

# PLANNING REPORT

AN BORD PLEANÁLA

LDG- 079116-25

ABP-

03 APR 2025

Fee: € 720.00 Type: CO.

Time: 16.34 By: HAWD.



## SECTION 5 REFERRAL – DECLARATION OF EXEMPTED DEVELOPMENT

Donegal County Council Reg. Ref. S525/14

Fairleigh House, High Road, Letterkenny, Co. Donegal

APRIL 2025

SUBMITTED ON BEHALF OF:  
ERM Contracts Ltd.,  
45 Main Street,  
Letterkenny.

85 Merrion Square, Dublin 2, D02 FX60  
+353 (0)1 539 0710 info@hpdcc.ie www.hpdcc.ie

**HUGHES**  
**PLANNING**  
& DEVELOPMENT CONSULTANTS

## 1.0 Introduction

This referral to An Bord Pleanála, pursuant to Section 5(3)(a) of the Planning and Development Act 2000 (as amended), has been prepared by Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, on behalf of ERM Contracts Limited, 45 Main Street, Letterkenny, and relates to a Section 5 Declaration made by Donegal County Council on 7<sup>th</sup> March 2025 under Reg. Ref. S525/14, regarding the use of Fairleigh House, High Road, Letterkenny, Co. Donegal, to provide long-term residential accommodation to protected persons.

The property management and staff provision will solely be the responsibility of our client, the property owner. Staff will visit the site to carry out maintenance and cleaning works only. No element of care, be it social, physical or emotional, will be provided to residents at this property, nor will any non-governmental organisation or approved housing body be involved in the day-to-day operation of the property.

We request that An Bord Pleanála review the Section 5 Declaration issued by Donegal County Council and make a determination that providing long-term residential accommodation to protected persons at 16 no. apartments located at Fairleigh House, High Road, Letterkenny, Co. Donegal, is deemed not development. In the interests of clarity, we would ask the following question to An Bord Pleanála:

*"Whether the use of residential apartments at Fairleigh House, High Road, Letterkenny, County Donegal, where care is not provided, as long-term residential accommodation for protected persons, is or is not development?"*

The prescribed fee of **€220.00** is enclosed, along with a copy of the declaration issued by Donegal County Council. We request that An Bord Pleanála set aside the decision of Donegal County Council and issue a declaration stating that the use of a residential property to accommodate protected persons **does not constitute development**.

## 1.1 Section 5 Declaration of Donegal County Council

On the 7<sup>th</sup> of March 2025, Donegal County Council refused a declaration of exemption for the use of Fairleigh House to provide residential accommodation to protected persons under Reg. Ref. S525/14 (See Appendix A). The Planning Authority determined that a material change of use would occur as the proposed use would result in an intensification of the use on the site as the apartments were not purpose-built.

It is submitted that the planning authority has erred in its assessment of the application. Having reviewed the report of the planning officer, it is considered that the planning authority did not consider the question put before them in the context of the decision made by An Bord Pleanála under ABP Ref. 307077-20 at the Rock Centre, Ballinamore, Co. Leitrim. Essentially, this is a like-for-like change of use – a residential building being used to provide long-term accommodation to people. The socio-economic background of those people should not factor and does not constitute a material change of use.

This report will assess the proposed use in the context of the Planning and Development Act 2000 (as amended) and relevant case law.

## 1.2 Summary of Grounds for Referral

The applicant's grounds for referral can be summarised by the following points:

- The planning authority has erred in its assessment of the application. Having reviewed the report of the planning officer, it is quite apparent that the planning authority did not consider the question put before them in the context of the decision made by An Bord Pleanála under ABP Ref. 307077-20 at the Rock Centre, Ballinamore, Co. Leitrim.
- It is submitted that an apartment can be used to house individuals or families who may also be international protection applicants. There will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants



occupying the building, which should never be taken into consideration when having regard to whether a change of use has occurred.

- The proposed use of a residential building comprising 16 no. Apartments will not add strain to existing services nor will they increase traffic volumes, noise or waste at the site. This is a like-for-like use. Therefore, there will not be an intensification of use on the site.

