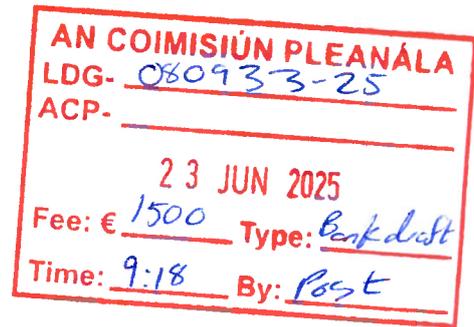




The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902



Declaration Reference: D/251/25

Appellant: Kyraview Ltd

Appellant Address: Beechlawn, Old Portmarnock Rd, Portmarnock, Dublin, D13 V343

Agent: Atlantic Building Consultants Ltd

Agent Address: Unit 1, Digital Hub, Merchants Quay Business Quarter, Kilrush, Co Clare

Subject Property: 108 Thomas Davis St, Mallow, Co Cork.

Subject Matter: Appeal against Cork County Councils Decision to deem the use of existing residential apartment block located at 108 Thomas Davis St, Mallow, Co Cork for use as accommodation for protected persons is "Development" and "Not Exempted Development"

Date of Declaration: 27th May 2025

PLANNING APPEAL

1. Introduction

On behalf of our client, 108 Thomas Davis St, Mallow, Co Cork, we hereby submit this referral to An Bord Pleanála under the provisions of Section 5 of the Planning and Development Act, 2000 (as amended) in respect of the declaration made by Cork County Council under Reference D/251/25, dated 27th May 2025, concerning the use of an existing residential apartments for accommodating persons seeking international protection.

We respectfully request that An Bord Pleanála review the Section 5 Declaration issued by Cork County Council and make a determination that providing accommodation to persons seeking international protection is deemed not "Development" and in the case that the use for accommodating persons seeking international protection is deemed "development, the use for accommodating persons seeking international protection is "Exempted Development" under Class 14(h) Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

The prescribed fee is enclosed along with a copy of the declaration issued by Cork County Council. This report sets out the rationale for this appeal along with all supporting documentation.

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1.1. Description of Property and Use

The subject site is located in 108 Thomas Davis St, Mallow, Co Cork.

The Apartments subject to this application are located on the first, second and third floor of the building. Access is provided via an existing ground level access hallway and stairwell to the upper floors. There are three (3) apartments on each floor with separate entrances to all apartments off existing external courtyard areas.

The applicable site is outlined in red below.

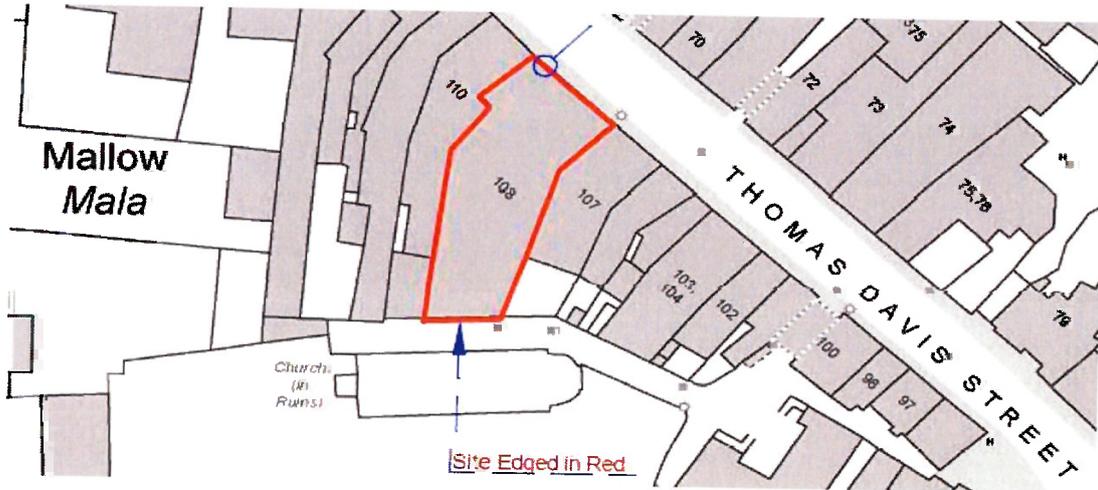


Figure 1: Location Map





Each of the subject apartments function independently and are self-contained, with private kitchen, bathroom, and habitable rooms, operating as standard residential units for persons who are seeking international protection.

Residents are free to enter the individual apartments as they wish, in a manner consistent with standard tenancies.

The subject apartments have operated continuously as residential accommodation, and the use of these apartments to provide accommodation to persons seeking international protection involves no structural alterations, no intensification of use, and no new impacts on the surrounding area.

The applicant provides no direct care facilities or services for the residents of the apartments other than standard supports and access to 3rd part services as would be expected for persons seeking international protection.

This would be considered as a reasonable level of support to assist in the integration of the residents into the areas .

There are no institutional or communal facilities onsite for use by the residents.

1.2. Planning History

The following table demonstrates the planning history for the site pertaining to the existing apartment complex applicable for the Section 5 Declaration of Exempted Development application submitted to Cork County Council. As is evidenced below, the site has been approved for residential use since 2002.

Planning Reference	Description	Decision Date	Decision
2477	Demolition of existing buildings and construct four storey building comprising of retail outlet, staff and storage area on the ground floor with a total of 9 no. apartments on three upper floors	27/11/02	Conditional
2462/44	Permission for retention of the change of use of the existing ground floor access hallway, access stairwell, 3 number first floor apartments and external common areas, 3 number second floor apartments and external common areas and 3 number third floor apartments and common areas (9 number apartments in total) from residential apartments to its current use as emergency accommodation for displaced person or persons seeking international protection along with all associated works.	24/03/25	Refused
D/255/24	Declaration of Exempted Development Under Class 20F Section 5 of the Planning & Development Act 2000 - 2010	10/09/24	Not Exempt





1.3. Section 5 Declaration of Cork County Council

On 27th May 2025, Cork County Council issued Declaration (Ref D/251/25) of Exempted Development under section 5 of the Planning & Development Act 2000 for existing residential apartments located at 108 Thomas Davis St, Mallow, Co Cork.

The planning authority deemed the use of the existing apartments for the purpose of providing accommodation for persons seeking international protection constitutes “development” under section 3 of the planning and development act 2000 as amended.

The planning authority has also deemed that the use of the apartments for the purpose of providing accommodation for persons seeking international protection is not considered exempt under Class 14 (h) of the planning and development regulations 2001 (As amended), as an “apartment” does not fall under any of the structures that are considered to be exempt under Class 14 (h).



2. Summary of Grounds for Referral

2.1. Development

Cork County Council's Declaration of Exempted Development under section 5 of the Planning & Development Act 2000 reference D/251/25 issued on 27th May 2025 states following:

- a) *"The change of use from previously established and permitted use as 9 no. apartments to current as emergency accommodation for persons seeking international protection does constitute a change of use"*
- b) *"The change of use raises planning considerations that are materially different to planning considerations relating to the established use"*
- c) *"The change of use constitutes a material change in the use of the structure and is development."*

Under Section 3(1) of the Planning and Development Act 2000, development is set out as a "material change of use". Such a "material change requires a shift in the functional character or planning impacts of the property (Westminster City Council v British Waterways Board [1985]). In this case there is:

- i) **No Functional Change:** the apartments remain residential in nature, irrespective of occupants being persons seeking international protection. In Donegal County Council Ref. S5 24/105, the use of apartments for protected persons was deemed identical in function to general residential use, as both involve "overnight accommodation by households." In this case, the apartments remain private homes to the residents of each apartment.

This use of the apartments aligns with the original planning permissions (2477), which does not restrict occupancy based on residents' legal or socioeconomic status, gender nor is there any condition that states the apartments must be occupied by single families or single occupancy owners.

The use of the apartments aligns with rental properties throughout Ireland typical in urban areas which provides shared accommodation between persons who are not part of the same families.

The applicant committed to a reduction of the occupancy of each apartment as part planning permission application reference 246244 (Refused 24th March 2025) to a maximum of 45 persons and this commitment remains applicable to this section 5 application.

- ii) **No Planning Impact:** The use of the apartments does not introduce new traffic, noise, or infrastructural demands beyond those of typical residential occupancy. There is no change to waste generation or visual character of the apartments.

Note, Cork County Council references the increase in the requests for parking permits for the premises from 6 in 2022 to 19 in 2024 in the planner's report.

In this case, request for 19 parking permits in an apartment building which will provide accommodation for up to 45 persons is reasonable and does not demonstrate an intensification of use.

iii) **Legal Precedent:** The Supreme Court in *Dublin Corporation v Moore* [1984] ILRM 339 affirmed that demographic differences among residents (such as legal status) are irrelevant to planning assessments and held that “the socioeconomic profile of residents is irrelevant to materiality.” Accordingly, any variation in the demographic profile of the occupants such as their legal status or background should not be considered when determining whether a change of use is material, and the current use does not constitute a material change.

iv) Planning Precedent:

An Bord Pleanála case reference 307077-20 is provided as an example of a residential development comprising multiple units in close proximity that has been deemed to be “Not Development” and as such suitable to provide overnight accommodation to persons seeking international protection.

Premises:	The Rock Centre
Description:	The referral site is located to the southeast side of Ballinamore town centre in County Leitrim and currently comprises a two-three storey mixed-use development, including upper-level residential use and ground-floor retail and commercial uses that are anchored by a Tesco supermarket. The majority of the retail and commercial units at ground floor are vacant at present and the development has been subject of three recent planning permissions. The development is currently served by two expansive surface-level car parks on the northeast side and the rear of the main building, as well as a basement car park. The upper-floor residences are accessed solely by a gated stairs off Cannaboe Street and served by a management and security suite. Each of the 25 residences are own-door residences served by a central courtyard marking out individual amenity areas by raised planters and featuring seating areas and play areas.
Address:	Ballinamore, Co. Leitrim
Reference:	Reg. Ref. 307077-20
Planning Authority:	Leitrim County Council
Decision:	Following a referral to An Bord Pleanála, it was declared that the use of apartments for protected persons and works to the apartments is not development.

v) Development & Exempted Status

Either of the following should be demonstrated to constitute “Development” and in this case, no actual physical works/alterations (either completed or planned) are proposed to any of the apartments nor has Cork County Council demonstrated material change of use to any of the apartments has occurred.

The subject apartments are being used for their intended purpose providing overnight residential type accommodation to their respect residents

2.2. Exempted Development

Cork County Council’s Declaration of Exempted Development under section 5 of the Planning & Development Act 2000 reference D/251/25 issued on 27th May 2025 states following:

d) *“The use of 9 No. of apartments as emergency accommodation for persons seeking international protection is development and is not exempted development as apartments do not come within the scope of Class 14(h) of the Planning and Development Regulations 2001 (as amended)*

i) **Premises Type:** The subject apartments are unequivocally included under “other premises providing overnight accommodation” as established in *The Rock Centre* determination (ABP 307077-20) and *Robinson Hall* decision (Donegal CC S5 24/105).

ii) **Regulatory Compliance:** There is no breach of original planning conditions or zoning objectives for the subject apartments

iii) **Policy Synergy:** There is full alignment Section 1.8.1 of Cork County Development Plan which promotes Social Inclusivity of individuals, families, social groups and communities with the provision of good quality affordable housing, community infrastructure and improving access to information and resources and the Joint Housing Strategy in the Cork County Development Plan 2022-2028 which seeks to secure national policy in meeting the housing needs of the County, increase housing supply, reverse the scale of unmet housing needs, and provide for a diverse range of housing needs to suit varying income levels and social circumstances”

iv) **Precedent-Based Certainty:** The unbroken consensus of planning authorities and An Bord Pleanála affirms that:

- Residential use for protected persons equals no material change
- Or
- If development is demonstrated, there should be exemption under Class 14(h) for apartments of this type as “other premises providing overnight accommodation”

3. Supporting Documentation

Document	Reference	Description
Cork County Council Decision – Ref. D/251/25,	Appendix A	Cork County Council Decision – Ref.
Section 5 Declaration	Appendix B	Completed Section 5 Declaration Section 5 Application submitted to Cork County Council



4. Conclusions

Based on the comprehensive assessment above and along with supporting documentation, Atlantic Building Consultants Ltd, on behalf of Kyraview Ltd, conclusively asserts the following:

“The use of existing nine (9) apartments located 108 Thomas Davis St, Mallow as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use.”

“Should An Bord Pleanála determine the proposal constitutes ‘Development’, it is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended).”

For all queries or clarifications required in relation to the information provided in this letter, please contact the undersigned.

Yours sincerely

Mark Tubridy C.Eng MIEI, B.Eng.
Atlantic Building Consultants Ltd

Kyraview,
C/O Mark Tubridy,
Atlantic Building Consultants,
Main Street,
Cooraclare,
Co. Clare.

27th May, 2025

REF: D/251/25
LOCATION: 108 Thomas Davis Street, Mallow, Co. Cork.

**RE: DECLARATION OF EXEMPTED DEVELOPMENT UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000 - 2010.**

Dear Sir/Madam,

On the basis of the information submitted by you on 25th April, 2025 the Planning Authority, having considered the question "whether the use of existing nine apartments as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use and should the Council determine the proposal constitutes 'Development', the use to accommodate persons seeking international protection is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended)" at **108 Thomas Davis Street, Mallow, Co. Cork** has declared that it is **not exempted development**.

Reason for Decision

The Planning Authority in considering this referral, had particular regard to

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended),
- (c) Class 14 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- (d) Planning history of the site,
- (e) Relevant caselaw,
- (f) Number of persons accommodated on site and the nature of accommodation and,
- (g) Presence of full time staff on-site and the nature of supports.

AND WHEREAS Cork County Council has concluded that :

- (a) The change of use from the previously established and permitted use as 9 no. of apartments to the current use as emergency accommodation for persons seeking international protection does constitute a change of use,
- (b) The change of use raises planning considerations that are materially different to planning considerations relating to the established use,

- (c) The change of use constitutes a material change in the use of the structure and is development,
- (d) The use of 9 no. of apartments as emergency accommodation for persons seeking international protection is development and is **not exempted development** as apartments do not come within the scope of Class 14(h) of the Planning and Development Regulations 2001 (as amended).

NOW THEREFORE, Cork County Council, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the said development is development and is **not exempted development**.

Please note that under Section 5 Subsection 3(a) where a declaration is issued under this section, any person issued with a declaration under subsection 2(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Yours faithfully,



PIO TREACY
A/SENIOR EXECUTIVE OFFICER,
PLANNING DEPARTMENT.



Planning and Development Directorate
Section 5 – Application for Declaration of Exemption Certificate

Ref: D/251/25 – Section 5 Declaration

Name: Kryaview Ltd

Development: *“The use of existing nine (9) apartments located at 108 Thomas Davis Street, Mallow as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use”*

and

“Should the Council determine the proposal constitutes ‘Development’, the use to accommodate persons seeking international protection is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended)”

Site Location/Address: 108 Thomas Davis Street, Mallow, Co. Cork.

