied.

#### Response to Item (i) of the Council's S. 5 declaration

- The subject building has been in use as a Retail/Commercial unit since its construction.
- All retail units are in retail / commercial use from the ground floor level and have access to the first floor of the building as part of their operation for storage of stock etc through shared lift / stair cores.
- The use of the first floor is intrinsically linked to, and is part of, the Retail / Commercial (Shop) functioning of the building.
- The Council requested F.I. confirming the commercial nature of the use.
- The applicant in response to the F.I. request submitted an affidavit. The affidavit confirmed the tenant of retail unit 3 from January 2018 to November

2019, stating that the unit was in retail use and also the first-floor space of Unit 8 N5 Business Park was in use for retail furniture sales and associated retail storage space until November 2019.

- The FI submission also includes confirmation from Auctioneers that Retail Unit 3 and the entirety of the first-floor space of Unit 8 had been leased as a retail unit and associated retail storage space prior to selling the units. This also confirmed that the first-floor space above units 1-4, previously used as retail units were sold separately.
- Having regard to the Covid-19 pandemic, the sale of the units was not completed until 2023.
- Sufficient information has been provided to demonstrate that the change of use on the site should be considered 'Exempted' development in accordance with Class 20F.
- Shop is a use identified in Class 20F for a change of use to accommodation for international protection applicants.
- The proposal is consistent with the 7 no. conditions and limitations of the Class 20F exemption.
- The proposal does not contravene the conditions of Article 9(1) of the Regulations. In this regard the proposal does not contravene a condition to a permission (Art. 9 (a) (i)) and does not endanger public safety by reason of traffic hazard ((Art. 9 (a) (iii)).
- The proposal does not relate to an unauthorised structure or use (Art. 9(a)(viii), nor will the proposed development have a significant impact on the integrity of any European site (Art. 9(a)(viiB).

Response to Item (ii) of the Council's S. 5 declaration.

- It is contended that the Council have no basis to make the claim that the development would endanger public safety by reason of traffic hazard or obstruction to road users.
- No traffic / transport assessment on the proposal was undertaken by the Council's Transport Department.

- A Transport Technical Note was prepared by Transport Insights as part of the Section 5 Declaration F.I. request. The Technical Note concluded that that the proposal is not predicted to materially impact on the operation of the adjoining road network in terms of traffic congestion or traffic safety.
- There will be no adverse traffic impacts arising from the proposed change of use, as the residents who have access to private modes of transport is less than the number of persons that would use private modes of transport to access and egress the site if the first floor was converted to office space.

6.2. The referral to ACP is accompanied by a Transport Technical Note (TTN), which can be summarised as follows.

- The application site is located in the centre of Castlebar proximate to a large number of services and amenities.
- The subject site is accessible by road connections, bus and train services.
- In terms of traffic impact, the following is noted.
  - The unit has planning permission for retail / commercial (shop).
  - The proposal is for IPAS for 25 no. rooms with 100 no. beds, mainly comprising of families.
  - An industry standard TRICS trip generation database has been used.
  - An existing school bus service will be utilised, negating the need for private car trips.
  - The TRICS model compares the proposed use (residential) to the permitted use (commercial – retail park).
  - Table 4.1 of the TTN estimates that peak hour trips are residential (2) and commercial – retail park (22), and daily trip rate for residential is 0.125, and for commercial – retail park is 46.33.
  - The daily trips (7am – 9pm) for residential is 13 and for commercial – retail park is 803.

- It is submitted that having regard to the total of 13 no. two-way trips per day, which equates to 1 – 2 trips per hour, based upon an operational window of 15 hours (7am – 9pm).
- The volume of trips is not envisaged to result in adverse impact on the local road network in the vicinity of the application site, in particular the N5 Business Park, and is significantly lower than the permitted land use.
- It is assumed, given the central location of the site, that the majority of residents will travel either by public transport, cycling or walking.
- The proposed change of use is expected to have negligible impact on the local road network, with its trip generation rates demonstrated to be significantly lower than that generated by the existing permitted retail / commercial use.

### **6.3. Planning Authority Response**

- None

## **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, 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 administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of</p>	<ol style="list-style-type: none"> <li>1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.</li> <li>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 2022<sup>1</sup> comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001.</li> <li>3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.</li> <li>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.</li> <li>5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.</li> <li>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.</li> </ol>
---	---

<p>structure normally used for public worship or religious instruction</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>
--	---

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

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

(a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013),

(b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or

(c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996.

