



An  
Coimisiún  
Pleanála

## Inspector's Report ACP-322840-25

### Question

Whether the use of a B & B to provide accommodation for persons seeking international protection is or is not development or is or is not exempted development

### Location

The Atlantic Way B&B, Main Street, Laghey. Co. Donegal, F94 XA37

### Declaration

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

S524/101

Applicant for Declaration

Carduff Developments Limited

Planning Authority Decision

Is not exempted development

### Referral

Referred by

Carduff Developments Limited

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.....	4
3.2. Planning Authority Reports .....	5
4.0 Planning History.....	6
5.0 Policy Context.....	7
5.1. Donegal County Development Plan, 2024 – 2030 .....	7
5.2. Natural Heritage Designations .....	7
6.0 The Referral.....	7
6.2. Planning Authority Response.....	11
7.0 Statutory Provisions.....	12
7.1. Planning and Development Act, 2000, as amended .....	12
7.2. Planning and Development Regulations, 2001, as amended. ....	12
8.0 Referral Precedents.....	15
9.0 Assessment.....	17
9.1. Introduction .....	17
9.2. Is or is not development.....	17
9.3. Is or is not exempted development .....	19
9.4. Restrictions on exempted development.....	22
10.0 EIA Screening.....	22
11.0 Appropriate Assessment .....	23
12.0 Water Framework Directive .....	23
13.0 Recommendation .....	24

Appendix 1 – Form 1: EIA Pre-Screening

## 1.0 Site Location and Description

- 1.1. The referral site is located in the centre of Laghey, Co. Donegal, which is situated approximately 4.5 km to the southeast of Donegal Town.
- 1.2. The referral property has access onto the Main Street, via electric gates, however the property is set back from the Street, by approximately 60 – 70 metres and is accessed by a driveway which slopes downwards to the subject property.
- 1.3. The subject property is a single storey detached structure currently used to accommodate persons seeking international protection.
- 1.4. The site also includes a separate detached single storey building which is subdivided into an office and a laundry facility. The site also includes an on-site playground and security office.
- 1.5. The site includes car parking provision for approximately 9 – 10 vehicles.

## 2.0 The Question

- 2.1. The question for consideration is as follows.

*Whether the use of Atlantic Way Bed and Breakfast, Main Street, Laghey. Co. Donegal, to provide accommodation for persons seeking international protection is or is not development or is or is not exempted development.*

## 3.0 Planning Authority Declaration

- 3.1.1. On the 11<sup>th</sup> of December 2024 a request for a Declaration in accordance with Section 5(1) of the Planning and Development Act, 2000, as amended, was received by Donegal County Council from Carduff Developments Limited.
- 3.1.2. The Planning Authority issued a declaration on the 22<sup>nd</sup> of May 2025, to the effect that the change of the use of existing bed and breakfast to provide accommodation for persons seeking international protection at The Atlantic Way B&B, Main Street, Laghey. Co. Donegal is development and is not exempted development.

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

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

- The subject property is known as the Atlantic Way B&B, Main Street, Laghey.
- The existing building is not a protected structure nor listed on the NIAH.
- Permission was granted under application ref. no. 03/1007 for an extension to the existing dwelling for bed & breakfast purposes and to install a new septic tank. This extension provided for 7 no. additional bedrooms for B&B accommodation.
- The property is not served by mains sewer. Inadequate information in respect of proposed effluent treatment.
- No information submitted in relation to floor plans illustrating the rooms for accommodation and rooms for the family ownership within the property.
- Further information is required to enable a determination.

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

- A detailed floor plan illustrating the internal layout of the existing B&B, identifying the exact area(s) of the permitted guesthouse use, and identifying the area of the property that constitutes the residential use, and the proposed number of rooms and occupants.
- Submit details of the existing wastewater treatment system and confirm that it has capacity for the proposed number of occupants and is functioning in accordance with Environmental Protection Agency guidelines.

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

- Revised plans submitted illustrate 15 no. bedrooms intended to provide for 51 persons.
- The plans also illustrate communal spaces for the residents including kitchen, dining etc.

