



Question

Whether 12 residential dwellings to determine if the current use for accommodation for persons seeking international protection is or is not development and is or is not exempted development

Location

Caislean Ri, Athenry, Co. Galway

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED25/66

Applicant for Declaration

Dom St. Properties (Ltd) Galway

Planning Authority Decision

Is not exempted development

Referral

Referred by

Dom St. Properties (Ltd) Galway

Owner/ Occupier

None

Observer(s)

None

Date of Site Inspection

26th February 2026

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Appendix 1 – Form 1: EIA Pre-Screening

1.0 Site Location and Description

- 1.1. The referral site is located in Athenry, Co. Galway, and the site relates to 12 no. houses within a suburban housing estate situated to the north of the town centre.
- 1.2. The 12 no. houses comprise of a block of 8 houses facing southwards and a separate block of 4 houses facing westwards.
- 1.3. The houses in question are all two-storey semi-detached dwellings with front driveway and rear gardens, and all the houses have side accesses.
- 1.4. Car parking provision is available for two cars to the front of each house.
- 1.5. The houses are currently occupied by persons seeking international protection.

2.0 The Question

- 2.1. The question for consideration is as follows.

Whether the use of 12 residential dwellings for its current use for accommodation for persons seeking international protection at No. 69, 70, 71, 72, 73, 74, 75, 76, 129, 130, 131 and 132 at Caislean Ri, Athenry, Co. Galway, is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

- 3.1.1. On the 13th of May 2025 a request for a Declaration in accordance with Section 5(1) of the Planning and Development Act, 2000, as amended, was received by Galway County Council from Dom St. Properties (Ltd) Galway.
- 3.1.2. The Planning Authority issued a declaration on the 27th of May 2025, to the effect that the change of the use of 12 residential dwellings for its current use for accommodation for persons seeking international protection at No. 69, 70, 71, 72, 73, 74, 75, 76, 129, 130, 131 and 132 at Caislean Ri, Athenry, Co. Galway, is development and is not exempted development.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

3.2.2. The Planner's Report can be summarised as follows:

- The proposed works are not considered exempt under Class 14(h) of the Regulations, as a dwelling house does not fall under the structures that are considered to be exempt under this class.
- The applicant's reference to ABP-307077-20 and Donegal County Council's S. 5 report, S524/104, are acknowledged.
- Singular dwelling houses does not fall within the scope of 'other premises' as described in Class 14(h).

3.2.3. Other Technical Reports

- None

4.0 Planning History

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

- L.A. Ref. 21/1846 – Planning permission **granted**, on the 22nd of December 2021, for the construction of a creche with a four-bedroom apartment over and 74 no. dwellinghouses consisting of
 1. 2 no. two storey detached houses
 2. 52 no. two storey semi-detached houses
 3. 20 no. two storey terraced houses (five blocks of four) and
 4. polishing filters, roads and associated services all to be connected to wastewater treatment plant approved under PI. Ref. No. 04/3598 (Gross floor area 7,965 sqm).
- L.A. Ref. 21/1551 – Planning permission **granted**, on the 18th of October 2021, subject to conditions, for further change of house plans to housing development previously permitted under PA ref. no.'s 06/3813 (as extended under PA ref. no.'s 12/4 & 18/12) as amended by PA ref. no.'s 20/1470 & 20/1611.
- L.A. Ref. 20/1611 – Planning permission **granted**, on the 21st of June 2021, subject to conditions, for revisions to access arrangements to housing

development previously permitted under PA Ref. No.'s 06/3813 (as extended under PA Ref. No's 12/4 & 18/12) at Cullairbaun, Athenry. The proposed revision seeks to retain the existing "Caislean Ri" housing estate entrance onto the R347 road. In addition, it is proposed to construct a mini roundabout along the R347 road to the south of the existing Caislean Ri estate.

- L.A. Ref. 20/1470 – Planning permission **granted**, on the 19th of July 2021, subject to conditions, for change of house plans and minor alterations to housing development previously permitted under PI. Ref. No.'s 06/3813 (as extended under PI. Ref. No.'s 12/4 & 18/12).
- L.A. Ref. 18/12 – Extension of duration of permission **granted**, on the 5th of March 2018 to 31st of December 2021, for the construction of a creche with a four-bedroom apartment over and 74 no. dwellinghouses approved under previous planning reference no. 06/3813. Previous Planning reference No 12/4.
- L.A. Ref. 12/4 – Extension of duration of permission **granted**, on the 17th of April 2012 to 16th of April 2017 (as per L.A. Ref. 18/12).
- L.A. Ref. 06/3813 – Planning permission **granted**, on the 19th of February 2007, subject to conditions, to construct a creche with a four-bedroom apartment over and 74 no. dwellinghouses consisting of
 1. 2 no. two storey detached houses
 2. 52 no. two storey semi-detached houses
 3. 20 no. two storey terraced houses (five blocks of four) and
 4. Polishing filters, roads and associated services all to be connected to wastewater treatment plant approved under PI. Ref. No. 04/3598 (Gross floor area 7965 sqm).

