



Question

Whether the change of use of an existing shop to 7 no. residential units is or is not development and is or is not exempted development.

Location

4-5 Sexton Street, Abbeyside,
Dungarvan, Co. Waterford.

Declaration

Planning Authority	Waterford City and County Council
Planning Authority Reg. Ref.	D5 2025 24
Applicant for Declaration	Keybuild Services Limited
Planning Authority Decision	Is not exempted development

Referral

Referred by	Keybuild Services Limited
Owner/ Occupier	Keybuild Services Limited
Observer(s)	None

Date of Site Inspection

12th December 2025

Inspector

Phillippa Joyce

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1.0 Site Location and Description

1.1. The referral site is located at No.s 4 and 5 Sexton Street, Abbeyside in Dungarvan town centre. No. 4 Sexton Street is a distinctive two storey, 5 bay structure featuring arched windows and doors with fanlights in the front elevation, and No. 5 Sexton Street is a two storey single bay structure with a ground floor level shopfront. The structures are mid-terrace properties, which are presently vacant.

2.0 The Question

2.1. A question has arisen pursuant of section 5 of the Planning and Development Act 2000, as amended (2000 Act) as to whether the change of use of an existing shop to 7 no. residential units, is or is not development, and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. Waterford City and County Council, in accordance with section 5 of the 2000 Act, issued a notification of declaration on the 4th September 2025 stating that a proposed change of use at the subject site 'is development and is not exempted development'.

3.2. Planning Authority Reports

3.2.1. Background

- I highlight to the Commission that there are two planning reports on the case file. The first report is SEP date signed 28th August 2025, and the second report is SEP date signed 4th September 2025.
- In the first report, the change of use at the subject site was determined to be development and to be exempted development. The last use of both properties was understood as being 'use as a shop'.
- In the second report, the change of use was determined to be development and not to be exempted development. The change in the decision relates to

the statement '[t]he stated use as a shop is inaccurate; the subject premises was last used as a café'.

- The notification of the declaration decision is based on the planning report date signed 4th September 2025.
- The report date signed 4th September includes a note stating, 'Pages 2-10 are exactly the same as the report dated 27 August 2025'.
- The second report also includes a section entitled 'Additional SEP Comments'.
- Accordingly, the following summary includes the main points from the second report incorporating those main points from the relevant pages as cited from the first report.

3.2.2. Planning Report

The planner's report serves as the basis for the declaration decision, the main points of which include:

- Cites sections 2(1), 3(1), 4(2), 4(4), 172(1) and 177U(9) of the 2000 Act.
- Cites article 10(6) of Part 2 of the Planning and Development Regulations 2001 as amended (2001 Regulations).
- In the section entitled 'Additional SEP Comments', the following points are made:
 - Outlines the background to the legislative provision article 10(6) of the 2001 Regulations.
 - States part of the site (No. 5) was last operated as a café.
 - The café use was permitted under PA Ref. 17/290 and is considered to be the last established and permitted use.
 - A café does not constitute use as a 'shop' nor come within Class 2(c) (Schedule 2, Part 4) or any other use class of the Regulations (refers to ABP 315684-23).

- While it could be argued as an oversight or not being in the spirit of the legislation, there are no exemptions under which the development would constitute exempted development.
- Describes the stated use as a shop as being inaccurate and was instead last used as a café.
- Changes the referral question to 'the change of use of an existing café to 7 no. residential units'.
- Concludes that the change of use constitutes works (as per section 2(1) of the 2000 Act), constitutes development (as per section 3(1)), and does qualify for exemption allowed under article 10(6) of the 2001 Regulations.
- Requirements for EIA and AA are screened out.

3.2.3. There are no Technical Reports from internal departments on the declaration case.

4.0 Planning History

Part of the Referral Site, No. 5 Sexton Street (note: the application includes part of the adjoining No. 4 Sexton Street)

PA Ref. 17/290 (implemented)

Permission granted to M. Ryan on the 26th July 2017 for development consisting of a change of use from bookmakers office to café along with change of use from public house (existing stores to the rear and side of the bookmakers on ground floor along with kitchen and stores on 1st floor) to café. Planning permission is also sought for new shopfront signage to the front elevation.

