



SECTION 5 APPLICATION


FOR DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

Completed application form & supporting documentation to be returned to the Planning Authority by email to planning@donegalcoco.ie

Name of Applicant(s):	Carduff Developments Limited
Agent Name: (if applicable)	Kevin Hughes, Hughes Planning & Development Consultants
Location of Proposed Development / Works: (Townland or postal address as appropriate and Eircode if available)	Fortwell Court Apartments, Fortwell, Letterkenny, Co. Donegal.
Description of Proposed Development including details of works (where applicable): (Only works listed below will be assessed under <u>this</u> section 5 application)	
<p><i>“Whether the use of residential apartments at Fortwell Court Apartments, Fortwell, Letterkenny, Co. Donegal, where care is not provided, as long-term residential accommodation for protected persons, is or is not development?”</i></p>	



Is the development a Protected Structure or within the curtilage of a Protected Structure?	Yes	No
		X
Has a declaration under Section 57 of the Planning and Development Act 2000 (as amended) been requested or issued in respect of the property.	Yes	No
		X
Applicant(s) Interest in the site:	Owner	
If not the Owner of the site, please provide the name of the Landowner:	N/A	
Please list types of plans, drawings etc. submitted with this application:	OS Map, Planning Report	
Planning History - list any relevant planning application reference numbers:	L13/93	
Are you aware of any enforcement proceedings connected to the site? If so, please supply details:	N/A	

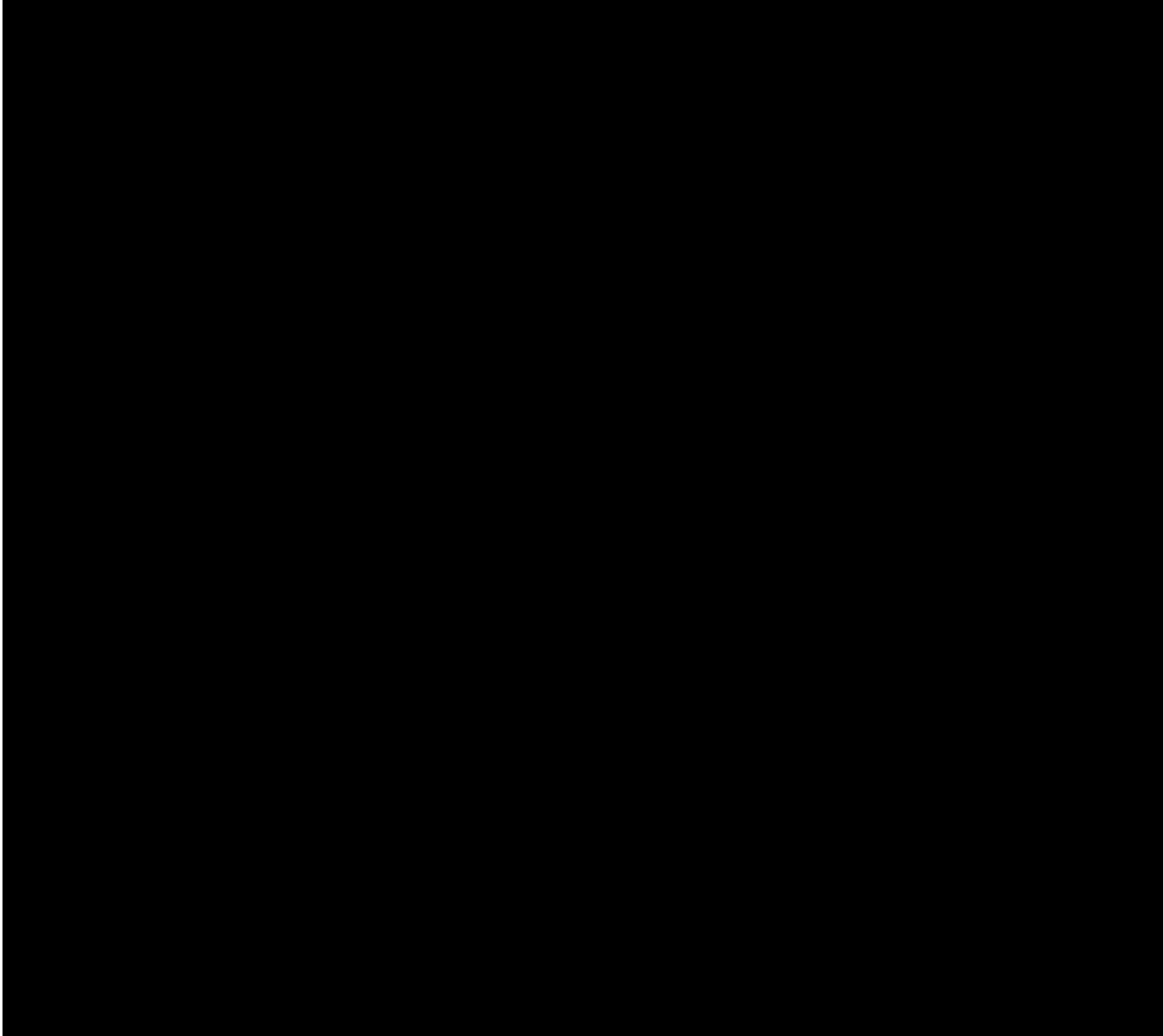
I hereby certify that the information provided is true and accurate	
Signature of Applicant/Agent:	
Date:	16 th December 2024