5.0 Policy Context

5.1 Galway County Development Plan, 2022 – 2028.

- 5.1.1. In the County's Settlement Hierarchy (Table 2.12 'Settlement Hierarchy') Athenry is designated as 'Strategic Potential', which is the third settlement tier in the County. The description for 'Strategic Potential' in the CDP is '*Large economically active service centre that provides employment for the surrounding areas*'.

5.2 Athenry Local Area Plan, 2024 – 2030.

- 5.2.1. The referral site is zoned 'R – Residential Existing' in accordance with the 'Land Use Zoning Map' of the LAP. The objective for the 'R – Residential Existing' zoning objective is stated as follows.

'To protect and improve the residential amenities of existing residential areas'.

5.3 Natural Heritage Designations

- Cregganna Marsh SPA (site code 004142) – 12 km southwest.
- Monivea Bog SAC (site code 002352) – 6.89 km northeast.
- Galway Bay Complex SAC (site code 000268) – 10.5 km southwest.
- Galway Bay Complex pNHA (site code 000268) – 10.5 km southwest.
- Monivea Bog pNHA (site code 000311) – 6.89 km northeast.

6.0 The Referral

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

6.1.1. Description of property

- The subject property is a purpose-built residential estate comprising of multiple self-contained dwellings.
- This referral relates to 12 no. dwellings.

- Each of the subject dwellings function independently and are self-contained, with private kitchen, bathroom, and habitable rooms, operating standard residential units for families seeking international protection.
- Residents enter the individual dwellings freely, consistent with standard tenancies.
- The use of these dwellings 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 houses. There are no institutional or communal facilities onsite for residents.
- The dwellings are occupied by families in accordance with their original intention.
- The existing occupancy of the dwellings, is as follows:

Table 1

House No.	Occupancy
No. 69	8 people – two different families
No. 70	6 people – one family
No. 72	6 people – one family
No. 73	5 people – one family
No. 75	5 people – one family
No. 129	8 people – two different families
No. 130	7 people – one family
No. 131	5 people – one family
No. 132	5 people – one family

- The use of the subject dwellings align with the original planning permission, which do not restrict occupancy based on the residents legal or socioeconomic status, nor is there any restrictions on occupancy.

Grounds for Referral

- Galway County Council (GCC) issued a declaration determining that the use would constitute development under Section 3 of the Act.
- 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 dwellings remain residential in nature, irrespective of the occupants.
- In Donegal County Council 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 dwellings remain private homes with no communal facilities, management offices or intensification of use.
- The dwellings in the current referral are occupied by families who are familiar with one another.
- The use of dwellings in the current aligns with the original planning permission.

No Planning Impact

- The use of the dwellings 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.

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

- Dwelling is defined as ‘any building (or part thereof) ordinarily used as a residence, including houses, flats, apartments, associated land.
- Apartment is defined as a self-contained residential unit with a larger building – legally a type of dwelling.
- 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 international protection.

Development and Exempted Status

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

Exempted Development

- The subject houses 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 the ‘R – Residential Existing’ zoning objective, NPO 37 (Housing for All) and Ireland’s obligations under the EU Reception Conditions Directive 2024/1346.
- 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 is an exemption under Class 14(h).

6.2. Planning Authority Response

- None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

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

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

7.1.2. Section 3(1) states that:

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

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

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

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

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

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

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

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

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

Class 20F	Conditions and Limitations
<p>Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum,</p>	<ol style="list-style-type: none"> 1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection. 2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001. 3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.

<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>
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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.

8.0 Referral Precedents

- 8.1.1. ABP-321968-25: The Commission determined on the 18th 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.
- 8.1.2. ACP-322842-25: The Commission determined on the 10th 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.
- 8.1.3. 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.

8.1.4. 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.

8.1.5. ABP-307077-20: The Board determined in December 2020 that the use of the premises at Cannaboe Street, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons, is not development. The Board determined that the permitted use of the apartments was not abandoned and the current use of the premises as apartments, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, does not constitute development.

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 dwellings use in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

9.2. **Is or is not development**

9.2.1. I would acknowledge that the referral submission confirms that no internal or external modifications were undertaken to the 12 no. houses, and this assertion is not contested by the planning authority. The housing development, which the 12 no. houses form part of, was originally permitted in 2007, in accordance with L.A. Ref.

06/3813, and I would consider, based on the information on the file and my site assessment, that the established residential houses, the subject of this referral, have not been altered or modified. I would therefore be satisfied that development has not occurred on the referral site due to works, in accordance with Section 2(1) of the Act.

