



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):	ERM Contracts Ltd.
Agent Name: (if applicable)	Hughes Planning and Development Consultants
Location of Proposed Development / Works: (Townland or postal address as appropriate and Eircode if available)	McClures House, High Road Letterkenny, County 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>“Whether the use of a residential dwelling at McClures House, High Road, Letterkenny, County Donegal, where care is not provided, a long-term residential accommodation for protected persons, is or is not development?”</p>	



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

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:		
Please list types of plans, drawings etc. submitted with this application:	OS Map, Planning Report, EFT Reference	
Planning History - list any relevant planning application reference numbers:	See Planning Report Enclosed	
Are you aware of any enforcement proceedings connected to the site? If so, please supply details:		

I hereby certify that the information provided is true and accurate	
Signature of Applicant/Agent:	
Date:	10th February 2025



NOT TO BE MADE AVAILABLE WITH APPLICATION

1) The applicant's address **must** be submitted on this page.

A large black rectangular redaction box covers the majority of the page content. The box is positioned centrally, extending from the top margin to the bottom margin and across most of the page width. To the left of the redacted area, there is a vertical column of small, light gray rectangular boxes, which appear to be part of a table or list that has been partially redacted. These boxes are arranged in a column, with some containing faint, illegible text. The overall appearance is that of a document where sensitive information has been completely obscured for public release.

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/>



Comhairle Contae
Dhún na nGall
Donegal County Council

Planning Services

RECEIVED DATE: 10/02/2025

HUGHES
PLANNING
& DEVELOPMENT CONSULTANTS

PLANNING REPORT

REQUEST FOR SECTION 5 DECLARATION OF EXEMPTED DEVELOPMENT

McClures House,
High Road
Letterkenny,
County Donegal

DONEGAL COUNTY COUNCIL

FEBRUARY 2025

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

85 Merrion Square, Dublin 2, D02 FX60
+353 (0)1 539 0710
info@hpdcc.ie
www.hpdcc.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, ERM Contracts Limited, concerning McClures House, High Road, Letterkenny, County Donegal.

The question before the Planning Authority is:

“Whether the use of a residential dwelling at McClure’s House, High Road, Letterkenny, County 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 a residential dwelling 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 application site relates to McClure’s House, located in the town of Letterkenny, County Donegal. There is an existing building on the site which is currently being used as a private residential dwelling. The site is accessed from High Road, one of the main streets in Letterkenny, and McClures Terrace.