7.2.6. 'shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

(a) for the retail sale of goods

(b) as a post office

(c) for the sale of tickets or as a travel agency

(d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,

(e) for hairdressing,

(f) for the display of goods for sale,

- (g) for the hiring out of domestic or personal goods or articles,
- (h) as a launderette or dry cleaners,
- (i) for the reception of goods to be washed, cleaned or repaired
- (j) but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;

7.2.7. 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.

7.2.8. Article 10 provides exemptions for change of uses in Part 4 of Schedule 2 of the Regulations. Article 10(4) provides an exemption for development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for accommodation of not more than 4 persons as overnight guest accommodation

## 8.0 Referral Precedents

8.1.1. ABP-318709-23: The Board determined on the 17<sup>th</sup> 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.

8.1.2. 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.

- 8.1.3. ABP-320219-24: The Board determined on the 20<sup>th</sup> 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.
- 8.1.4. ABP-320031-24: The Board determined on the 19<sup>th</sup> 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.
- 8.1.5. 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.
- 8.1.6. RL3573: The Board determined on the 14<sup>th</sup> of May 2018 that the use of Unit 1 for general retailing as a “Mr. Price”, if the food aisle were removed to comply with condition number 2 of planning register reference number PL 04/70037, and the change of use of Unit 1 from a toy shop to a “Mr. Price” at 1 Cleveragh Retail Park, Sligo is development and is not exempted development.
- 8.1.7. ABP-303868-19: The Board determined on the 26<sup>th</sup> of June 2019 that the operation of a toy shop in a retail warehouse in a bulky goods retail park at World of Wonder, Unit Number 3, Limerick Road, Shesherahkeale, Nenagh, Co. Tipperary, is development and is not exempted 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 subject building 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.
- 9.1.2. **Is or is not development**
- 9.1.3. Section 2(1) of the Act, 2000, as amended, defines “works” as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....’.
- 9.1.4. 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.
- 9.1.5. The first step to consider in this case is to establish the lawful use of the first-floor area of the subject property, and whether the change of use from this lawful use to a use to accommodate international protection applicants is development.
- 9.1.6. It is accepted that planning permission was granted (PA Ref. 98/1335), in August 2000, for the construction of a retail / commercial park, subject to 22 no. conditions. Condition no. 9 of this permission clarifies the scope of the retail units permitted within the retail / commercial park. I would also note from the planning history of the subject property that no subsequent planning permission was granted, as such the use of the property was not amended. During my site assessment I noted that retail units were operating on the ground floor area of the referral property. It would therefore appear, in my view, that the permitted and operating use is retail, as defined by condition no. 9 of the permission. The Commission will note that the previous referral question on the subject site (PA Ref. 24/451) stated that the use of the referral property was office, in which case the PA made a determination on that basis. However, the main grounds of this referral is that incorrect information was provided to the Council in the previous Section 5 application, stating that the use of

the referral building was office, which the applicant accepts was inaccurate information, and the PA acknowledges this error. This therefore clarifies that the referral building was not previously in office use.

- 9.1.7. The second step is to consider whether or not this retail use has been abandoned or extinguished, as claimed by the PA.
- 9.1.8. The PA contend that the permitted retail / commercial use at first floor level of Unit 8 was never acted upon as such there was never any established retail / commercial / office use on the first-floor level.
- 9.1.9. In response to a further information request the applicant submitted an affidavit and a letter from an auctioneer, confirming that there was an established retail use at the first-floor level of Unit 8. The affidavit submits that the subject premises comprises of four distinct retail units at ground floor level, and the first floor is an associated storage area for the retail units.
- 9.1.10. The affidavit is from a former occupier of one of the ground floor retail units, who was conducting retail furniture sales, from January 2018 to November 2019. The submitted affidavit indicates that during this time the entire first floor area served as a storage area for the furniture retail unit. The auctioneers' letter, who were responsible for handling the sale of the units in 2019, verifies the assertion in the affidavit, namely that one of the retail units was used by a retail furniture operator and the entire first-floor level above the 4 no. retail units was used as ancillary storage space associated with this furniture retail unit.
- 9.1.11. I would therefore consider that the submitted referral has satisfactorily demonstrated that the retail use at first floor level was acted upon, and that there was a retail use operating at first floor level, albeit used as storage for an associated retail use at ground floor level.
- 9.1.12. I note the relevant dates in the auctioneer's letter which confirms the use of the first-floor unit. The submitted auctioneer's letter states their instruction to sell the retail units in December 2019, however due to the instability of the retail market during the Covid-19 pandemic, the sale of the units was not completed until 2023. A further relevant consideration in establishing the lawful use is whether this first-floor retail use, which has not been in operation since November 2019, has been abandoned.

