



An
Coimisiún
Pleanála

Inspector's Report ACP-322842-25

Question

Whether the use of existing residential apartment block located at 108 Thomas Davis St, Mallow, Co. Cork for use as accommodation for protected persons is or is not development or is or is not exempted development

Location

108 Thomas Davis St, Mallow, Co. Cork

Declaration

Planning Authority

Cork County Council

Planning Authority Reg. Ref.

D/251/25

Applicant for Declaration

Kyraview Ltd.

Planning Authority Decision

Is not exempted development

Referral

Referred by

Kyraview Ltd.

Owner/ Occupier

None

Observer(s)

None

Date of Site Inspection

15th and 16th January 2026

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1.0 Site Location and Description

- 1.1. The referral site comprises of an existing 4-storey building located in Thomas Davis Street, Mallow, Co. Cork. Thomas Davis Street is the town's main shopping and commercial street.
- 1.2. The referral property relates to the upper 3 floors of the building which comprises of 9 no. apartments, with 3 no. apartments on each floor.
- 1.3. The ground floor of the referral building contains a pharmacy and there is an access door to the upper floor apartments adjoining the pharmacy. The upper floor apartments are accessed by an internal stairwell.
- 1.4. All apartments have own door access onto a central courtyard area at each level. The rear apartments (6 no. units in total) all have south facing balconies. The front 3 no. apartments, overlooking Thomas Davis Street, have no private open space provision.
- 1.5. The 9 no. apartment units are currently in use as accommodation for persons seeking international protection.

2.0 The Question

I have amended the question slightly to reflect the referrer's submission to provide for a maximum occupancy of 45 persons. The content of the referral submission to provide for a maximum of 45 persons within the subject building is consistent with the submitted drawings that accompanied the referral submission. The question for determination is as follows.

Whether the use of residential apartments at 108 Thomas Davis Street, Mallow, Co. Cork, to provide accommodation for a maximum occupancy of 45 no. persons seeking international protection, is or is not development and/or is or is / not exempt development.

3.0 Planning Authority Declaration

3.1. On the 25th of April 2025, a request for a Declaration in accordance with Section 5(1) of the Planning and Development Act, 2000, as amended, was received by Cork County Council from Atlantic Building Consultants.

3.2. The Planning Authority issued a declaration on the 27th May 2025, to the effect that the change of use from the previously established and permitted use as 9 no. of apartments to the current use as emergency accommodation for persons seeking international protection is development and is not exempted development as apartments do not come within the scope of Class 14(h) of the Planning and Development Regulations, 2001 (as amended).

3.3. Planning Authority Reports

3.3.1. Planning Reports

3.3.2. The Planner's Report, dated 22nd May 2025, can be summarised as follows:

Is or is not development

- The previous use was residential apartments, and the current use is accommodation supporting displaced persons seeking international protection (IP).
- An important question is whether the development constitutes a material change of use.
- *Cusack v. Minister for Local Government and McMahon v Dublin Corporation* determines materiality on the bases of the differences between the character of the existing use and the proposed use.
- Another approach in case law considers the impacts or effects of the existing use compared with the proposed use (*Monaghan County Council v Brogan*). This is useful in the consideration of intensification of use.
- In *Galway County Council v Lackagh Rock* the court determined that what should be looked at are the matters which the planning authority would take

into account in the event of a planning application being made either for the use on the appointed day or for the present use.

- The permitted and established use at the building is residential apartments.
- A recent inspection of the referral site notes that the building is occupied solely by men, and the premises signage refers to 'Mallow Accommodation Centre'.
- Documentation in relation to previous planning application (Ref. 24/6244) confirms the occupancy of the accommodation centre was 62 (with a maximum capacity of 64 bed spaces across 8 apartments of the 9 no. apartments).
- Apartment no. 8 is occupied by 1 no. full-time on-site staff/caretaker. Apartment no. 8 includes office / desk reception area setup in the kitchen area to assist IP persons.
- Typically, 8 men reside in each apartment.
- The applicant proposes to reduce the occupancy to 45 IP applicant occupants to conform with the National Standards of Accommodation. It is unclear how this will be achieved.
- Documentation in relation to previous planning application (Ref. 24/6244) outlines details in respect of care and services available for residents. This includes,
 - Basic Needs and Welfare Support
 - Social and Community Support
 - Education and Support
 - Mental Health and Wellbeing Services
 - Legal and Integration Assistance
- The application documentation in respect of previous planning application (Ref. 24/6244) also outlines programme activities / operations at the premises, which includes administrative and management duties, resident

support and welfare, operations, facility management and security and compliance.