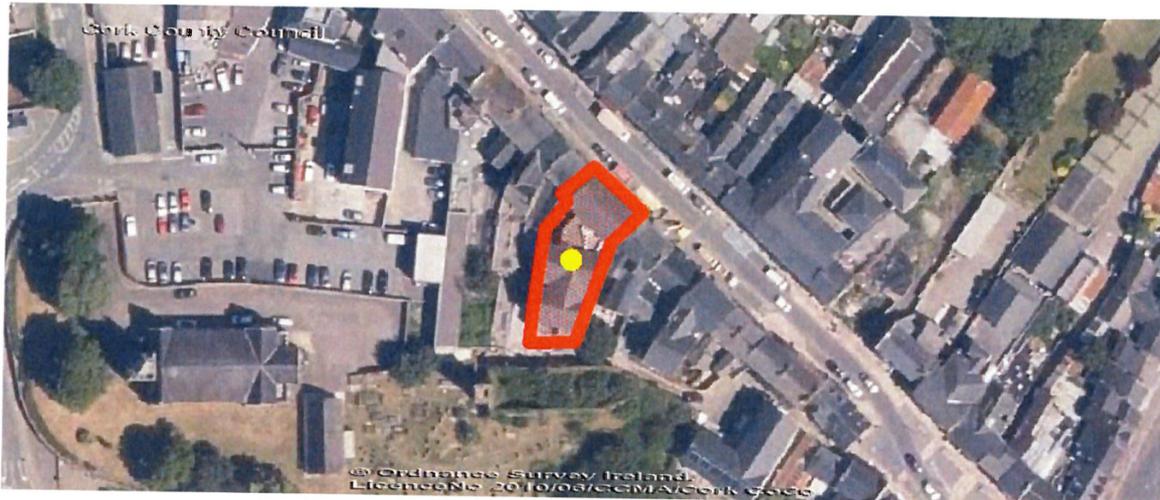
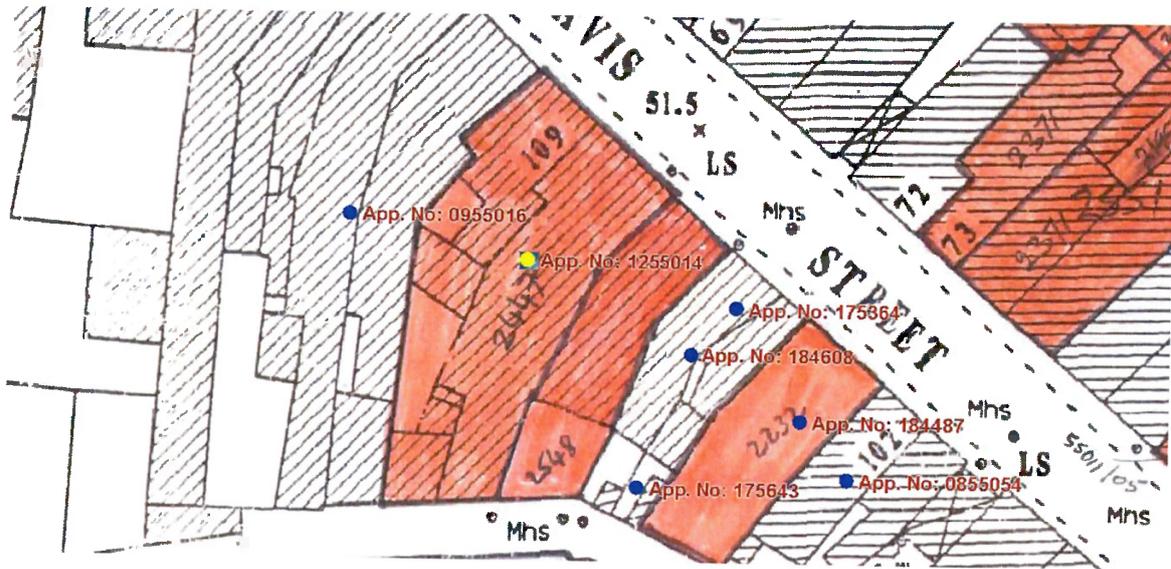


Fig.1: Subject Site Location

Planning History:



Planning Applications

Ref	Year	File	Applicant	Development Description	Address	Received	Decision	Decision Date	Final Grant
2447	2002	552447	Barry, Thomas & Catherine	Demolition of existing buildings and construct four storey building comprising of retail outlet, staff and storage area on the ground floor with a total of 9 no. apartments on three upper floors	Main Street (Thomas Davis Street), 108 & 109	28/05/02	Granted	24/10/02	27/11/02
N/A	2024	Kyraview Ltd 24/6244		Permission for retention of the change of use of the existing ground floor access hallway, access stairwell, 3 number first floor apartments and external common areas, 3 number second floor apartments and external common areas	108 Thomas Davis Street	27/11/2024	Refused	24/03/25	

and 3 number
third floor
apartments and
common areas
(9 number
apartments in
total) from
residential
apartments to
its current use
as emergency
accommodation
for displaced
person or
persons seeking
international
protection
along with all
associated
works.

Section 5 Declarations

D/255/24: Kyraview Ltd - Is the continued use of the 1st, 2nd and 3rd floor at 108 Thomas Davis Street, Mallow to accommodate displaced persons and persons seeking international protection until December 2028 exempted development? – IS NOT EXEMPTED DEVELOPMENT.

Question subject of the Section 5:

3. QUESTION/DECLARATION DETAILS:

Please state the specific question for which a Declaration of Exemption is sought

Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

Pursuant to Section 5 of the Planning and Development Act 2000, the Applicant respectfully requests that the Cork County Council provide by way of Section 5 Declaration response to the following:

"The use of existing nine (9) apartments located 108 Thomas Davis St, Mallow as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use."

OR

"Should the Council determine the proposal constitutes 'Development', the use to accommodate persons seeking international protection is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended)."

On the basis of the information submitted the question(s) to be addressed under this request are as follows:

"The use of existing nine (9) apartments located at 108 Thomas Davis Street, Mallow as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use"

and

"Should the Council determine the proposal constitutes 'Development', the use to accommodate persons seeking international protection is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended)"

Legislative Context:

Planning and Development Act 2000 (as amended)

Section 3(1) of the Act states 'development' means:

"In this Act, except where the context otherwise requires, "development" means— (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or (b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021)"

Section 4 of the Act sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act.

Planning and Development Regulations 2001 (as amended)

Article 5(1) states:- "care" means personal care, including help with physical, intellectual or social needs;

Article 6 states:- (1) Subject to Article 9, development of a class specified in column 1 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.

Article 9(1) of the Planning & Development Regulations, 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act.

Article 10 (1) Changes of Use of the Planning and Development Regulations 2001 (as amended) outlines that the classes of use specified in Schedule 2, shall be exempted development for the purposes of the Act, if the works carried out are exempted development.

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:-

<i>Column 1 Description of Development</i>	<i>Column 2 Conditions and Limitations</i>
<i>CLASS 14 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 (h) of the said premises or institution, or part thereof, to use as accommodation for protected persons.</i>	<i>The number of persons with an intellectual or physical disability or a mental illness living in such residence shall not exceed 6 and the number of residents carers shall not exceed 2.</i>

Class 20F of the same part exempts the following:

<p style="text-align: center;"><i>Column 1</i> <i>Description of Development</i></p>	<p style="text-align: center;"><i>Column 2</i> <i>Conditions and Limitations</i></p>
<p><i>CLASS 20F Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, 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.</i></p>	<ol style="list-style-type: none"> <i>1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.</i> <i>2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 20221 comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 20012.</i> <i>3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.</i> <i>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.</i> <i>5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.</i> <i>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.</i>

	<p>7. 'international protection', for the purpose of this class, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015).</p> <p>8. 'temporary protection', for the purpose of this class, has the meaning given to it in Article 2 of Council Directive 2001/55/EC of 20 July 2001."</p>
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Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022 sets out that 'displaced persons' means people displaced from Ukraine as a result of the military invasion by Russia.

The International Protection Act 2015 (No. 66 of 2015) sets out that 'International Protection' means status as a refugee, or status as a person eligible for subsidiary protection

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

S.I. No. 582 of - Planning and Development (Amendment) (No.4) Regulations 2015, sets out the following definition of protected person.

(3) Article 5(1) of the Principal Regulations is amended by inserting after the definition of "painting" the following definition:

" '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;".

The Planning and Development Regulations 2001(as amended), state that:

'international protection', for the purposes of Class 20F of the Planning and Development Regulations 2001(as amended), has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015).

"international protection" means

status in the State
either—

(a) as a refugee, on the basis of
a refugee declaration, or

(b) as a person eligible for
subsidiary protection, on
the basis of a subsidiary
protection declaration;

Assessment

I note the plans and particulars submitted as part of the application along with the planning history relating to the site.

- **“Is or is not development?”**

The submitted application form states that the previous use is *“Accommodation supporting displaced persons and persons seeking international protection”*, and that the previous use was *“Residential Apartments”*. The current use is to continue *“Residential Apartments accommodating persons seeking international protection”*.

It is also noted that under the previous declaration ref: D/255/24, the submitted application form stated that the existing use is *“Accommodation supporting displaced persons and persons seeking international protection”*, and that the previous use was *“Residential Apartments”*. The current/proposed use at the time was to continue *“Accommodation supporting displaced persons and persons seeking international protection”* until December 2028.

The question/statement put forward by the application is that *“The use of existing nine (9) apartments located at 108 Thomas Davis Street, Mallow as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use”*.

Therefore, an important question is whether the development constitutes a material change of use.

A change of use must be material to constitute development as set out in Section 3 of the Act. Material change of use is not defined under the Act or any other planning statute.

In *Simons on Planning Law*, Browne notes that there are two schools of thought in case law; the first, in which judgments consider the differences between the character of the existing use and the proposed use (*Cusack v. Minister for Local Government*, *McMahon v Dublin Corporation*). He notes that the existence of a class of exempted development in law might be taken as implicitly recognising that changes within a class may well constitute a material change in use. The other approach in case law, considers the impacts or effects of the existing use compared with the proposed use (*Monaghan County Council v. Brogan*), and can be particularly useful in considerations of intensification of use. In *Galway County Council v. Lackagh Rock* the court found that what should be looked at are the matters which the planning authority would take into account in the event of a planning application being made either for the use on the appointed day or for the present use.

The permitted and established use of the building is that of residential apartments. I visited the site in relation to recently refused planning application ref: 24/6244 and I observed the following;

The premises signage (and DCEDIY agreements/contracts) refers to the premises as *“Mallow Accommodation Centre”*, the building was occupied with only men.

The submitted documentation and assessment undertaken with the planning application ref: 24/6244 confirmed that the occupancy of the accommodation centre was 62 (with a maximum capacity of 64 bed spaces across 8 apartments with apartment no. 8 of the 9 apartment units being occupied by 1 no. full time on site staff/caretaker, who resides in apartment no. 8 and who had an office desk/reception area setup in the kitchen area to assist IP persons. Typically, 8 men resided in each apartment it was not a situation of 8 families with a family residing in each apartment.

The applicant within planning application noted that the occupancy exceeded the occupancy for the premises using the National Standards for Accommodation offered to people in the protection process. The applicant expressed a willingness to reduce the occupancy to the maximum of 45 IP occupants however it is not clear if this has occurred.

Documentation submitted with the planning application ref: 24/6244 states that the care and services available to the occupants of the Mallow Accommodation Centre is as follows:

The following outlines the type of care and services available.

Basic Needs & Welfare Support	Weekly food provision
	Access to healthcare services via the HSE
Social & Community Support	On-site staff to assist with queries, concerns and form filling
	Access to social workers (where available) for vulnerable individuals
	Access to Community activities and integration programs
Education & Support	Access to English language classes for adults
Mental Health & Wellbeing Services	Referral to counselling and psychological services
	Access to Support for victims of trauma or gender-based violence
Legal & Integration Assistance	Access to Information sessions on rights and responsibilities
	Assistance with legal aid and asylum process support

There are a number of vulnerable groups among International Protection Applicants who in certain cases require additional safeguards and supports. These safeguards and supports are available to the occupants of Mallow Accommodation Centre as required.

Common Categories of Vulnerable Groups Among International Protection Applicants:

- Ethnic or Religious Minorities – Groups that face discrimination or targeted violence, both in their home countries and sometimes within asylum accommodation.
- Survivors of Torture or Trauma – Individuals who have experienced severe physical or psychological abuse, including war-related trauma or human rights violations.
- Victims of Human Trafficking – Those who have been exploited for forced labour, sexual exploitation, or other forms of modern slavery.
- Pregnant Women & New Mothers – Women requiring medical and social care due to pregnancy, childbirth, or postnatal health concerns.
- Persons with Disabilities – Individuals with physical, sensory, intellectual, or mental health disabilities who need specialized care or accommodations.
- Elderly Applicants – Older individuals who may have health conditions or mobility challenges and require additional care.
- LGBTQ+ Individuals – People facing persecution in their home countries due to their sexual orientation or gender identity, who may also be at risk in asylum accommodation.

Planning Department
24 DEC 2025

The applicant detailed the daily activities/operations of the premises as follows:

Administrative & Management Duties

- Resident check-ins: Monitoring arrivals, departures, and any issues within the accommodation.
- Maintaining records: Updating logs related to occupancy, health concerns, complaints, and maintenance issues.
- Liaising with authorities & NGOs: Communicating with the Department of Children, Equality, Disability, Integration and Youth (DCEDIY), legal representatives, healthcare providers, and refugee support organisations.

Resident Support & Welfare

- Providing information & assistance: Helping residents navigate asylum processes, local services, and available supports.
- Organising activities: Facilitating language classes, social activities, or integration programs.
- Conflict resolution: Addressing disputes among residents or between residents and staff.
- Responding to emergencies: Handling urgent medical, security, or welfare incidents.

Operations & Facility Management

- Ensuring meal service: Overseeing food distribution and dietary accommodations.
- Housekeeping oversight: Ensuring communal areas and rooms are kept clean, either through staff or by guiding residents on their responsibilities.
- Monitoring supplies: Managing stocks of toiletries, linens, and other essentials.
- Maintenance coordination: Reporting and arranging for repairs to plumbing, heating, or electrical issues.

Security & Compliance

- Ensuring safety protocols: Conducting fire safety checks, enforcing house rules, and maintaining a safe environment.
- Monitoring access: Keeping track of visitors, ensuring security, and checking compliance with any curfew rules.
- Incident reporting: Documenting any significant issues, including health concerns, behavioural incidents, or breaches of centre rules.

The level of care, services and supports in relation to personal care arguably meets the threshold of 'care' as defined in the planning regulations, and the care is more typical of residential institutions or tourist accommodation.

The maximum occupancy at the time of the planning application was 64 bed spaces across 8 no. of 2-bed apartments.

Each bedroom typically included 2 no. of bunk beds (i.e 4 bed spaces) with typically 8 no. of IP persons occupying each 2-bedroom apartment (i.e. 4 persons per room). Typically, 8 no. of IP persons shared a communal kitchen and 1 no. of toilet/shower per apartment.

I also note the contents of the letter from the Department of Children, Equality, Disability, Integration and Youth submitted to the Planning Authority, which refers to emergency accommodation for persons seeking international protection.

The agreement in place for "*Mallow Accommodation Centre*" refers to provision of residential full board accommodation and other services and that the said accommodation and other services shall be to a standard that is reasonable having regard to the emergency daily needs of those seeking international protection.

I note the case of *Corporation v Moore* [1984], and that the only change to the use of the building is that of the socio-economic class of the inhabitants, and the building remains in residential use, with no material change of use. For this assessment, I have not taken account of the socio-economic class of the inhabitants of the apartments at 108 Thomas Davis St; however, it is noted a number of uses (boarding schools, nursing homes, hostels, prisons) are clearly residential, but are not apartments. As outlined elsewhere in this report the continuation of the broader residential use does not necessarily mean that a material change of use is not involved.

Having regard to the test set out in *Galway County Council v Lackagh Rock*, the planning authority would take different matters into account in the event of a planning application being made for the emergency accommodation use, or for the use as apartments. Also, I am aware from the Municipal District Office that there has been a significant increase in parking permit requests from occupants of no. 108 Thomas Davis Street (e.g in 2024, 19 permits were issued for occupants up from 6 permits issued in 2022). This further demonstrates the materiality of the change of use and the impacts from the development on the area.

Regarding the impacts or effects of the current emergency accommodation use compared with the previously permitted/established use as apartments, the larger number of residents, and the 24-hour staffing, will naturally have different impacts than the impacts of 9 no. of apartments. The use has different impacts than its use as 9 no. individual 2 bed apartments.

I note that the applicant may make the case that the apartments are used as apartments. The continuation of the broader residential use does not necessarily mean that a material change of use is not involved.

This building of 9 apartments is now being used as emergency accommodation for the reception and care of protected persons. Having regard to the number of occupants (even allowing for a reduced occupancy to 45 persons), intensification of use and the level of care, services and supports in relation to personal care which is more typical of residential institutions, hostels or tourist accommodation, in my opinion the current use as emergency accommodation for persons seeking international protection is not that of residential apartments, but more akin to a residential institution type development and therefore in my opinion the development constitutes a material change of use.

- *Is or is not exempted development?*

The applicant also asserts that if it is determined by the Planning Authority that the proposal constitutes 'development' then the use to accommodate persons seeking international protection is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).

"Should the Council determine the proposal constitutes 'Development', the use to accommodate persons seeking international protection is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended)"

The exemption provided under Class 14 is noted, it includes 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 (h) of the said premises or institution, or part thereof, to use as accommodation for protected persons.

The permitted use of the building is 'residential apartments'.

There is no exemption, under the Act or the Regulations, for change of use of residential apartments to use as an emergency accommodation centre for protected persons.

The applicant notes the exemption provided for under Class 14(h) of Part 1 of Schedule 2 of the Regulations. This exemption exists for the change of use from various types of premises for accommodation for protected persons.

The referenced premises include hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, however the exemption does not include houses or apartments.