- There is no personal care provided for the occupants, only a staff office and store.
- Revised layout plan illustrates existing connection to public mains.
- The applicant has failed to indicate a residential component to the existing dwelling that would be essential for the use of the B&B.
- Failure to comply with the exemption would therefore de-exempt the use of the building for IPAS.
- There is no evidence of a signed contract to confirm that the proposed temporary use is either by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth. Although not requested through FI, this is an integral part of the proposed use of the building as IPAS accommodation.
- The proposed change of use is not exempt having regard to the conditions and limitations of Class 14, (h) of Part 1 of Schedule 2 of the Planning & Development Regulations, 2001 (as amended).

#### 3.2.5. Other Technical Reports

- None

## 4.0 Planning History

### 4.1.1. The following planning history relates to the referral site.

- L.A. Ref. 25/60113 – Retention permission **granted**, on the 28<sup>th</sup> of May 2025, subject to conditions, for first floor development consisting of additional guest accommodation, including all other associated site development works to an existing premises.
- L.A. Ref. 03/1007 – Permission **granted**, on the 23<sup>rd</sup> of April 2004, subject to conditions, for the erection of a single storey extension to existing dwelling house for bed and breakfast purposes, and to install a new septic tank and treatment works.

## 5.0 Policy Context

### 5.1 Donegal County Development Plan, 2024 – 2030

- 5.1.1. In the County Settlement Hierarchy (Figure 3.1) Laghey is designated as a ‘Rural Settlement’, which is the fourth settlement tier in the County.
- 5.1.2. Section 3.3.4 of the Plan notes that Donegal is a predominantly rural county that there will be a need to accommodate genuine housing need whilst having regard to environmental, landscape and technical constraints and also to the viability of our smaller towns and villages.

### 5.2 Natural Heritage Designations

- Donegal Bay (Murvagh) SAC (site code 000133) – 1.02 km west.
- Donegal Bay SPA (site code 004151) – 1.05 km west.
- Donegal Bay (Murvagh) pNHA (site code 000133) – 1.02 km west.

## 6.0 The Referral

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

### 6.1.1. Introduction

- No works are being sought as part of this referral and the application relates solely to the use of the building.
- Staff will visit the site for maintenance and cleaning works only and no element of care, either social, physical or emotional is provided to the residents.
- No non-government or approved housing body is involved in the day-to-day operation of the property.
- It is contended that the use for the provision of long-term residential accommodation for protected persons at a B&B is not development.

- The PA have erred in their determination which concluded that in order for the B&B to operate as a B&B that there has to be a residential component to operate same.
- The PA concluded that the B&B component is subject to the exemption and that the residential component is not.
- The entirety of the building was used as a B&B and is a holiday accommodation or other premises providing overnight accommodation. Both uses are exempted under Class 14(h).

#### 6.1.2. Summary of case

- There is no requirement for a B&B or guesthouse accommodation to have separate residential use and there is no requirement for the owner or operator of the accommodation to reside in the premises.
- A residential unit can be used to house individuals / families who are international protection applicants. There is no change to the building other than the socio-economic class associated with the inhabitants.
- The proposed use of the guesthouse comprising of 15 no. rooms will not add any strain to existing services, nor will it increase traffic volumes, noise or waste at the site.
- Established PA's decisions have determined that change of use from a guest house to accommodate international protection applicants is exempted development. The proposed changes of use are exempted development having regard to Class 14(h) of Part 1, Schedule 2 of the Regulations.

#### Grounds for Referral

- The PA have erred in its assessment, as there is no requirement for a B&B to be assessed as two separate units, i.e. residential dwelling and as a B&B.
- The B&B operated without a resident residing in the B&B.
- The property provides 15 no. bedrooms, and all bedrooms can be provided for overnight accommodation in one night.
- The existing B&B or other premises is exempted development having regard to Class 14(h).

- The applicant does not intend to carry out works to the property. There are no external changes to the property.
- The subject proposal will accommodate 51 no. persons and there are various communal living areas including a common room, communal kitchen, laundry facilities and various stores. These communal areas are available to occupants of the B&B.
- There is a small staff office within the property.
- No personal care services are provided for the residents. The provision of communal facilities on site does not constitute care provision.
- All occupants are independent residents, and the management role is strictly operational and administrative.
- There are numerous precedents whereby Planning Authority's determined that the change of use from guest house to accommodation for international protection applicants is exempted development, and this includes;
  - PA Ref. 393, Cavan County Council – 19 & 21 Coleman Road, Drumnavanagh, Cavan,
  - Cavan County Council – The Bridge Restaurant and Guesthouse, Coleman Road, Cavan.
  - PA Ref. S5 2024/62, Louth County Council – No. 7 Castle Street, Ardee, Co. Louth.
  - PA Ref. ED24/0057 – South Dublin County Council – The Forge Guesthouse, Mill Road, Saggart, Co. Dublin.
- ABP Ref. 307077 refers to a case which the Board determined that the change of use of incomplete apartments and to residential accommodation, including persons seeking international protection, and not as a facility for the protection and care of protected persons, does not constitute a change of use.
- The continued use of Atlantic Way B&B as a residential building does not constitute development in accordance with s. 2(1) of the Planning and Development Act, 2000 (as amended).