- It is submitted that the level of care services and supports arguably meets the threshold of care as defined in the planning regulations. This level of care is more typical of residential institutions or tourist accommodation.
- In the previous planning application, each bedroom contained 4 no. bedspaces in the form of 2 no. bunk beds, with typically 8 no. persons occupying each 2-bedroom apartment.
- A letter from the Department of Children, Equality, Disability, Integration and Youth submitted to the PA, refers to emergency accommodation for persons seeking international protection.
- The Mallow Accommodation Centre refers to provision of full residential board accommodation and other services that the standard of accommodation shall be a reasonable standard to meet the needs of those seeking international accommodation.
- In case law *Dublin Corporation v Moore* (1984) it was determined that socio-economic class of the inhabitants is not a factor in considering material change of use. The PA have not considered socio-economic class of the residents in considering a material change of use.
- A number of uses, such as boarding schools, nursing homes, hotels, prisons are clearly residential but are not apartments.
- The continuation of the broader residential use does not necessarily mean that a material change of use is not involved.
- Having regard to *Galway County Council v Lackagh Rock* the PA would take different matters into account in the event of a planning application.
- The Municipal District Office confirmed that there has been a significant increase in parking permit requests from occupants of the referral building¹, from 6 parking permits in 2022 to 19 permits in 2024. This further demonstrates the materiality of the change of use.

¹ No. 108 Thomas Davis Street

- The emergency accommodation use compared with the previously permitted/established use as apartments has different impacts or effects considering the larger number of residents and the 24-hour staffing. This amounts to different impacts than its use as 9 no. individual 2-bed apartments.
- Although accepting that a broader residential use is proposed, the use does not necessarily mean that a material change of use is not involved.
- Having regard to the number of occupants, including the 45 persons proposed, intensification of use and the level of care, services and supports in relation to personal care which is more typical of residential institutions, hostels or tourist accommodation, the current use as emergency accommodation for persons seeking international protection is not that of residential apartments.
- This use is more akin to residential institution, and the development constitutes a material change of use.

Is or is not development

- The permitted use is residential apartments.
- There is no exemption under the Act or Regulations, for the change of use of residential apartments to use as an emergency accommodation centre for protected persons.
- Class 14(h), Part 1, Schedule 2 of the Regulations, 2001 (as amended) provides an exemption for a change from various types of premises for accommodation for protected persons.
- Class 14(h), Part 1, Schedule 2 does not include houses or apartments.
- The reference to other premises or residential institutions providing overnight accommodation should be read in the context of establishments provided in Class 14(h).
- It is contended that houses or apartments are not the kind of residential institution envisaged in this exemption. Neither house nor apartments are listed in Class 14(h).

- Similarly, in Class 20F, there is a lengthy list of building types, but house or apartment is not listed.
- There is no available exemption that could apply to this development.
- The applicant refers to case ref. S524/105 in Donegal County Council. This case related to the use of apartments for long-term accommodation for protected persons with no care.
- Donegal County Council determined that a material change of use had occurred however it was exempt having regard to Class 14(h), as the site is already a permitted residential complex.
- It is considered that residential apartments or houses are not the same use as residential institution.
- The PA has had regard to ABP determinations ABP-307077-20 and ABP-320031-24.

3.3.3. Other Technical Reports

- None

4.0 Planning History

- L.A. Ref. 24/6244 – Permission **refused** on the 24th of March 2025 for retention of the change of use of the existing ground floor access hallway, access stairwell, and 9 number apartments in total at first, second and third floor level to its current use as emergency accommodation for displaced person(s) seeking international protection along with all associated works. The refusal reason stated the following.
 1. The site is located in the designated Mallow Local Electoral Area Rent Pressure Zone which is characterised by a high demand for housing and a limited supply of long-term accommodation available. The proposed retention of the change of use to emergency accommodation for displaced person or persons seeking international protection on a permanent basis would result in 9 no. of residential apartments being withdrawn from the available supply of residential accommodation for occupation within a

designated “Rent Pressure Zone”, where there is high demand for such units, and, would exacerbate the existing shortage of residential accommodation for long term or permanent occupation within Mallow town. As a result, to permit retention of the development would, therefore, would set an undesirable precedent for other similar development and be inconsistent with the Government’s Housing For All Policy and the Joint Housing Strategy in the Cork County Development Plan, 2022-2028, which seeks to secure national policy in meeting the housing needs of the County, increase housing supply, reverse the scale of unmet housing needs, and provide for a diverse range of housing needs to suit varying income levels and social circumstances. The proposed development would therefore seriously injure the amenities of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