- 9.2.2. I noted from my site assessment and the documentation on the file that the subject dwellings are currently used to accommodate families seeking international protection.
- 9.2.3. I would therefore consider that the key question for the Commission to determine in this referral case is whether the use of the existing dwellings to accommodate persons seeking international protection represents a change of use, and if that is the case whether a material change of use has occurred, which would therefore be development in accordance with Section 3 of the Act. I will firstly consider whether a change of use has occurred.

Change of Use

- 9.2.4. The 12 no. residential properties are currently in use as residential accommodation for persons seeking international protection. The PA's Planner's Report stated that the proposed change of use is development.
- 9.2.5. I noted from my site assessment that the houses would appear to be operating solely for residential accommodation purposes. There is no reception orientation or on-site care facilities within the properties or adjacent to the properties and there is no provision of shared or communal facilities that would serve the properties.
- 9.2.6. The referrer also submits that the houses function independently and are self-contained, and that the residents enter the individual dwellings freely, consistent with standard tenancies.
- 9.2.7. During my site assessment I inspected the internal layout of houses no. 69 and no. 70, which are both typical of the remainder of the houses. No. 69 was recently vacated and unoccupied at the time of my site assessment and no. 70 was occupied by a single family, and in both cases the residential units were operating as single occupancy residential properties. Further, the layout of each of the properties were identical to that as illustrated in the submitted plans in the referrer's submission and were not modified in any way.

- 9.2.8. In accordance with the referrer's submission the 12 no. houses are occupied generally by families (refer to Table 1 in para 6.0 above) and the houses function as single occupancy units and as such are no different to that of the permitted use. The residential properties include a driveway to the front of the houses which can accommodate 2 no. car parking spaces, which again is standard for domestic suburban type residential properties.
- 9.2.9. I would consider, based on the above considerations, that the character of the 12 no. residential properties is no different to that of either owner occupier houses or that of rented accommodation in the private market which is consistent with the intended purpose of the permitted development in L.A. Ref. 06/3813.
- 9.2.10. In addition to the above considerations, I would also acknowledge that the referrer's submission indicates that there are no direct care facilities or services for the residents of the 12 no. houses.
- 9.2.11. In addition to the above considerations and in support of the current referral before the Commission, I note that the applicant's submitted legal opinion refers to case law, *Dublin Corporation v Moore (1984)*, which infers that the social status of residents is not a planning consideration.
- 9.2.12. A separate case raised by the referrer relates to 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 apartments are not operating as an emergency reception for the care of protected persons, and that it is being operated as residential accommodation, as per the permitted use and the status or personal circumstances of the apartment residents is not a material planning issue. I would also consider that this is a relevant referral precedent case for the current referral before the Commission, as the 12 no. houses, as noted in para. 9.2.5 above, have no reception orientation or on-site care facilities.
- 9.2.13. In addition to the above I would also have regard to previous Board decision ABP-307031-24, in which case the Board concluded that the use of a dwelling house to accommodate persons seeking international protection was a material change of use. In this case the Planning Inspector's report noted that the accommodation was different in character to that of a dwelling house, with a large number of families and

individuals sharing communal facilities, as opposed to each household living in one individual dwelling unit. The Board accepted the Inspector's recommendation. In the current referral before the Commission the 12 no. houses are operating as independent self-contained residential units which differs to that in case ABP-307031-24, where a large number of families were sharing communal facilities within a single property.

9.2.14. Having regard to the above considerations I am of the view that the use of the 12-no. existing semi-detached dwellings for residential accommodation for protected persons does not represent a change of use from the permitted use and, therefore, does not constitute development.

9.2.15. Although I have concluded above that a change of use has not occurred, for completeness and should the Commissioners conclude otherwise, I will consider the factors in respect of a material change of use relevant to the question before the Commission.

9.2.16. 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 applicant's submission. 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'.

9.2.17. 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.

- 9.2.18. The applicant submits that the use of the dwellings will not introduce any new traffic, noise or infrastructural demands beyond those of typical residential occupancy. The subject residential dwellings have car parking provision located to the front of the properties where there is sufficient space to accommodate two vehicles. There is no information on the file in respect of car ownership or usage for the residents, however I noted from my site assessment some of the households had cars parked to the front of their respective properties.
- 9.2.19. I would consider, given the space to accommodate two vehicles to the front of the properties and the household occupancy rates submitted by the applicant, that there is adequate space to accommodate the car parking demands and that any vehicle generation at the properties would not demonstrate, in my opinion, an intensification of use.
- 9.2.20. I do not consider that the nature and the characteristics of the residential accommodation for persons seeking international protection, would have different planning considerations in relation to traffic generation, waste collection, noise or impacts on adjacent amenities generally, relative to the permitted use for the 12 no. residential properties, either on a rented or owner occupier basis, as permitted on the referral site. As such the use of the dwellings for protected persons would not be materially different to that of the permitted use on the referral site.
- 9.2.21. I am satisfied that development has not occurred, however should the Commission consider otherwise I have set out considerations in relation to exempted development.