Other Section 5 Referral Cases

ABP 315684-23, PA Ref. D/277/22 – whether the change of use of a premises from a funeral home to a coffee shop is or is not development and, is or is not exempted development at 12 The Mall, Youghal, Co. Cork.

Decision: is development and is not exempted development (May 2024).

5.0 Policy Context

5.1. Local Planning Context

- 5.1.1. The applicable development plan for the referral case is the Waterford City and County Development Plan 2022-2028 (CDP). The site is zoned as General Business 'GB', the objective of which seeks 'To provide for and improve General Business uses; this includes suburban district retail and local neighbourhood centres'.
- 5.1.2. The site does not contain/ is not located within any architectural or cultural heritage designations (e.g., archaeological monuments, protected structures, architectural conservation areas). The site does not contain/ is not located within/ subject to any ecological or hydrological related CDP designations (e.g., biodiversity, natural heritage, tree protection, flood zones).
- 5.1.3. The site is located within the 'Most Sensitive' landscape character type as designated in the CDP (which applies to the majority of Dungarvan town and along the county's coastlines). The site is also located within a 'Scenic Route' designation through the town and along the coastal roads.

5.2. Natural Heritage Designations

- 5.2.1. The referral site is not located in or immediately adjacent to a European Site, a Natural Heritage Area (NHA) or a proposed NHA. There are no watercourses at or adjacent to the site. The site is c.132m to the northeast of Colligan River as it flows into Dungarvan Harbour.
- 5.2.2. The European Site designations in proximity to the referral site include (measured at closest proximity):
 - Dungarvan Harbour SPA (site code: 004032) is c.52m to the south.
 - Dungarvan Harbour pNHA (site code: 000663) is c.257m to the northwest and c.677m to the southeast.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The main points raised in the referrer's case include:

Procedural Matters

- Applicant wishes to provide apartments under the provisions of article 10(6) of the Planning Regulations 2001.
- Highlights the exemption expires at the end of December 2025.
- Applicant has notified the planning authority and received acknowledgment of receipt of same (dated 18th December 2024, copy included with the referral).
- Highlights the existence of two reports by the planning authority.
- States it is unclear from the reports why the planning authority changed its decision on the declaration.

The Premises and the Last Use

- States the report dated 3rd September and Declaration are incorrect. Matters refuted include:
 - The subject premises (i.e., No.s 4 and 5) are interconnected properties.
 - Previous café use was in No. 5 Sexton Street, and only at ground floor level.
 - No. 4 Sexton Street was previously in use as a public house, then as a bicycle hire shop and never as a café.
 - The ground and first floor levels of No. 5 are not connected.
 - Access is available at ground floor levels between No. 4 and No. 5. The first-floor level of No. 5 (used as a wash/ prep area) can only be accessed from the ground floor level of No. 4.
 - The kitchen that served the café use is within the public house at No. 4.
 - The wash/ prep area and storage at first floor level of No. 5 was linked to and served the adjacent public house.
 - Declaration does not refer to the existing shop use at No. 4 Sexton Street.
 - The last use of No.4 was as a bicycle hire shop and that use extended into No. 5.

- Incorrect to state the last use of the subject premises was as a café.
- A site visit would have confirmed that; the property was not inspected by any Council officials.
- Café use (Bliss Café operation) ceased in July 2023, closing down in August 2023.
- States the subsequent use of the subject premises (i.e., Nos 4 and 5) was as a bicycle hire shop, refers to advertising by the Waterford Greenway Bike Hire Company with a business address at 3-5 Sexton Street.

Class 14(c) Part 1 of Schedule 2 of the Planning Regulations 2001

- Notwithstanding and without prejudice to the above, the Commission is asked to have regard to the provisions of Class 14(c) of the 2001 Regulations.
- Class 14(c) holds a change of use of a restaurant to a shop is exempted development. Café can be defined as a small restaurant.
- Change of use from a café to a shop use can be exempted development and change of use of a shop to a residential use can be exempted development.
- Submits precedent exists for 'leapfrogging from one use to another which is not of itself an exempted development, if an intervening change use, if availed of, would have automatically exempted both uses'.
- Refers to ABP PL 236313, PA Ref. 09/249; where the Board concluded in its reasoning that '*... (d) The said Regulations do not require that an authorised use be implemented before availing of the exemption permitted under this class*'.
- Applying same reasoning the even if No. 5 (café use) had not been used as a shop, such a use would have been an authorised use through exemption and it was not necessary for that authorised use (i.e., shop) to have been implemented for the change of use to residential to take place.