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

Additional Contact Information

NOT TO BE MADE AVAILABLE WITH APPLICATION





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

Advice to Applicant

- (a) **Prescribed Fee** - €80.00 - You may wish to pay the fee by card by ringing the cash office on 074 9153900. Please note the receipt number in your cover email with the form.
- (b) Application must be accompanied by:
- **Site location map** with site clearly outlined in red (to a scale of not less than 1:1000 in built up areas and 1:2500 in all other areas).
 - **Site layout plan** (Site or layout plans shall be drawn to a scale (which shall be indicated thereon) of not less than 1:500 or such other scale as may be agreed with the planning authority prior to the submission of the application, the site boundary shall be clearly delineated in red).
 - **Elevations** (if applicable) – (plans, elevations and sections drawn to a scale of not less than **1:200**).
 - **Other details** (e.g. landowner consent (if applicable), photographs as appropriate).
- (c) Completed application form & supporting documentation to be returned to the Planning Authority **by email** to planning@donegalcoco.ie
- (d) More information on exempted development can be found on the OPR planning leaflets available at <https://www.opr.ie/planning-leaflets/>

Land Registry Compliant Map



Tailte
Éireann



Planning Services

RECEIVED DATE: 17/12/2024

Loreto
Secondary
School

Letterkenny
Leitir Ceanainn

FORTWELL

LOWER MAIN STREET

OLIVER PLUNKETT RD

BURNSIDE PARK

CENTRE COORDINATES:
ITM 616696,911254

PUBLISHED: 12/12/2024
ORDER NO.: 50439332_1

MAP SERIES: 1:1,000
MAP SHEETS: 0283-06
1:1,000 0283-07

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

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OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:
The map objects are only accurate to
the resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
www.tailte.ie; search 'Capture Resolution'

LEGEND:
To view the legend visit
www.tailte.ie and search for
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Comhairle Contae
Dhún na nGall
Donegal County Council

Planning Services

RECEIVED DATE: 17/12/2024

HUGHES
PLANNING
& DEVELOPMENT CONSULTANTS

PLANNING REPORT

REQUEST FOR SECTION 5 DECLARATION OF EXEMPTED DEVELOPMENT

Fortwell Court Apartments, Fortwell,
Letterkenny, Co. Donegal

PREPARED IN DECEMBER 2024 ON BEHALF OF:
Carduff Developments Limited

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

1.0 Introduction

Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, 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, Carduff Developments Limited, concerning Fortwell Court Apartments, Fortwell, Letterkenny, Co. Donegal.

The question before the Planning Authority is:

“Whether the use of residential apartments at Fortwell Court Apartments, Fortwell, Letterkenny, Co. Donegal, where care is not provided, as long-term residential accommodation for protected persons, is or is not development?”

We would submit, that the use of residential apartments as temporary accommodation for displaced persons seeking international protection does not constitute development as no change of use has occurred, nor have any works been carried out to the property.