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

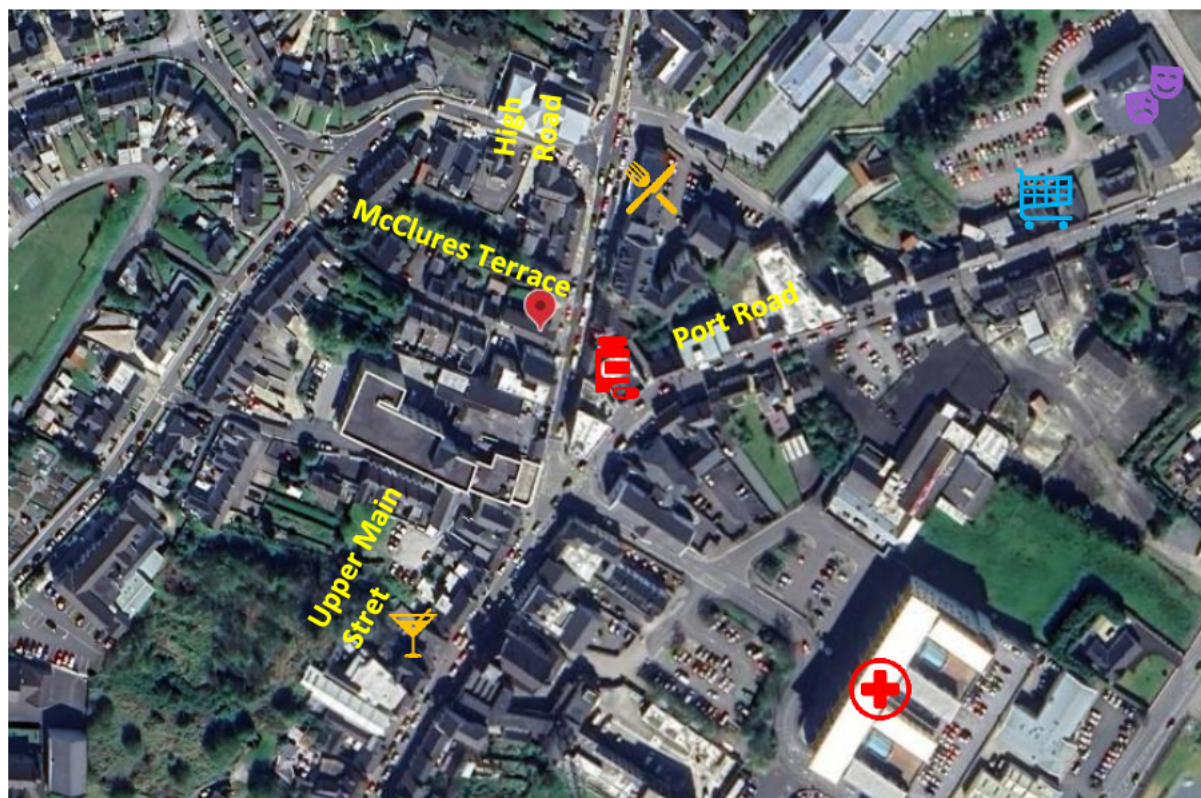


Figure 1.0 Aerial image showing the locational context of the subject site (shown by red pinpoint).

McClure’s House was converted from a retail unit to accommodation in 2022. It has been occupied as a residential dwelling since this conversion. The Section 5 decision issued by Donegal County Council on 26th September 2022 in relation to this conversion is attached to this report.



Figure 2.0 Streetview of the front of the McClures House from High Road.



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

3.0 Planning History

The Donegal County Council planning registry contained one section 5 declaration relating to the application site.

Reg. Ref. S522/31 Section 5 declaration confirming the change of use from retail to residential was exempted development in accordance with Article 10(6) of the Planning and Development Regulations 2001 (as amended).