## 2.0 Site Description

The application site relates to Fairleigh House, located in the town of Letterkenny, County Donegal. There is an existing building on the site, which is currently being used as private residential apartments and a two storey dwelling connected to the site via a rear laneway. The site is accessed from High Road, one of the main streets in Letterkenny, and McClures Terrace.

The site is located in the centre of town, providing access to goods and services to meet the daily needs of residents. There is a pharmacy located directly opposite the site on High Road, a café located c. 80m to the north of the property, a pub located c. 150m to the south, a hospital c. 200m to the southeast, and a theatre/cultural centre and supermarket located c. 250m to the northeast.

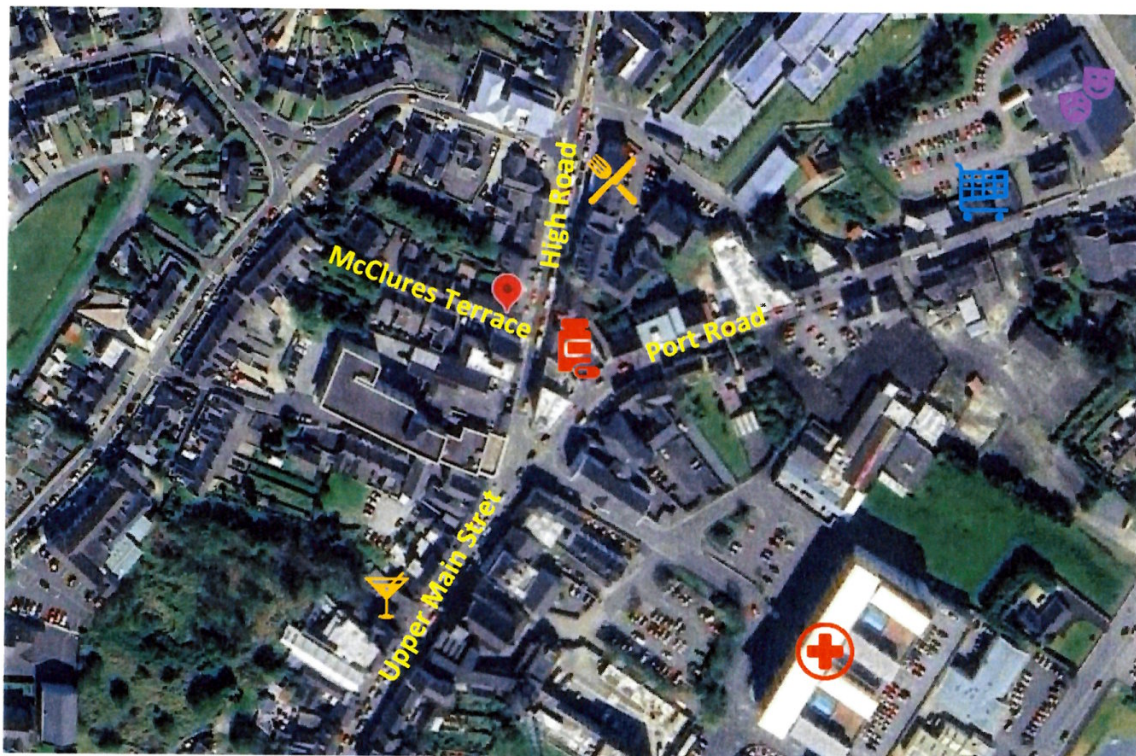


Figure 1.0 Aerial image showing the locational context of the subject site (shown by red pinpoint).

Fairleigh House was a pre-1963 Guesthouse that was redeveloped into apartments in 1996 together with 1 no. 4 bedroomed terraced house (No. 12 McClures Terrace). Fairleigh House and No. 12 McClures Terrace were developed for use as accommodations for the adjacent Hotel and are presently operating as private residential apartments.





Figure 2.0 Streetview image of the front of Fairleigh House from High Road.



Figure 3.0 Streetview image of the side of Fairleigh House from McClures Terrace.



### 3.0 Planning History

The Donegal County Council planning registry contains the following planning permission relating to the application site:

**Reg. Ref. 13/80012** Retention permission granted on 27<sup>th</sup> March 2013 by Donegal County Council for 2 no. apartments located within the roof space of existing apartment complex approved under planning Ref. L.69/96. Also, minor elevational revisions to accommodate development.