6.2. Planning Authority Response

6.2.1. No response has been received from the planning authority on the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000, as amended

7.1.1. Section 2(1): Interpretation

“Structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of any structure so defined...

‘Works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

7.1.2. Section 3(1): Development

“Development” means –

(a) the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land...

7.2. Planning and Development Regulations, 2001, as amended

7.2.1. Part 2, Exempted Development, Interpretation for this Part

Article 5(1)

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

(a) for the retail sale of goods,

(b) as a post office,

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

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

(e) for hairdressing,

(f) for the display of goods for sale,

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

(h) as a launderette or dry cleaners,

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

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

7.2.2. Part 2, Exempted Development, Changes of Use

Article 10(1)

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the Act,
- (c) be inconsistent with any use specified or included in such a permission, or
- (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Article 10(6)

- (a) In this sub-article—

'habitable room' means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

'relevant period' means the period from 8 February 2018 until 31 December 2028 (Note: since the referral was lodged with the Commission, S.I No. 648 of 2025 extended the relevant period from 31 December 2025 to 31 December 2028).

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

- (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,
- (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and
- (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d)

- (i) The development is commenced and completed during the relevant period.
- (ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall –
 - (I) primarily affect the interior of the structure,
 - (II) retain 50 per cent or more of the existing external fabric of the building, and
 - (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.
- (iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural

and streetscape character of the remainder of the structure or of neighbouring structures.

- (iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.
- (v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.
- (vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.
- (vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.
- (viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.
- (ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.
- (x) No development shall relate to any structure in any of the following areas:

- (I) an area to which a special amenity area order relates;
- (II) an area of special planning control;
- (III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in sub-paragraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice – Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

(e)

- (i) Where a person proposes to undertake development to which paragraph (b) relates, then he or she shall in the case of development relating to Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2, notify in writing the planning authority in whose functional area that the change of use will occur not less than 14 days prior to the commencement of the works related to the proposed change of use and any related works;
- (ii) Details of each notification under subparagraph (i), which shall include information on—
 - (I) the location of the structure,
 - (II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit, and
 - (III) the Eircode for the relevant property, shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the

planning authority during office hours and on the planning authority's website.

(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).

7.2.3. Schedule 2, Part 1, Exempted Development – General

Class 14

Development consisting of a change of use—

- (b) from use as a public house, to use as a shop,
- (c) from use...as a restaurant, to use as a shop,

No conditions or limitations apply.

7.2.4. Schedule 2, Part 4, Exempted Development – Classes of Use

CLASS 1 Use as a shop.

CLASS 2 Use for the provision of—

- (a) financial services,
- (b) professional services (other than health or medical services),
- (c) any other services (including use as a betting office), where the services are provided principally to visiting members of the public.

CLASS 3 Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

CLASS 6 Use as a residential club, a guest house or a hostel (other than a hostel where care is provided).

CLASS 12 Use as a Public House, meaning a premises which has been licensed for the sale and consumption of intoxicating liquor on the premises under the Licensing Acts 1833 to 2018.

8.0 Planning Assessment

8.1. Is or is not development

- 8.1.1. The question put forward by the referrer relates to whether the change of use of an existing shop to 7 no. residential units, is or is not development, and is or is not exempted development. The referrer's case is that the subject site, comprising No.s 4 and 5 Sexton Street, are interconnected premises that were last in use as a shop (bicycle hire operation). The structures are both presently vacant.
- 8.1.2. The first question to consider is whether or not the proposed development constitutes development under the definitions contained in the 2000 Act. Section 3(1) of the Act defines 'development' as the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.
- 8.1.3. To determine whether development would occur, the relevant tests to apply are to establish whether 'works' would be carried out and/ or whether there would be a material change in the use of the structures or land.
- 8.1.4. 'Works' are defined in section 2(1) of the Act as any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. 'Structure' is also defined in section 2(1) of the Act (see section 7.0 of this report above). Following a review of the particulars in the case file and my site inspection, I confirm each building at the subject site is a structure as so defined.
- 8.1.5. From a review of the plans and particulars submitted with the referral case (including the ground and first floor plans as existing and proposed), the proposed development would involve activities of demolition, construction, extension, alteration, and repair. Further, the proposed change of use from the shop use, as submitted by the referrer, to several residential units would constitute a material change in use.

