Inspector's Report ACP-323936-25

Question	Whether the change of use (no material alterations) of the lower ground floor of Bert House (a Protected Structure) to bedrooms to accommodate people seeking international protection, is or is not development and is or is not exempted development.
Location	Bert House, Athy, Co. Kildare

Declaration

Planning Authority	Kildare County Council
Planning Authority Reg. Ref.	ED/1275
Applicant for Declaration	Damien Malone
Planning Authority Decision	Is not exempted development

Referral

Referred by	Damien Malone
Owner/ Occupier	Spindara Limited
Observer(s)	None
Date of Site Inspection	8 October 2026

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1.0 Site Location and Description

1.1. Bert House is an eighteenth-century Palladian house, a protected structure, set in its own grounds, set back from the R417 (the Athy to Monasterevin Road), 5 km north of Athy, Co. Kildare. The site is bordered to the south-west by the River Barrow.

1.2. It was recorded by the National Inventory of Architectural Heritage (NIAH) in 2002 (prior to its conversion to hotel use), as being of Architectural, Artistic, Historical and Social special interest, and being of Regional importance. The NIAH is an identifying survey, and no description or appraisal of the interior was undertaken.

1.3. The site as a whole (the house and grounds) is currently in use as accommodation for people seeking international protection.

2.0 The Question

2.1. Whether the change of use (no material alterations) of the lower ground floor of Bert House (a Protected Structure) to bedrooms to accommodate people seeking international protection, is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Is development and is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

One report, summarised as follows:

- Site context, location, planning history, and legislation noted. Previous referral referred to Class 20F of the regulations, while this referral cites Class 14(h) of the referral.
- However, issue of works (as defined by Section 3) to a protected structure is still the same. Insufficient architectural conservation information has been

submitted to outline that the internal works required would not undermine the character of the protected structure.

3.2.2. Other Technical Reports

Appropriate Assessment Screening Report and Determination – unlikely to affect the SAC (River Barrow and Nore SAC 002162) as all works are internal. No foreseen potential impacts. AA is not required.

4.0 Planning History

The planner's report refers to the following planning history:

ED1193 – Referral – The change of use to existing at lower ground floor (basement) level to accommodations (7 bedrooms, kitchen, living room and shower room) at Bert House Athy Co Kildare, a protected structure (RPS no B34-03) is development and is exempted development.

Reg ref 05/2226 – Retention permission granted for change of use from house to hotel (17 bedrooms, restaurant, leisure facility) new ensuite bedrooms, gym, etc.

5.0 Policy Context

5.1. Kildare County Development Plan 2023-2029 (as varied)

5.1.1. The site is not zoned.

The building is a protected structure, RPS no B34-03, described as 'house'. It is not in an Architectural Conservation Area. There are no objectives for preservation of views. There are no objectives for the preservation of any sites or features of archaeological, geological, historical, scientific or ecological interest on the site (the protected structure aside). There are no Tree Preservation Orders on the site.

5.2. Natural Heritage Designations

River Barrow and River Nore SAC 002162 – 90 metres south of building, immediately bordering site.

6.0 The Referral

6.1. Referrer's Case

6.1.1. The referrer has made the following case:

- It is accepted that the information submitted to the council could have been clearer; the only floor plan submitted was one prepared for a fire safety certificate. Two drawings are now provided for clarity, one showing the existing layout, and one the proposed layout the subject of this referral, with the area of the ground floor proposed to be converted to bedrooms clearly marked.
- The extent of the area has been reduced; the proposal to convert the monks bar to a living room has been omitted, as the planning status of that proposed room is uncertain.
- The only internal works are the proposed sub-division of the gymnasium, constructed c. 40 years ago, (shown as bedroom 3 and bedroom 4 on the drawing) and the conversion of two store rooms to provide ensuite bathrooms for bedroom 2 and bedroom 1. These areas are outlined in green.
- Walls have been repainted. All original doors and windows remain in place. A walk-through video is provided. Plastering of internal walls of the gym, and fully reversible partition walls would be undertaken.
- The Section 5 declaration request submitted to the council contained an Architectural Heritage Assessment (AHIA) carried out by a qualified conservation consultant. This appears to have been misplaced by the Local Authority, as it was not found on the file on a visit to the Local Authority, it is not on the online file, and it was not referred to in the planner's report. A copy is submitted with this referral.
- There is no indication a site visit was carried out by the Local Authority.
- This referral is materially different to that submitted as ref ED11993, and the Commission is not precluded from considering it (having regard to the Narconon judgment).