The reference to '*or other premises or residential institutions providing overnight accommodation*', should be read in the context of the list as a whole: '*hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential accommodation, or part thereof*'. Notwithstanding the fact that houses or apartments provide overnight accommodation, they are not the kind of residential institution envisaged in this exemption. In fact, it is noted that neither house or apartments are listed in the exemption. Similarly, in Class 20F, there is a long list of types of building, but house or apartment is not listed.

Accordingly, it is considered that there is no exemption under the PDA 2000 (as amended) or the P&D Regulations 2001 (as amended) that could apply to this development.

Note - It is noted that the applicant references a case from Donegal County Council (ref: S524/105), which related to use of apartments as long-term accommodation for protected persons (with no care). Only part of the determination is included within the submitted documents. From a review of the DCC assessment (online) it appears that in that case the Council's considered the use to be a material change of use however deemed it to be exempt under Class 14(h) on the basis that "*the proposal aligns with Class 14(h), as the site is already a permitted residential complex*". In my professional opinion, as noted above in the report residential apartments or houses are not the same use as residential institution.

I have had regard to other An Bord Pleanála determination's including the following: ABP-307077-20 and ABP-320031-24.

Conclusion

Is Development and IS Not Exempted Development.

Recommendation

WHEREAS a question has arisen as to:

“The use of existing nine (9) apartments located at 108 Thomas Davis Street, Mallow as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use”, and

“Should the Council determine the proposal constitutes ‘Development’, the use to accommodate persons seeking international protection is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended)”

AND WHEREAS Cork County Council, in considering this referral, had regard particularly to –

- (a) Sections 2,3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001 (as amended);
- (c) Class 14 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);
- (d) Planning history of the site;
- (e) Relevant caselaw;
- (f) Number of persons accommodated on site and the nature of accommodation; and,
- (g) Presence of full time staff on-site and the nature of supports.

AND WHEREAS Cork County Council has concluded that:

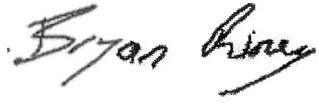
- (a) The change of use from the previously established and permitted use as 9 no. of apartments to the current use as emergency accommodation for persons seeking international protection does constitute a change of use,
- (b) The change of use raises planning considerations that are materially different to planning considerations relating to the established use,
- (c) The change of use constitutes a material change in the use of the structure and is development,
- (d) The use of 9 no. of apartments as emergency accommodation for persons seeking international protection is development and is not exempted development as apartments do not come within the scope of Class 14(h) of the Planning and Development Regulations 2001 (as amended).

NOW THEREFORE, Cork County Council, in exercise of the powers conferred on it by Section 5 of the 2000 Act, hereby decides that the said development is development and is not exempted development.



J. Tierney
Executive Planner
22/05/2025

I endorse the above recommendation.

A handwritten signature in black ink that reads "Bryan Riney". The signature is written in a cursive style with a prominent initial 'B'.

Bryan Riney
Senior Planner
27/05/2025



**REQUEST FOR SECTION 5 DECLARATION
OF EXEMPTED DEVELOPMENT**

@

**108 Thomas Davis St,
Mallow,
Co Cork**

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DOCUMENT CONTROL SHEET

Project Title	Request for Section 5 Declaration of Exempted Development
Project Subject	108 Thomas Davis St, Mallow, Co Cork
TE Reference	P_24_152
Revision	01
Status	Final Report
Control Date	24 th April 2025

Record of Issue

Issue	Status	Date
1/1	Final	24/04/2025

Distribution

Organisation/Person	Status
Cork County Council	Submission

1. INTRODUCTION

1.1. Executive Summary

Atlantic Building Consultants Ltd, have prepared this Report to accompany a request for a Declaration pursuant to Section 5 of the Planning and Development Act, 2000, as amended, on behalf of our client, Kyraview Ltd , concerning nine (9) self-contained apartments located in 108 Thomas Davis St, Mallow, Co Cork.

The apartments have been used to provide overnight residential accommodation to persons seeking international protection since 10th December 2022.

We submit the following in relation to these apartments:

Use of apartments as temporary accommodation for persons seeking international protection does not constitute “development” as it does not involve altering the nature of occupancy from general residential use to accommodation for protected persons.

Where it is determined by Cork County Council that the use of the subject apartments does constitute “development”, that such a change is exempted under Class 14(h) Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) where it meets the prescribed conditions below:

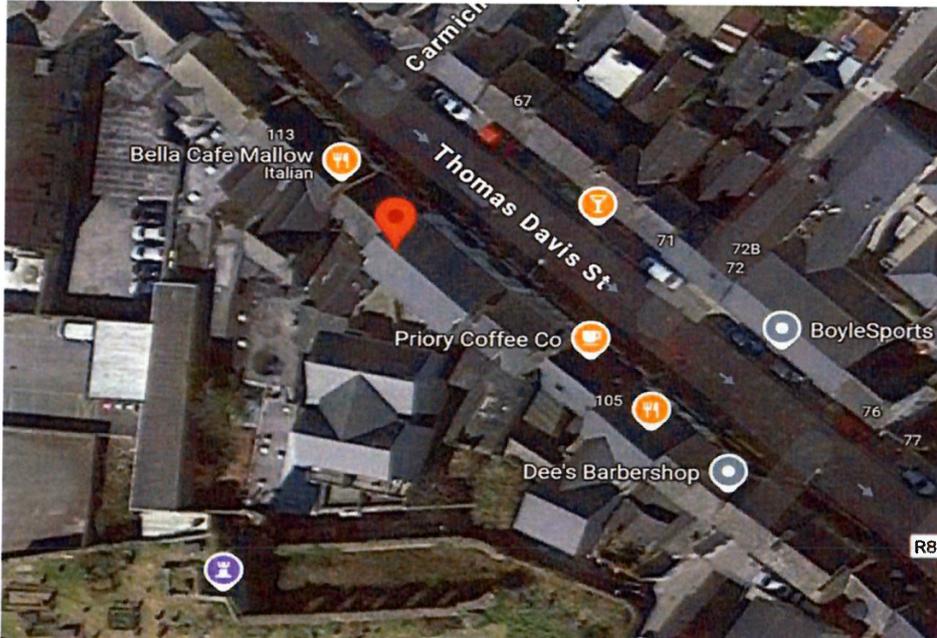
- a) The proposal aligns with Class 14(h), as the site is already permitted for residential use.*
- b) No works are proposed that would contravene existing planning conditions.*
- c) The use as accommodation for protected persons complies with local zoning and planning policy, including social inclusion objectives.*

1.2. Applicant

This report has been commissioned by Kyraview Ltd.

1.3. Location

The existing premises is located at 108 Thomas Davis St, Mallow, Co Cork and includes nine (9) Apartments and common areas – refer to site map attached and below.



1.4. Consultant

This report and supporting application have been compiled and submitted on behalf of the applicant by Atlantic Building Consultants Ltd.

1.5. Supporting Documents

Document	Reference	Description
Declaration Form	Appendix A	Completed Section 5 Declaration
Inspectors Report	ABP-307077-20	An Bord Plenala Report
Section 5 Referral Report	Ref. No: S524/105	Robbinson Hall Apartments
Location Map	P_24_152_06	OSI Map – Scale 1:2500
Site Map	P_24_152_05	Site Map – Scale 1:500
Floor Plans & Elevations	P_24_152_01-04 & 07-10	Detailed Layout, Elevations and Sections

2. SITE DESCRIPTION

The subject site is located in 108 Thomas Davis St, Mallow, Co Cork. The Apartments subject to this application are located on the first, second and third floor of the building. Access is provided via an existing ground level access hallway and stairwell to the upper floors. There are three (3) apartments on each floor with separate entrances to all apartments off existing external courtyard areas.

The applicable site is outlined in red below.

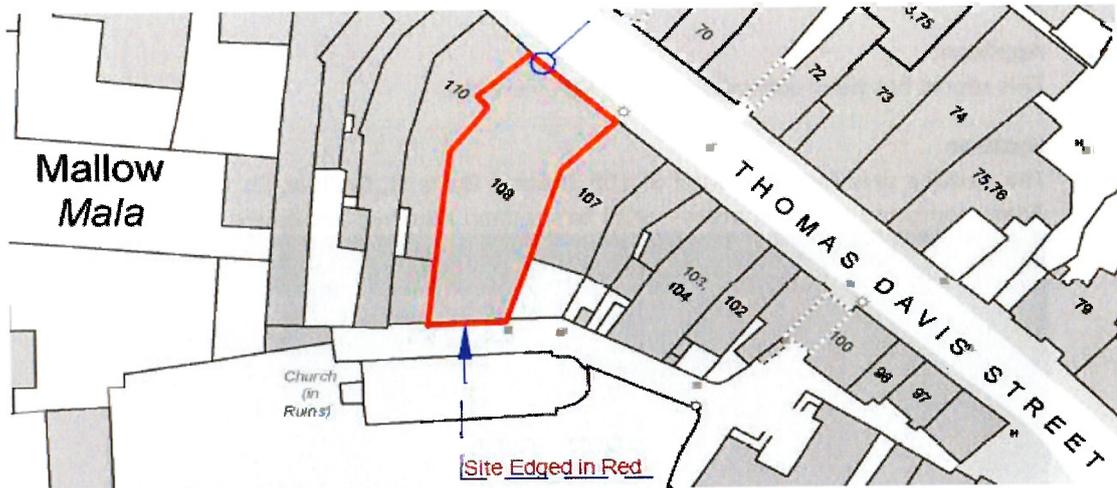


Figure 1: Location Map



- ← 3 x 3rd Floor Apartments
- ← 3 x 2nd Floor Apartments
- ← 3 x 1st Floor Apartments
- ← Ground Floor Access

3. PLANNING HISTORY

The following table demonstrates the planning history for the site pertaining to the existing apartment complex applicable to this request for a Section 5 Declaration of Exempted Development. As is evidenced below, the site has been approved for residential use since 2002.

Planning Reference	Description	Decision Date	Decision
2477	Demolition of existing buildings and construct four storey building comprising of retail outlet, staff and storage area on the ground floor with a total of 9 no. apartments on three upper floors	27/11/02	Conditional
246244	Permission for retention of the change of use of the existing ground floor access hallway, access stairwell, 3 number first floor apartments and external common areas, 3 number second floor apartments and external common areas and 3 number third floor apartments and common areas (9 number apartments in total) from residential apartments to its current use as emergency accommodation for displaced person or persons seeking international protection along with all associated works.	24/03/25	Refused
D/255/24	Declaration of Exempted Development Under Class 20F Section 5 of the Planning & Development Act 2000 - 2010	10/09/24	Not Exempt

4. PLANNING PRECEDENTS

The following Planning Precedents have been set in County Leitrim (via An Bord Pleanála) and Co Donegal in relation to the use of residential apartments for accommodation for persons seeking international protection.

a) The Rock Centre,

Description:

The referral site is located to the southeast side of Ballinamore town centre in County Leitrim and currently comprises a two-three storey mixed-use development, including upper-level residential use and ground-floor retail and commercial uses that are anchored by a Tesco supermarket. The majority of the retail and commercial units at ground floor are vacant at present and the development has been subject of three recent planning permissions. The development is currently served by two expansive surface-level car parks on the northeast side and the rear of the main building, as well as a basement car park. The upper-floor residences are accessed solely by a gated stairs off Cannaboe Street and served by a management and security suite. Each of the 25 residences are own-door residences served by a central courtyard marking out individual amenity areas by raised planters and featuring seating areas and play areas.

Address:

Ballinamore, Co. Leitrim

Reference:

Reg. Ref. 307077-20

Planning Authority:

Leitrim County Council

Decision:

Following a referral to An Bord Pleanála, it was declared that the use of apartments for protected persons and works to the apartments is not development.

Inspector's Report Noted:

"I am satisfied that the subject block of apartments can therefore be considered under the term 'other premises' for the purposes of Class 14, providing residential or overnight accommodation. Accordingly, I consider that the use of the apartments for the reception and care of protected persons or as accommodation for protected persons comes within the scope of the exempted development provided for under Classes 14(h) and (i) of Part 1 of Schedule 2 to the Regulations".

The Inspector further noted that Having visited the referral site, *"it is clear that the residential accommodation is being operated in a manner similar to other apartment developments, with gated access and servicing by a management and security suite. Facilities beyond those that would normally form part of an apartment complex were not in evidence and the facility does not feature any particular additional reception, orientation or care services. 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 and the status or personal circumstances of the apartment residents is not a material planning issue. I am satisfied that the current use of the apartments is not as a facility for the reception and care of protected persons and does not constitute a change of use from the permitted use and, therefore, does not constitute development".*

b) Robinson Hall Apartments

Description: Residential development comprising a mix of self-contained dwelling & common areas. The building comprises multiple self-contained units, each designed to offer private living spaces with essential amenities. The units are equipped with kitchen facilities, living areas, and private bathrooms, ensuring residents have the autonomy and comfort necessary for daily activities.

Address: Port Road, Letterkenny, Co Donegal

Reference: Ref: S5 24/105

Planning Authority: Donegal County Council

Decision: "The proposal IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT"

Planners Report Concluded:

The Planning Authority concluded that The proposal IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT, as the development falls within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) and in considering this referral, had regard particularly to:

- a) *Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).*
- b) *Articles 6(3), 9(1), and Class 14(H) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).*
- c) *The planning history, current use of the subject site, and Section 5 declarations by An Bord Pleanála.*

5. **STATUTORY PROVISIONS**

Section 2(1) of the Planning and Development Act 2000 as amended states the following:

- a) “development” has the meaning assigned to it by Section 3
- b) “works includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal”

Section 3(1) of the Planning and Development Act 2000 as amended states the following

- a) “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’.

Article 6(1) of the Planning and Development Regulations 2001-2025 (hereinafter referred to as ‘the Regulations’) provide that ‘subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1’.

Schedule 2 of Part 1 of the Regulations, sets out the classes of exempted development, including “Class 14” allowing for “development consisting of a change of use”:

- a) “(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,
- b) (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”.

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

- a) any structure which was designed for use as one or more apartments, except such a structure which was used as business premises immediately before 1 October 1964 or is so used with permission under the Act.

‘care’ means personal care, including help with physical, intellectual or social needs.

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

Or

- (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996.

6. CORK COUNTY DEVELOPMENT PLAN 2022

The Cork County Development Plan 2022 - 2028 sets out the overall Development Strategy and Planning Policy Objectives for the County for the period 2022 to 2028

The following is provided to demonstrate the approved land use along with adherence to the policy objectives of Cork County Council for the ongoing use of the subject apartments to accommodate persons seeking international protection.

The subject site is zoned as "Town Centre/Neighbourhood Centres" per the Cork County Development Plan 2022 – 2028. The subject site is located adjacent to arrow in map below.

Municipal Districts Public Play Areas and Conveniences

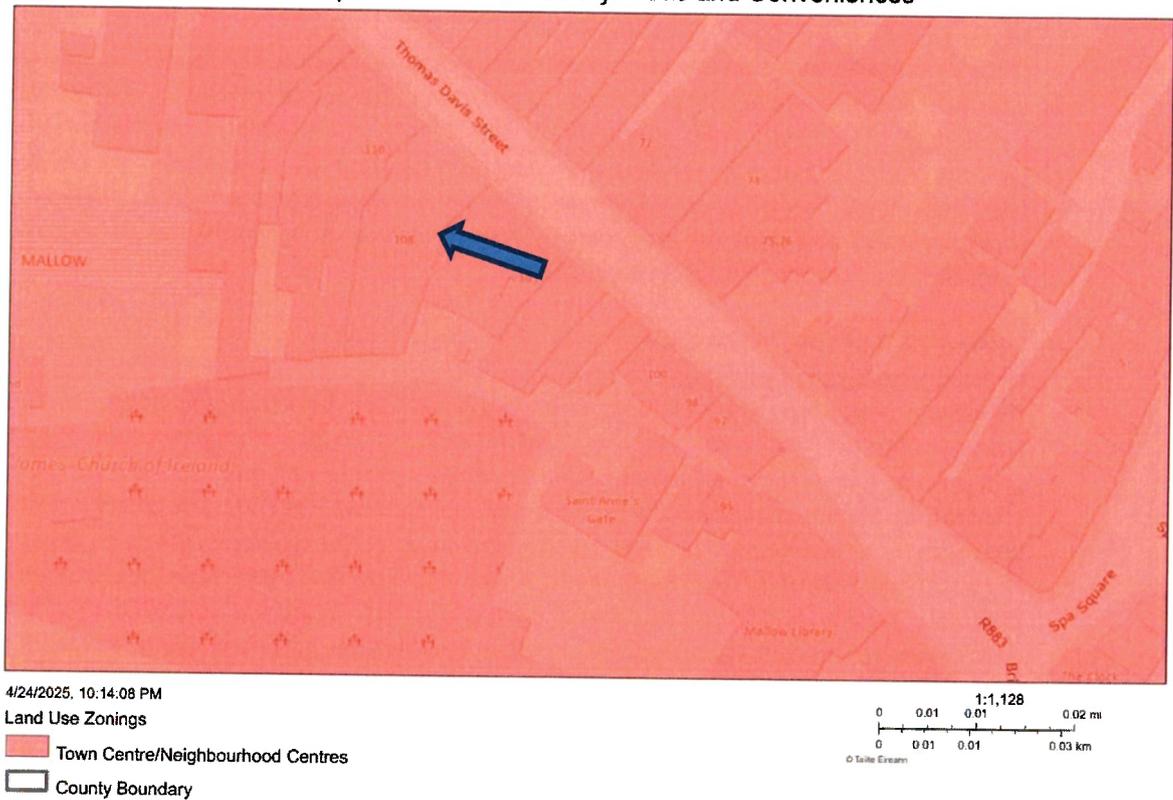


Figure 2: Land Use Zoning Plan

Section 4.3.1 of Cork County Development Plan

"Housing for All, the Government's plan to boost the supply of housing to 2030 was published on the 2nd of September, 2021. The overall aim of this new housing plan for Ireland is that "Everyone in the State should have access to a home to purchase or rent at an affordable price, built to a high standard and in the right place, offering a high quality of life.