**Reg. Ref. L.69/96** Apartment development approved by Donegal County Council.

**Reg. Ref. L84/93** Apartment development approved by Donegal County Council.

### 4.0 Planning Context

The Letterkenny Plan and Local Transport Plan 2023-2029 governs land use on the subject site in conjunction with the Donegal County Development Plan 2024-2030. The subject site is zoned Town Centre in the Letterkenny Plan 2023-2029 with a stated objective *'to sustain and strengthen the core of Letterkenny as a regional centre of residential, commercial, retail, cultural and community life and to support active travel and public transportation provision.'*

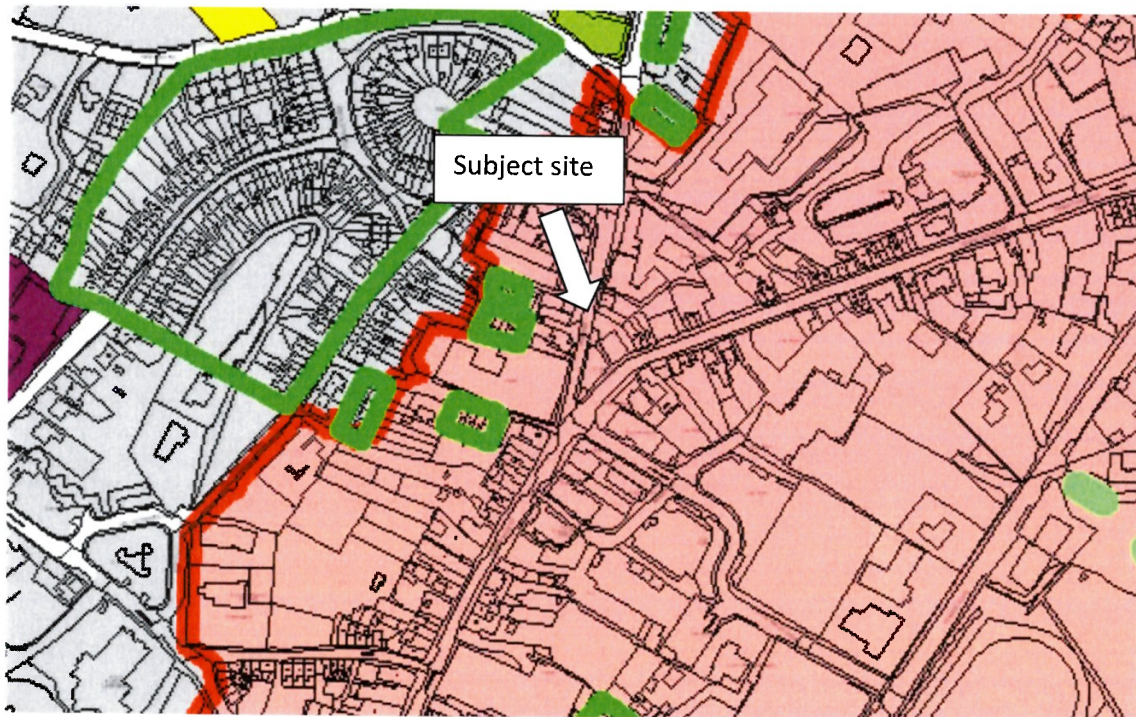


Figure 4.0 Extract from Map 7.1 Land Use Zoning Map of the Letterkenny Plan and Local Transport Plan 2023-2029, with the subject site indicated by an arrow.

#### **Accepted in Principle**

Land uses which are classified as 'Accepted in Principle' will normally be permitted, subject to compliance with relevant policies, standards and requirements contained in the Plan. According to the Letterkenny Plan and Local Transport Plan 2023-2029, there are no uses which are 'Accepted in Principle' in the Town Centre zone.