- Section 5 D255524 – Cork County Council determined in September 2024 that the continued use of the 1st, 2nd and 3rd floor of existing residential development to accommodate displaced persons and persons seeking international protection until December 2028 is not exempted development.
- P.A. Ref. 2447 – Planning permission **granted** in 2002 for the demolition of existing buildings and the construction of a four-storey building comprising of retail on the ground floor with a total of 9 no. apartments on three upper floors.

5.0 Policy Context

5.1. Cork County Development Plan, 2022 – 2028

- 5.1.1. The referral site is zoned ‘Town Centre/Neighbourhood Centres’ whereby the land use zoning objective is, as follows,
- a. Promote the development of town centres and neighbourhood centres as the primary locations for retail and other uses that provide goods or services principally to visiting members of the public. The primary retail areas will form the main focus and preferred location for new retail development, appropriate to the scale and function of each centre and in accordance with the Retail

Strategy. Residential development will also be encouraged particularly in mixed use developments while the use of upper floors of retail and commercial premises in town centres for residential use will in particular be encouraged.

- b. Recognise that where it is not possible to provide the form and scale of development that is required on a site within the core area, consideration can be given to sites on the edge of the core area based on sequential approach.

5.2. Natural Heritage Designations

- Blackwater River (Cork/Waterford) SAC – (site code 002170) – 200m south
- Blackwater Valley (Killavullen) pNHA (site code 001080) – 8.5km east

6.0 The Referral

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

6.1.1. Description of property

- Each of the apartments function independently with private kitchen and bathrooms.
- Residents enter apartments freely, consistent with standard tenancies.
- The use of these apartments to accommodate persons seeking international protection involves no structural alterations, no intensification of use, and no new impacts on surrounding areas.
- The applicant provides no direct care facilities or services for the residents of the apartments other than standard supports and access to third party services. This is a reasonable level of support to assist with integration of residents into the area.
- There are no institutional or communal facilities onsite for residents.

Grounds for Referral

- Cork County Council (CCC) issued a declaration determining that the change of use from established / permitted apartments to emergency accommodation for international protection (IP) gives rise to considerations that are materially different and is development as a material change of use arises.
- A material change of use requires a shift in the functional character or planning impacts of the property in accordance with Westminster City Council v British Waterways Board (1985).

No Functional Change

- The apartments remain residential irrespective of the occupants.
- In Donegal CC decision (S5 24/105) the use of apartments for protected persons was deemed identical in function to general residential use, as both involve overnight accommodation by households. In this case the apartments remain private homes to the residents of each apartment.
- The use of apartments aligns with the original planning (P.A. Ref. 2477) which does not restrict occupancy based on residents' legal or socio-economic status, gender nor is there any condition that states the apartments must be occupied by single families or single occupancy owners.
- The use of the apartments aligns with rental properties throughout Ireland typical in urban areas.
- The applicant is committed to a reduction in occupancy to a maximum of 45 persons (as per the planning application 24/6244) and this commitment remains applicable to this section 5 application.

No Planning Impact

- The use of the apartments will not introduce any new traffic, noise or infrastructural demands beyond those of typical residential occupancy.
- There will be no change to waste generation or visual character of the apartments.

- CCC refer to an increase in demand for parking permits. The request for 19 parking permits to accommodate 45 persons does not demonstrate an intensification of use.

Legal Precedent

- 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 current use does not constitute a material change.

Planning Precedent

- ABP decision in case ref. 307077-20 provides an example of a residential development comprising of multiple units that has been deemed not development and as such suitable for overnight accommodation for persons seeking IP.

Development and Exempted Status

- No actual physical works/alterations are proposed to any of the apartments nor has CCC demonstrated a material change of use has occurred.