- In respect of material change of use the test is whether it is materially different from the prior use.
- In *Esat Digifone v South Dublin County Council*, the High Court referred that the determination of materiality must be relevant to the proper planning and development and the preservation of amenities.
- In *Galway County Council v Lackagh Rock* the High Court referred to the test of materiality are the matters that the PA would take into account in the event of a planning application.
- In *Budd J. in Westmeath County Council v Quirke & Sons*, the court noted that the activities on the land constitute a change in use, however not all alterations will be material, and that consideration of materiality of a change of use means assessing not only the use itself but also its effects.
- Atlantic Way B&B has been in use as residential accommodation providing holiday accommodation since 2004. The residential use is retained and the only difference is an increase in the number of residents.
- Case law (*Dublin Corporation v Moore (1984)*) confirmed that demographic differences among residents, including legal status, are irrelevant to planning assessments.
- The judgement also concluded that the socio-economic profile of the occupants should not be considered in determining whether a material change of use was undertaken.
- The B&B facility has 15 no. guestrooms and each room is ensuite.
- The property includes shared living area, communal room and communal laundry services on site.
- Residents are free to enter and exit the property.
- The proposed residential accommodation does not provide care.
- The continued use of the property to provide residential accommodation does not constitute development as no material change of use has occurred.

- In the case of Cork County Council v Slattery Pre-Cast Concrete, the High Court referred that the assessment of whether an intensification of an existing use at a property constitutes a material change of use is one to be assessed in light of practical effects relevant to planning considerations. Such as increased vehicular traffic, noise, waste collection and impact on the amenity of surrounding residents.
- The property is well served by public buses and the likely car ownership at the property would be low, and the number of staff will be minimal. There will not be a noticeable increase in traffic volumes at the site.
- No change is proposed to the current waste management collection.
- The proposal will not affect noise levels in the area that may be detrimental to the amenity of adjoining dwellings.
- The increase in residents at the property would not constitute an intensification of use. The practical effects of the new use are no different to the approved use.
- It is contended that no material change of use would occur.

## 6.2. Planning Authority Response

6.2.1. The following is the summary of a response submitted by the PA.

- The change of use from B&B to accommodation for protected persons is not exempted development in accordance with Class 14(h) of Part 1 of Schedule 2 of the Regulations.
- A residential component is integral to a B&B use and has not been taken into account in the argument by the applicant.
- It is noted that referrals have been lodged to ACP for change of use from guesthouse to IPAS accommodation, with only one referral relating to a B&B which was withdrawn.
- There is no evidence of a signed contract that the proposed temporary use is either on or behalf of the Minister for Children, Equality, Disability, Integration and Youth. This is essential for a proposed IPAS use.

- The PA is reliant on the Planner's Report and recommendation.

## 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,</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> </ol>

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

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. 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.
- 7.2.7. 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-322072-25 – The Commission determined on the 6<sup>th</sup> of March 2026 that a change of use of a Farmhouse Bed and Breakfast to provide accommodation for persons seeking international protection, Laune Valley Farmhouse B&B, Bansha, Killorglin, Co. Kerry, constitutes a material change of use and is not exempted development as it does not come within the scope of Class 14 – Part 1 of Schedule 2 of the Regulations.
- 8.1.2. ABP-321968-25: The Commission determined on the 18<sup>th</sup> of February 2026 that a residential dwelling at 32 Sandhills, Hacketstown Road, Carlow as a residence for International Protection Applicants is not development. The Commission accepted the Inspectors recommendation. The Inspectors Report concludes that the use of the existing semi-detached dwelling for residential accommodation for protected persons does not represent a change of use from the permitted use and, therefore, does not constitute development. In respect of a material change of use, the Inspector concluded that the nature and the characteristics of the residential accommodation for persons seeking international protection, would not have different planning considerations in relation to traffic generation, waste collection, noise or impacts on adjacent amenities generally, relative to the occupation of this single residential property. As such the use of the dwelling for protected persons would not be materially different to that of the permitted use on the referral site.
- 8.1.3. ACP-322842-25: The Commission determined on the 10<sup>th</sup> of March 2026 that the use of existing residential apartment block located at 108 Thomas Davis St, Mallow,