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

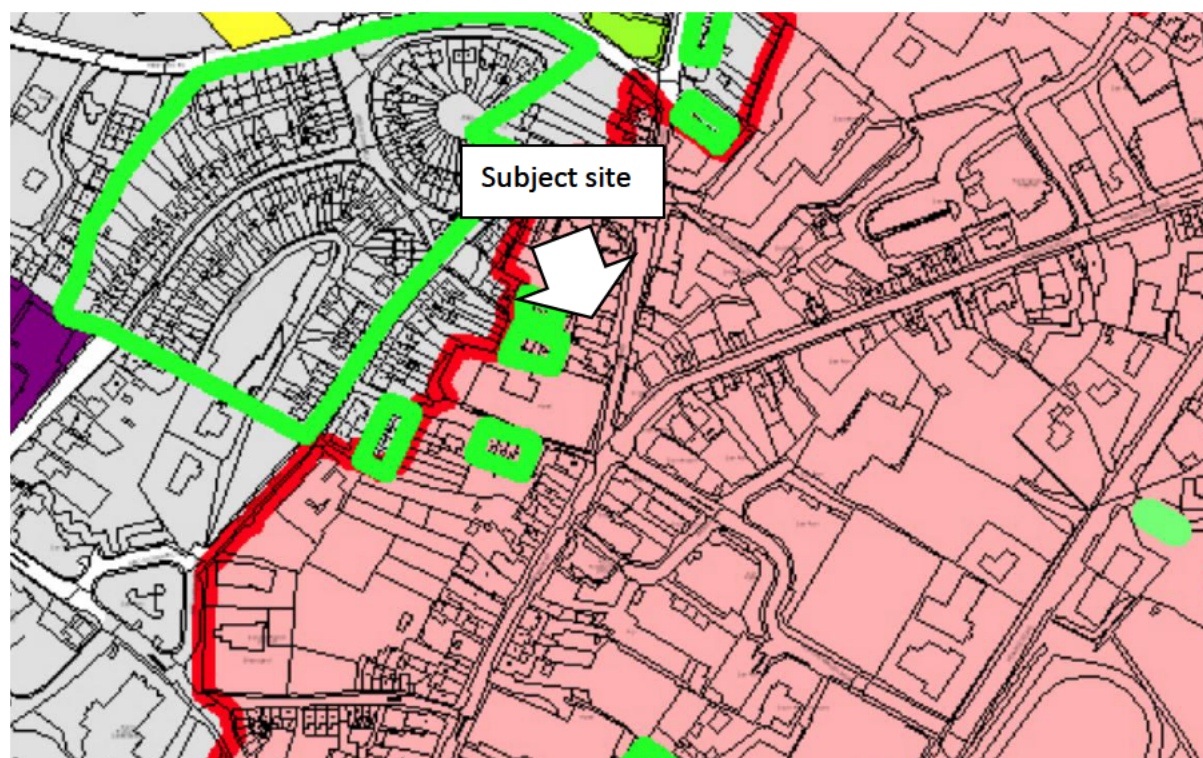


Figure 4.0 Extract from Map 7.1 Land Use Zoning Map of the Letterkenny Plan and Local Transport Plan 2023-2029, with the subject site indicated by an arrow.

Accepted in Principle

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

Open for Consideration

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

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

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

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 the dwelling at McClure's House as a residential building that provides accommodation to protected persons but does not provide care. From the outset, it is contended that this does not constitute development as no change of use has occurred.

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

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. Residents of the building have their own dwelling 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. This building provides long-term accommodation with residents living there for a minimum of 12 months. It is submitted that the continued use of the property to provide residential accommodation is not development as no material change of use has occurred.

In considering the above, it is submitted that the use of the dwellings at McClure's House as long-term residential accommodation 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 the dwelling to house protected persons was considered to be development and, in this case, considered to be exempted development.

It is considered that a residential dwelling 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 a residential dwelling at McClure’s House, High Road, Letterkenny, County 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 a residential dwelling 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.

Planning Pack Map



Tailte
Éireann

**CENTRE
COORDINATES:**
ITM 616930,911674

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ORDER NO.: 50447523_1

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MAP SHEETS: 0283-02

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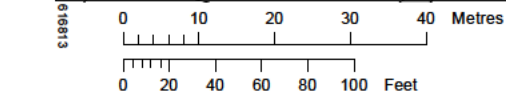
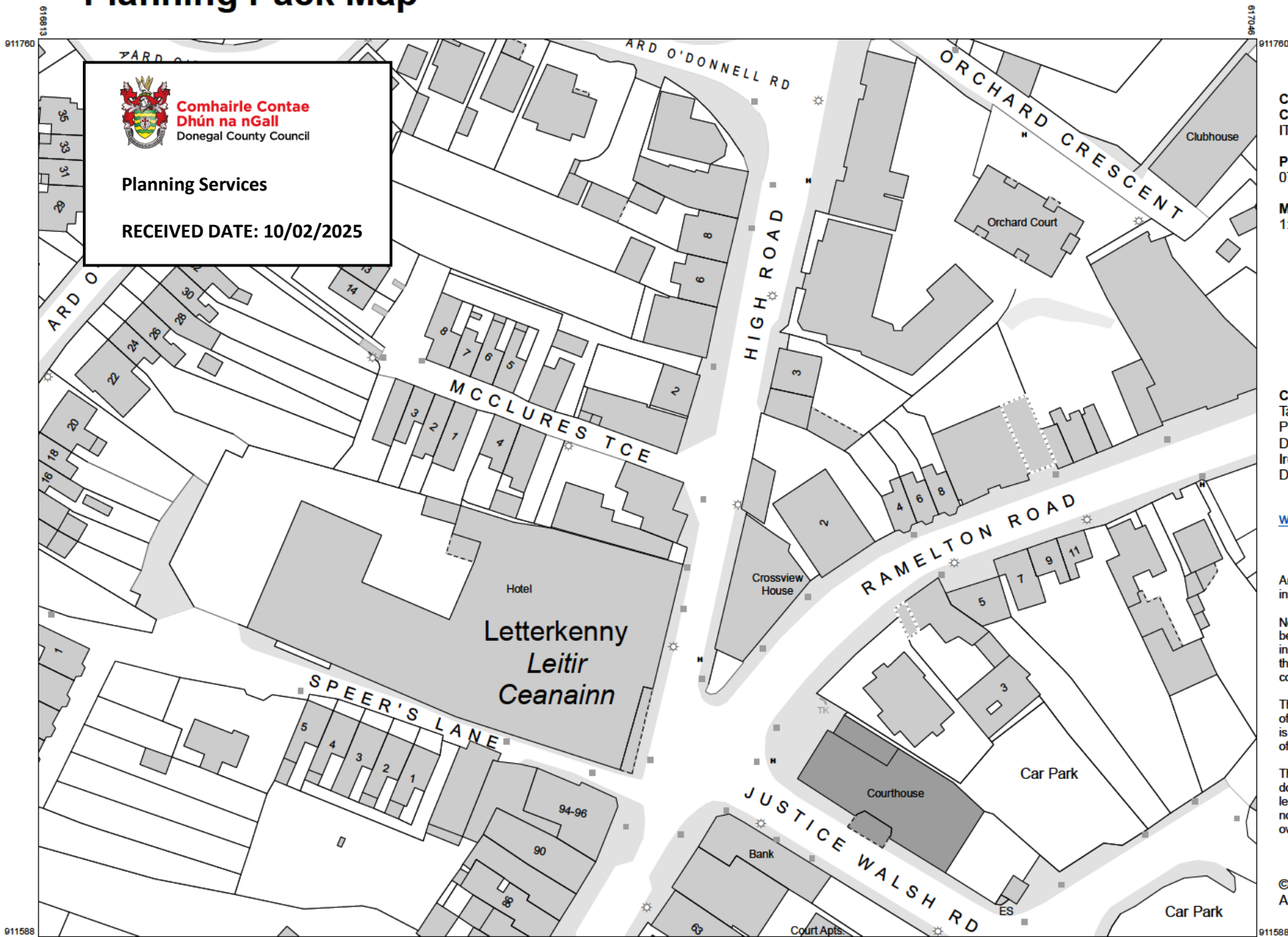
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**Comhairle Contae
Dhún na nGall**
Donegal County Council