### Open for Consideration

An 'Open for Consideration' use is one which may or may not be acceptable depending on the size or extent of the proposal and the particular site location. Proposals in this category will be considered on their individual merits and may be permitted only if not materially in conflict with the policies and objectives of the Development Plan and if they are consistent with the proper planning and development of the area. Uses which are 'Open for Consideration' on Town Centre land are as follows:

Amusement Arcade/Casinos	Car Park (other than ancillary)	Betting Office
Cafe	Cinema	Community/Recreational/Sports
Creche/Playschool	Cultural Uses/Library	Dancehall/Disco
Funeral Home	Garage/Car Repair	Guesthouse/Hotel/Hostel
Hot Food Takeaway	Industry (Light)	Medical Consultancy/Healthcare
Nursing Home	Offices	Park/Playground
Petrol Station	Place of Worship	Playing Fields
Pub	Restaurant	<b>Residential</b>
Retail	School/Education	Solar Energy Generation
Tourist Related Facilities	Warehouse/Store/Depot	

Residential uses are 'Open for Consideration' in the zoning objective for the subject site.

### **5.0 Grounds for Referral**

A Section 5 application was submitted to Donegal County Council to determine whether the use of a residential building as temporary accommodation for displaced persons seeking international protection constitutes development or if it qualifies as exempted development. It is submitted that the Planning Authority has erred in its assessment of the application.

Essentially, this is a like-for-like change of use – a residential building being used to provide long-term accommodation to people. The socio-economic background of those people should not factor and does not constitute a material change of use.

Upon review of the Planning Officer's report, it is evident that the Planning Authority did not adequately address the question posed. Critically, the authority failed to properly consider relevant national precedent established by An Bord Pleanála in **Ref. ABP-307077-20** at the Rock Centre, Ballinamore, Co. Leitrim. This precedent was provided as part of the submission and clearly demonstrated that the use of residential apartments to accommodate persons seeking international protection can constitute exempted development under planning legislation.

#### **Relevant Precedent: ABP Ref. 307077-20 – The Rock Centre, Ballinamore, Co. Leitrim**

Following a referral under Section 5, An Bord Pleanála determined that the use of previously incomplete apartments for residential accommodation, including for persons seeking international protection, **did not constitute a material change of use** and, therefore, **did not constitute development**. The Board found that:

*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.*

The Inspector further observed:

*The residential accommodation is being operated in a manner similar to other apartment developments, with gated access and a management and security suite. There were no facilities present beyond what would typically be found in an apartment complex. The personal status or circumstances of the residents is not a material planning issue.*

This reasoning confirms that the use of standard residential apartments for protected persons – absent institutional care or communal services – remains within the bounds of residential use and does not require planning permission. The subject property operates similarly and, therefore, can rely on the precedent set by An Bord Pleanála.

### Comparison to Current Application: Fairleigh House

In refusing the current Section 5 application, Donegal County Council argued that:

*'The Rock Centre was a purpose-built apartment complex, whereas Fairleigh House was originally a guesthouse before its redevelopment into apartments. A purpose-built apartment block provides an inherently flexible form of residential accommodation, while a building that was formerly a guesthouse may carry different planning implications when transitioning to a long-term residential function.'*

This rationale is flawed. Nowhere in the Inspector's Report for ABP-307077-20 was it suggested that the building must be **purpose-built** for apartment use. The assessment focused solely on whether the **use** of the property constituted a material change of use. It concluded that it did not, provided the accommodation functioned as standard residential units without institutional services.

The Rock Centre included 25 no. own-door apartments with no communal or care facilities, other than a security office, which is not essential to the planning consideration.

Similarly, Fairleigh House currently accommodates 16 no. own-door apartments and 1 no. house, which operate under the same principles:

- No care or communal living facilities are provided other than a shared laundry room and bin storage area;
- Each apartment is self-contained;
- The landlord maintains common areas and essential services;
- Residents are responsible for day-to-day upkeep.

The decision in Ref. ABP-307077-20 clearly establishes a strong and relevant precedent. It confirms that the use of residential units, regardless of whether they are purpose-built, as accommodation for persons seeking international protection does not constitute a material change of use or intensification, and is therefore **not** development.

Donegal County Council should have given due weight to this precedent. The circumstances at Fairleigh House mirror those of the Rock Centre in all material planning respects. Accordingly, the current use should be considered as **non-development**, and the Planning Authority's refusal is inconsistent with established national planning jurisprudence.