Co. Cork to provide accommodation for persons seeking international protection is not development. The Commission accepted the Inspectors recommendation. The Inspectors Report concludes that the nature and the characteristics of the residential accommodation for persons seeking international protection on the referral site, would not have materially different planning considerations in relation to traffic generation, waste collection, noise or impacts on adjacent amenities generally, relative to the occupation of 9 no. apartments.

- 8.1.4. ABP-320219-24: The Board determined on the 20<sup>th</sup> of November 2024 that the proposed change of use of a 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 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 a 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.
- 8.1.7. ABP-321373-24: The Board determined on the 14<sup>th</sup> 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.

## **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.

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

- 9.2.1. The relevant question to consider in this referral is whether a change of use from bed and breakfast to accommodation providing for international protection applicants is development.
- 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. I would note that the information on the file, including that submitted in the referral to ACP indicates that no works were undertaken at the property, as such development has not occurred due to works on the site.
- 9.2.3. In terms of the established use on the referral site, it is evident from the information on the file that the referral property once operated as a Bed and Breakfast, and this is not disputed by either of the parties. The established use is apparent from the planning history on the subject site, as both L.A. Ref. 25/60113 and L.A. Ref.

03/1007 relate to permissions for extension to existing B&B on the subject site. Further, I would note from Google Street View (2011 and 2010) that signage to the front of the property, adjoining the public road, advertised a B&B on the referral site.

- 9.2.4. In considering whether a material change of use has occurred and therefore development, I would note that a Bed and Breakfast, although not defined in the Regulations or the Act, operates primarily as residential in character whereby guest accommodation is ancillary to the main use and are typically located in residential areas with the accommodation is short term in nature.
- 9.2.5. The proposed accommodation is different in character to an individual dwelling house, as there are a large number of individuals, from several families, and the proposed occupancy is 51 persons proposed for 15 no. bedrooms, sharing communal facilities. The character of this occupation is therefore different to that of a single household living in one individual dwelling unit. The proposed use, for residential accommodation for persons seeking international protection, is not that of a dwelling house which would be associated with a Bed and Breakfast.
- 9.2.6. The proposed use has one communal kitchen, sitting room and an external laundry room. There is also an on-site manager and security. I would consider that the proposed accommodation for persons seeking international protection is more akin to an institutional use and is therefore, in my opinion, a material change of use from an individual dwelling house.
- 9.2.7. I would also have regard to a previous decision by the Commissioners, in case reference ABP-322072-25, which I have referred to above in para. 8.1.1. In this case the Commission determined that a change of use from Bed and Breakfast to accommodation for persons seeking international protection constitutes a material change of use. I would also note the Board decision in respect of ABP-321373-24, which the Board determined that change of use from guesthouse to accommodation for persons seeking international protection constitutes a material change of use. In this case (ABP-321373-24) the Board concluded a material change of use is apparent on the basis that Class 6 of Part Four of Schedule 2 of the Planning and Development Act, 2001 (as amended) provides for guest house and 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. I would consider that the same rationale would apply to a Bed and Breakfast.

9.2.8. I note the referrer cites previous Board decision ABP-307077-20, however, in that instance, each apartment in question was in use as an apartment. In this instance, one dwelling house is proposed to provide communal living facilities for a large number of people, from different families, in a congregated setting.

9.2.9. I would note that the referrer has cited case law in their submission as evidence that a material change of use has not occurred, however the fact that no exemption is available for a change of use from Bed and Breakfast to accommodation to provide for international protection applicants, as explained in para. 9.2.7 above, and effectively planning permission would be required is evidence, in my opinion, that a material change of use has occurred.

9.2.10. On the basis of the above considerations, I would conclude that the proposed change of use is a material change of use and therefore falls under the definition of development under Section 3(1)(a) of the Act.