'Housing for All' provides four pathways to achieving four overarching objectives;

- a) Supporting Homeownership and Increasing Affordability;*
- b) Eradicating Homelessness,*
- c) Increasing Social Housing Delivery and Supporting Social Inclusion;*
- d) Increasing New Housing Supply and Addressing Vacancy and Efficient Use of Existing Stock".*

Section 1.8.1 of Cork County Development Plan

“Social Inclusion – Social inclusion affects the wellbeing of individuals, families, social groups and communities. Creating a more socially inclusive society by alleviating social exclusion, poverty and deprivation is a major challenge. Steps towards achieving a more socially inclusive society include the provision of good quality affordable housing, community infrastructure and improving access to information and resources”.

Section 1.9.2.3 of Cork County Development Plan

“Incorporate sustainable development, climate change mitigation and adaptation, social inclusion, high quality design and resilience as fundamental principles, cross cutting and underpinning the Development Plan”.

Section 6.1.5 of Cork County Development Plan

“Promoting social inclusion is a key element of the work of Cork County Council, as indicated by the high level commitment demonstrated by the creation of the Social Inclusion, Community and Rural Development Strategic Policy Committee, the 3 no. active Local Community Development Committees (LCDC), and the Cork County Public Participation Network. More recently, the work of the Cork County Council Covid-19 Community Support Programme served to highlight issues of social exclusion, how these are magnified in times of crisis, and the central role of the local authority in facilitating a response to these inequalities”.

Section 2.4.1 of Vol 3 North Cork

Link: [volume-3-north-cork.pdf](#)

“Mallow is designated as a Key Town in the Regional Spatial and Economic Strategy (RSES) for the Southern Region. The overall vision for Mallow is to sustainably strengthen the employment-led growth and town centre-led regeneration of Mallow as a regional economic driver, leverage its strategic location and accessibility on inter-regional road and rail networks to build upon inherent strengths, in particular food production and tourism potential, while protecting and enhancing the natural environment of the Blackwater Valley. It aims to ensure new development delivers enhanced quality of life for all, based on high quality residential, working and recreational environments, respectful of the unique character and heritage of the town and supported by a good range of services and community facilities.”

7. ASSESSMENT

a) Description of Property and Use

The subject property is a purpose-built multi-use building that incorporates nine (9) self-contained residential apartments on the first, second and third floors.

Each of the subject apartments function independently and are self-contained, with private kitchen, bathroom, and habitable rooms, operating as standard residential units for residents who are seeking international protection.

Residents are free to enter, reside and leave the individual apartments as they wish, in a manner consistent with standard tenancies.

The subject apartments have operated continuously as residential accommodation, and the use of these apartments to provide accommodation to persons seeking international protection involves no structural alterations or new impacts on the surrounding area.

The applicant provides no direct care facilities or services for the residents of the apartments. There are no institutional or communal facilities onsite.

This use aligns with the original planning permission (2477) which does not restrict occupancy based on residents' legal or socioeconomic status.

b) Material Change of Use

Under Section 3(1) of the Planning and Development Act 2000, development is set out as a "material change of use". Such a "material change requires a shift in the functional character or planning impacts of the property (*Westminster City Council v British Waterways Board* [1985]). In this case there is:

- i) **No Functional Change:** the apartments remain residential in nature, irrespective of occupants being persons seeking international protection. In Donegal County Council Ref. S5 24/105, the use of apartments for protected persons was deemed identical in function to general residential use, as both involve "overnight accommodation by households." In this case, the apartments remain private homes with no communal facilities, management offices or intensification of use.
- ii) **No Planning Impact:** The use does not introduce new traffic, noise, or infrastructural demands beyond those of typical residential occupancy. There will be no change to waste or visual character.
- iii) **Legal Precedent:** The Supreme Court in *Dublin Corporation v Moore* [1984] ILRM 339 affirmed that demographic differences among residents (such as legal status) are irrelevant to planning assessments and held that "the socioeconomic profile of residents is irrelevant to materiality."

Accordingly, any variation in the demographic profile of the occupants such as their legal status or background should not be considered when determining whether a change of use is material, and the current use does not constitute a material change.

c) Development & Exempted Status

The applicant does not intend to carry out any works to the subject apartments that will materially change the existing layout, elevations or use. Under Section 2(1) of the *Planning and Development Act 2000* (as amended), "development" requires either:

- i) Physical works (none proposed), or
- ii) Material change of use (none identified).

Even if the Council determines the use to be development, it would then qualify as exempted development under Class 14(h) Schedule 2 of the Planning Regulations as:

- i) the apartments are "other premises providing overnight accommodation", and
- ii) the use aligns with existing residential zoning and complies with all relevant conditions of original permissions.

Precedent: An Bord Pleanála (Ref. 307077-20) and Donegal County Council (Ref. S5 24/105) have ruled similar cases as exempt.

d) Policy Synergy & Strategic Alignment

The proposed use demonstrates full compatibility with Ireland's integrated planning and social inclusion framework. At the local level, it directly supports:

- i) Section 1.8.1 of Cork County Development Plan which promotes Social Inclusivity of individuals, families, social groups and communities with the provision of good quality affordable housing, community infrastructure and improving access to information and resources".
- ii) Joint Housing Strategy in the Cork County Development Plan 2022-2028 seeks to secure national policy in meeting the housing needs of the County, increase housing supply, reverse the scale of unmet housing needs, and provide for a diverse range of housing needs to suit varying income levels and social circumstances"

Nationally, it aligns with:

- i) Housing for All (NPO 37): "Provision of suitable accommodation for international protection applicants."
- ii) Social Inclusion Policy (DEHLG 2020): "Universal access to housing as a fundamental right."

Internationally, it fulfills:

- i) EU Reception Conditions Directive (2013/33/EU): Article 18(1) on "dignified housing standards for applicants."
- ii) UN Sustainable Development Goal 11: "Inclusive, safe, and sustainable human settlements."

This multi-tiered policy congruence eliminates any planning justification to oppose the use, as it simultaneously preserves residential zoning integrity, advances statutory social obligations, and implements Ireland's humanitarian commitments.

8. CONCLUSION

Based on the comprehensive assessment above, Atlantic Building Consultants Ltd., on behalf of Kyraview Ltd, conclusively asserts the following to support this Declaration request:

a) Definitive Absence of Development

- i) The existing use to provide accommodation for persons seeking international protection for the nine (9) Apartments located at 108 Thomas Davis St, Mallow, Co Cork remains residential under current planning regulations. The subject properties retain their essential residential character without modification to their physical state or functional use.
- ii) There are no works proposed for the nine (9) Apartments located at 108 Thomas Davis St, Mallow, Co Cork that would constitute "Development" per the meaning derived from Section 3(1) of the Planning and Development Act 2000.
- iii) The current use to provide accommodation for persons seeking international protection for the Apartments located at 108 Thomas Davis St, Mallow, Co Cork do not contravene any local or planning policies for the town of Mallow
- iv) Jurisprudence confirms (*Dublin Corporation v Moore* [1984]) that occupant demographics cannot constitute a material change in planning terms.
- v) No intensification of use occurs, as the Apartments will operate at their approved residential capacity without institutional features.

b) Unqualified Exemption Under Class 14(h)

Should the Council adopt a conservative interpretation, all requirements for exemption are categorically met:

- i) **Premises Type:** The apartments are unequivocally "other premises providing overnight accommodation" as established in *The Rock Centre* determination (ABP 307077-20) and *Robinson Hall* decision (Donegal CC S5 24/105).
- ii) **Regulatory Compliance:** There is no breach of original planning conditions (2477) or zoning objectives.
- iii) **Policy Synergy:** There is full alignment with National Policy Objective 37 (Housing for All), and Ireland's obligations under the EU Reception Conditions Directive 2024/1346.
- iv) **Precedent-Based Certainty:** The unbroken consensus of planning authorities and An Bord Pleanála affirms that:
 - Residential use for protected persons equals no material change
 - Or
 - If development, there is an automatic exemption under Class 14(h)

9. **DECLARATION REQUEST**

Pursuant to Section 5 of the Planning and Development Act 2000, the Applicant respectfully requests that the Cork County Council provide by way of Section 5 Declaration response to the following:

PRIMARY POSITION

“The use of existing nine (9) apartments located 108 Thomas Davis St, Mallow as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use.”

ALTERNATIVE POSITION

“Should the Council determine the proposal constitutes ‘Development’, it is hereby confirmed as exempted development under Class 14(h), Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended).”





CORK COUNTY COUNCIL APPLICATION FOR SECTION 5 DECLARATION OF EXEMPTION

APPLICANT CHECKLIST

(Please tick ✓)

- 4 No. Copies of Application Form:
- 1 No. Copy of Contact Details:
- 4 No. Copies 6" O.S. Maps:
- 4 No. Copies 25" O.S. Maps:
- 4 No. Copies of Site Layout Plan:
- 4 No. Copies Scaled Drawings of Development:
- €80 Application Fee:

FOR OFFICE USE ONLY

Receipt No.	
Cash/Cheque/ Credit Card	
Date	
Declaration Ref. No.	

DATE STAMP HERE

You should make sure that you are satisfied that any information/documentation that you submit is appropriate to be viewed by the public. Please do not submit any information that you do not want 3rd parties to view.

In the case of a Declaration of Exemption for Land Reclamation, the following additional information is required:

- A copy of the details submitted to the Council's Environment Department (Inniscarra) for a Waste Licence Permit
- Correspondence from Teagasc (detailing how the land reclamation would benefit the land in question for agricultural purposes)
- Details of existing and proposed levels
- Details of fill material and duration of fill.

DATA PROTECTION

The planning process is an open and public one. In that context, all applications for Declarations of Exemption are made available for public inspection.

Personal information collected by Cork County Council is done so in order for us to process your application for a Section 5 Declaration of Exemption. Legally we can process this information as it is necessary for us to comply with our statutory/legal obligations. The protection of our personal data is a key priority for the Council and your data will be processed in line with our Privacy policy which is available at <http://www.corkcoco.ie/Privacy-Policy> or hardcopy from our offices at County Hall, Carrigrohane Road, Cork, Ireland. Should you have any questions about our privacy policy or the information we hold about you, please contact us by email to dpo@corkcoco.ie or write to us at Data Protection Officer, Cork County Council, County Hall, Carrigrohane Road, Cork, Ireland.

1. NAME OF APPLICANT: (ADDRESS TO BE SUPPLIED AT QUESTION A – CONTACT DETAILS)

Kyraview Ltd

2. POSTAL ADDRESS OF LAND OR STRUCTURE FOR WHICH DECLARATION OF EXEMPTION IS SOUGHT:

108 Thomas Davis St, Mallow, Co Cork

3. QUESTION/DECLARATION DETAILS:

Please state the specific question for which a Declaration of Exemption is sought

Note: Only works listed and described under this section will be assessed under the Section 5 Declaration of Exemption

Pursuant to Section 5 of the Planning and Development Act 2000, the Applicant respectfully requests that the Cork County Council provide by way of Section 5 Declaration response to the following:
"The use of existing nine (9) apartments located 108 Thomas Davis St, Mallow as accommodation for persons seeking international protection does not constitute development, as it involves no alterations or material change of use."
OR
"Should the Council determine the proposal constitutes 'Development', the use to accommodate persons seeking international protection is exempted development under Class 14(h), Part 1, Schedule 2 of the Planning & Development Regulations 2001 (as amended)."

4. APPLICATION DETAILS:
 Answer the following if applicable. Note: Floor areas are measured from the inside of the external walls and should be indicated in square metres (m²)

(a) Floor area of existing/proposed structure(s):	779.60 m/sq
(b) If a domestic extension is proposed, have any previous extensions/structures been erected at this location after 1 st October, 1964 (including those for which planning permission has been obtained):	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide floor areas (m ²) and previous planning reference(s) where applicable:
(c) If a change of use of land and/or building(s) is proposed, please state the following: Existing/previous use Previous Use: Residential Apartments	Proposed use Current Use: Residential Apartments accommodating persons seeking international protection
(d) Are you aware of any enforcement proceedings connected to this site?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> If yes, please state relevant reference number(s):

5. LEGAL INTEREST OF A PPLICANT IN THE LAND/STRUCTURE:

Please tick appropriate box to show applicant's legal interest in the land or structure:	A. Owner <input checked="" type="checkbox"/>	B. Other <input type="checkbox"/>
Where legal interest is "Other", please state your interest in the land/structure:		
If you are not the legal owner, please state the name of the owner/s (address to be supplied at Question C in Contact Details):		

6. PROTECTED STRUCTURE DETAILS/ ARCHITECTURAL CONSERVATION AREA:

Is this a Protected Structure/Proposed Protected Structure or within the curtilage of a Protected Structure: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 been requested or issued for the property by the Planning Authority: Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please state relevant reference No. _____
Is this site located within an Architectural Conservation Area (ACA), as designated in the County Development Plan? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

7. APPROPRIATE ASSESSMENT:

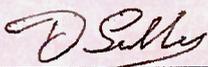
Would the proposed development require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site (SAC, SPA etc)? Yes No

8. DATA PROTECTION DECLARATION:

In order for the Planning Authority to process the personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <http://www.corkcoco.ie/privacy-statement-cork-county-council> or in hardcopy from any Council office; and to having your information processed for the following purposes:

Processing of your Declaration of Exemption application by the Planning Authority

I give permission for my personal information to be processed for the purpose stated above

Signed (By Applicant Only)	
Date	25-Apr-2025

GDPR Special Categories of data / Sensitive Personal data - Explicit Consent

Where Special Categories of personal data / sensitive personal data are provided as part of / in support of a declaration application, **explicit consent** to the processing of the special categories of data must be given by the person to whom the data refers, namely the Data Subject.

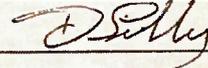
Special Categories of data / Sensitive Personal data include:

- Race
- Ethnic origin
- Political opinions
- Religion
- Philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data
- Health data
- Concerning a natural person's sex life
- Sexual orientation

In order for the Planning Authority to process the sensitive personal data you have provided, your consent is required. By ticking the box below, you consent to the Planning Authority processing the personal data provided by you in line with the terms of Cork County Council's Privacy Policy available at <https://www.corkcoco.ie/privacy-statement-cork-county-council> or in hardcopy from any Council office; and to having your information processed for the following purposes:

Sensitive personal data being submitted in support of Declaration of Exemption Application

I give permission for my sensitive personal data submitted to the Planning Authority to be processed for the purpose stated above.

Signed	
Date	25-Apr-2025

You have the right to withdraw your consent by contacting the Planning Department, Ground Floor, County Hall, Carrigrohane Road, Cork. Tel: (021) 4276891 Email: planninginfo@corkcoco.ie or by contacting the Planning Department, Norton House, Cork Road, Skibbereen, Co. Cork. Tel: (028) 40340 Email: westcorkplanninginfo@corkcoco.ie However if consent to the use of personal data is withdrawn during the declaration of exemption decision-making process this information cannot be considered as part of the decision making process. Once a decision has been made, an applicant is not entitled to withdraw consent. as the right of erasure does not apply to a situation where processing is required for compliance with a legal obligation or for the performance of a task carried out in the public interest.