- The council does not dispute that the proposal complies with the limitations and conditions specific to the exemption at Article 20F. Having regard to the limitations on works to protected structures set out at Section 4(1)h and Section 57, the AHIA addresses issues of impact on the character.
- Regarding limitations set out at Article 9(1)(a)(vii), the change of use (in isolation from any works) does not comprise the excavation, alteration or demolition of the lower ground floor of Bert House; the works are exempt under Section 4(1)(h), which is not subject to the restrictions of Article 9.
- The Commission is invited to agree that the Section 57 of the Act does not de-exempt the internal works, that the change of use is exempt under Class 20(F) and the works are exempt under Section 4(1)(h).

6.1.2. The referral includes the AHIA originally submitted, an additional letter by a Grade 2 Conservation Architect, and the walk-through video referred to above.

6.1.3. Salient points from the AHIA are summarised as follows:

- The building (a large H-plan 11-bay 3-storey Palladian mansion, built c. 1780) is a protected structure, and considered 'Regionally Important' by the National Inventory of Architectural Heritage (NIAH). It went through a number of named owners, and was vacant for nearly 10 years prior to its purchase by the current owners.
- It was converted into a hotel, by the current owners, granted retention permission on 26 January 2007. The basement rooms were converted to bar, sauna, snooker room, dance studio and storage rooms for the use of hotel guests. The upper floors are now used to house people benefiting from Temporary Protection or seeking International Protection.
- Kildare Development Plan policy, and Architectural Heritage Protection Guidelines for Planning Authorities (2004) are noted. Having regard to these policies, the development in the basement will not impact any further on its significance beyond any existing impacts due to the permitted alterations carried out to make into a leisure centre from the hotel.
- The continued use for accommodation ensures this building can be maintained and protected into the future.

6.1.4. The letter from the Grade 2 Conservation Architect reiterates the history of the building, and notes the following in addition:

- The difference in opinion seems to revolve around whether the internal works required to facilitate the change of use consist of exempted development.
- The proposed works (an inconsequential change to the gym and the provision of 2 ensuite bathrooms) do not materially affect the character of the structure, or any element which contributes to its special interest.

6.2. Planning Authority Response

None received.

6.3. Further Responses

None on file.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

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 and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.
- "protected structure" means—

  (*a*) a structure, or

  (*b*) a specified part of a structure,

  which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant

grounds of the structure and which would not otherwise be included in this definition;

- "structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

  (*a*) where the context so admits, includes the land on, in or under which the structure is situate, and

  (*b*) in relation to a protected structure or proposed protected structure, includes—

  (i) the interior of the structure,

  (ii) the land lying within the curtilage of the structure,

  (iii) any other structures lying within that curtilage and their interiors, and

  (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i)* or *(iii)*;

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'.

Section 4(1)(h) states that the following shall be exempted development:

"development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures"

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. The main regulations made under this provision are the Planning and Development Regulations 2001-2025.

7.1.4. Section 57(1) states that:

> the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—
>
> (*a*) the structure, or
>
> (*b*) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

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

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

> "protected person", for the purposes of Schedule 2, means—
>
> (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;

7.2.2. Article 6(1) of the Planning and Development Regulations 2001 (as amended) ('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'.