2.0 Site Description

The subject site is situated along Fortwell Court, just off Lower Main Street, Letterkenny, Co. Donegal. The surrounding area predominantly comprises residential land uses, with several commercial businesses and services located approximately 60 meters to the east, near Lower Main Street.

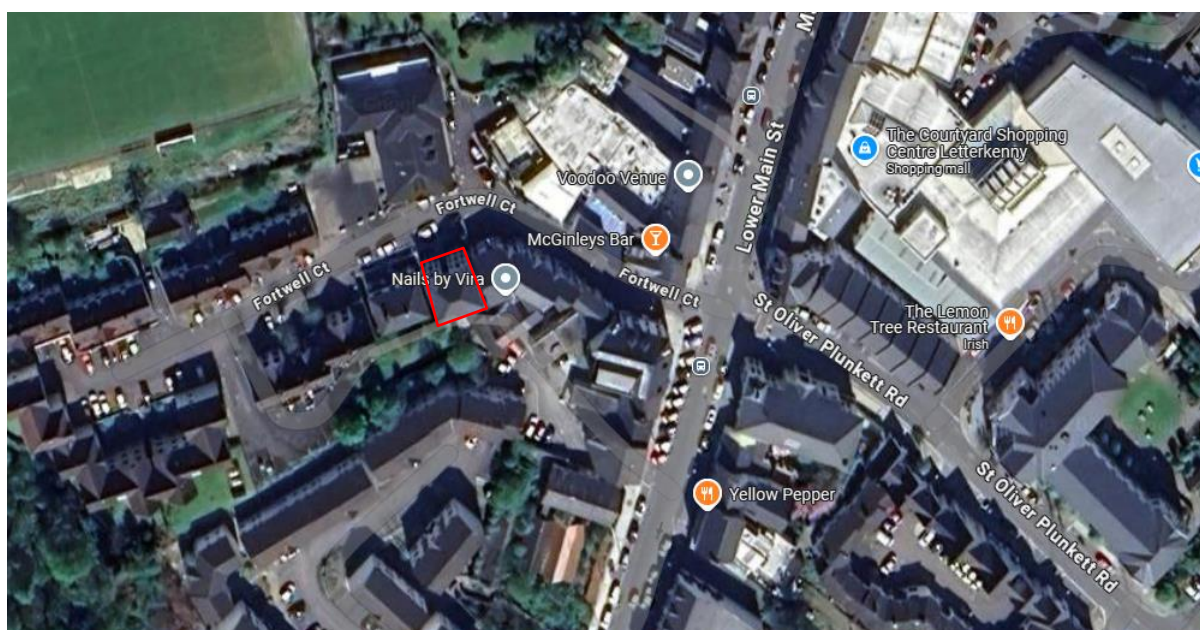


Figure 1.0 Aerial image illustrating the immediate locational context of the site (red outline).



Figure 2.0 Aerial image illustrating the wider locational context of the site (red star).

3.0 Planning History

The Donegal planning registry contains one permission relating to the current apartment development as follows:

Reg. Ref. L.13/93 Construction of 8 No. apartments at Fortwell, Lower Main Street, Letterkenny, subject to 10 No. conditions.

3.1 Planning Precedent

The Rock Centre, Ballinamore, Co. Leitrim

Reg. Ref. 307077-20 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.

The 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.'

The Fortwell Court Apartments complex is currently being operated on a similar basis with no care facilities being provided. This decision by An Bord Pleanála sets a clear and strong precedent for the use of apartments to house persons seeking international protection.

4.0 Planning Context

The Letterkenny Plan and Local Transport Plan 2023-2029 is the relevant statutory development plan for the subject site. The following section is a brief zoning review and land use objective for the site.

4.1 Zoning

As per Map 7.1 in the development plan, the subject site is zoned objective 'Town Centre'. The zoning matrix included in the Letterkenny Plan and Local Transport Plan 2023-2029 (indicates permissible and open-for-consideration uses for each zoning objective. 'Permitted in Principle' uses are generally acceptable subject to the normal planning process and compliance with the relevant policies and objectives, standards and requirements set out in the Plan. 'Open for Consideration' uses may be permitted where the Planning Authority is satisfied that the proposed development is compatible with the policies and objectives for the respective zone and would not be in conflict with the permitted, existing or adjoining land uses whilst conforming with the proper planning and sustainable development of the area.