Please note that all information / supporting documentation submitted will be available publicly to view at the Planning Authority offices.

ADVISORY NOTES :

The application must be accompanied by the required fee of €80
 The application must be accompanied by a site location map which is based on the Ordnance Survey map for the area, is a scale not less than 1:1000 and it shall clearly identify the site in question.
 Sufficient information should be submitted to enable the Planning Authority to make a decision. If applicable, any plans submitted should be to scale and based on an accurate survey of the lands/structure in question.
 The application should be sent to the following address:
 The Planning Department, Cork County Council, Floor 2, Co. Hall, Carrigrohane Road, Cork, T12 R2NC; or for applications related to the Western Division, The Planning Department, Cork County Council, Norton House, Cork Road, Skibbereen, Co. Cork, P81 AT28.

- The Planning Authority may require further information to be submitted to enable the authority to issue a decision on the Declaration of Exemption application.
- The Planning Authority may request other person(s), other than the applicant; to submit information on the question which has arisen and on which the Declaration of Exemption is sought.
- Any person issued with a Declaration of Exemption may on payment to An Bord Pleanála refer a Declaration of Exemption for review by the Board within 4 weeks of the date of the issuing of the Declaration of Exemption decision.
- In the event that no Declaration of Exemption is issued by the Planning Authority, any person who made a request may on payment to the Board of such a fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a Declaration of Exemption was due to be issued by the Planning Authority.

The application form and advisory notes are non-statutory documents prepared by Cork County Council for the purpose of advising the type of information which is normally required to enable the Planning Authority to issue a Declaration of Exemption under Section 5. This document does not purport to be a legal interpretation of the statutory legislation nor does it state to be a legal requirement under the Planning and Development Act 2000 as amended, or Planning and Development Regulations, 2001, as amended.

9. **I hereby declare that, to the best of my knowledge and belief, the information given in this form is correct, accurate and fully compliant with the Planning and Development Acts 2000, as amended and the Regulations made thereunder:**

<i>Signed (Applicant or Agent as appropriate)</i>	
Date	24-Apr-2025

ADDITIONAL CONTACT INFORMATION TO BE SUBMITTED WITH APPLICATION

- The applicant(s) address **must** be submitted on this page.
- **Only one copy of this section of the application form needs to be submitted**

(A) Applicant: (From Question 1 of Application Form)

Address (Required):	Beechlawn house Old portmarnock Drumnigh rd Portmarnock Co. Dublin
Telephone No./Mobile No. (if any):	
Email Address (if any):	

(B) Person/Agent acting on behalf of the Applicant (if any):

Name:	Mark Tubridy
Address:	Unit 1, Digital Hub, Merchants Quay Business Quarter Frances Street Kilrush Co. Clare
Telephone No./Mobile No. (if any):	083 4167049
Email Address (if any):	info@atlanticbc.ie
Should all correspondence be sent to the above address? Please tick \surd appropriate box.	
Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
(Please note that if the answer is 'No', all correspondence will be sent to the Applicant's address)	

(C) Owner/s (required where applicant is not the owner):

Name:	
Address:	
Telephone No./Mobile No. (if any)	
Email Address (if any)	

The provision of additional contact information such as email addresses or phone numbers is voluntary and will only be used by the Planning Authority to contact you should it be deemed necessary for the purposes of administering the application. These details will not be made available to any third party with the exception of An Bord Pleanala for the purpose of administering the appeal.

Fully completed application forms should be submitted to the relevant planning office.

CORK COUNTY COUNCIL

County Hall Office

Planning Dept. TEL: (021) 4276891
County Hall, FAX: (021) 4867007
Carrigrohane Road,
Cork, T12 R2NC

West Cork Planning Office

Norton House, TEL: (028) 40340
Cork Road, FAX: (028) 21660
Skibbereen,
Co. Cork, P81 AT28

WEB ADDRESS: www.corkcoco.ie

SECTION 5 REFERRAL REPORT – Ref. No: S524/105

Donegal County Council

10 COMMENTS

The subject site, Robinson Hall Apartments, Port Road, Letterkenny, Co. Donegal, is an existing apartment complex. The current referral seeks to determine whether the proposed use of the residential apartments as long-term residential accommodation for protected persons, constitutes development and, if so, whether it is exempted development.

The site is not included on the Council's Record of Protected Structures nor on the National Inventory of Architectural Heritage. The site is located within a Town Centre zoning designation under the Letterkenny Plan and Local Transport Plan 2023-2029, where residential uses are considered open for consideration.

2.0 EVALUATION

Statutory Provisions

Planning and Development Act, 2000 (as amended)

- **Section 2(1):**
 - Defines "structure" and "works" relevant to development considerations.
- **Section 3(1):**
 - States that development includes the carrying out of works or a material change in the use of any structure or land.
- **Section 4:**
 - Outlines categories of development that may be exempt from requiring planning permission.

Planning and Development Regulations, 2001 (as amended)

Class 14(H) of Schedule 2, Part 1:

- Permits a change of use "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... to use as accommodation for protected persons."
- Protected persons are defined under the International Protection Act 2015.
- Conditions of exemption include:

- Compliance with the definition and purpose of "protected persons."
 - No contravention of planning conditions or zoning regulations.
-

3.0 ASSESSMENT

3.1 Consideration of Proposed Development

1. **Existing Use:**
 - The property currently consists of residential apartments within a multi-unit complex.
 2. **Proposed Use:**
 - The change of use is proposed to accommodate protected persons under Class 14(h).
 - Protected persons are defined in Section 2(1) of the International Protection Act 2015.
 3. **Analysis of Development:**
 - The proposed change constitutes a material change of use, as it involves altering the nature of occupancy from general residential use to accommodation for protected persons, fulfilling the statutory definition of "development" under Section 3(1) of the Act.
 - However, such a change is explicitly exempted under Class 14(h) provided it meets the prescribed conditions.
 4. **Compliance with Class 14(h) Conditions:**
 - The proposal aligns with Class 14(h), as the site is already a permitted residential complex.
 - No works are proposed that would contravene existing planning conditions.
 - The use as accommodation for protected persons does not conflict with local zoning or planning policy.
-

3.2 Appropriate Assessment

- As the development constitutes a change of use without physical works, there is no requirement for an Appropriate Assessment under Section 177U(9) of the Planning and Development Act 2000 (as amended).
-

3.3 Environmental Impact Assessment (EIA)

- No significant environmental impacts arise from this proposed change of use, and the development is not within a class of projects requiring EIA under Schedule 5, Parts 1 and 2 of the Planning and Development Regulations 2001 (as amended).

4.0 CONCLUSION

It is considered that:

1. The proposed use of the apartments for accommodation for protected persons constitutes development under Section 3(1) of the Planning and Development Act 2000 (as amended).
2. The proposed development is exempted development under Class 14(h) of the Planning and Development Regulations 2001 (as amended), as it satisfies the prescribed conditions for exemption.

5.0 RECOMMENDATION

It is hereby recommended that a declaration be made that the subject matter of the request as above –

IS Development

&

IS Exempted Development within the meaning of the above act.

The proposal to:
(i) Use the apartments as long-term accommodation for protected persons as provided for under Schedule 2, Part 1 Class 14(h) of the Planning & Development Regulations 2001 (as amended) .

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).
- The planning history, current use of the subject site, and Section 5 declarations by An Bord Pleanála.

And concluded that:

The proposal IS DEVELOPMENT and IS EXEMPTED DEVELOPMENT, as the development falls within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).



Executive Planner
20/01/2025



Frank Sweeney
Senior Executive Planner
Community Development & Planning Services
21/01/2025

Chief Executive's Order No. 2025PH017.7

Planning and Development Acts 2000 (as amended)

SECTION 5:-

Request received 17th December 2024 from JMA Ventures Limited, C/O Kevin Hughes, Hughes Planning & Development Consultants, 85 Merrion Square, Dublin 2, D02 FX60 in relation to use of residential apartments as long-term residential accommodation for protected persons at Robinson Hall Apartments, Port Road, Letterkenny, Co. Donegal.

SUBMITTED:-

Written request received 17th December 2024 as above and report dated 20th January 2025 from the Executive Planner (Ref. No: S5 24/105 refers).

ORDER:-

Having considered the said request, the report of the Executive Planner, and the record forwarded to the Council by An Bord Pleanála in compliance with Sub-Section 6(c) of the said Section I have concluded that a declaration on the questions in the said request should be made in the terms of that in the Schedule to this Order, the main reasons and considerations therefore being detailed therein. I therefore Order that the declaration issue to the said requester and the owners/occupiers of the land concerned and, further, that it be entered in the Council's Planning Register in compliance with Sub-Section (5) of the said Section.


SENIOR EX. PLANNER

DATED THIS 22nd DAY OF JANUARY 2025

Chief Executive's Order No: 2025PH0177

Ref.No: S5 24/105

SCHEDULE

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

IS Development

IS 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).

And concluded that:

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS EXEMPTED DEVELOPMENT** as the development falls within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

JS 22/01



**Comhairle Contae
Dhú n na nGall**
Donegal County Council

Áras an Chontae,
Leifear,
Contae Dhú n na nGall, F93 Y622

County House,
Lifford,
County Donegal, F93 Y622

T: 074 91 53900
E: info@donegalcoco.ie
W: www.donegalcoco.ie
W: www.ccdhunngall.ie

Planning Services
E: planning@donegalcoco.ie

Ref. No: S524/105

21st January 2025

JMA Ventures Limited,
C/O Kevin Hughes,
Hughes Planning & Development Consultants,
85 Merrion Square,
Dublin 2,
D02 FX60

Re: Use of residential apartments as long-term residential accommodation for protected persons at Robinson Hall Apartments, Port Road, Letterkenny, Co. Donegal.

A Chara,

I refer to your request received on 17th December 2024 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: 2025PH0177

Reference No: S5 24/105

Name of Requester: JMA Ventures Limited,
C/O Kevin Hughes,
Hughes Planning & Development Consultants,
85 Merrion Square,
Dublin 2,
D02 FX60

Summarised Description of development the subject matter of request:

Use of residential apartments as long-term residential accommodation for protected persons

Location: Robinson Hall Apartments, Port Road, Letterkenny, Co Donegal.

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

IS Development

IS Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

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

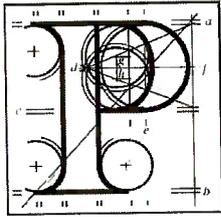
- Sections 2, 3, 4, and 177U of the Planning and Development Act, 2000 (as amended).
- Articles 6(3), 9(1), and Class 14(H) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

The proposal **IS DEVELOPMENT** within the meaning of the Planning and Development Act 2000 (as amended) and **IS EXEMPTED DEVELOPMENT** as the development falls within the scope of Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

K. O'Connell - 21/1

For Senior Ex/Planner
Planning Services

Dated this 21st day of January 2025



An
Bord
Pleanála

Inspector's Report ABP-307077-20

Question

Whether use of incomplete apartments as apartments or as apartments for protected persons and works to the apartments is or is not development or is or is not exempted development

Location

The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim

Declaration

Planning Authority

Leitrim County Council

Planning Authority Reg. Ref.

ED-19-31

Applicant for Declaration

Liam Madden

Planning Authority Decision

Split

Referral

Referred by

Liam Madden

Owner/Occupier

Remcoll 2 Ltd.

Observer(s)

None

Date of Site Inspection

30th November 2020

Inspector

Colm McLoughlin

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1.0 Site Location and Description

1.1. The referral site is located to the southeast side of Ballinamore town centre in County Leitrim and currently comprises a two-three storey mixed-use development, including upper-level residential use and ground-floor retail and commercial uses that are anchored by a Tesco supermarket. The majority of the retail and commercial units at ground floor are vacant at present and the development has been subject of three recent planning permissions. The development is currently served by two expansive surface-level car parks on the northeast side and the rear of the main building, as well as a basement car park. The upper-floor residences are accessed solely by a gated stairs off Cannaboe Street and served by a management and security suite. Each of the 25 residences are own-door residences served by a central courtyard marking out individual amenity areas by raised planters and featuring seating areas and play areas.

2.0 The Question

2.1. The following are questioned by the referrer:

- 'whether the use of the then incomplete and abandoned apartments at 'The Rock', Ballinamore, County Leitrim for use as apartments is or is not development and is or is not exempted development';
- 'whether the change of use of the then incomplete and abandoned apartments and partly completed on foot of planning permission 04/1546 at 'The Rock', Ballinamore, County Leitrim to 'The Reception and Care of those seeking International Protection' is or is not development and is or is not exempted development';
- 'whether the built works carried out internally and externally at the above then incomplete apartments currently in use as 'The Reception and Care of those seeking International Protection' are or are not development and are or are not exempted development'.

2.2. Noting information gathered during my site inspection and following a review of the submitted information, in the interest of clarity and to comprehensively address

matters raised by the referrer, it is considered appropriate that the questions referred to the Board be reworded and addressed by the following questions:

- whether the use of previously incomplete and abandoned apartments, as apartments, and;
- whether the use of previously incomplete and abandoned apartments to use for the reception and care of protected persons, and;
- whether the works to complete the previously incomplete and abandoned apartments, in order to use the apartments for the reception and care of protected persons,

at The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim, is or is not development or is or is not exempted development.

2.3. I intend to proceed with my assessment on the basis of the reworded questions.

3.0 Planning Authority Declaration

3.1. Declaration

3.1.1. The planning authority initially advised the referrer that they required additional time under section 5(2)(ba)(ii) of the Planning & Development Act 2000, as amended (hereinafter referred to as 'the Act'), in order to make a determination regarding the question, which the referrer subsequently responded to. Following this, the planning authority engaged with the High Courts regarding the information submitted by the referrer and also with the Department of Justice and Equality, requesting clarification on a contractual agreement between the owner of the referral site and the Minister for Justice and Equality. The planning authority subsequently declared the following on the 31st day of March, 2020:

- use of the then incomplete and abandoned apartments for use as apartments is development and is exempted development;
- change of use of the then incomplete and abandoned apartments and partly completed on foot of planning permission P04/1546 to 'The Reception and Care of those seeking International Protection' is not development;

- the built works carried out internally and externally at incomplete apartments currently in use as 'The Reception and Care of those seeking International Protection' are development and are exempted development.

3.1.2. Pursuant to Section 5 of the Act, this Declaration has now been referred to the Board for review.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The recommendation within the report of the Planning Officer (March 2020) reflects the Declaration issued by the planning authority. The planning report can be summarised as follows:

- photographs taken in 2009 by the Council's Enforcement Officer reveal that the subject structure was sealed and watertight, the primary structure was, therefore, complete in 2009 and only the internal fit out of the apartments remained incomplete;
- abandonment of the permitted residential apartment use did not arise;
- internal fit out works are exempted development under section 4(1)(h) of the Act;
- the subject previously permitted apartments are currently being used to provide residential accommodation to applicants seeking international protection, which remains solely a residential use;
- change of use does not equal a change in tenure, therefore development has not occurred by the provision of the accommodation for persons seeking international protection;
- the external works elements are incidental to the use and the provision of services and open spaces completing the building, and, therefore, can come within the terms of section 40(2)(a)(iii) and (iv) of the Act.

3.2.2. Other Technical Reports

- None received.

4.0 Planning History

4.1. Referral Site

4.1.1. The planning history associated with the referral site, includes the following planning applications:

- Leitrim County Council (LCC) Ref. P04/1546 – a ten-year permission was granted by the planning authority in June 2005 for a supermarket with a service yard, five retail units, two office units, 21 residential units, a crèche and play area, 141 parking spaces and a car showroom;
- LCC Ref. P05/544 – permission was granted in November 2005 by the Planning Authority for revisions to the parent permission LCC Ref. P04/1546 primarily comprising revised elevations and floor areas to the retail and commercial units, as well as revisions to provide for 22 residential units in total;
- LCC Ref. P07/585 – permission was granted in January 2008 by the Planning Authority for revisions to the parent permission LCC Ref. P04/1546 primarily providing for an increased ground floor area, six additional retail and four additional office units at first floor, a total of 25 residential units, change of use of crèche to residential unit and an increased ground-floor area;
- ABP ref. 306621-20 (LCC ref. P19/255) – permission was granted by the Board in June 2020 for a change of use of a retail unit to a pharmacy;
- ABP ref. 306577-20 (LCC ref. P19/254) – permission was granted by the Board in June 2020 for a café and alterations to the entrance area;
- ABP ref. 306549-20 (LCC ref. P19/243) – permission was granted by the Board in June 2020 for a three-storey office building over the existing basement structure on the northeast end of the site.