7.2.3. Article 9 sets out a large number of restrictions and limitations on exemptions available under Article 6, including but not limited to developments that would contravene a condition attached to a permission, developments that would contravene specific Development Plan objectives, developments affecting national monuments, developments requiring Appropriate Assessment, and developments that would obstruct any public right of way or endanger public safety.

7.2.4. Article 9 (vii) restricts developments *that consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

7.2.5. Part 1 of Schedule 2 of 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'
>
> (j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both.
>
> This class is subject to the following condition/limitation:
>
> Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.

7.2.6. Class 20F of the same Part exempts the following:

Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support 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.

This latter class is subject to the following conditions and limitations:

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 2022[1] comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001[2].

3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.

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.

5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.

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.

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).

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.

7.3. Other Legislation

7.3.1. Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022

This sets out that ‘displaced persons’ means people displaced from Ukraine as a result of the military invasion by Russia.

7.3.2. International Protection Act 2015 (No. 66 of 2015)

This sets out that ‘International Protection’ means status as a refugee, or status as a person eligible for subsidiary protection.

7.3.3. Article 2 of Council Directive 2001/55/EC of 20 July 2001

This sets out that ‘temporary protection’ means a procedure of exceptional character to provide immediate and temporary protection to displaced persons in the event of a mass influx of such persons, without the need for individual applications. This directive was triggered for the first time in March 2022 in response to the war in Ukraine.

7.3.4. Refugee Act of 1996 or the Subsidiary Protection Regulations 2013

These are acts under which people apply for refugee status, asylum, or subsidiary protection.

7.3.5. Section 3 of the Immigration Act 1999

This Section deals with Deportation Orders.

7.3.6. **Section 24 of the Refugee Act of 1996**

This section sets out that a programme refugee means a person who has been given leave to enter and remain in the State for temporary protection or resettlement as part of a group of persons.

7.4. **Other Policy Documents**

7.4.1. **Architectural Heritage Protection: Guidelines for Planning Authorities (Department of Arts, Heritage and the Gaeltacht, 2011)**

7.4.2. Chapter 7 addresses Conservation Principles, and notes (among other things) the importance of keeping historic buildings in use; the importance of research; the principle of minimum intervention; the use of appropriate materials and methods; the requirement for reversibility of alterations; avoiding incremental damage; and compliance with Building Regulations.

7.4.3. Chapter 8 deals with Walls and Other Structural Elements.

7.4.4. Chapter 10 deals with Openings: Doors and Windows.

7.4.5. Chapter 11 deals with Interiors.

7.4.6. Chapter 17 deals with Alterations to Enhance Fire Safety.

7.4.7. Chapter 18 deals with Improving Access.

7.4.8. Chapter 19 deals with Maintenance.

7.4.9. **National Standards for accommodation offered to people in the protection process (Department of Justice & Equality, 2020)**

7.4.10. The National Standards are set out within a framework of ten themes, with Theme 4 being Accommodation. Standard 4.2 sets out minimum space requirements and ceiling heights (2.4 metres), and guidelines for the bedroom, which should provide a good quality living environment and receive sufficient natural light.

8.0 **Assessment**

8.1.1. It should be noted at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the current 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, whether it falls within the scope of exempted development.

8.2. **The scope of the question**

8.2.1. The question posed to the local authority was whether a change of use 'with no material alterations' constituted exempted development. The documents submitted, including a plan drawing prepared as part of a Fire Safety Certificate application, and an Architectural Heritage Impact Assessment, show works to be undertaken to enable the change of use. These include the insertion of bathrooms and a kitchen, the addition of fire doors to the corridor, the blocking of two window openings, and (in a recent extension) plastering and painting of walls, subdivision with partition walls, and insertion of a new window. In my view, whether the alterations are material or not remains to be seen, and should be assessed as part of the referral.

8.2.2. Additionally, in consideration of the location of the accommodation relative to the external ground level, I consider this level more accurately described as the basement of the property, rather than the lower ground floor. I also note that the referral highlights the central wing and east wing only.