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

9.3.1. The referrer claims that Class 14(h) of Part 1, Schedule 2 of the Regulations provides an exemption for a change of use from Bed and Breakfast to use as accommodation for protected persons. The PA determined that the exemption would not apply in this instance. For clarity, Class 14(h) of the Regulations states the following

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

9.3.2. I would acknowledge that Bed and Breakfast is not listed above under the Class 14(h) exemption and therefore an issue for consideration is whether the planning legislation has different interpretations in respect of a Bed and Breakfast

establishment and a Guesthouse, and as such if there are any implications for the potential exemption available in Class 14(h), Part 1, Schedule 2 of the Regulations.

- 9.3.3. Firstly, I note that neither guest house or bed and breakfast are defined in the planning legislation. 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. The specific use category in Class 6 of Part Four, Schedule 2 is '*Use as a residential club, a **guest house** or a hostel (other than a hostel where care is provided)*'.
- 9.3.4. It is also worth noting that the Donegal County Development Plan, 2024-2030, has land use zoning objectives for designated settlements, and the Land Use Zoning Matrix is standard for all settlements within the Plan. A specific use listed in the Land Use Zoning Matrix is '*Guesthouse/Hotel/Hostel*', and all these uses are specifically referenced in Class 14(h) of Part 1, as noted above. Notably Bed and Breakfast is not listed as a use in the Donegal County Development Plan Land Use Zoning Matrix. I would consider this relevant in the context of this referral application as the Plan does not include Bed and Breakfast within the uses '*Guesthouse/Hotel/Hostel*', and it would therefore not be considered as a use within these uses.
- 9.3.5. Furthermore, Article 10(4) of the Regulations refers to guest accommodation in the context of an exemption. In this regard Art. 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. Art. 10(4) therefore affords an exemption to any house to provide guest accommodation of up to 4 bedrooms. Having regard to the nature of the exemption (maximum 4 bedrooms) envisaged in Art. 10(4) the scale of this guest accommodation would be small, and more typically aligned with a Bed and Breakfast establishment.
- 9.3.6. In addition, I would consider that the intention of the Art. 10(4) exemption is that the principal use of the property remains as a dwelling house, and that the guest accommodation is ancillary. Whereas a guest house which is listed as a use category in Class 6, of Part 4, Schedule 2 of the Regulations, as referred to above, can typically be larger in scale, and more commercial in nature, than that envisaged

in Art. 10(4), and I note from a standard dictionary definition that Guest House is defined as '*kind of small hotel*'.

- 9.3.7. Further to the above considerations, I would consider that should a Bed and Breakfast be considered an applicable use for Class 14(h), then the implication of the exemption in Art. 10(4) would effectively mean that any house could in theory avail of the Class 14(h) exemption on the basis that it has availed of the Art. 10(4). Furthermore, I would consider that given that a house, or residential generally, is not listed in Class 14(h), that it is the intent of the legislation that a house, or residential generally, cannot avail of the exemption under Class 14(h).
- 9.3.8. The critical issue to determine, in my view, is whether a Bed and Breakfast can avail of the Class 14(h) exemption. I would be of the view based on the above considerations that there is a distinction in planning legislation in relation to a Bed and Breakfast establishment, which can be smaller in scale and more residential in character, compared with a Guesthouse, and that Class 14(h), Part 1, Schedule 2 of the Regulations is clear in terms of the available exemptions and Bed and Breakfast is not listed as an exempted use. Similarly, in Class 20F, there is a long list of types of building, but bed and breakfast is not listed.
- 9.3.9. I would acknowledge that the referrer submission refers to 4 no. precedents whereby Planning Authority's determined that the change of use from guest house to accommodation for international protection applicants is exempted development. However, I have reviewed these precedents, as contained in the appendix of the referral submission, and all of these Section 5 cases relate to guesthouses, rather than Bed and Breakfast establishments, which is the subject of this referral, and therefore I would not consider that the submitted precedents are directly relevant to the current referral before the Commission.
- 9.3.10. However, should the Commission reach a different conclusion and take the view that the subject referral building can be classified as a Guesthouse, or that a Bed and Breakfast establishment is an applicable use in Class 14(h) then the change of use at the referral property to residential accommodation providing for persons seeking international protection would be exempted development in accordance with Class 14(h), Part 1, Schedule 2 of the Regulations.