4.2. Relevant Referrals

4.2.1. The following referrals subject of declarations by the Board are considered relevant:

- ABP Ref. 301688 – in February 2019 the Board decided that the conversion of the premises at Nos.57, 59 & 61 Cabra Road (Protected Structure), Dublin 7 to a supported homeless accommodation facility is development and is exempted development;
- ABP Ref. PL68.RL2685 – in May 2010 the Board decided that the change of use of the first and second floors of a hotel at Nos.58 & 59 Main Street, Longford, to a hostel to accommodate refugees is development and is not exempted development;
- ABP Ref. PL79.RL2503 – in August 2008 the Board decided that the refurbishment and change of use of a residential unit at 56 Mitchel Street, Thurles, County Tipperary, for use as emergency accommodation for not more than six persons deemed to be homeless is development and is exempted development;
- ABP Ref. PL11.RF0969 – in April 2001 the Board decided that the change of use of a convent in Stradbally, County Laois, to accommodate refugees and/or asylum seekers is development and is not exempted development.

5.0 Policy & Context

5.1. Leitrim County Development Plan 2015-2021

- 5.1.1. Leitrim County Development Plan 2015-2021 is the statutory plan for this area. The Development Plan identifies Ballinamore as a tier 2A settlement in the land-use strategy for the County, with the referral site identified as being within an area zoned for 'Mixed-use'. Objective OBJ 7 of the Plan seeks the development of lands zoned 'Mixed Use' for commercial residential, health, community, educational, cultural, retail and related uses. The site and surrounding area does not have any conservation status. The Housing Strategy appended to the County Development Plan outlines that Leitrim County Council will work with voluntary organisations and other government agencies, in ensuring accommodation is available to all. The Development Plan also notes that persons continue to move to the County for housing, economic and refugee purposes.

5.2. Natural Heritage Designations

- 5.2.1. The nearest designated sites to the referral site is the Cuilcagh - Anierin Uplands Special Area of Conservation (SAC) (Site Code: 000584), which is located approximately 6.9km to the northwest of the development site.

6.0 Statutory Provisions

6.1. Planning and Development Act 2000, as amended

- 6.1.1. 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'
- 6.1.2. 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'.
- 6.1.3. Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including Section 4(1)(h) providing for the carrying out of works for the maintenance, improvement or alteration of any structure that only affect the interior of the structure or which do not materially affect the external appearance so as to render it inconsistent with the character of neighbouring structures.
- 6.1.4. 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 2001-2020.
- 6.1.5. Section 40 of the Act places limits on the duration of a permission and these limits shall not apply following the expiration of the appropriate period, under subsection (2)(a)(iii):
- in the case of a house, shop, office or other building which itself has been completed, in relation to the provision of any structure or works included in the

relevant permission and which are either necessary for or ancillary or incidental to the use of the building in accordance with that permission.

6.2. Planning and Development Regulations 2001-2020

- 6.2.1. Article 6(1) of the Planning and Development Regulations 2001-2020 (hereinafter referred to as 'the Regulations') provide that 'subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1'.
- 6.2.2. Schedule 2 of Part 1 to the Regulations set out the classes of exempted development, including 'Class 14' allowing for 'development consisting of a change of use': -
- '(h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as accommodation for protected persons,
 - (i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons'.
- 6.2.3. As provided for in Article 9(1)(a), the following development to which article 6 relates, shall not be exempted development, if the carrying out of such development would, inter alia:
- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
 - (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.

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

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

6.2.5. For the purposes of Schedule 2, the Regulations provide the following definition of a 'protected person' -

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

(c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996.

6.3. Other Legislative Definitions

- 6.3.1. A person who has made an application to the Minister for Justice and Equality for a declaration under Section 8 of the Refugee Act, 1996 is defined as ‘a person who arrives at the frontiers of the State seeking asylum in the State or seeking the protection of the State against persecution or requesting not to be returned or removed to a particular country or otherwise indicating an unwillingness to leave the State for fear of persecution’. Section 3 of the Immigration Act, 1999, includes those ‘persons whom the Minister proposes to make a deportation order in relation to or whom has been notified of same’. A ‘programme refugee’ is defined in the Refugee Act, 1996, as ‘a person to whom leave to enter and remain in the State for temporary protection or resettlement as part of a group of persons has been given by the Government and whose name is entered in a register established and maintained by the Minister for Foreign Affairs, whether or not such person is a refugee within the meaning of the definition of refugee’.

7.0 The Referral

7.1. Referrer’s Case

- 7.1.1. The referrer’s submission was received by An Bord Pleanála on the 14th day of April, 2020, and can be summarised as follows:
- the first-floor corrals and internal and external works to the semi-derelict apartments are development;
 - the parent permission for the development expired, therefore, the development was unauthorised and exemptions do not apply;
 - the declaration should be considered in light of referrals relating to the use of apartments at Chancery Hall in Dublin for short-stay accommodation (ABP ref. 302856, 302857, 302858, 302859, 302861, 302862, 302865 and 302866);

- the use of incomplete or abandoned apartments for residential purposes requires planning permission regardless of whether or not this is for short-stay or long-stay accommodation;
- the use of the incomplete apartments as a reception and care for those seeking international protection is development and their use for refugees is a material change of use;
- the change of use does not come within the terms of Class 14(h) as the incomplete, semi-derelict and never-occupied apartments are not and never were premises or a residential institution providing overnight accommodation;
- there is no exemption to allow a change of use from apartments to housing of protected persons;
- there is no fire safety certificate for four of the apartments and legal development works cannot be undertaken to an illegal building.

7.2. Planning Authority's Response

7.2.1. The Planning Authority did not respond to the referrer's case.

7.3. Owner / Occupiers Response

7.3.1. The owner / occupiers response to the Board with respect to the referral can be summarised as follows:

- of relevance to this case are the planning applications relating to the site that were recently decided by the Board (ABP refs. 306621-20, 306577-20 & ABP ref. 306549-20);
- no unauthorised use arises, as the residential aspect of the premises is in use as residential accommodation and it is not appropriate or correct to assert that the identity of the end-user vitiates the permitted use;
- the referrer has a history of objecting;
- investment to complete and occupy the development has been undertaken and the referral is a clear attempt to stymie the regeneration of the area.

7.4. Observations

7.4.1. None received.

7.5. Further Submissions

7.5.1. Following consultation by An Bord Pleanála with the Minister for Justice and Equality and the Chief State Solicitor's Office, no responses were received.

8.0 Assessment

8.1. Introduction

- 8.1.1. The purpose of this referral is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area, but rather whether or not the matters in question constitute development, and if so fall within the scope of exempted development within the meaning of the relevant legislation. The Board should be aware that much of the information presented by the referrer relates to matters that are outside the jurisdiction of this section 5 referral, given that they relate to assertions regarding enforcement and other regulatory regimes, such as building and fire safety regulations.
- 8.1.2. The referral to the planning authority was accompanied by a cover letter which addressed the recent planning and development history of the referral site, contractual matters, enforcement matters and information relating to refugees, asylum seekers, migrants, direct provision centres and emergency residential orientation centres (EROCs). The referral was also accompanied by details relating to a High Court case pertaining to the referral site, including affidavits, a copy of the Planning and Development Regulations 2015 (S.I. No.582 of 2015), copies of legal correspondence, including letters from the Chief State Solicitor's Office and a Memorandum of Agreement relating to contracts for using part of the referral site, copies of newspaper articles, land registry details and company details, as well as planning correspondence, documentation and drawings relating to the referral site.
- 8.1.3. Each of the questions raised relate to the completion and use of the 25 own-door apartments accessed at first-floor level in the subject development. These

residential units were initially the subject of a grant of planning permission in 2005 under LCC ref. P04/1546 and were subject of revisions that were permitted under LCC ref. P05/544 in 2005 and LCC ref. P07/585 in 2008.

8.2. Is or is not development?

- 8.2.1. Section 3 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’. As defined in section 2(1) of the Act, works include ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’.

Works

- 8.2.2. The three questions put forward involve a slight variation of the preceding question, although each of the questions would appear to initially question whether the completion of the works to the subject apartments after the expiration of their appropriate period would or would not involve development. The appropriate period for the relevant permissions would have expired on the 9th day of June, 2015. The Planning Authority has outlined that their records reveal that the development was substantially complete in 2009. I am satisfied that there is a permission for the apartments and that their consequent recorded completion, including subsequent fit-out necessary and ancillary or incidental to the use of the permitted building, would have come under section 40 of the Act and, therefore, do not come within the scope of section 5 of the Act. Consequently, whether the permitted works to complete the previously incomplete and abandoned apartments is or is not development, is not a matter for this section 5 referral.

Change of Use

- 8.2.3. Each of the questions also query whether a change of use of the apartments has arisen and if a change of use has arisen, is this material for planning purposes. The referrer asserts that as the apartments were not completed within the lifetime of the parent permission, their permitted use had been abandoned and to bring the apartments into use would comprise a material change of use. Consequently, the questions relate to whether or not the residential apartment use has been abandoned or if the permitted use as apartments can be resumed.

8.2.4. High Court judgement (IEHC 74 – 2004) 'Molloy & Others - v - The Minister for Justice, Equality and Law Reform & Others' is applicable in the consideration of this aspect of the question. This concluded that where the use in the original permission can still apply and is capable of being implemented, it could therefore be resumed, since there had been no material structural alteration to the property, and as it did not involve an intensification of use. The original valid planning permission cannot be lost or abandoned if such a case arises. I consider that the Molloy case is applicable in the consideration of the circumstances presented in this referral case, for the following reasons:-

- the parent permission relating to the site was a ten-year planning permission granted in June 2005 for a mixed-use development under LCC Ref. P04/1546 and subject to permitted revisions under LCC refs. P05/544 and P07/585;
- I am not aware of the permitted residential aspect of the development being used for non-residential purposes and permission was not sought for their alternative use;
- the internal and external works undertaken to the premises following the expiration of the appropriate period and prior to the occupation of the residential aspect, involving fit-out works and the provision of services, did not involve construction work;
- substantive evidence to show that the owner/occupiers intended to abandon the use of the apartments has not been provided;
- having inspected the premises internally and externally, there are no material structural alterations that restricted the permitted use of the premises as apartments;
- the use as apartments would be of similar character and intensity to that which was permitted.

8.2.5. Accordingly, it follows from the assessment above that the use of the apartments as apartments is not abandoned and is not a material change from the permitted use and, therefore, the use as apartments is not development.

8.2.6. The next issue to consider from the questions, is whether or not the current use of the permitted apartments conforms to a change of use that would be material. The

referrer states that the current use of the facility is for 'the reception and care of those seeking international protection' or as stated in the reworded questions 'the reception and care of protected persons'. Various references to potential use as an EROC are also provided throughout the referral documentation. EROCs are centres for asylum seekers in Ireland, where in addition to offering accommodation, ancillary services to facilitate relocation and resettlement would be provided. EROCs serve as temporary accommodation facilities for persons arriving into the country through relocation and resettlement, providing medical services, language training, education, cultural orientation and social protection services.

8.2.7. Correspondence between representatives of the referrer and the Chief State Solicitor's Office dated the 7th day of November, 2019, states that the Minister for Justice and Equality has not entered into any contract to establish an EROC in Ballinamore. Subsequent correspondence between these parties dated the 29th November, 2019, clarifies that 25 families would occupy the subject 25 apartments, which would be used on an 'own-door independent living basis', with no communal living facilities. Having visited the referral site, it is clear that the residential accommodation is being operated in a manner similar to other apartment developments, with gated access and servicing by a management and security suite. Facilities beyond those that would normally form part of an apartment complex were not in evidence and the facility does not feature any particular additional reception, orientation or care services. 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 and the status or personal circumstances of the apartment residents is not a material planning issue. I am satisfied that the current use of the apartments is not as a facility for the reception and care of protected persons and does not constitute a change of use from the permitted use and, therefore, does not constitute development.

8.3. Is or is not exempt development?

8.3.1. I am satisfied that in response to the referrer's questions, development has not currently taken place on the referral site. However, should the Board consider otherwise and to comprehensively address the changes that were not in evidence, although they were asserted by the referrer to have taken place, below I consider the

provisions set out within Articles 5(1), 6(1), 9(1) and 10(1) of the Regulations and whether any exemptions would apply.

- 8.3.2. I am satisfied that Article 10(1) of the Regulations would not provide for an exemption to allow the apartments change to a reception and care centre for protected persons, as this change would not consist of a change of use within any one of the classes of use specified in Part 4 of Schedule 2 to the Regulations.
- 8.3.3. Part 1 of Schedule 2 to the Regulations deals with general exempted development, including the conditions and limitations to the exemptions, if any. Development consisting of a change of use from various guest accommodation, religious, defence barracks and other premises, as well as residential institutions providing overnight accommodation, to use for accommodation for protected persons and use as an EROC for protected persons is exempt under Classes 14(h) and (i). There are no conditions or limitations listed beside these exemption classes. The exemption does not specifically refer to a change from residential accommodation, apartments or a category to which the subject permitted use would reasonably fall into, but the exemption does refer to a change from 'other premises'. The Regulations do not specifically define a 'premises', but they do define a 'business premises' and an 'excluded premises'. Based on the definitions, a block of apartments is an 'excluded premises' and therefore not a 'business premises' for the purposes of the Regulations. A standard dictionary definition for a 'premises' is as a house or other building and the land on which it is built. I am satisfied that the subject block of apartments can therefore be considered under the term 'other premises' for the purposes of Class 14, providing residential or overnight accommodation. Accordingly, I consider that the use of the apartments for the reception and care of protected persons or as accommodation for protected persons comes within the scope of the exempted development provided for under Classes 14(h) and (i) of Part 1 of Schedule 2 to the Regulations.
- 8.3.4. If the carrying out of development would contravene a planning condition or be inconsistent with any permitted use, the Class 14 exemptions for the aforementioned changes of use are restricted under Article 9(1)(a)(i) of the Regulations. Condition 1 of the parent permission LCC ref. P04/1546 states the following:

- Notwithstanding the exempted development provisions of the Planning and Development Regulations, any proposed change of use or occupancy, or any other form of exempted development i.e. outbuildings, boundary walls, etc., shall be subject to the written agreement of the Planning Authority or Permissions as may be required.

8.3.5. Accordingly, if it had been considered that a material change of use or occupancy had arisen from that which was permitted, this condition would restrict the exemption provided for under Article 9(1)(a)(i) of the Regulations.

9.0 Recommendation

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

WHEREAS questions have arisen as to:

- whether the use of previously incomplete and abandoned apartments, as apartments, and
- whether the use of previously incomplete and abandoned apartments to use for the reception and care of protected persons, and
- whether the works to complete the previously incomplete and abandoned apartments, in order to use the apartments for the reception and care of protected persons,

at The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim, is or is not development or is or is not exempted development:

AND WHEREAS Liam Madden requested a declaration on this question from Leitrim County Council, and the Council issued a declaration on the 31st day of March, 2020, stating the following:

- use of the then incomplete and abandoned apartments for use as apartments is development and is exempted development;

- change of use of the then incomplete and abandoned apartments and partly completed on foot of planning permission 04/1546 to 'The Reception and Care of those seeking International Protection' is not development;
- the built works carried out internally and externally at incomplete apartments currently in use as 'The Reception and Care of those seeking International Protection' are development and are exempted development.

AND WHEREAS Liam Madden requested a declaration on this question on the 14th day of April, 2020, from An Bord Pleanála:

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

- (a) sections 2(1), 3(1), 4, 5 and 40 of the Planning and Development Act 2000, as amended,
- (b) articles 5(1), 6(1), 9(1) and 10(1) of the Planning and Development Regulations 2001-2020,
- (c) the planning and development history of the site,
- (d) the nature of the current use of the site,
- (e) the submissions of the Referrer,
- (f) the report of the Planning Inspector:

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the provision of works to complete the apartments, included in the relevant permission and which are either necessary for or ancillary or incidental to the use of the building permitted, come within the scope of Section 40 of the Planning and Development Act 2000, as

amended, and do not come within the scope of Section 5 of the Planning and Development Act 2000, as amended;

- (b) the permitted use of the apartments was not abandoned and the current use of the premises as apartments, and not as a facility for the reception and care of protected persons, does not constitute a change of use from the permitted use and, therefore, does not constitute development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the use of the premises at The Rockquarter, Cannaboe Street, Ballinamore, County Leitrim as apartments, including residential accommodation for protected persons, is not development.