8.2.3. Finally, the referrer refers specifically to Class 20F in their question. Again, what exemption might be available for a given development should form part of the assessment of the referral.

8.2.4. Having considered all the material submitted and undertaken a site visit, I consider the correct wording should be:

> *"Whether the change of use of part of the basement of Bert House (a protected structure) to accommodation for people seeking international protection, is or is not development and is or is not exempted development.*

8.3. Is or is not development

8.3.1. As noted above, both ‘works’ and ‘material change of use’ constitute development. Regarding the issue of material change of use, the permitted use of the building as a hotel is not in dispute. Nor is the current use as accommodation for persons seeking international protection.

8.3.2. The ‘existing lower ground floor plan’ drawing submitted to the Commission shows rooms labelled gym; studio; monks well; snooker room; wine cellar; the monk’s bar; stairs; conference room; games room; sauna; changing room; as well as rooms labelled for storage. I noted on the site visit that the gym extension is in an unfinished condition, with unfinished walls, floor, and ceiling, and there are no fittings typical of a sauna in the room so labelled. It is likely that the use as a leisure centre was not fully implemented. In any case, having considered the location and layout of the rooms, I consider them to be ancillary to, and part of, the overall hotel use.

8.3.3. The change of use from leisure facilities and storage areas within a hotel, to accommodation for people seeking international protection is, in my view, a material change of use.

8.3.4. With regard to the question of works, there are a number of small discrepancies in the documents submitted, and I consider the referral documentation to be light on detail – no method statements, specifications for works, or details of materials, have been submitted or referred to. The letter submitted to the Commission sets out as proposed works the following:

- the subdivision of the gymnasium to create bedrooms 3 & 4, with plastering and painting of internal walls
- the conversion of two small stores to en-suite facilities for bedrooms 1 & 2
- repainting of walls

8.3.5. The drawings submitted to the commission (existing and proposed plans) show no structural changes, with changes to room names only.

8.3.6. There are additional works shown on the drawing originally submitted to the Local Authority (labelled as being prepared as part of a Fire Safety cert). This shows three bathrooms in the former store rooms (two as described above, and one opposite

bedroom 8), the blocking of two window opes (between the ‘studio’ and unfinished gym extension), and an additional pair of doors in the corridor, all of which I observed on the site visit, with the bathrooms fully tiled and plumbed.

8.3.7. It also shows a proposed new window to provide light and ventilation to bedroom 4, and shows the partition wall between the Monk’s Well room and the studio removed, with this combined room labelled as a kitchen (also referred to in the AHIA photographs). The internal staircase is indicated as sterile and free from all obstructions (while it has been blocked off and provides no egress). ‘Openable windows on each landing to be used for smoke ventilation’ are indicated, while there is no window visible. These works had not been undertaken on the date of the site visit, but it can be inferred they are required to facilitate the change of use.

8.3.8. These works (construction of walls, demolition of walls, blocking of window openings or creation of same, and the application of plaster, paint, and tiles or other material to a protected structure) constitute works. Additionally, collectively they constitute the alteration and renewal of the structure, which also constitutes works.

8.3.9. Both a material change of use and works are proposed, both of which constitute development.

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

8.4.1. Regarding the change of use, as noted above, the referrer has cited Class 20F. However, an exemption exists under Class 14(h) of Part 1, Schedule 2, of the Regulations, which exempts the change of use of a hotel to use as accommodation for protected persons. Neither the Local Authority nor the referrer considered this in their documentation. Having considered the definitions and meanings set out in the legislation the term ‘protected person’ corresponds to all intents and purposes to that of ‘persons seeking international protection’. I consider this exemption to be of relevance. I note that there is no dispute between the Local Authority and the Referrer regarding the existing use of the site as a whole, and it is the works to the basement that give concern.