Furthermore, it is noted that under Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3(1) as follows: -

*"In this Act, '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 other land."*

The Applicant does not intend to carry out works to the property, therefore, this declaration seeks clarification on the continued use of Fairleigh House as a residential building that provides accommodation to protected persons but does not provide care. From the outset, it is contended that this **does not constitute development** as no change of use has occurred.

It is noted that legislation does not define the phrase 'material change of use' as used in Section 2(1) of the Act. To determine the materiality of the change, the practical impacts and effects of the proposed change of use and whether it would have led to materially different planning considerations by the Planning Authority are considered in this determination.

The jurisprudence on this topic illustrates that the focus of the planning authority must be on the practical effects of the examined use when determining whether it is materially different from the prior use. In *Esat Digifone v South Dublin County Council* [2002] 3 I.R. 585, the High Court made the following remarks:

*"The consideration to be taken into account in determining materiality must at least be relevant to "proper planning and development and the preservation of amenities" which are the twin objectives of the preamble to the legislation. The question is whether there were sufficient planning considerations raised by the change in activity to justify its submission to development control."*

In a similar vein, the court quoted Barron J. in *Galway County Council v. Lackagh Rock* [1985] I.R.120 at 127:

*"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."*

A further decision in support of that view is that of Budd J. in *Westmeath County Council v. Quirke & Sons* [Unreported, High Court, 23<sup>rd</sup> May 1996] where the court noted that:

*"Many alterations in the activities carried out on the land constitute a change of use, however, not all alterations will be material. Whether such changes amount to a material change in use is a question of fact as is explained in Monaghan County Council v Brogan [1987] IR 339. Consideration of the materiality of a change in use means assessing not only the use itself but also its effects."*

Fairleigh House has been used as residential apartments since 1996. The proposed use of the property continues the established private residential use, with the only alteration to have occurred being an increase in the number of residents accommodated upon the site.

It is submitted that there will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying the building which should not be taken into consideration when having regard to whether a material change of use has occurred as evidenced by the Supreme Court *Dublin Corporation v Moore* [1984] ILRM 339 in which the judge stated:

*"I can well understand the objection voiced by Mr Heneghan in his affidavit, to which I have referred - the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin - yet others for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law - if they were, they might well offend against rights of equality."*

It is considered that if this were a planning application for a residential building, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic backgrounds. Essentially, this is a like-for-like change of use – a residential building being used to provide long-term accommodation to people. The socio-economic background of those people should not factor and does not constitute a material change of use.

The subject site is a residential complex comprising 16 no. apartments. Each apartment has a kitchen and dining room, and laundry services are available on-site. A central waste collection area is provided on-site, and a contracted collection service is in place. Residents are free to enter and exit the house throughout the day like any tenant renting from a private landlord. Staff employed by our client will be present on the property, with their duties comprising maintenance and management of the property. This building will provide long-term accommodation, with residents living there for a minimum of 12 months.

It is submitted that the continued use of the property to provide residential accommodation does **not constitute development**, as no material change of use has occurred.



In considering the above, it is submitted that the use of Fairleigh House as a long-term residential building comprising 16 no. apartments and 1 no. house to provide accommodation to protected persons, which does not provide care, does not constitute a change of use and, therefore, does not constitute development in accordance with the Planning and Development Act 2000 (as amended).

With regard to the intensification of the use, it is submitted that the use of the property to provide accommodation to protected persons does not constitute an intensification of the use. The remarks of Clarke J. in *Cork County Council v. Slattery Pre-Cast Concrete* [2008] IEHC 291 are relevant in assisting the Board in determining whether an intensification of an established use is material:

*"The assessment of whether an intensification of use amounts to a sufficient intensification to give rise to a material change in use must be assessed by reference to planning criteria. Are the changes such that they have an effect on the sort of matters which would properly be considered from a planning or environmental perspective? Significant changes in vehicle use (and in particular heavy vehicle use that might not otherwise be expected in the area) are one such example, changes in the visual amenity or noise are others.*

The question as to whether an intensification of an existing use at a property constitutes a material change of use is one to be assessed in light of the practical effects of that intensification on relevant planning considerations. These considerations include but are not limited to, increased vehicular traffic, noise, waste collection and impact on the amenity of surrounding residents.