Residential uses are open for consideration in the zoning objective for the subject site.

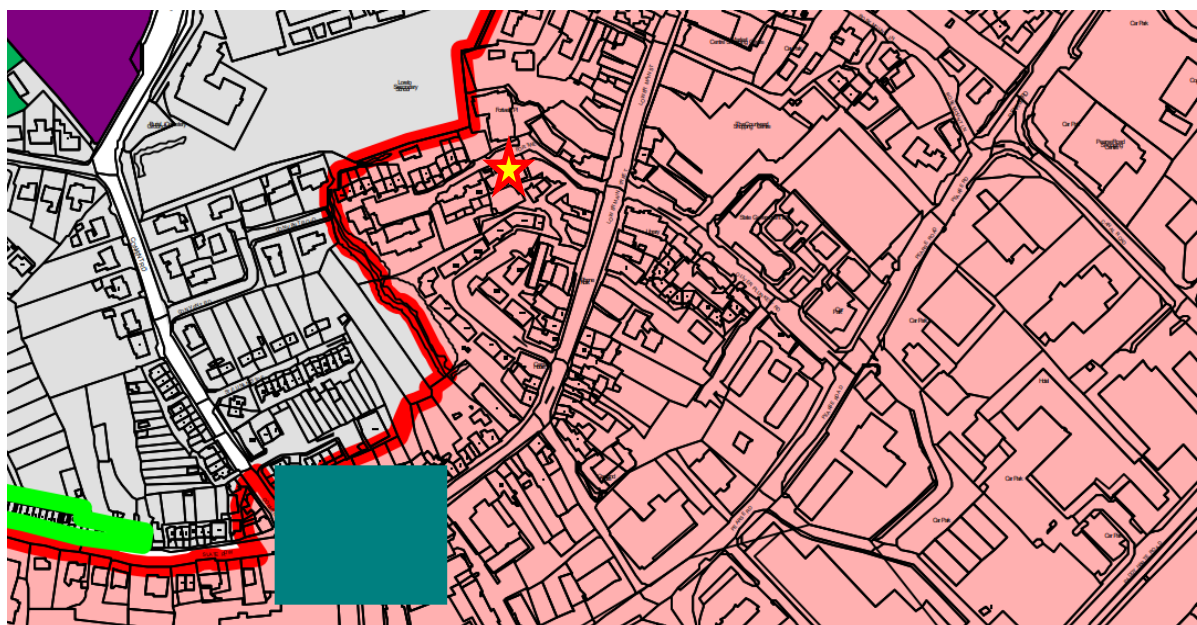


Figure 3.0 Extract from Map 7.1 in the Letterkenny Plan and Local Transport Plan 2023-2029 (showing the site (yellow star) zoned Town Centre.

5.0 Development

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

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."

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

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

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

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

It is considered that if this were a planning application for a residential building, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic backgrounds.

The subject site is a residential building constructed in c. 1993 and has been in continuous use as a residential property. Residents of the building have their own apartments and there are no communal facilities. Residents are free to enter and exit the building complex throughout the day like any tenant renting from a private landlord. A management company maintains the building as is common with most apartment complexes. It is submitted that the continued use of the property to provide residential accommodation is not development as no material change of use has occurred.

In considering the above, it is submitted that the use of Fortwell Court Apartments as long-term residential apartments to house protected persons, which does not provide care, does not constitute a change of use and therefore, does not constitute development in accordance with the Planning and Development Act 2000 (as amended).

In addition to this, we would refer to An Bord Pleanála Ref. 307077 for a Section 5 Declaration on whether the use of apartments to house protected persons was considered to be development and in this case, considered to be exempted development.

It is considered that residential apartments may be used for temporary accommodation for protected persons.

6.0 Conclusion

The question before the planning authority is as follows:

“Whether the use of residential apartments at Fortwell Court Apartments, Fortwell, Letterkenny, Co. Donegal, where care is not provided, as long-term residential accommodation for protected persons, is or is not development?”

This Section 5 application clarifies that the use of residential apartments as temporary accommodation for displaced persons seeking international protection does not constitute development.