Exempted Development

- The subject apartments are included under '*other premises providing overnight accommodation*' as established in decision by ABP 307077-20 and Donegal CC (S5 24/105).
- There is no breach of the original planning conditions or zoning objectives for the subject apartments.
- There is full alignment with section 1.8.1 of Cork County Development Plan which promotes Social Inclusivity of individuals, families, social groups and communities with good quality housing in accordance with the Joint Housing Strategy of the CDP.

- A consensus reached by PA's and ABP is that residential use for protected persons amount to no material change, and should development be demonstrated there should be an exemption under Class 14(h) for apartments for this type of '*other premises providing overnight accommodation*'.

Conclusion

- The use of the existing apartments as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use.
- Should the proposal be development it is exempted under Class 14(h), Part 1, Schedule 2 of the Regulations.

7.0 Statutory Provisions

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

7.1.1. Section 2(1) of the Act states the following:

- 'development' has the meaning assigned to it by Section 3;
- 'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal'

7.1.2. Section 3(1) states that:

- 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or over land'.

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

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

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

7.2.1. Article 6(1) of the Planning and Development Regulations 2001, as amended, (hereinafter referred to as ‘the Regulations’) provide that ‘subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.

7.2.2. Schedule 2 of Part 1 to the Regulations set out the classes of exempted development, including ‘Class 14’ allowing for ‘development consisting of a change of use’: - ‘

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

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

7.2.3. Statutory Instrument 376 of 2023 titled Planning and Development (Exempted Development) (No. 4) Regulations 2023 is an amendment to the 2001 Regulations which inserted a new Class 20F to Part 1 of Schedule 2 of the 2001 Regulations. Class 20F is set out as follows:

Class 20F	Conditions and Limitations
Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or	1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.

<p>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</p>	<p>2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001.</p> <p>3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.</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>
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7.2.4. As provided for in Article 9(1)(a), the development to which article 6 relates, shall not be exempted development, under certain circumstances and the restrictions and limitations are outlined in this Article.

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

- ‘business premises’ means –
 - ‘(a) any structure or other land (not being an excluded premises) which is normally used for the carrying on of any professional, commercial or industrial undertaking or any structure (not being an excluded premises) which is normally used for the provision therein of services to persons,
 - (b) a hotel, hostel (other than a hostel where care is provided) or public house,or
 - (c) any structure or other land used for the purposes of, or in connection with, the functions of a State authority’
- ‘excluded premises’ means –
 - (a) any premises used for purposes of a religious, educational, cultural, recreational or medical character,
 - (b) any guest house or other premises (not being a hotel or a hostel) providing overnight guest accommodation, block of flats or apartments, club, or boarding house, or
 - (c) any structure which was designed for use as one or more dwellings, except such a structure which was used as business premises immediately before 1 October, 1964 or is so used with permission under the Act.
- ‘care’ means personal care, including help with physical, intellectual or social needs.

7.2.6. For the purposes of Schedule 2, the Regulations provide the following definition of a ‘protected person’ –

- (a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013),
- (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or
- (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996.

8.0 Relevant Referrals

- 8.1.1. ABP-321373-24: The Board determined on the 14th of April 2025 that the use of a guesthouse at Dun a Ri House Hotel, Kingscourt, County Cavan, to provide accommodation for persons seeking international protection, is development and is exempted development. The Board determined that the change of use from guesthouse to provide accommodation for persons seeking international protection constitutes a material change of use and therefore development, having regard to Class 6 of Part Four of Schedule 2 of the Planning and Development Act, 2001 (as amended) which does not include the provision of accommodation for international protection applicants as a use in that Class. Further the Board noted that the change of use from guesthouse to the provision of accommodation for International Protection Applicants has been specifically provided for as a class of exempted development in legislation.
- 8.1.2. ABP-318709-23: The Board determined on the 17th of February 2025 that the use of the buildings/properties/structures located at the Former Great Southern Hotel, for the purposes of accommodating persons seeking international protection is development and is not exempted development.
- 8.1.3. In this case works on a permitted use on site, i.e. nursing home, had commenced but was not completed in its entirety as permitted. The Board determined that the completion of such works to the building/properties/structures on site for any use other than a nursing home would, therefore, (i) contravene a condition attached to a permission under the Planning and Development Act, 2000, as amended, and (ii) be inconsistent with a use specified in a permission under that Act, and be de-exempted under Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as

amended, and pending the completion of these works, there are no other exemptions available.