9.1.13. I would note that in Simons on Planning Law (2021), Browne refers to Supreme Court case Dublin County Council v. Tallaght Block Company Limited [1982] ILRM 535, and notes the following,

*The mere suspension of development will not, generally, amount to abandonment. It has been held, however, that where a previous development has not merely been suspended for a temporary and determined period but has ceased for a considerable time, with no evinced intention of resuming it at any particular time, it is a question of fact whether or not the former use has been abandoned.*

9.1.14. As such, in order for a use to be considered abandoned in accordance with case law, the use must be vacant for a considerable time period and secondly there must be demonstrated evidence of no intention of resuming the use. It is also evident from a review of case law generally that these matters require judgement in each case depending on the particular circumstances arising.

9.1.15. Based on the submitted documentation in this current referral case the accepted facts are as follows,

- The first-floor area has been vacant for over 6 years, since November 2019.
- The ground floor units are operating independently as retail units.
- The 4-no. ground floor retail units and the entire first-floor area have been sold separately to suit purchaser requirements
- The first-floor area is partially fitted out to provide accommodation for international protection applicants.

9.1.16. Notwithstanding the period of time of non-use, exceeding 6 years, and the carrying out of internal works which are intended to facilitate a change of use, I would not consider the retail use has been abandoned, as the first-floor works are unauthorised and there is no valid extant planning permission for a change of use. In support of this position, I would have regard to relevant case law, Molloy v Minister for Justice, Equality and Law Reform, in which case Browne infers that if a permitted use is displaced by another use, then the resumption of the permitted use itself represents a fresh act of development requiring planning permission. However on this referral site, although works have been undertaken at first floor level which relate to an

unauthorised use, any unauthorised use has not commenced, as such I would conclude that there is a right to resume the authorised use, as a subsequent permission or use was not implemented, and that the original retail permission was acted upon, as demonstrated in the submitted affidavit.

9.1.17. I therefore would take the view that the established lawful use of the first-floor unit is, as set out in condition no. 9 of the parent permission, a retail unit for the sale of bulky goods only.

9.1.18. The change of use from retail (shop) to the provision of accommodation for International Protection Applicants has been specifically provided for as a class of exempted development in legislation, in Class 20F of Part 1, Schedule 2 of the Regulations, as such the proposed change of use is material and therefore constitutes development.

9.1.19. In addition to the above, I would note from the PA's Planner's Report, the Referrer's submission to ACP, the submitted plans, and my site assessment, that alterations to the interior of the structure have been partially undertaken to facilitate the proposed change of use. It is evident from the submitted plans, and my site assessment, that the internal works to the first floor are extensive and in the main amount to subdividing the first-floor area into a series of bedrooms, 25 in total, with communal spaces such as dining areas, kitchens and sitting rooms. The alterations also include the provision of shower and toilet blocks. As these alterations are partially complete the works undertaken include the insertion of partition walls, plastering, installation of internal insulation, insertion of new ceilings, electrical and plumbing works.

9.1.20. The alterations involve the operation of construction, and alteration, which constitute 'works' and as such falls under the definition of development under Section 3(1)(a) of the Act.

## **9.2. Is or is not exempted development**

9.2.1. I would consider that Class 20F of Part 1, Schedule 2 of the Regulations is the relevant exemption for consideration for the proposed change of use. Class 20F provides an exemption for a change of use from shop to use as accommodation for persons seeking international protection. For clarity, Class 20F of the Regulations states the following,