8.1.6. I consider that the activities and change of use are within the scope of works and, therefore, within the definition of development in the 2000 Act.

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

8.2.1. The second question to answer is whether the development is or is not exempted development. The referrer states that the proposed development seeks to avail of the provisions of article 10(6) of the 2001 Regulations. The article allows a change of use of a structure from use as Class 1, 2, 3, 6 or 12 (as per Part 4 of Schedule 2, see section 7.0 of this report above) to residential use (subject to several restrictions).

Use Classes at the Subject Site

8.2.2. As stated above, the referrer's case is that the structures at the subject site are interconnected properties that were last in use as a shop (i.e., Class 1) and therefore their change of use to residential is exempted under article 10(6).

8.2.3. In its declaration decision, the planning authority highlighted that No. 5 had been in operation as a café, stated the café use was permitted under PA Ref. 17/290, and determined that the café use is the last established and permitted use. The planning authority changed the referral question to 'the change of use of an existing café to 7 no. residential units'.

8.2.4. The referrer refutes the position of the planning authority and states the conclusion that the subject site was in last use as a café is incorrect. The referrer outlines No. 4 had historically been a public house, the café use was only established at ground floor level of No. 5, that the subsequent and last use as a bicycle hire shop was established in No. 4 and extended into No. 5.

8.2.5. To this end and in support of its case, the referrer outlines the interconnecting nature of the structures (internal layouts, accessibility between ground and first floor levels of No. 5 is only possible through accessing the stairwell of No. 4).

8.2.6. In considering the last use at the subject site, I have had regard to the documentation on the case file, the planning history at the subject site, and my site inspection. The last use for assessment purposes (as the premises are vacant) correlates with the 'current use' (as per article 10(6)(c)(ii)).

8.2.7. In respect of No. 4, I consider that the historic use of the structure as a public house is and remains clearly evident (building design, elevations, layouts, internal fixtures and fittings, external beer garden, storage of associated items). As discussed in more detail below, I consider a café use was established in part of the structure through the implementation of PA Ref. 17/290.

8.2.8. Of No. 4 being most recently in use as a shop, I consider that the referrer has provided limited information regarding the bicycle hire operation. The main documentary evidence for same is that relating to the online presence of Waterford Greenway Bike Hire.

8.2.9. While additional evidence relating to the shop use would have been beneficial (e.g., a starting date, how long the operation existed, evidence, if any, of a section 5 declaration for same), there is no evidence on the case file to not accept the referrer's position that the bicycle hire operated at the structure (I do note correspondence from an auctioneer (dated 11th December 2024) stating that 4/5 Sexton Street was vacant and unoccupied since 1st October 2022. However, this does not align with the documentary evidence for the dates of the café use and would potentially conflict with the referrer's position that the bicycle hire operation postdated the café use). At the time of my site inspection, No. 4 is vacant and the internal floorspace (particularly the ground floor level) is in a state of flux.

8.2.10. Further, I note that the existence of the bicycle hire operation (i.e., the shop use) therein was not raised or disputed by the planning authority. In its decision, the planning authority generally applied the café use to all of the subject site.

8.2.11. As the Commission will be aware, under the provisions of Class 14(b) in Part 1 of Schedule 2 of the 2001 Regulations, a change of use from a public house to a shop is exempted development. I have considered whether the exemption could be relevant for the assessment of the referral case. While the exemption may have been/ be applicable to the majority of the structure, as a change of use from a public house to a café has occurred in the eastern part of No. 4 (i.e., permission applied for, granted and implemented), this part of the structure would not benefit from the exemption.

8.2.12. Therefore, in respect to No. 4, I conclude that the last use (i.e., current use) for the majority of No. 4 is as a shop and not, as described in the planning authority's

declaration conclusion, as a café. However, as discussed below, I find that the last use (current use) of part of No. 4 (i.e., that subject of PA Ref. 17/290) is as a café, being that which is authorised (applied for, permitted, and implemented).