Planning Services

RECEIVED DATE: 10/02/2025



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Donegal County Council

SECTION 5 REFERRAL REPORT – Ref. No: S5 25/12

1.0 BACKGROUND

1.1 Location:

The subject site is located at McClure's House, High Road, Letterkenny, County Donegal.

1.2 Site Description:

The site is situated in the town centre of Letterkenny and currently operates as a private residential dwelling. The property was previously converted from a retail unit to residential accommodation in 2022 under a Section 5 declaration (Reg. Ref. S522/31). It is positioned in an area with access to various public amenities, including retail, hospitality, and healthcare services.

1.3 Planning History

Reg. Ref. S522/31 – Section 5 declaration confirming the change of use from retail to residential as exempted development under Article 10(6) of the Planning and Development Regulations 2001 (as amended).

2.0. THE QUESTION

The agent, Hughes Planning and Development, on behalf of the applicant, ERM Contracts Limited, has made a submission to Donegal County Council seeking a declaration under Section 5 of the Planning and Development Act 2000 (as amended) to determine:

Whether the use of a residential dwelling at McClure's House, High Road, Letterkenny, County Donegal, where care is not provided, as long-term residential accommodation for protected persons, is or is not development?

3.0 EVALUATION

3.1 Planning and Development Act, 2000 (as amended)

Section 2(1)

In this Act, except where the context otherwise requires –

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

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

"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal ...

Section 3(1)

"Development" in this Act means, except where the context otherwise requires, 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.

Section 177U(9)

"In deciding upon a declaration for the purposes of Section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct screening for appropriate assessment in accordance with the provisions of this section".

Class 14(h) of Schedule 2, Part 1 of the Planning & Development Regulations (as amended):

- 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.

3.2 ASSESSMENT

Consideration of Proposed Development

Existing Use:

The property currently consists of an existing dwelling within the town centre of Letterkenny.

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.

Analysis of Development:

The property is a private residential dwelling previously converted from a retail unit under an exempted development declaration. The application seeks to confirm that the continued use of the property for long-term accommodation of protected persons, without providing care services, does not constitute development.