Colm McLoughlin
Planning Inspector

8th December 2020

Land Registry Compliant Map



Tailte
Éireann

CENTRE COORDINATES:
ITM 556017,598411

PUBLISHED:
01/08/2024

MAP SERIES:
1:1,000
1:1,000

MAP SHEETS:
5952-15
5953-11

COMPILED AND PUBLISHED BY:
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Phoenix Park,
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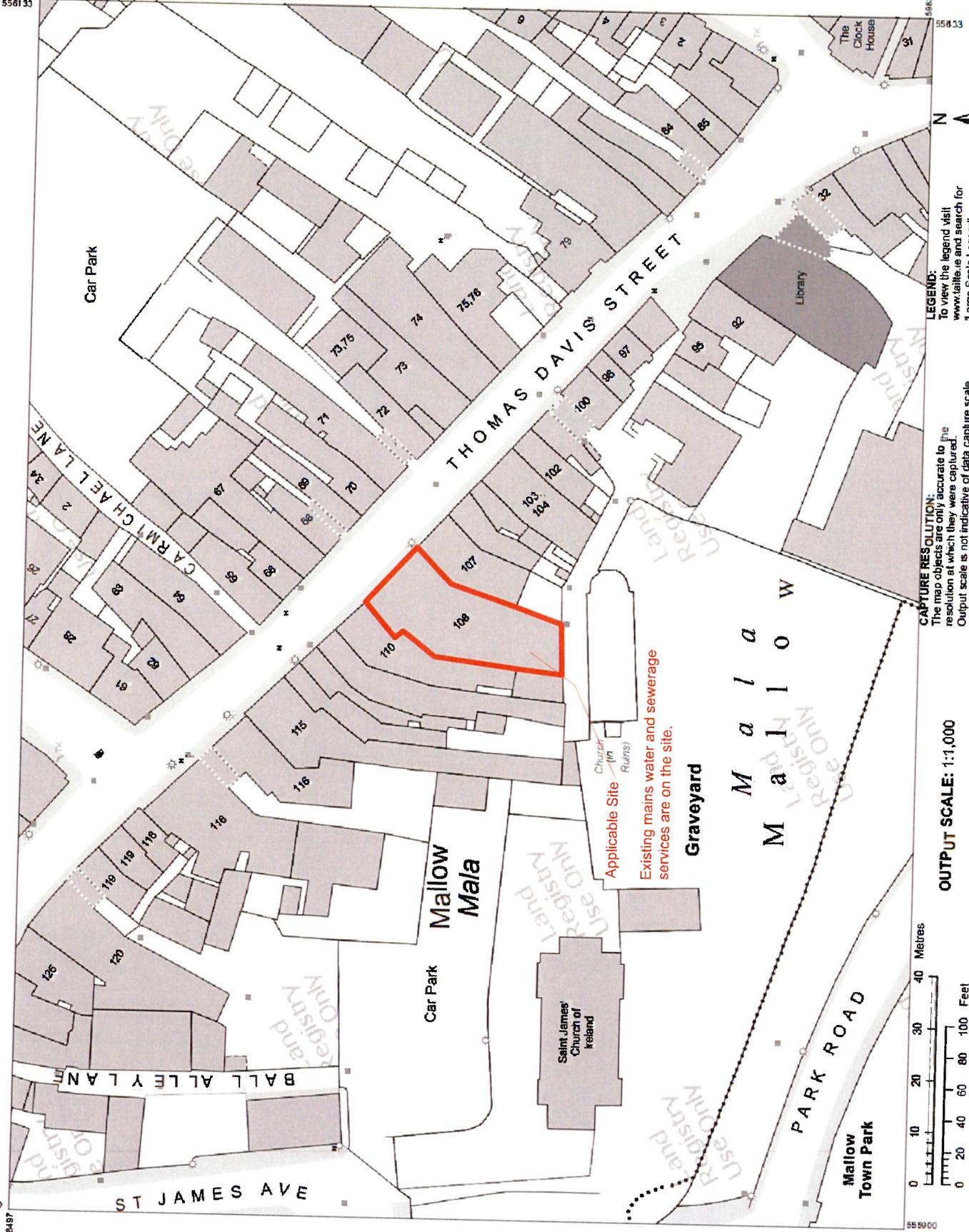
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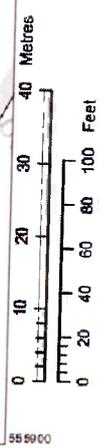
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Applicable Site

Existing mains water and sewerage services are on the site.

Car Park

Saint James' Church of Ireland

Church (in Ruins)

A B C

P/24/152/05
P-03

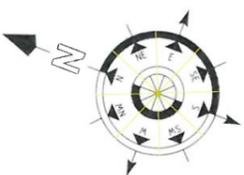
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Client - Kyraview Ltd.
Address - 108 Main Street, Mallow, Co. Cork.

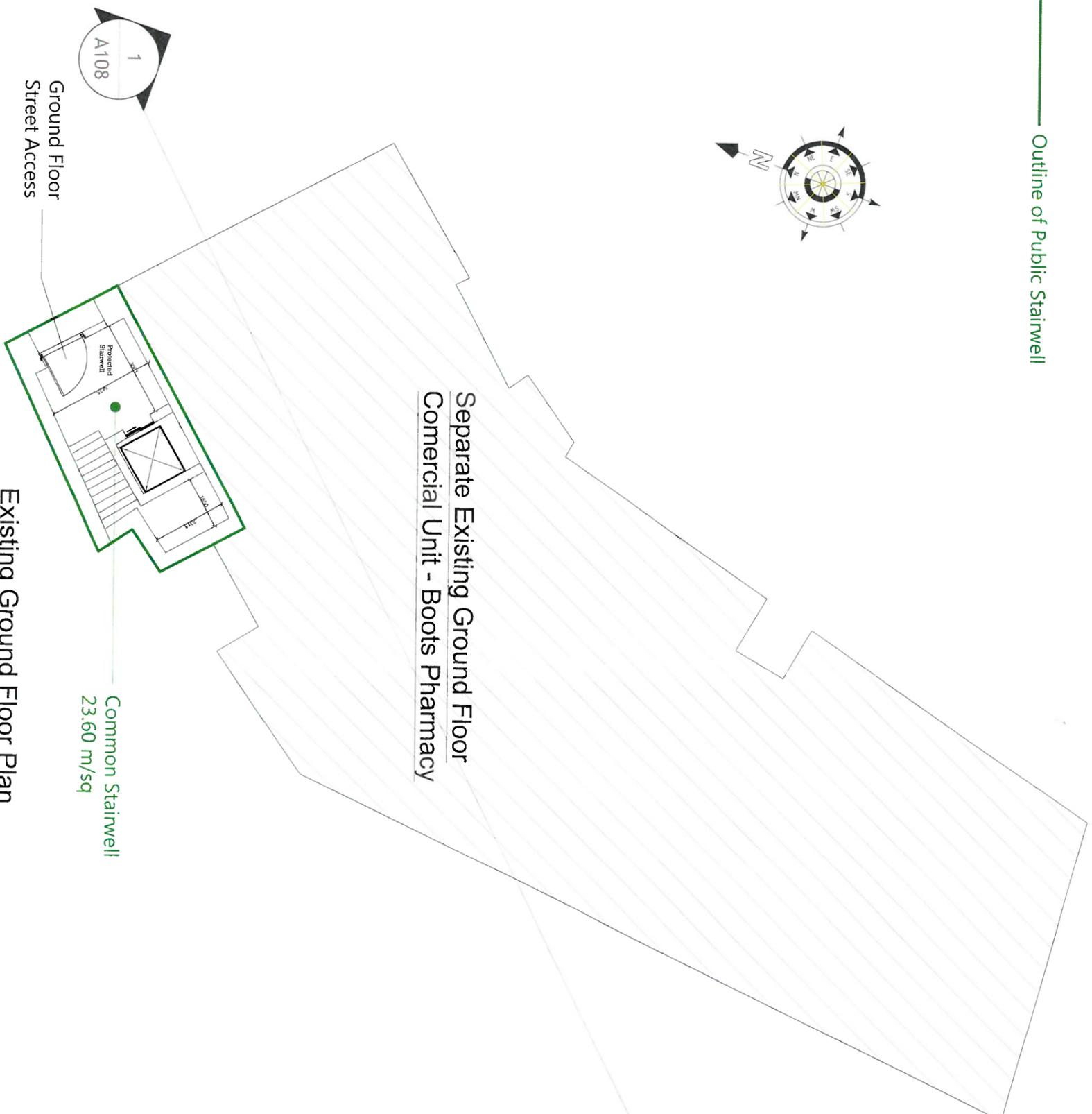
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Project - Section 5 Declaration

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— Outline of Public Stairwell



Existing F.F.L. =
100.000m



Existing Ground Floor Plan

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23 JUN 2025
LTR DATED FROM AA1
LDG- 3222842-25
ACP-

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23 JUN 2025
LTR DATED FROM
LDG-
ACP-

Title - Existing Ground Floor Plan
Project - Section 5 Declaration
Client - Kyraview Ltd
Address - 108 Thomas Davis Street,
Malloy, Co Cork.
Scale - 1:150
Size - A3

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P-03 15.02.25

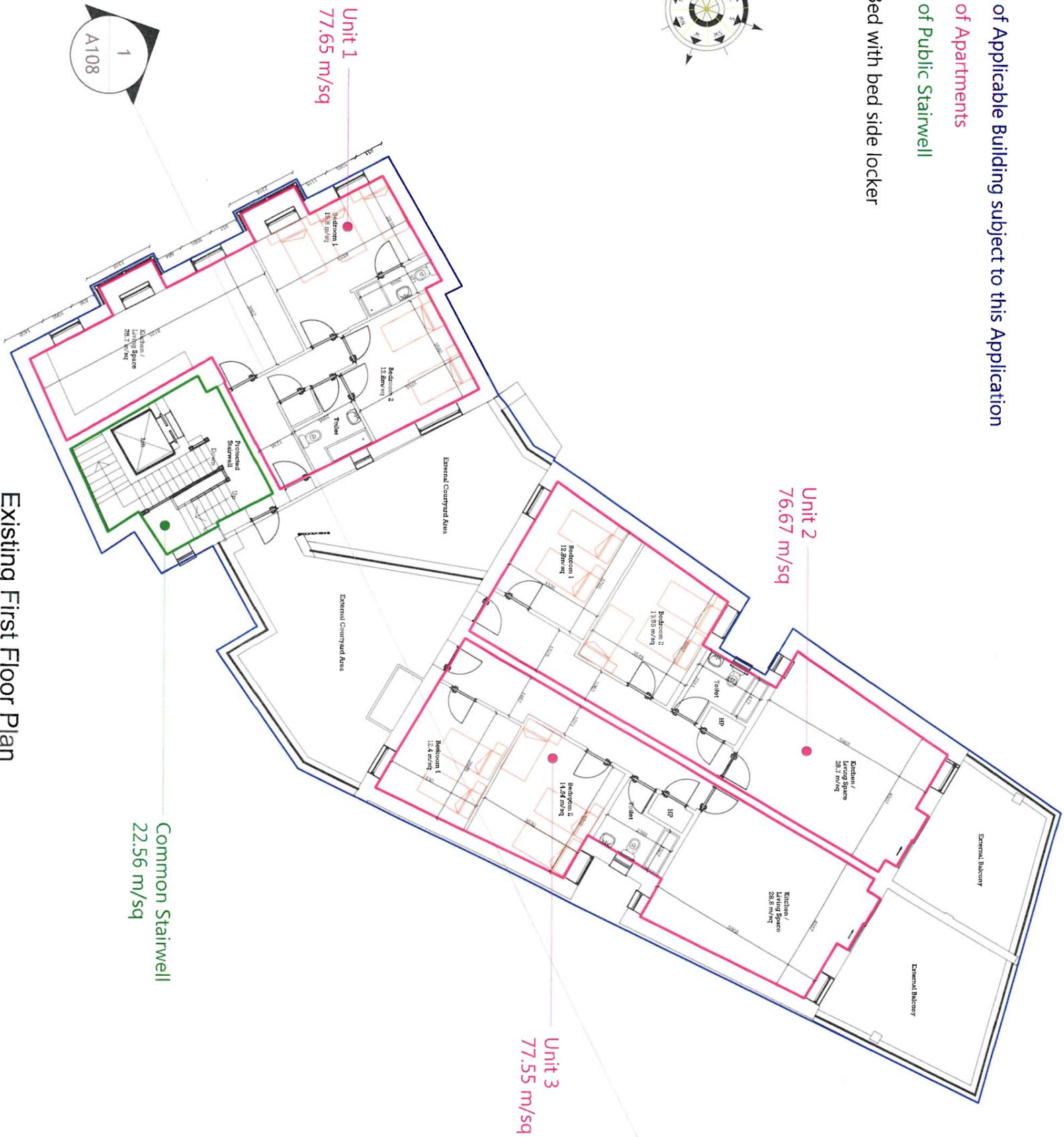
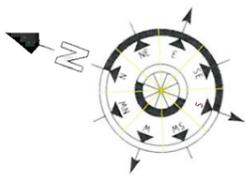
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A B C

Outline of Applicable Building subject to this Application

Outline of Apartments

Outline of Public Stairwell

Single Bed with bed side locker



Existing First Floor Plan

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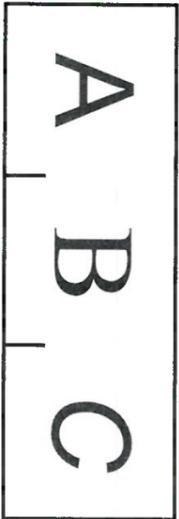
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Title - Existing First Floor Plan	Client - Kyraview Ltd	Scale - 1:150	ATLANTIC BUILDING CONSULTANTS LTD. (Incorporating PND Building Consultancy & Tubridy Engineering) Unit 1 Digital Hub, Merchants Quay Business Quarter, Frances Street, Kilrush, Co. Clare. Tel: 083 416 7097 Email: mark.tubridy@atlantictbc.ie
Project - Section 5 Declaration	Address - 108 Thomas Davis Street, Mallow, Co Cork.	Size - A3	P/24/152/02
			P-03 15.02.25



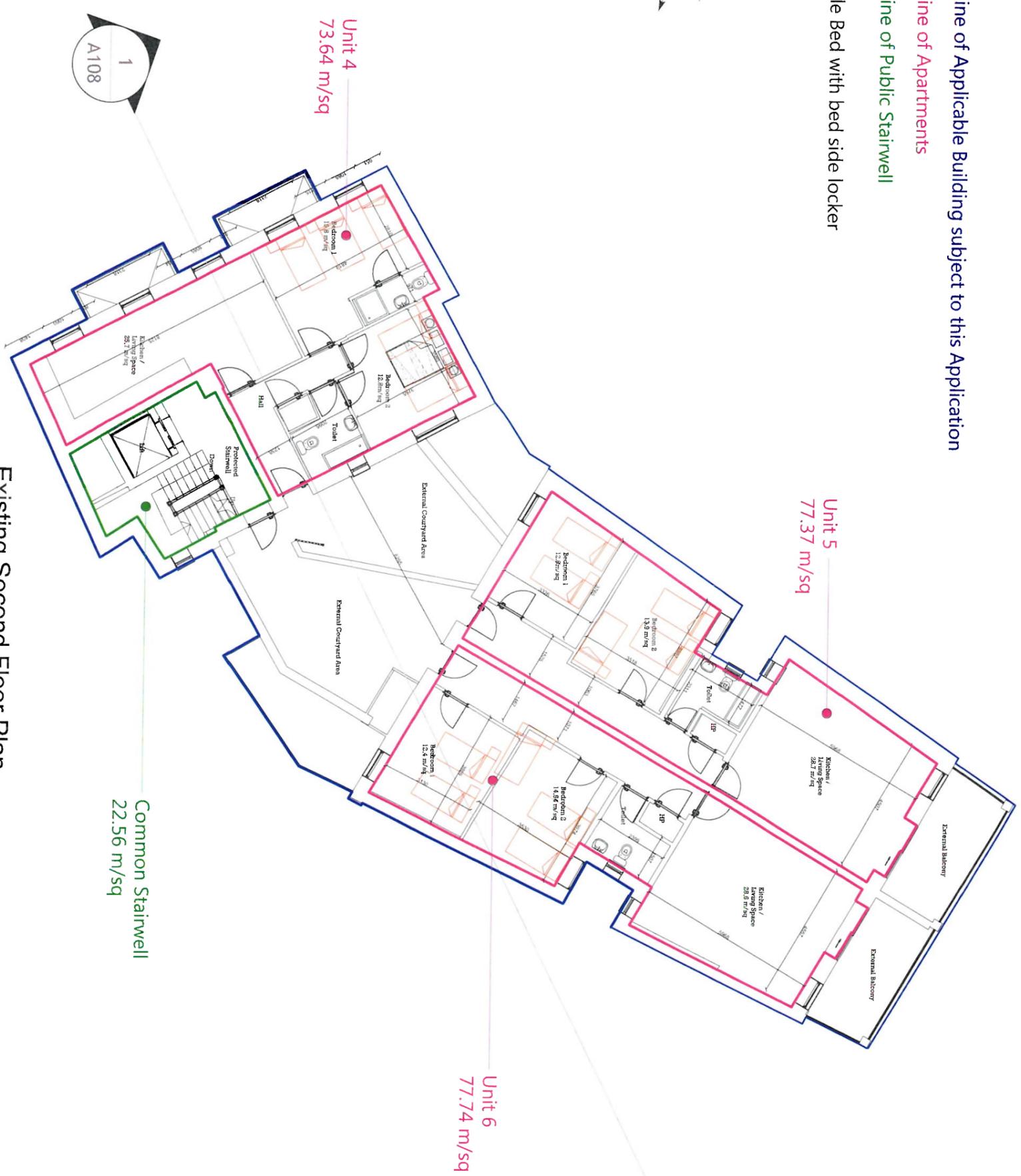
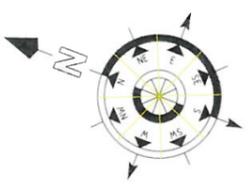
Outline of Applicable Building subject to this Application

Outline of Apartments

Outline of Public Stairwell



Single Bed with bed side locker



Existing Second Floor Plan

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Title - Existing Second Floor Plan

Project - Section 5 Declaration

Client - Kyreview Ltd

Address - 108 Thomas Davis Street, Mallow, Co Cork.