*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.*

- 9.2.2. The Class 20F exemption refers to 'shop', therefore a key issue for consideration is whether the permitted retail use within the retail / commercial park would qualify for the exemption which is for a 'shop'. Condition no. 9 of this permission clarifies the type of retail units permitted.
- 9.2.3. Condition no. 9 of the parent permission specifically refers that the retail units shall be used only for the sale of bulky goods such as electrical appliances, DIY stores, building supplies, furniture, tiles, repair shops, kitchen/bathroom shops or showrooms, carpet sales, computer stores, engineering types of sales i.e. fireplaces/garden machinery, light engineering (wrought ironwork or custom-made works). Further, condition no. 9 also specifies that retail activities excluded include general retailing, such as food retailing, bookshops, professional and financial institutions. Moreover condition no. 9 refers that retail activity or uses which would normally be associated with the town centres will not be permitted. The reason for the specific nature of this condition is to protect the existing town centre retail function.
- 9.2.4. The Retail Planning Guidelines (2012), which I have referred to in para 5.3 above, define 'bulky goods', and I would consider that condition no. 9 of the parent permission is generally consistent with the items listed in Annex 1 of the Retail Planning Guidelines, 2012, in respect of 'bulky goods'.
- 9.2.5. I would also acknowledge that 'shop' is defined in Article 5 of the Regulations, as follows;

*shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –*

*(a) for the retail sale of goods*

*(b) as a post office*

*(c) for the sale of tickets or as a travel agency*

*(d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and "wine" is defined as any intoxicating liquor which may be sold under a wine retailer's off-licence (within the meaning of the Finance (1909-1910) Act, 1910), 10 Edw. 7. & 1 Geo. 5, c.8,*

*(e) for hairdressing,*

*(f) for the display of goods for sale,*

*(g) for the hiring out of domestic or personal goods or articles,*

*(h) as a launderette or dry cleaners,*

*(i) for the reception of goods to be washed, cleaned or repaired*

*(j) but does not include any use associated with the provision of funeral services or as a funeral home, or as a hotel, a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises except under paragraph (d), or any use to which class 2 or 3 of Part 4 of Schedule 2 applies;*

9.2.6. I would consider, based on the above definition of 'shop' and due to the classification of 'bulky goods' in the Guidelines, that the integration of bulky retail goods is not considered in the normal understanding of retail. On this basis it is reasonable to conclude, in my opinion, that the nature of retailing, as contained in the definition of a 'shop' is different in nature to that permitted in condition no. 9 of the parent permission. Moreover, the retailing as contained in the definition of a shop, in my view, is more typical of a town centre, and the objective, or reason, of condition no. 9 is to protect the town centre retail function, and therefore by its nature I would consider that a shop, as defined in the Regulations, is materially different to that of a retail use selling bulky goods.

- 9.2.7. I would also note that over the past number of years a significant number of Board decisions have established precedents in determining that there is a material difference, in planning terms, between retail uses selling bulky goods and general retailing, including referral precedents ABP-303868-19 and RL.3573.
- 9.2.8. Therefore, as the Class 20F exemption relates to 'shop' and not retail units used only for the sale of bulky goods, I would conclude that the Class 20F exemption would not be available in this instance.
- 9.2.9. The Class 20F exemption is a temporary use '*by or on behalf of the Minister of Children, Equality, Disability, Integration and Youth*'. The referral submission includes correspondence from the DCEDIY confirming their interest in utilising the property for the accommodation of International Protection applicants, subject to planning compliance, building control, fire and insurance certifications. I would therefore consider that the applicant has adequately demonstrated that the temporary use is for or on behalf of the Minister of Children, Equality, Disability, Integration and Youth. Accordingly, should the Commission consider that the Class 20F exemption is available, it would not fall on this requirement.
- 9.2.10. In conclusion, I would be satisfied that the proposed change of use from retail/commercial (shop) at Unit 8 (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo, to residential accommodation to provide for international protection applicants is not exempted development, as the permitted use does not come within the definition of a shop.

### 9.3. **Restrictions on exempted development**

- 9.3.1. 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.
- 9.3.2. The PA have outlined specifically that the development would not be exempted if such development would endanger public safety by reason of traffic hazard or obstruction of road users, and that this would need to be demonstrated.

- 9.3.3. The referral submission to ACP includes a report from transport planning consultants. This transport report provides traffic modelling using TRICS, and, in my view, the report satisfactorily demonstrates that the proposed change of use is expected to have negligible impact on the local road network, with its trip generation rates demonstrated to be significantly lower than that generated by the existing permitted retail / commercial use. I would concur with the transport assessment that the proximity to the town centre would allow for cycling, walking and the use of public transport, which would reduce the need for car ownership for residents. I would note that the PA does not include any counter analysis demonstrating that the proposed development would have an adverse traffic impact relative to that of the permitted use. I therefore would not consider that Article 9 (1)(a)(iii) would apply in this instance.
- 9.3.4. Nonetheless, and should the Commission consider that the development is exempted development in accordance with the provisions of Article 6 of the Regulations, I would be of the view that Article 9 (1)(a)(i) would apply and de-exempt the exemption, on the basis that a 'shop' use, as defined in Article 5 of the Regulations, is materially different to a retail use selling bulky goods, and the use of a shop within the referral property, to avail of the exemption, would contravene condition no. 9 of the parent permission.
- 9.3.5. 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 Class 20F apply in this instance that Article 9 (1)(a)(i) would de-exempt the said exemptions.