Accordingly, we request a declaration to this effect from Donegal County Council under Section 5 of the Planning and Development Act 2000 (as amended). Should you have any queries or require any further information, please do not hesitate to contact the undersigned.



Kevin Hughes MIPI MRTPI
Director For HPDC Ltd.



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

Áras an Chontae,
Leifear,
Contae Dhún na nGall, F93 Y622

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Ref. No: S524104

17th December 2024

Carduff Developments Limited
C/o Hughes Planning & Development Consultants
85 Merrion Square
Dublin 2

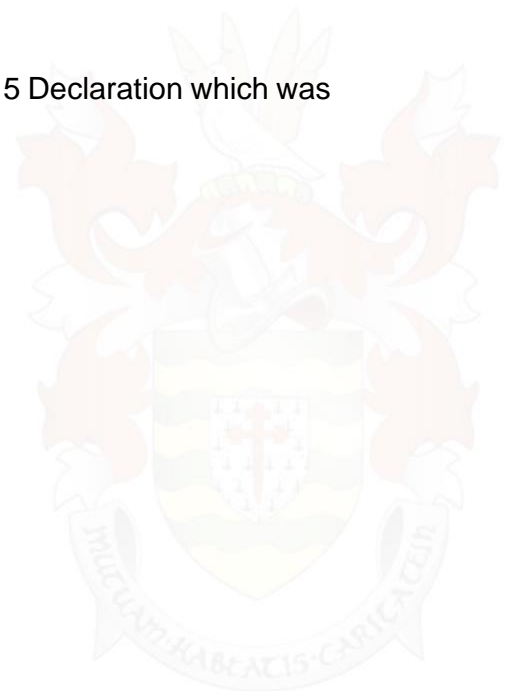
Re: Written request pursuant to Section 5 of the Planning & Development Act 2000 (as amended) Declaration & Referral on development and exempted development.
Use of residential apartments at Fortwell Court Apartments, where care is not provided, as long-term residential accommodation for protected persons at Fortwell, Letterkenny.

A Chara,

I wish to acknowledge receipt of your application for a Section 5 Declaration which was received on 17th December 2024.

Mise le meas

for A/Senior Ex. Planner
Development Management



SECTION 5 REFERRAL REPORT – Ref. No: S524/104

Donegal County Council

1.0 COMMENTS

The subject site, Fortwell Court Apartments, Fortwell, 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 Part 1 of Schedule 2 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 Class 14(H).

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
Development Applications Unit
27/01/2025



Frank Sweeney
Senior Executive Planner
Community Development & Planning Services
27/01/2025

Chief Executive's Order No: 2025PH0197

Planning and Development Acts 2000 (as amended)

SECTION 5:-

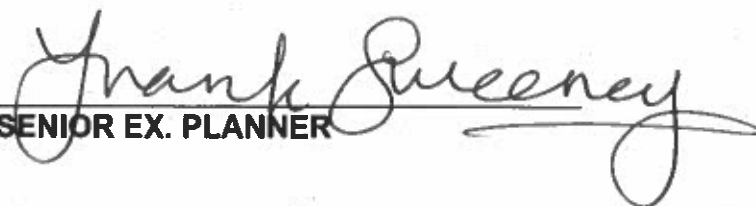
Request received 17th December 2024 from Carduff Developments Limited, C/O Hughes Planning & Development Consultants, 85 Merrion Square, Dublin 2, D02 FX60 in relation to use of residential apartments as long-term residential accommodation for protected persons at Fortwell Court Apartments, Fortwell,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

SUBMITTED:-

Written request received 17th December 2024 as above and report dated 27th January 2025 from the Executive Planner (Ref. No: S5 24/104 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 27th DAY OF JANUARY 2025

MME

Chief Executive's Order No: 2025PH0197
Ref.No: S5 24/104

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** 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 27/01

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

DECLARATION

Chief Executive's Order No: 2025PH0197

Reference No: S5 24/104

Name of Requester: Carduff Developments Limited
C/O 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: Fortwell Court Apartments, Fortwell, 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** 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).



For Senior Ex. Planner
Planning Services

Dated this 27th day of January 2025



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

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Ref. No: S524/104

27th January 2025

Carduff Developments Limited
C/o 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 Fortwell Court Apartments, Fortwell, 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**

/jmcc