Scale - 1:150

Size - A3

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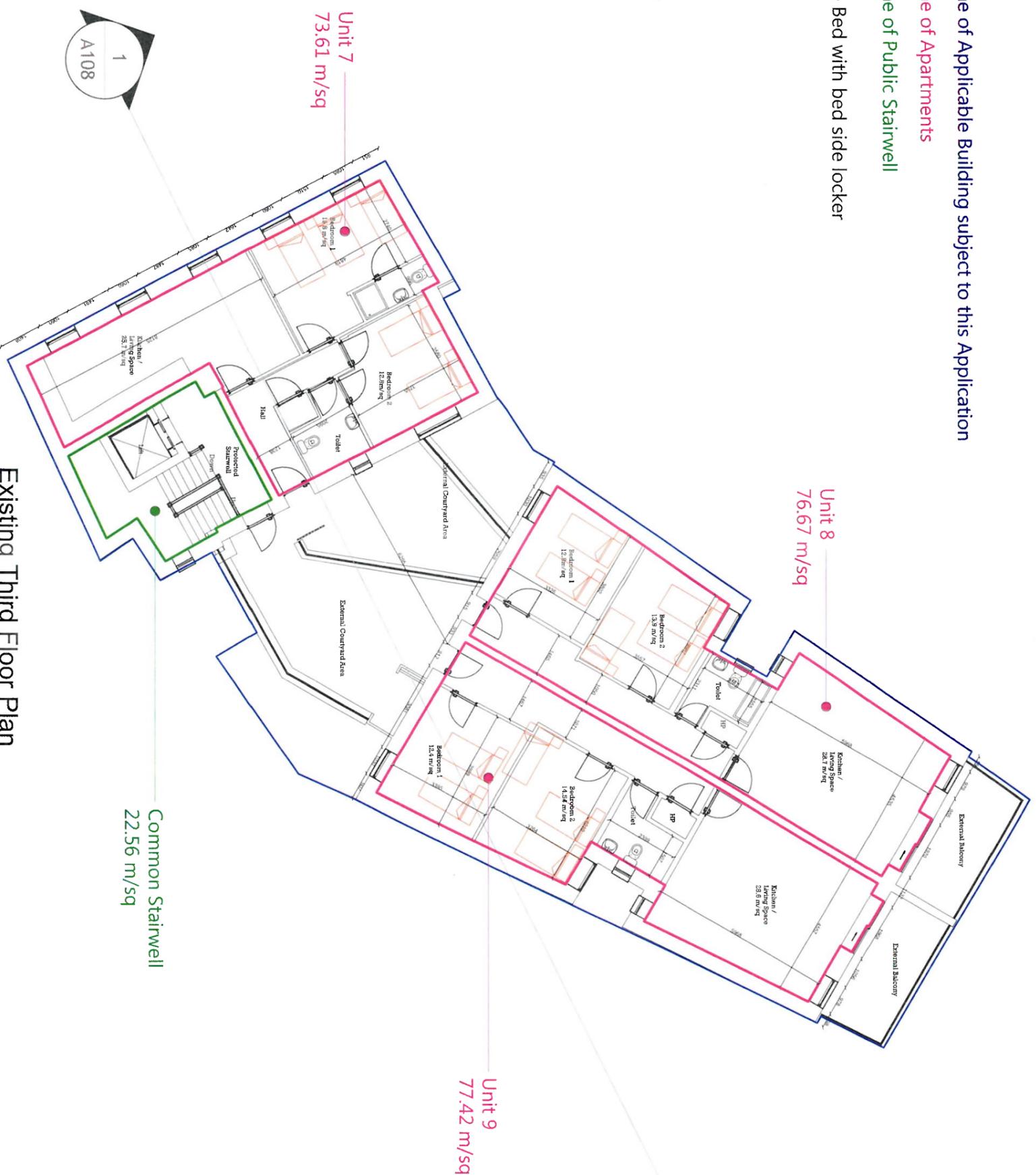
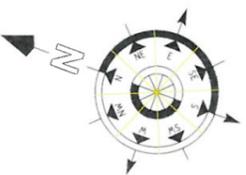
ACP **322842-25**

Outline of Applicable Building subject to this Application

Outline of Apartments

Outline of Public Stairwell

Single Bed with bed side locker



Existing Third Floor Plan

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P/24/152/04	P-03	15.02.25
A	B	C

Outline of Applicable Building Area



Northeast Elevation

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Title - Existing Northeast Elevation
Project - Section 5 Declaration

Client - Kyraview Ltd.
Address - Main Street, Mallow, Co Cork.

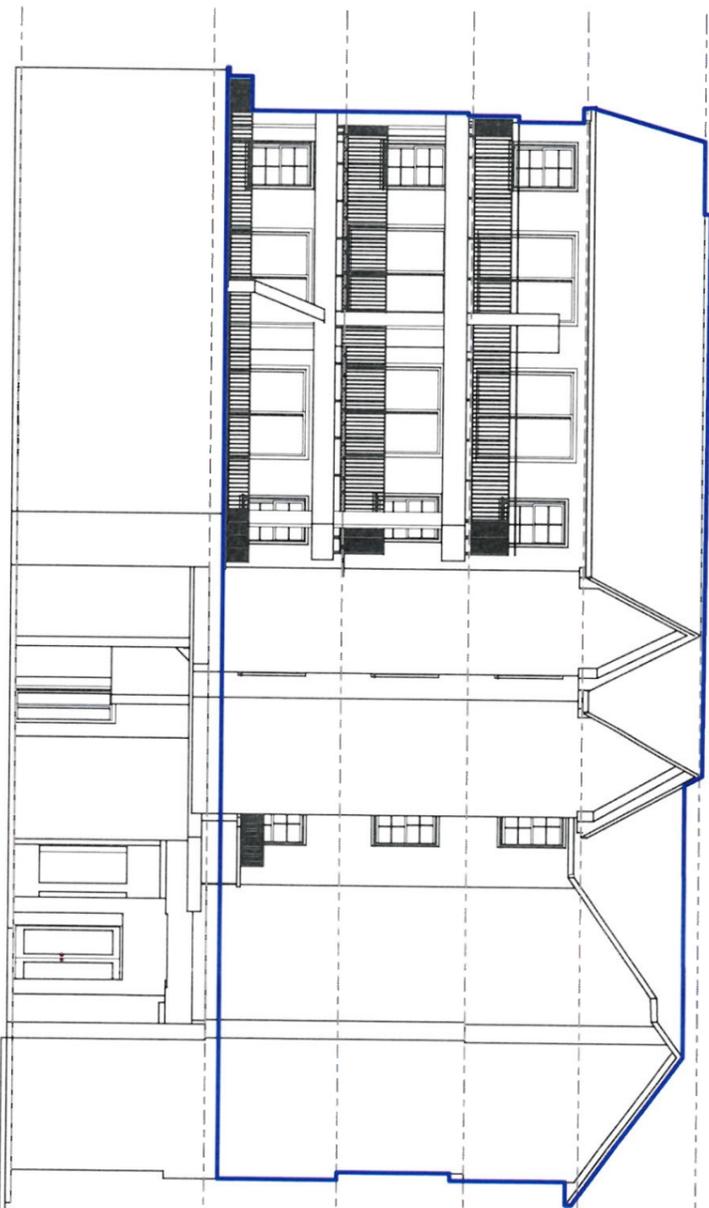
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P/24/152/07
P-01 01.08.24

A B C

Outline of Applicable Building Area



Existing South & East Elevations

L5 - Architectural	10730
L4 - Architectural	8150
L3 - Architectural	5660
L2 - Architectural	2900
L1 - Architectural	0
L0 - Architectural	-4200

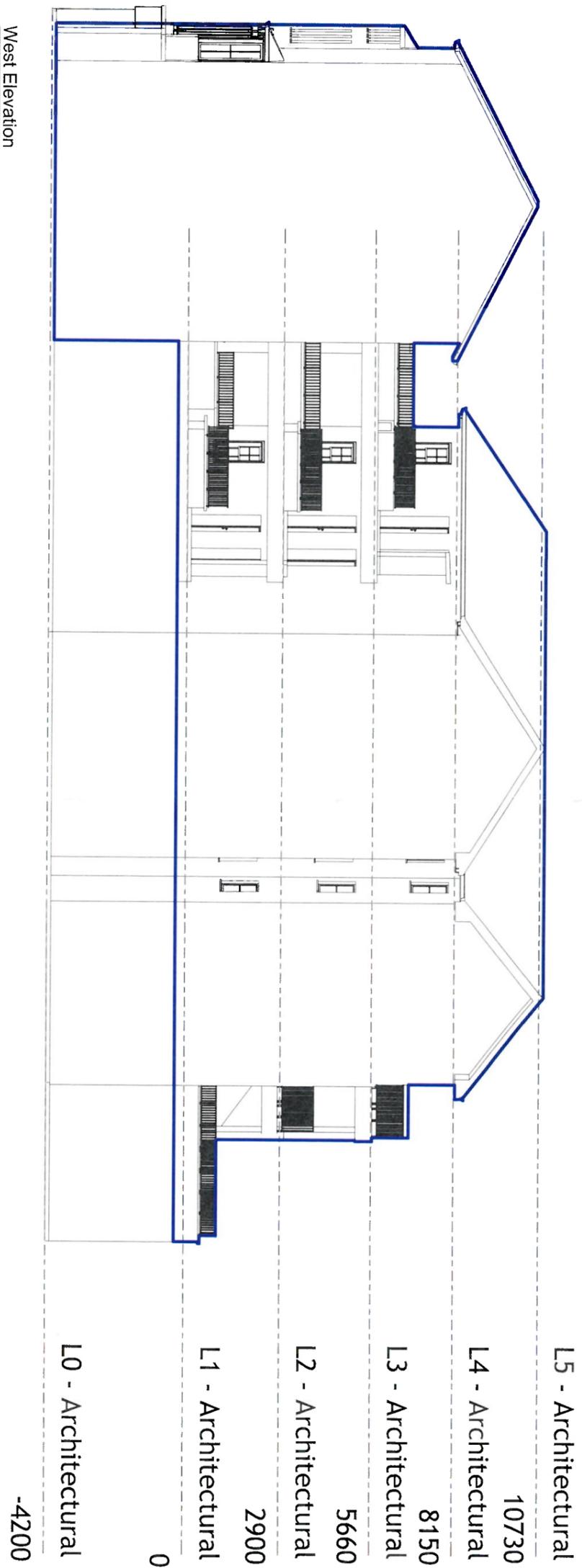
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ACP. ~~322842-25~~

Title - Existing South & East Elevations
Client - Kyraview Ltd.
Project - Section 5 Declaration
Address - Main Street, Mallow, Co Cork.
Scale - 1:150
Size - A3

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P/24/152/08
P-01 01.08.24
A B C

Outline of Applicable Building



L5 - Architectural

10730

L4 - Architectural

8150

L3 - Architectural

5660

L2 - Architectural

2900

L1 - Architectural

0

L0 - Architectural

-4200

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Title - West Elevation
Project - Section 5 Declaration

Client - Kyraview Ltd.
Address - Main Street, Mallow, Co. Cork

Scale - 1:150
Size - A3

ATLANTIC BUILDING CONSULTANTS LTD
Unit 1 Digital Hub, Merchants Quay Business
Quarter, Frances Street, Killybegs, Co. Clare.

P/24/152/09
P-01 01.08.24

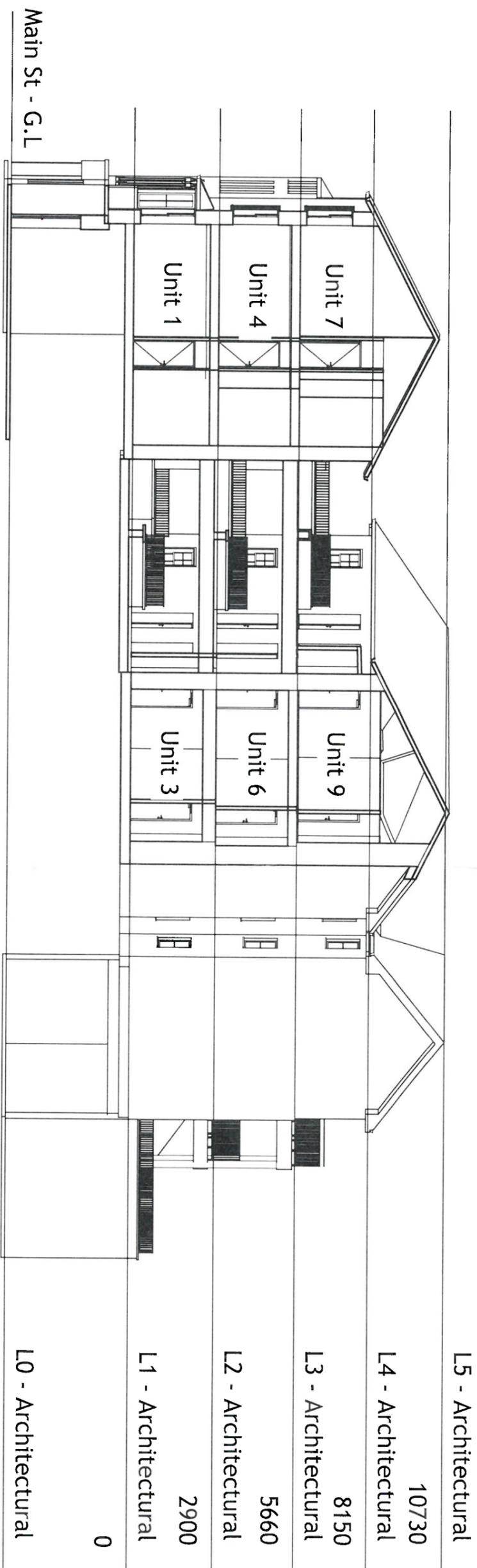
ATLANTIC BUILDING CONSULTANTS LTD
A B C

AN COIMISIÚN PLEANÁLA

23 JUN 2025

LTR DATED FROM

LDG-322842-25



L5 - Architectural

10730

L4 - Architectural

8150

L3 - Architectural

5660

L2 - Architectural

2900

L1 - Architectural

0

L0 - Architectural

-4200

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Title - Existing Section	Client - Kyraview Ltd.	Scale - 1:150	ATLANTIC BUILDING CONSULTANTS LTD
Project - Section 5 Declaration	Address - Main Street, Mallow, Co Cork	Size - A3	Unit 1 Digital Hub, Merchants Quay Business Quarter, Frances Street, Kitsh, Co. Clare
			P/24/152/10
			P-01 01.08.24

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