Planning History at the Subject Site

- 8.2.13. While the address given for PA Ref. 17/290 is No. 5 Sexton Street, it is apparent from the description of development and plans submitted, that the application also relates to part of the adjoining No. 4.
- 8.2.14. The eastern part of No. 4, comprising one bay, was included in the development boundary of the application. This part of No. 4 incorporates an internal stairwell which facilitates access between the ground floor and first floor levels of No. 5. The description of development for PA Ref. 17/290 indicates that No. 4 was in use as a public house at the time (July 2017), and No. 5 as a bookmaker.
- 8.2.15. While it is submitted in the referral case that PA Ref. 17/290 was not fully implemented, from my site inspection it would appear that the proposed layout was implemented. I confirm that access between the ground and first floor levels of No. 5 can only be achieved via the stairwell in the eastern part of No. 4. That being, the works and change of use applied for in respect of No. 4, were implemented.
- 8.2.16. In respect of No. 5, I note the referrer confirms its previous use as a café. I find that the implemented use of the structure as a café is clearly evident (building design, elevation, advertising, internal layout (as noted at the time of my site inspection, the first-floor level of No. 5 was used as an ancillary food preparation area for the ground floor use). There is also ample documentary evidence on the case file for same (planning history, social media documentation, photographic evidence).
- 8.2.17. In having regard to other relevant referral cases, I note there is an established precedent whereby a café (i.e., a coffee shop) does not come within the planning definition of a shop, nor are there provisions for shop to be interpreted as a use within Class 2 of Part 4 in Schedule 2 (as per precedent referral cases, see section 4.0 Planning History of this report above).
- 8.2.18. While the Commission will be aware that, under the provisions of Class 14(c) in Part 1 of Schedule 2 of the 2001 Regulations, the change of use from a restaurant (which could reasonably be aligned to that of a café) to a shop is exempted development, I

do not consider that the exemption is relevant in the assessment of this referral case. The referrer has not provided sufficient documentary evidence (indeed any) that could be reasonably relied upon demonstrating that No. 5 was last used as a shop (i.e., associated with the bicycle hire operation).

8.2.19. Therefore, in respect of No. 5, I conclude that the last use (current use) is that of a café, being that which is authorised (applied for, permitted, and implemented).

Change of the Referral Question

8.2.20. Having regard to the foregoing, I consider that the majority of No. 4 was last in use as a shop and that the eastern part of No. 4 and No. 5 were last in use as a café. I propose to change the referrer's question to reflect same, and to assess the following question: Whether the change of use of a shop (at the majority of No. 4 Sexton Street) and of a café (at the eastern part of No. 4 and No. 5 Sexton Street) to 7 no. residential units, is or is not development, and is or is not exempted development.

8.2.21. I identify the relevant legislative provisions for the referral case as being article 10(6) of the 2001 Regulations (see section 7.0 of this report above). In particular, are the provisions of articles 10(6)(b) and (c).

Article 10(6)(b) of the 2001 Regulations

8.2.22. Article 10(6)(b) is a key consideration for the referral case. I cite the sub-article below and an important provision:

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2. (my underline)

8.2.23. As discussed at length above, the referrer submits the structures within the subject site (i.e., No.s 4 and 5) were last used as a shop and the planning authority concluded that same were last used as a café. In my opinion, the majority of No. 4 was last used as a shop, and the eastern part of No. 4 and No. 5 were as a café. Class 1 of Part 4 in Schedule 2 is use as a shop, while a café is not listed within any of the use classes of Part 4 in Schedule 2. Accordingly, the change of use from café (eastern part of No. 4 and No. 5) to residential does not comply with the provisions of article 10(6)(b).

Article 10(6)(c) of the 2001 Regulations

8.2.24. Article 10(6)(c) is also a key consideration for the referral case. I cite the sub-article below and identify two important provisions:

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

- (i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*
- (ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and*
- (iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development, then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d). (my underline)*

8.2.25. Firstly, article 10(6)(c)(ii) requires that the subject structure has at some time been used for the purpose of its current use class. Of relevance for the referral case, as established above, the majority of the structure at No. 4 has at some time been used for the purpose of its current use class, being Class 1 (i.e., a shop).