8.4.2. With regard to the works involved, apart from the insertion of the new window to the gym extension to serve bedroom 4, all works are internal. The referrer cites Section 4(1)(h), which typically exempts works undertaken for the improvement or alteration

of a structure. I consider this a relevant exemption, and consider the restrictions under Section 57 below.

8.5. Restrictions on exempted development

8.5.1. Regarding the exemption for change of use from hotel to accommodation for protected persons under Class 14(h) of Part 1, Schedule 2 of the Regulations, there are no conditions or limitations set out within that class. However, the change of use cannot be considered in isolation of the works required to undertake it.

8.5.2. Regarding the works which are required to facilitate the change of use, some of which have already been undertaken, Section 57 specifies that works to a protected structure shall only be exempted development if those works would not materially affect the character of the structure, or the character of any element of the structure which contributes to its special interest.

8.5.3. Having undertaken a site visit, I consider the submitted AHIA and the subsequent architect's letter to be light on detail, omitting surviving features, and not fully reflective of the character of the basement area, or the works required to bring it into use. The AHIA refers repeatedly to works previously permitted (in 2006), without having regard to whether or not those were implemented.

8.5.4. The largest room (labelled as the Monks Bar) contains a fireplace and ceiling hooks (which, along with the basement location, indicate it was the kitchen). Neither of these features are mentioned in the referral. This room contains setts as well as flags – the flags are mentioned, but not the setts. There are additional flagstones in the corridor, which are not mentioned. Nor is the staircase, or the basement area (not shown on the plans) which the rooms to the north of the corridor (proposed bedrooms 5-8) look into. Nor is the well referred to in the report or shown on the Fire Cert drawing submitted to the Local Authority (although it is shown in the plans submitted to the Commission). It is an unusual feature in the basement of a house, and contributes to its character, regardless of its date. The vaulted ceilings are not found in the rooms under the east wing, but only in the rooms under the central block. Section 3.0 of the AHIA suggests that this central 7-bay block pre-dates the end wings, but makes no distinction between the character of this part of the basement and that of the east wing.

8.5.5. The plain plaster finishes (compared with the heavily ornate plasterwork above ground) contribute to the character of the basement, reflecting its earlier utilitarian role, as do the vaulted ceilings, the retained features, the layout and plan form, with small window openings set in deep recesses facing onto an enclosed basement area.

8.5.6. In my view, the works already undertaken (the installation of bathrooms, with marble effect walls and suspended ceilings) materially affect the character of the structure. The apparent proposed removal of the well would materially affect the character of the structure. I have no concerns regarding the proposed works to the gym extension, apart from the blocking of the original window openings as shown on the Fire Safety Cert drawing. While painting and plastering of already painted and plastered surfaces can typically be undertaken without detriment to the character of a protected structure, no method statement or specification has been provided for any of the works, nor have details on the compatibility of the materials. I observed large areas of damp, peeling paint, failing plaster and odours on the site visit.

8.5.7. I note also that the standards and requirements set out in the *National Standards* would be likely to require works which have not been specified in this referral, having regard to the provision of sufficient natural light for bedrooms, and minimum floor-to-ceiling heights.

8.5.8. As noted above, Article 9 of the Planning and Development Regulations, 2001 (as amended), refers to restrictions on exempted development. I have considered the proposal in light of these restrictions and limitations, and am satisfied that none of the restrictions under Article 9 apply in this instance. I note that these restrictions apply only to exemptions under the Regulations, and do not apply to exemptions provided by the Act. I have considered in particular Article 9(vii), (cited by the referrer) which refers to *places, caves, sites, features or other objects of archaeological interest*. However, considering other instances of this text in the legislation, I do not consider it to be a proxy for, or synonym of, protected structure. Similarly, Article 10 refers only to changes of use undertaken under Part 4 of Schedule 2 (while the change of use here comes under Part 1 of Schedule 2).