The proposed use has been assessed in the context of the issues highlighted in the above case law:

#### **Traffic Volumes:**

As noted, the property contains 16 no. apartments and 1 no. house as approved by Donegal County Council and will be used to house protected persons. Given the status of the residents as asylum seekers and the fact that children will likely reside at the house, it is reasonable to assume that car ownership and usage at the house would be extremely low. The property is located in the town centre and is within walking distance of many major amenities and services, thus negating the need for private cars.

It is noted that the building is located near Letterkenny Bus Station, which is served by Bus Éireann's local and regional routes. In July 2024, the National Transport Authority (NTA) initiated a public consultation to introduce such a service, proposing two routes (Figure 5.0) operating 17 hours per day, Monday to Saturday, with slightly shorter hours on Sundays. These routes were planned to connect areas like Mountain View, the town centre, Letterkenny University Hospital, Ballymacool, ATU Letterkenny, Lisnenan, and An Gleann Rua, aiming to serve over 80% of the town's population within a short walk to a bus stop.

On-street parking is available in the immediate area, and parking permits can be sourced from Donegal County Council.

The number of staff will be minimal and mostly comprise maintenance and management staff. It is considered that there will not be a noticeable increase in traffic volumes at the site.



Route 1 – Mountain View via Towncentre & Letterkenny University Hospital to Ballymacool and return  
 Route 2 – Lisnahan via Towncentre & Letterkenny University Hospital to An Gleann Rua and return

Figure 5.0 Bus route map for Letterkenny. The subject site (red star) is located along Routes 1 and 2.

### Waste Collection:

With regards to waste collection, no change is proposed to the current waste collection system at Fairleigh House. It is noted that a central waste collection area is provided on site, and a collection service is in place. This will not affect the adjoining footpath or roadway. It is not anticipated that the increase in residents will result in excessive waste at the residential building that cannot be dealt with by the current waste collection setup.

### Noise:

The proposed use will not affect noise levels in the area that may be detrimental to the amenity of adjoining dwellings. As noted, the residential building will be used to provide accommodation to protected persons. There will not be any increase in noise that would not be in keeping with any residential development. It is also noted that the property is located in the town centre, where noise levels are slightly elevated regardless of the property's use.

Having regard to the above, it is our opinion that the increase in residents at this property does not constitute an intensification of the use. It is our client's submission that the practical differences in the current use of Fairleigh House as a private accommodation for persons seeking international protection are, to all intents and purposes, almost indiscernible from its approved use.

The precedent set by An Bord Pleanála did not consider whether or not the apartment building must be purpose-built and only noted that the occupation of own-door apartments by persons seeking international protection does not constitute development. The Inspector's Report found that housing



protected persons in individual apartments **does not materially alter** the residential nature of the development:

*"The facility is not operating as an emergency reception for the care of protected persons [...] It is being operated as residential accommodation, as per the permitted use."*

It is also important to note that the Section 5 declaration confirming a change of use from retail to residential on this site was granted by Donegal County Council in 2022 under Reg. Ref. S522/31. It is considered that Donegal County Council in their assessment of that Section 5 application, determined that residential use at this location would not adversely affect services in the area.

Whilst it is clearly a matter for the Board to determine, in accordance with the law set out above, it is our submission that the lack of practical effects of the new use, in line with the judgments of the High Court in *Slattery Pre-Cast Concrete* and *Molloy*, means that no material change of use will occur at Fairleigh House. Given the lack of any material change in use, no development requiring planning permission pursuant to the terms of the Planning and Development Act, 2000, has taken place or is proposed to take place in this regard.

## 6.0 Conclusion

It is intended to use the subject site at Fairleigh House, which is a multi-unit residential building comprising 16 no. apartments and 1 no. house to provide accommodation to protected persons. This property will not provide care to residents. The building has been in use as a multi-unit residential building since 1996, and the continued use of the building to provide residential accommodation does not constitute development as no change of use has occurred, nor have any works been carried out to the property. Essentially, this is a like-for-like change of use – a residential building being used to provide long-term accommodation to people. The socio-economic background of those people should not factor and does not constitute a material change of use.