The Planning and Development Act 2000 (as amended) does not explicitly define material change of use. In *Dublin Corporation v Moore* [1984] ILRM 339, the Supreme Court ruled that a change in the socioeconomic profile of residents does

not constitute a material change of use. However, the scale and nature of the accommodation must also be considered when assessing material change of use.

In An Bord Pleanála case ABP-307077-20, it was determined that the use of apartments for protected persons without care provisions was not development, as it did not alter the permitted use.

The Planning Authority does not consider the Rock Centre precedent to be directly applicable in this case due to fundamental differences in building type, original use, and scale of accommodation. The Rock Centre was a purpose-built apartment complex, whereas McClure's House was originally a retail unit and later converted into a single dwelling. A purpose-built apartment block provides an inherently flexible form of residential accommodation, while a single dwelling converted from a retail unit does not carry the same characteristics of long-term multi-unit residential use.

The scale of McClure's House was originally designed for single-occupancy or small household use. The proposed use would involve a more intensified residential use that is materially different from its prior residential use. The change in function raises new planning considerations regarding occupancy, density, and potential amenity impacts that were not applicable in the Rock Centre case.

3.3 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).

3.4 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:

The proposed use constitutes development under Section 3(1) of the Planning and Development Act 2000, as it represents a material change of use. The continued use of McClure's House for residential accommodation of protected persons introduces an intensified residential function that differs from its existing use. The Planning Authority does not accept ABP-307077-20 as a valid precedent due to significant differences in building type, scale, and original function. The proposed use does not qualify as exempted development, as it does not align with the intended use under Class 14(h) of the Planning and Development Regulations 2001 (as amended).

5.0 RECOMMENDATION

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

IS Development

&

IS NOT Exempted Development within the meaning of the above act.

The proposal to:

(i) whether the use of a residential dwelling at McClure's House, High Road, Letterkenny, County Donegal, where care is not provided, as long-term residential accommodation for protected persons, is or is not development?

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

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

And concluded that:

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



Executive Planner
05/03/2025



Frank Sweeney
Senior Executive Planner
Community Development & Planning Services
07/03/2025

Chief Executive's Order No: 2025PH0618

Planning and Development Acts 2000 (as amended)

SECTION 5:-


Request received 10th February 2025 from ERM Contracts Ltd., C/O Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, D02 FX60 in relation to the change of use of a residential dwelling to long term residential accommodation for protected persons at McClure's House, High Road, Letterkenny, Co. Donegal.

SUBMITTED:-

Written request received 10th February 2025 as above and report dated 5th March 2025 from the Executive Planner (Ref. No: S525/12 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 7th DAY OF MARCH 2025

WME

Chief Executive's Order No: 2025PH0618

Ref.No: S525/12

SCHEDULE

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

IS Development

IS NOT Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

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

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

And concluded that:

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

JS 07/03

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

DECLARATION

Chief Executive's Order No: 2025PH0618

Reference No: S525/12

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

Summarised Description of development the subject matter of request:

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

Location: McClure's House, High Road, Letterkenny, Co. Donegal.

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

IS Development

IS NOT Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

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

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

And concluded that:

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



For Senior Ex. Planner
Planning Services

Dated this 7th day of March 2025



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

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

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W: www.donegalcoco.ie
W: www.ccdhunangall.ie

Planning Services
E: planning@donegalcoco.ie

Ref. No: S525/12

7th March 2025

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

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

A Chara,

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

Mise, le meas,

**For Senior Ex. Planner
Planning Services**

/RMcC

From: [planning.mailbox](#)
To: ["sinead.lynch@hpdc.ie"](mailto:sinead.lynch@hpdc.ie)
Subject: Section 5 - McClures House, Lky; Quay Road, Dungloe & Fairleigh House, Lky
Date: 12 February 2025 10:14:00
Attachments: [image001.png](#)

A Chara

I wish to acknowledge receipt of your applications for a Section 5 Declaration which was received on 10th February 2025 regarding:

McClures House, Letterkenny - Ref.No: S525/12 refers.

Quay Road, Dungloe - Ref.No: S525/13 refers.

Fairleigh House, Letterkenny - Ref.No: S525/14 refers.

Regards

Teresa

Teresa Conway

Staff Officer

Planning

0749153900



Comhairle Contae
Dhún na nGall
Donegal County Council