- 9.3.11. The referrer also refers to ‘holiday accommodation’ or ‘other premises’ as a potential exemption for the referral property within Class 14(h). Class 14(h) refers specifically to ‘holiday accommodation’ as a use for which the change of use to the provision of accommodation for International Protection Applicants has been specifically provided for. ‘Holiday accommodation’ is not defined in the Act or the Regulations, notwithstanding it is my view that ‘holiday accommodation’ or ‘other premises’ must be read in the context of the list as a whole: ‘*hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential accommodation, or part thereof*’, which in my view are more residential institution, as envisaged in the exemption, rather than a dwelling house, or Bed and Breakfast, whereby the guest accommodation is ancillary to the main use.
- 9.3.12. Separately I would note that the PA refers that there is no evidence of a signed contract to confirm that the proposed temporary use is either by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth. Notwithstanding, this requirement is in respect of the Class 20F exemption and is not a requirement for Class 14(h) exemption for which the referrer seeks the exemption.

#### 9.4. **Restrictions on exempted development**

- 9.4.1. I have noted above that the available exemption in Class 14(h), Part 1, Schedule 2 of the Regulations is not applicable in respect of Question 2 of the referral before the Commission. Notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations, 2001 (as amended), refers to restrictions on exempted development.
- 9.4.2. In this respect I have assessed the use to provide accommodation for persons seeking international protection having regard to the relevant Article 9 restrictions, and I would conclude that should Classes 14(h) and/or 20(F) apply in this instance that Article 9 would not de-exempt the said exemptions.

### 10.0 **EIA Screening**

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

## 11.0 **Appropriate Assessment**

- 11.1. I have considered case ABP-322840-25 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 Donegal Bay (Murvagh) SAC (site code 000133) located approximately 1.02 km to the west and Donegal Bay SPA (site code 004151) situated approximately 1.05 km west of the referral site.
- 11.3. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 11.4. The reason for this conclusion is as follows:
- The nature and scale of the development and the location of the site on developed serviced lands.
  - The absence of any ecological pathway from the development site to the nearest European Site.
- 11.5. I conclude, on the basis of objective information, that the development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.
- 11.6. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

## 12.0 **Water Framework Directive**

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

The reason for this conclusion is as follows.

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

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

### 13.0 Recommendation

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

**WHEREAS** a question has arisen as to whether the use of Atlantic Way Bed and Breakfast, Main Street, Laghey. Co. Donegal, to provide accommodation for persons seeking international protection is or is not development and is or is not exempted development:

**AND WHEREAS** Carduff Developments Limited requested a declaration on this question from Donegal County Council and the Council issued a declaration on the 22<sup>nd</sup> day of May 2025 stating that the matter was development and was not exempted development:

**AND WHEREAS** Carduff Developments Limited referred this declaration for review to An Coimisiún Pleanála on the 18<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) Part 1 and Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) Relevant case law,
- (e) Previous referrals to the Commission, including ABP-322072-25 and ABP-321373-24,
- (f) the planning history of the site,
- (g) The documentation on the file, including the submission on behalf of the requestor Carduff Developments Limited:
- (h) the pattern of development in the area:
- (i) the report and recommendation of the Inspector:

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

- (a) the change of use of the Bed and Breakfast to provide accommodation for persons seeking international protection constitutes a material change and therefore is development as defined under Section 3(1)(a) of the Planning and Development Act, 2000, (as amended),
- (b) the change of use of a Bed and Breakfast to provide accommodation for persons seeking international protection is not exempted development as it does not come within the scope of Class 14 – Part 1 of Schedule 2 – 'Exempted Development - General' inserted by The Planning and Development (Amendment) (Number 4) Regulations 2015 (S.I No 582/2015),

**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 of a Bed and Breakfast at Main Street, Laghey. Co. Donegal to provide accommodation for persons seeking international protection 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

14<sup>th</sup> April 2026

**Form 1 - EIA Pre-Screening**

<b>Case Reference</b>	ACP-322840-25
<b>Proposed Development Summary</b>	Whether the use of a B&B to provide accommodation for persons seeking international protection is or is not development or is or is not exempted development.
<b>Development Address</b>	The Atlantic Way B&B, Main Street, Laghey. Co. Donegal
	<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 type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input checked="" 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, Schedule 5 or a prescribed type of proposed road	

<p>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: \_\_\_\_\_