As shown above, the proposed use will not result in an intensification of use at the site, and we submit that Donegal County Council has erred in its assessment of the application for a declaration under Section 5 of the Act.

Therefore, the question before the Board is:

*"Whether the use of residential apartments at Fairleigh House, High Road, Letterkenny, County Donegal, where care is not provided, as long-term residential accommodation for protected persons, is or is not development?"*

Accordingly, we request An Bord Pleanála to set aside the decision of Donegal County Council and decide that the proposed development does not constitute development.

We trust that the Board will have regard to this submission and look forward to the decision in due course.



Kevin Hughes MIPi MRTPI  
Director for HPDC

**Appendix A**

Copy of the decision by Donegal County Council to refuse a section 5 declaration.



**Comhairle Contae  
Dhún na nGall**  
Donegal County Council

Áras an Chontae,  
Leifear,  
Contae Dhún na nGall, F93 Y6Z2

County House,  
Lifford,  
County Donegal, F93 Y6Z2

T: 074 91 53900  
E: [info@donegalcoco.ie](mailto:info@donegalcoco.ie)  
W: [www.donegalcoco.ie](http://www.donegalcoco.ie)  
W: [www.ccdhunnangall.ie](http://www.ccdhunnangall.ie)

**Planning Services**  
E: [planning@donegalcoco.ie](mailto:planning@donegalcoco.ie)

**Ref. No: S525/14**

7<sup>th</sup> March 2025

ERM Contracts Ltd.,  
C/O Hughes Planning and Development Consultants,  
85 Merrion Square,  
Dublin 2,  
D02 FX60

**Re: Change of use of a residential dwelling to long term residential accommodation for protected persons**

A Chara,

I refer to your request received on 10<sup>th</sup> February 2025 under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,

**For Senior Ex. Planner  
Planning Services**

/RMcC



***Planning and Development Acts, 2000 (as amended)***  
***(Declaration and Referral on Development and Exempted Development)***

**DECLARATION**

**Chief Executive's Order No:** 2025PH0620

**Reference No:** S525/14

**Name of Requester:** ERM Contracts Ltd.,  
C/O Hughes Planning and Development Consultants,  
85 Merrion Square,  
Dublin 2,  
D02 FX60

**Summarised Description of development the subject matter of request:**

Change of use of a residential dwelling to long term residential accommodation for protected persons

**Location:** Fairleigh House, High Road, Letterkenny, Co. Donegal.

**IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE**

**IS** Development

**IS NOT** Exempted Development

**WITHIN THE MEANING OF THE ABOVE ACT**

**The Planning Authority, in considering this referral, had regard particularly to:**

- Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).
- Articles 6(3), 9(1), and Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).
- Section 5 declarations by An Bord Pleanála.

**And concluded that:**

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS NOT EXEMPTED DEVELOPMENT** as the development does not fall within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).



**For Senior Ex. Planner**  
**Planning Services**

**Dated this 7<sup>th</sup> day of March 2025**

# Planning Pack Map



**Tailte  
Éireann**

**CENTRE  
COORDINATES:**  
ITM 616930,911674

**PUBLISHED:** 07/02/2025  
**ORDER NO.:** 50447523\_1

**MAP SERIES:** 1:1,000  
**MAP SHEETS:** 0283-02

**COMPILED AND PUBLISHED BY:**  
Tailte Éireann,  
Phoenix Park,  
Dublin 8,  
Ireland.  
D08F6E4

[www.tailte.ie](http://www.tailte.ie)

Any unauthorised reproduction  
infringes Tailte Éireann copyright.

No part of this publication may  
be copied, reproduced or transmitted  
in any form or by any means without  
the prior written permission of the  
copyright owner.

The representation on this map  
of a road, track or footpath  
is not evidence of the existence  
of a right of way.

This topographic map  
does not show  
legal property boundaries,  
nor does it show  
ownership of physical features.

©Tailte Éireann, 2025.  
All rights reserved.