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

- 9.3.1. As noted above in para. 7.0 (statutory provisions) exemptions exist for change of use from various premises to use for accommodation for protected persons under the Regulations under Class 14(h) and Class 14(i) of Part 1 of Schedule 2.
- 9.3.2. Class 14(h) and Class 14(i) refers to a list, as follows, *'hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential accommodation, or part thereof'*.
- 9.3.3. I would consider that the provision *'or other premises'* is part of the larger provision *'or other premises or residential institutions providing overnight accommodation'* and

must be considered in the context of the list as a whole. Notwithstanding the fact that a house provides overnight accommodation, a house is not the kind of residential institution envisaged in this exemption.

- 9.3.4. It is my view, and similar to the Board's determination in referral case ABP-320031-24, which I have summarised in para. 8.1.4 above, that the exemptions would not apply to this dwelling house.
- 9.3.5. Similarly, in Class 20F, there is a long list of building types, but apartments are not listed. As such, there is no exemption under the Act or under the Regulations that can be availed of.
- 9.3.6. I note that the applicant refers to a Section 5 declaration, dated 22nd of January 2025, 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. The applicant in this current referral includes the relevant documentation in respect of S5 24/105, which I have reviewed. I note that Donegal County Council decided that the change of use is a material change of use, as it involves altering the nature of the occupancy from general residential use to accommodation for protected persons, and that the change of use is exempted development having regard to Class 14(h) of Part 1, Schedule 2 of the Regulations. I have outlined under para 9.2 above that the change of use is not development.
- 9.3.7. Notwithstanding Declaration S5 24/105, houses, or indeed apartments, are not the kind of residential institution envisaged in this exemption, and as such, there is no exemption under the Act or under the Regulations that can be availed of.

9.4. Restrictions on exempted development

- 9.4.1. I have noted above that there are no relevant exempted development provisions in respect of the referral before the Commission. Notwithstanding, and should the Commission consider otherwise, I would acknowledge that Article 9 of the Planning and Development Regulations 2001 (as amended) refers to restrictions on exempted development.
- 9.4.2. In this respect I have assessed the use to provide accommodation for persons seeking international protection having regard to the relevant Article 9 restrictions,

and I would conclude that should Classes 14(h), 14(i) and/or 20F apply in this instance that Article 9 would not de-exempt the said exemptions.

10.0 EIA Screening

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

11.0 Appropriate Assessment

11.1. I have considered case ABP-322848-25 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 Monivea Bog SAC (site code 002352) located approximately 6.89 km to the northeast, Galway Bay Complex SAC (site code 000268) located approximately 10.5 km to the southwest, and Cregganna Marsh SPA (site code 004142) situated approximately 12 km to the southwest.

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

11.4. The reason for this conclusion is as follows:

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

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

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

12.0 Water Framework Directive

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

The reason for this conclusion is as follows.

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

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

13.0 Recommendation

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

WHEREAS a question has arisen as to whether the use of 12 residential dwellings for its current use for accommodation for persons seeking international protection at No. 69, 70, 71, 72, 73, 74, 75, 76, 129, 130, 131 and 132 at Caislean Ri, Athenry, Co. Galway is or is not development or is or is not exempted development:

AND WHEREAS Dom St. Properties (Ltd) Galway, requested a declaration on this question from Galway County Council and the Council issued a declaration on the 27th day of May 2025, stating that the matter was development and was not exempted development:

AND WHEREAS Dom St. Properties (Ltd) Galway, 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), 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) Parts 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) Relevant case law,
- (e) Previous referrals to the Commission, including ABP-321968-25 and ABP-307077-20,
- (f) the planning history of the site,
- (g) The documentation on the file, including the submission on behalf of the requestor Dom St. Properties (Ltd) Galway:
- (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 permitted use of the 12 no. houses and the current use of the properties as residential accommodation for persons seeking international protection, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, does not constitute development.
- (b) The use of the 12 no. houses as residential accommodation for persons seeking international protection, does not raise planning considerations that are materially different to planning considerations relating to the permitted use,

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that the use of the 12 no. houses to provide accommodation for persons seeking international protection, is not development.

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

Senior Planning Inspector

27th March 2026

Form 1 - EIA Pre-Screening

Case Reference	ACP-322848-25
Proposed Development Summary	Whether 12 residential dwellings to determine if the current use for accommodation for persons seeking international protection is or is not development and is or is not exempted development.
Development Address	Caislean Ri, Athenry, Co. Galway.
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	

<p>type of proposed road 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: _____