- 8.1.4. ABP-320219-24: The Board determined on the 20th of November 2024 that the proposed change of use of former medical centre to temporary hostel use, to accommodate displaced persons or persons seeking international protection is development and is exempted development and Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 (as amended) is the relevant exemption. The Board also determined that works consisting of the replacement of a window with two new windows, blocking up of a door, removal of a window and its replacement with a new door is development and is exempted development.
- 8.1.5. ABP-320031-24: The Board determined on the 19th of November 2024 that the change of use of a dwelling house to accommodation, where care is not provided, for protected persons is development and is not exempted development. The Board concluded that a change of use from a dwelling house to provide accommodation, for protected persons is material change of use.
- 8.1.6. ABP-307077-20: The Board determined in December 2020 that the use of the premises at Cannaboe Street, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons, is not development. The Board determined that the permitted use of the apartments was not abandoned and the current use of the premises as apartments, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, does not constitute development.

9.0 **Assessment**

9.1. **Introduction**

- 9.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the accommodation use in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

9.2. Is or is not development

9.2.1. Section 3(1)(a) of the Act defines development as the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land and in effect relates to both works and the material change in the use of land or structures.

9.2.2. Works

I acknowledge that the referral submission confirms that no actual physical works/alterations are proposed or have been undertaken to any of the apartments, and this assertion is not contested by the planning authority.

9.2.3. I would acknowledge from information on the file that planning permission was granted (P.A. Ref. 2447) on the referral site in 2002 for the demolition of existing buildings and the construction of a four-storey building comprising of retail on the ground floor with a total of 9 no. apartments on three upper floors. Furthermore, and having regard to the planning history on the subject site, there was no subsequent planning permissions altering the residential apartment use or layout on the site.

9.2.4. I am therefore satisfied, based on a visual inspection of the site and the documentation on the file, that the established residential units are those permitted as residential apartments in the original permission (P.A. Ref. 2447) and have not been altered or modified internally or externally. I would therefore conclude that development has not occurred on the referral site due to works.

9.2.5. The apartments permitted in 2002 under L.A. Ref. 2447 are currently used to accommodate persons seeking international protection, since 2022. The question therefore before the Commission is whether the use of the existing permitted residential apartments to accommodate persons seeking international protection is a material change of use, which would therefore be development in accordance with Section 3 of the Act.

9.2.6. Material Change of Use

There is no definition of 'material change of use' in the Act, or any other statute, however case law has addressed the tests of materiality. I have considered all the case law referenced in the referrer's submission and the PA's planning report. I would note that in Simons on Planning Law (2021), Browne refers to the case law,

Galway County Council v Lackagh Rock, and Browne refers that Barron J. stated, in relation to material change of use, as follows,

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

- 9.2.7. A further consideration in respect of a material change of use is whether an intensification of use would constitute a material change to the use. I would note that in Simons on Planning Law (2021), Browne refers to the case law Dublin City Council v Carty Builders and Co. Ltd, which relates to a caravan park, and deems that the fact that a business is operating more extensively and successfully would not constitute a material change of use.
- 9.2.8. Further in Simons on Planning Law (2021), Browne notes that where the planning permission does not contain an express limitation on the scale of the business, it may be necessary to infer the scale of the business for which permission has been granted will follow a natural expansion envisaged in the planning permission.
- 9.2.9. In respect of an intensification of an existing use, having regard to case law, the intensification per se cannot be a material change in use, and that it must also be established that the intensification has affected the proper planning and development of the area.
- 9.2.10. In assessing whether a material change of use has occurred on the site I note that the existing apartments, used to accommodate persons seeking international protection, comprise of own-door independent living units and the residents are free to enter and exit the residential use, in a similar manner to other apartment developments.
- 9.2.11. Furthermore, in considering the nature of the use for residential accommodation, the following facts, based on the file documentation and my site assessment, are relevant,

- Each of the apartment's functions independently with private kitchen and bathrooms.
- The applicant provides no direct care facilities or services for the residents of the apartments other than an on-site manager, who resides in apartment no. 8.
- There are no shared or communal facilities onsite for residents, such as common rooms or laundry room.
- There is no reception orientation or care facilities on site for those seeking international protection. The existing use on site is not operating as an emergency reception for the care of protected persons.
- The existing use is being operated solely as residential accommodation.
- The residential accommodation has no off-street car parking provision, and car parking provision is met by on street permit spaces.