8.2.26. However, the current use class of the eastern part of the structure at No. 4 and the structure at No. 5 is that of a café which is not one of the specified use classes, i.e., Class 1, 2, 3, 6 or 12. While the majority of No. 4 may be considered to comply with the provisions of article 10(6)(c)(ii), the eastern part and all of No. 5 cannot be so considered. As the plans and particulars of the proposed development relate to development within/ across both structures, it is not logical or realistic to consider the proposed development in these structures separately. Accordingly, the proposed development does not comply with the provisions of article 10(6)(c)(ii).

8.2.27. Related to this sub-article, I find that the referrer's request for the Commission to apply the exempted development provisions available in Class 14(c) of Part 4 in Schedule 2 in this case to be untenable. That being, the referrer seeks to apply a

change of use from restaurant to shop, and then a change of use from shop to residential as per article 10(6).

- 8.2.28. I consider that the wording of article 10(6)(c)(ii) expressly prohibits such 'leapfrogging' of use classes as it requires a subject structure to have at some time been used for the purpose of its current use class. On the basis of the information on the case file and following my site inspection, in my opinion, the current use class of part of No. 4 and No. 5 is not use as a shop.
- 8.2.29. Secondly, article 10(6)(c)(iii) requires that a subject structure has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development. As discussed above, the referrer has not indicated exact dates or provided evidence for when the structures at the subject site became vacant.
- 8.2.30. From the information provided, the café operation in part of No. 4 and No. 5 vacated the premises in August 2023. Subsequent to which the referrer states the shop use (bicycle hire operation) extended from No. 4 into No. 5.
- 8.2.31. While I confirm the structures were vacant at the time of my site inspection, and this assessment is being undertaken at a time more than 2 years since the café use is indicated to have vacated, the referrer has failed to definitively demonstrate when the shop use ceased at No. 4 and/ or when either and/ or both structures became vacant. Accordingly, in the absence of same, the proposed development does not comply with the provisions of article 10(6)(c)(iii).

8.3. Restrictions on exempted development

- 8.3.1. As it has been determined that the proposed development is not exempted development, the question as to any restrictions on exempted development does not arise.

8.4. Appropriate Assessment Screening

- 8.4.1. In accordance with section 177U(4) of the 2000 Act, and on the basis of objective information, I conclude that the proposed development would not have a likely significant effect on any European site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (Stage 2) under section 177V of the 2000 Act is not required.
- 8.4.2. This conclusion is based on:

- Nature, scale and location of the proposed development.
- Qualifying interests and conservation objectives of the European sites.
- Absence of any meaningful pathways to any European site.
- Distances from European sites.
- Standard pollution controls and project design features (connection to public water services networks) that would be employed regardless of proximity to a European site and the effectiveness of same.

8.4.3. No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

8.5. **Environmental Impact Assessment Screening**

8.5.1. The proposal is of a class of development identified in Part 2 of Schedule 5 of the 2001 Regulations for the purposes of Environmental Impact Assessment (EIA). Accordingly, I have undertaken a pre-screening exercise and preliminary examination of the proposed development (see Appendix 1 and Appendix 2 respectively of this report below).

8.5.2. By taking into account the nature and scale of the proposed development, the location of the site on zoned and serviced lands within an existing built-up area and outside of any protected, sensitive and/ or designated location, the existing pattern of development in the vicinity, the information and reports submitted as part of the declaration and referral, and the criteria set out in Schedule 7 of the 2001 Regulations, I have concluded that there is no real likelihood of significant effects on the environment arising from the proposed development, and that the need for an EIA and the submission of an EIAR is not required.

9.0 **Recommendation**

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

WHEREAS a question has arisen as to whether the change of use of an existing shop to 7 no. residential units at No.s 4 and 5 Sexton Street,

Abbeyside, Dungarvan, is or is not development and is or is not exempted development:

AND WHEREAS Keybuild Services Limited requested a declaration on this question from Waterford City and County Council and the Council issued a declaration on the 4th day of September 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Keybuild Services Limited referred this declaration for review to An Coimisiún Pleanála on the 29th day of September 2025:

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

- (a) Sections 2(1), 3(1), 4(2), 4(4), 172(1) and 177U(9) of the Planning and Development Act, 2000, as amended,
- (b) Articles 5(1), 10(1) and 10(6) of Part 2 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 14(b) and (c) of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended
- (d) Part 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (e) the planning history of the site, and
- (f) the pattern of development in the area.