## 10.0 EIA Screening

- 10.1. 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. I have considered case ABP-322709-25 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 Moy SAC (site code 002298) located approximately 3.4 km to the north of the referral site. The Newport River SAC (site code 002144) is located approximately 7.4 km to the southwest.
- 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:
- The nature and scale of development.
  - 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 Recommendation

- 12.1. 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 change of use from retail/commercial (shop) to Temporary International Protection Accommodation at Unit 8, (First Floor), N5 Business Park, Moneen,

Castlebar, Co. Mayo, and associated internal works, is or is not development or is or is not exempted development:

**AND WHEREAS** SagJoin Partnership requested a declaration on this question from Mayo County Council and the Council issued a declaration on the 12<sup>th</sup> of May 2025, stating that the matter was development and was not exempted development:

**AND WHEREAS** SagJoin Partnership referred this declaration for review to An Coimisiún Pleanála on the 6<sup>th</sup> day of June 2025:

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

- (a) Section 2(1), 3(1), 4(2) and 4(4) of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Relevant case law,
- (d) Previous referrals to the Commission, including ABP-303868-19 and RL.3573,
- (e) The documentation on the file, including the submission on behalf of the requestor SagJoin Partnership:
- (f) the pattern of development in the area:
- (g) the report and recommendation of the Inspector

**AND WHEREAS** An Coimisiún Pleanála has concluded that:

- (a) the authorised use of the premises on the site is as a retail use for the sale of bulky goods, as permitted by condition no. 9 under planning register reference number 98/1335,
- (b) a change in the use of the premises from a retail for the sale of bulky goods to general retailing would involve a material change of use, having regard to its character and its material external impacts (such as its possible impact on town centre retailing) on the proper planning and sustainable development of the area and, therefore, constitutes development, and
- (c) the change of use of retail use for the sale of bulky goods to provide accommodation for persons seeking international protection is not exempted development as it does not come within the scope of Class 20F – Part 1 of Schedule 2 – 'Exempted Development - General' inserted by The Planning and Development (Amendment) (Number 4) Regulations 2023 (S.I No 376/2023).

**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 change of use from retail/commercial (shop) to Temporary International Protection Accommodation at Unit 8, (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo, 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

28<sup>th</sup> April 2026

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	ABP-322709-25
<b>Proposed Development Summary</b>	Whether the change of use from retail/commercial (shop) to Temporary International Protection Accommodation at Unit 8, (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo, and associated internal works is or is not development or is or is not exempted development.
<b>Development Address</b>	Unit 8 (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo.
<b>In all cases check box /or leave blank</b>	
<b>1. Does the proposed development come within the definition of a ‘project’ for the purposes of EIA?</b>  (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.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>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?</b>	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2,	

<p>Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	
<p><input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></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><b>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)?</b></p>	
<p>Yes <input type="checkbox"/></p>	<p><b>Screening Determination required (Complete Form 3)</b></p>
<p>No <input checked="" type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b></p>

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_

## Form 2 - EIA Preliminary Examination

<b>Case Reference</b>	ABP-322709-25
<b>Proposed Development Summary</b>	Whether the change of use from retail/commercial (shop) to Temporary International Protection Accommodation at Unit 8, (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo, and associated internal works is or is not development or is or is not exempted development.
<b>Development Address</b>	Unit 8 (First Floor), N5 Business Park, Moneen, Castlebar, Co. Mayo.
<b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b>	
<p><b>Characteristics of proposed development</b></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 the change of use to provide accommodation for persons seeking international protection. The development also involves internal alterations to an existing building.</p> <p>The alteration works 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. 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><b>Location of development</b></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 is the River Moy SAC (site code 002298) located approximately 3.4 km to the north of the referral site. The Newport River SAC (site code 002144) is located approximately 7.4km to the southwest.</p> <p>Given that there are no hydrological connections I have concluded in my AA Screening that the development would not likely have a significant effect on any European site.</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.
<b>Types and characteristics of potential impacts</b>  (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	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.
<b>Conclusion</b>	
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>
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 o