9.2.12. I have noted above that the existing residential development is maintained by an on-site manager, which is not uncommon amongst established apartment developments.

9.2.13. The household composition of each apartment on the referral site comprises of men only, and I note that the PA and the applicant both refer to case law *Dublin Corporation v Moore (1984)*, which infers that the social status and demographic differences among residents is not a planning consideration. I therefore would not consider that household composition is a material planning issue in respect of an apartment use or residential use generally.

9.2.14. Having regard to the foregoing, I would consider that the nature of the apartment use is operating as originally envisaged in the 2002 permission, in that the units are operating independently from one another and they are self-contained.

9.2.15. The PA's planning report has given consideration to ABP determinations ABP-307077-20 and ABP-320031-24. I have had regard to recent Board decision ABP-320031-24, in which case the Board concluded that the use of a dwelling house to accommodate persons seeking international protection was a material change of use. In this case the Planning Inspector's report noted that the accommodation was different in character to that of a dwelling house, with a large number of families and

individuals sharing communal facilities, as opposed to each household living in one individual dwelling unit.

- 9.2.16. The proposed use, before the Commission, does not include shared facilities such as kitchen, dining, common rooms or laundry rooms for the entire building, which would, in my opinion, change the nature of the use to more of an institutional residential setting.
- 9.2.17. I have also given consideration to previous Board decision ABP-307077-20, where the Board determined that the use of a premises as apartments, including residential accommodation for protected persons, is not development. In this particular case the Planning Inspector reported that the residential accommodation is being operated in a manner similar to other apartment developments, with gated access and servicing by a management and security suite, and that there are no facilities beyond those that would normally be expected of an apartment complex. The Planning Inspector's report concluded that the facility is operating as residential accommodation, as per the permitted use and the status or personal circumstances of the apartment residents is not a material planning issue.
- 9.2.18. Separately I note that both the PA and the applicant refer to a Section 5 declaration by Donegal County Council (S5 24/105) in which case the Council declared that the use of residential apartments as long-term residential accommodation for protected persons is development and is exempted development. However, there are no further details available on the file or Council's website and as such I am unable to determine the nature of use in this particular case and the relevance to the decision to the current referral before the Commission.
- 9.2.19. The PA refers to documentation in relation to previous planning application (Ref. 24/6244) outlines a level of care for the proposed use that is consistent with that of the definition of care in the Planning Regulations. Article 5 of the Planning and Development Regulations, 2001, as amended, defines 'care' as '*means personal care, including help with physical, intellectual or social needs*'. I would consider that the definition of care in the Regulations relates more to an institutional setting rather than the existing residential use at the property, which is comprised of own-door independent living units and the residents are free to enter and exit the residential use. Furthermore, I note that the referrer submits that the applicant provides no

direct care facilities or services for residents of the apartments other than standard supports to access third party services, as can be expected for persons seeking international protection to assist with integration of residents into the area.

9.2.20. Having regard to the above considerations it is reasonable to conclude, in my opinion, that the nature of the existing use of residential accommodation, in terms of its operating character, would be no different to that of the permitted use.

9.2.21. Intensification of Use

I would note that the referral submission indicates that the maximum occupancy of the building will be 45 persons, and this is consistent with the layout of bedspaces in the submitted drawings that accompanied the referral submission to the Commission.

9.2.22. Notwithstanding the applicant’s intention to limit the occupancy of the building to 45 persons, I note from my site assessment, that the apartment building has a maximum capacity of 64 persons, and this number is consistent with the findings of the local authority planner’s site inspection. It was evident from the site assessment that each apartment contains two bedrooms, and within each of the bedrooms there are two sets of bunkbeds with provision to accommodate 8 persons per apartment. Apartment no. 8 was occupied by the on-site manager; however, the remaining 8 apartments would have a maximum capacity of 64 persons. Notwithstanding the above, at the time of my site assessment the occupancy rate of the building was 49 persons.

9.2.23. The table below provides a summary of the bedspaces contained in the original permission, currently in situ, and proposed in the current referral application before the Commission.