AND WHEREAS An Coimisiún Pleanála has concluded that:

- (a) The proposed changes of use of a shop (at the majority of No. 4 Sexton Street) and of a café (at the eastern part of No. 4 and No. 5 Sexton Street) to comprise works and constitute development as

defined under sections 2(1) and 3(1) respectively of the Planning and Development Act 2000, as amended,

(b) The proposed development does not comply with the provisions of article 10(6)(b), Part 2 of the Planning and Development Regulations 2001, as amended,

(c) The proposed development does not comply with the provisions of article 10(6)(c)(ii) or (iii), Part 2 of the Planning and Development Regulations 2001, as amended.

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 works as described is development and is not exempted development.

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

Phillippa Joyce

Senior Planning Inspector

6th January 2026

Appendix 1: Environmental Impact Assessment – Pre-Screening

1. Does the proposed development come within the definition of a ‘project’ for the purposes of EIA?	
(“Project” means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	
<input checked="" type="checkbox"/> Yes, it is a ‘Project’. Proceed to Q2.	
<input type="checkbox"/> No, no further action required.	
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input checked="" type="checkbox"/> Yes, it is a Class specified in Part 1.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3.	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/ exceed the thresholds?	
<input type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/ exceeds the threshold.	
<input checked="" type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Proceed to Q4.	Class 10(b)(i) and/ or Class 10(b)(iv) Relevant threshold: - Class 10(b)(i): more than 500 dwelling units. - Class 10(b)(iv): urban development in an area greater than 10ha.
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)?	
<input checked="" type="checkbox"/> No	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: _____

Appendix 2: Environmental Impact Assessment – Preliminary Examination

The Commission carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations. This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.

Characteristics of proposed development (In particular, the size, design, cumulation with existing/ proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/ disasters and to human health).	Project comprises the change of use of the existing buildings from a shop and a café to residential use with associated construction, demolition, alteration works to the buildings, and associated site works. It does not differ significantly in terms of character or of scale from the surrounding area (i.e., residential uses in modest scaled buildings, c. 2 storeys in height). Project would cause minor physical changes to the appearance of the site and buildings during the construction and operation (occupation) phases. However, the former would be temporary in nature and not significant, and the latter are minor in nature and impact being associated with elevational changes and internal layout. No significant use of natural resources is anticipated. The project would connect into the public water services networks, for which there is no evidence of insufficient capacity to accommodate demands. Construction phase activities would result in the use of potentially harmful materials, and cause noise and dust emissions. These would likely be typical of similar construction sites. Conventional waste produced from construction and operational activities would be managed. Project would not cause risks to human health through water contamination/ air pollution through the design of the scheme, connection to public water services systems, and scale of residential activity arising.
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved	Project is not located in, on, or adjoining any European site, any designated or proposed Natural Heritage Area, or any other listed area of ecological interest or protection.

<p>land use, abundance/ capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>The site accommodates vacant commercial buildings, and there is no evidence of the presence of any protected habitats, plants, or fauna species. The Colligan River is the closest watercourse, located c.132m to the southwest of the site. However, there is no direct hydrological connection between the site and any watercourse or surface water body.</p> <p>There are no protected structures, architectural conservation area, or archaeological monuments recorded at or adjacent to the site.</p> <p>The site is located within a 'Most Sensitive' scenic classification for landscape assessment purposes. However, as the changes to the front elevations of the structures are minor, no adverse visual impacts are anticipated.</p>	
<p>Types and characteristics of potential impacts</p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>Amelioration of environmental impacts have been incorporated into the project's design.</p> <p>There are no likely significant effects identified or anticipated in terms of cumulative and/ or transboundary effects.</p>	
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
<p>There is no real likelihood of significant effects on the environment.</p>	<p>EIA is not required.</p>	<p>Yes</p>
<p>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p>	<p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p>No</p>
<p>There is a real likelihood of significant effects on the environment.</p>	<p>EIAR required.</p>	<p>No</p>

Inspector: _____ Date: _____