8.6. Conclusion

8.6.1. While an exemption is available for change of use from hotel to accommodation for protected persons at Class 14(h) of Part 1, Schedule 2 of the Regulations, in this instance, works are required to undertake the change of use. These works are of the type typically exempt under Section 4(1)(h). However, they would materially affect the character of the protected structure, and as per Section 57(1) of the Act, are not exempted development.

9.0 EIA Screening

9.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

10.0 Appropriate Assessment

10.1. 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. I conclude that the proposed development (alone) would not result in likely significant effects on any European site. The proposed development would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required for the project. No mitigation measures are required to come to these conclusions.

11.0 Water Framework Directive

11.1. An assessment of the proposed development has been undertaken with regard to the objectives set out in Article 4 of the EU Water Framework Directive.

11.2. Having considered the nature, scale, and location of the proposed development, it is concluded that the proposal will not result in any risk of deterioration in the status of any water body, including surface waters (rivers and lakes), groundwater, transitional

waters, or coastal waters. This applies to both qualitative and quantitative status, and in respect of temporary and permanent effects.

11.3. In addition, the proposed development will not adversely affect the achievement of established environmental objectives, including the protection, maintenance, and improvement of water body status, as required under the Directive.

11.4. Accordingly, the proposed development is considered to be compliant with the requirements of Article 4.

12.0 **Recommendation**

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

WHEREAS a question has arisen as to whether the change of use of the basement of Bert House (a protected structure) to accommodation for people seeking international protection, is or is not exempted development is or is not development or is or is not exempted development:

AND WHEREAS Damien Malone requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 12th day of November, 2025 stating that the matter was development and was not exempted development:

AND WHEREAS Damien Malone referred this declaration for review to An Coimisiún Pleanála on the 9th day of December, 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(2) of the Planning and Development Act, 2000, as amended,

(d) Section 57(1) of the Planning and Development Act, 2000, as amended,

(e) Articles 5, 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,

(f) Part 1 *Exempted Development - General* of Schedule 2 to the Planning and Development Regulations, 2001, as amended, including Class 14(h) and Class 20F, and the conditions and limitations thereof,

(g) The European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No. 306/2022)

(h) the planning history of the site,

(i) the use of the site,

(j) the current uninhabitable condition of the area in question, and the works required to implement the change of use

(k) the documentation on the file,

(l) the report and recommendation of the Inspector following a site visit

AND WHEREAS An Coimisiún Pleanála has concluded that:

(a) The permitted use of the basement area referred to is as a leisure centre (which use was partly implemented), store rooms, and wine cellar as a part of, and ancillary to, the permitted and previous hotel use

(b) The proposed use of the basement as accommodation for persons seeking international protection requires works to the protected structure,

(c) These works would materially affect the character of the structure

(d) These works (which are required to carry out the change of use) are not exempt, having regard to Section 57 of the Act.

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the change of use of the basement of Bert House (a protected structure) to accommodation for people seeking international protection is development and is not exempted development.

Form 1 - EIA Pre-Screening

Case Reference	323936-25
Proposed Development Summary	Change of use of part of the basement of Bert House (a protected structure) to accommodation for people seeking international protection
Development Address	Bert House, Athy, Co. Kildare.
	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)	☒ Yes, it is a 'Project'. Proceed to Q2. ☐ 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)?	
☐ Yes, it is a Class specified in Part 1. **EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.**	State the Class here
☒ 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?	
☒ 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. **No Screening required.**	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. **EIA is Mandatory. No Screening Required**	**State the Class and state the relevant threshold**
☐ Yes, the proposed development is of a Class but is sub-threshold. **Preliminary examination required. (Form 2)** **OR** **If Schedule 7A information submitted proceed to Q4. (Form 3 Required)**	**State the Class and state the relevant threshold**

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)?	
Yes ☐	**Screening Determination required (Complete Form 3)** ***[Delete if not relevant]***
No ☐	**Pre-screening determination conclusion remains as above (Q1 to Q3)** ***[Delete if not relevant]***