<u>Bedspaces in the Referral Building</u>			
Apartment unit	Permission P.A. Ref. 2447	In-situ	Referral application
Apartment no. 1	4	8	5
Apartment no. 2	4	8	5
Apartment no. 3	4	8	5

Apartment no. 4	4	8	5
Apartment no. 5	4	8	5
Apartment no. 6	4	8	5
Apartment no. 7	4	8	5
Apartment no. 8	4	On-site manager	5
Apartment no. 9	4	8	5
Total	36	64	45

9.2.24. The original planning permission (L.A. Ref. 2447) includes 9 no. conditions, and I would note that none of the attached conditions expressly limited the scale of the use in terms of the maximum number of bedspaces.

9.2.25. The PA, in their Planners Report, raised concerns in respect of intensification of the use having regard to the increased demand for car parking permits, which rose from 6 parking permits in 2022 to 19 permits in 2024.

9.2.26. Notwithstanding the increase of 9 no. additional bedspaces within the building, the footprint of the building is unchanged with no extensions or additional buildings on the site. I therefore consider that any planning considerations in respect of visual impact, overshadowing or overlooking would not be materially different from that of the planning considerations in the original planning application (L.A. Ref. 2447), as there is no change to the footprint of the building.

9.2.27. I would acknowledge that there would be additional noise and waste generation based on the additional occupancy within the building, however given the increase of 9 persons, it is difficult to demonstrate, in my opinion, that this would be materially different to the planning considerations in the original planning application. Furthermore, and in respect of car parking demands and traffic generation, I would concur with the referrer that the request for 19 parking permits to accommodate 45 persons does not demonstrate an intensification of use, given that the original maximum occupancy was 36 persons.

9.2.28. I accept, owing to the increased bedspaces, that the intensity of the residential use would increase, however the overall nature and character of the use remain the same and, in my opinion, is not materially different to that permitted.

9.2.29. Conclusion

I do not consider that the nature and the characteristics of the residential accommodation for persons seeking international protection on the referral site, would 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, either on a rented or owner occupier basis, as permitted on the referral site. As such the use of the buildings for protected persons would not be materially different to the permitted use on the referral site.

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

9.3. Is or is not exempted development

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

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

9.3.3. Similarly, in Class 20F, there is a long list of types of buildings, but apartments are not listed. As such, there is no exemption under the Act or under the Regulations that can be availed of.

9.4. Restrictions on exempted development

9.4.1. I have noted above that there are no relevant exempted development provisions in respect of the referral before the Commission. Notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations 2001 (as amended) refers to restrictions on exempted development.

9.4.2. In this regard I have assessed the use to provide accommodation for persons seeking international protection having regard to the relevant Article 9 restrictions, and I would conclude that should Classes 14(h), 14(i) and/or 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-322842-25 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 Blackwater River (Cork/Waterford) SAC, located approximately 200m south 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 residential apartments at 108 Thomas Davis Street, Mallow, Co. Cork, to provide accommodation for persons seeking international protection, is or is not development and/or is or is / not exempt development:

AND WHEREAS Kyraview Ltd. requested a declaration on this question from Cork County Council and the Council issued a declaration on the 25th day of April 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Kyraview Ltd. referred this declaration for review to An Coimisiún Pleanála on the 23rd day of June, 2025:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) Section 4(2) of the Planning and Development Act, 2000, as amended,
- (e) Article 5 of the Planning and Development Regulations, 2001, as amended,

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

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) the permitted use of the apartments and the current use of the premises as residential accommodation for persons seeking international protection with a maximum occupancy of 45 persons, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, does not constitute development.
- (b) The use of the buildings as residential accommodation for person seeking international protection with a maximum occupancy of 45 persons, does not raise planning considerations that are materially different to planning considerations relating to the permitted use,

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the use of residential apartments to provide accommodation for persons seeking international protection, is not development.

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

Senior Planning Inspector

17th February 2026

Form 1 - EIA Pre-Screening

Case Reference	ACP-322842-25
Proposed Development Summary	Whether the use of existing residential apartment block for use as accommodation for protected persons is or is not development or is or is not exempted development.
Development Address	108 Thomas Davis St, Mallow, Co. Cork.
In all cases check box /or leave blank	
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input checked="" type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

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

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

Inspector: _____ Date: _____