

MICHAEL FRIEL

ARCHITECTS & SURVEYORS LTD.

CREESLOUGH,
Co. DONEGAL, F92 TF60.

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Planning Section,
Donegal County Council,
County House,
Lifford,
Co. Donegal.



05/11/2025

: Section 5 Application for Declaration on use of Guesthouse :

A Chara,

I attach for your consideration a Section 5 application, where we are seeking a declaration from the Local Authority in respect to the continued use of a Guesthouse located at 1 Clachan Mór, Windyhall, Letterkenny as accommodation for persons availing of International Protection.

To assist the planning Authority we have referenced within the application the exemptions which have been enshrined in law to permit such uses through exempt development thus not requiring Planning permission in this instance. We also bring to the Planning Authorities attention to 2 No. cases which have recently been decided by An Coimisiún Pleanála relating to such uses within Donegal, namely Ref No: ABP-322208-25 & ABP- 322210- 25 where they have determined that the use of properties *"as a long- term residential accommodation for protected persons where care is not provided, is not development"*.

This particular case is clear insofar as a premises granted permission to operate as a Guesthouse under Planning Ref No: 25/60200 is now seeking a section 5 Declaration from the Planning Authority to advise that the use of this property for the long term residential accommodation for protected persons where care is not provided is permitted as it is not deemed to be development as per statute.

The fee of €80 has been duly paid under **receipt No: 98945**.

I trust that this matter is satisfactory and look forward to hearing from you in due course.

Best Regards,

MICHAEL FRIEL MRIA.



SECTION 5 APPLICATION

FOR DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

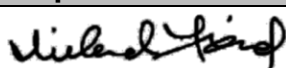
Completed application form & supporting documentation to be returned to the Planning Authority by email to planning@donegalcoco.ie

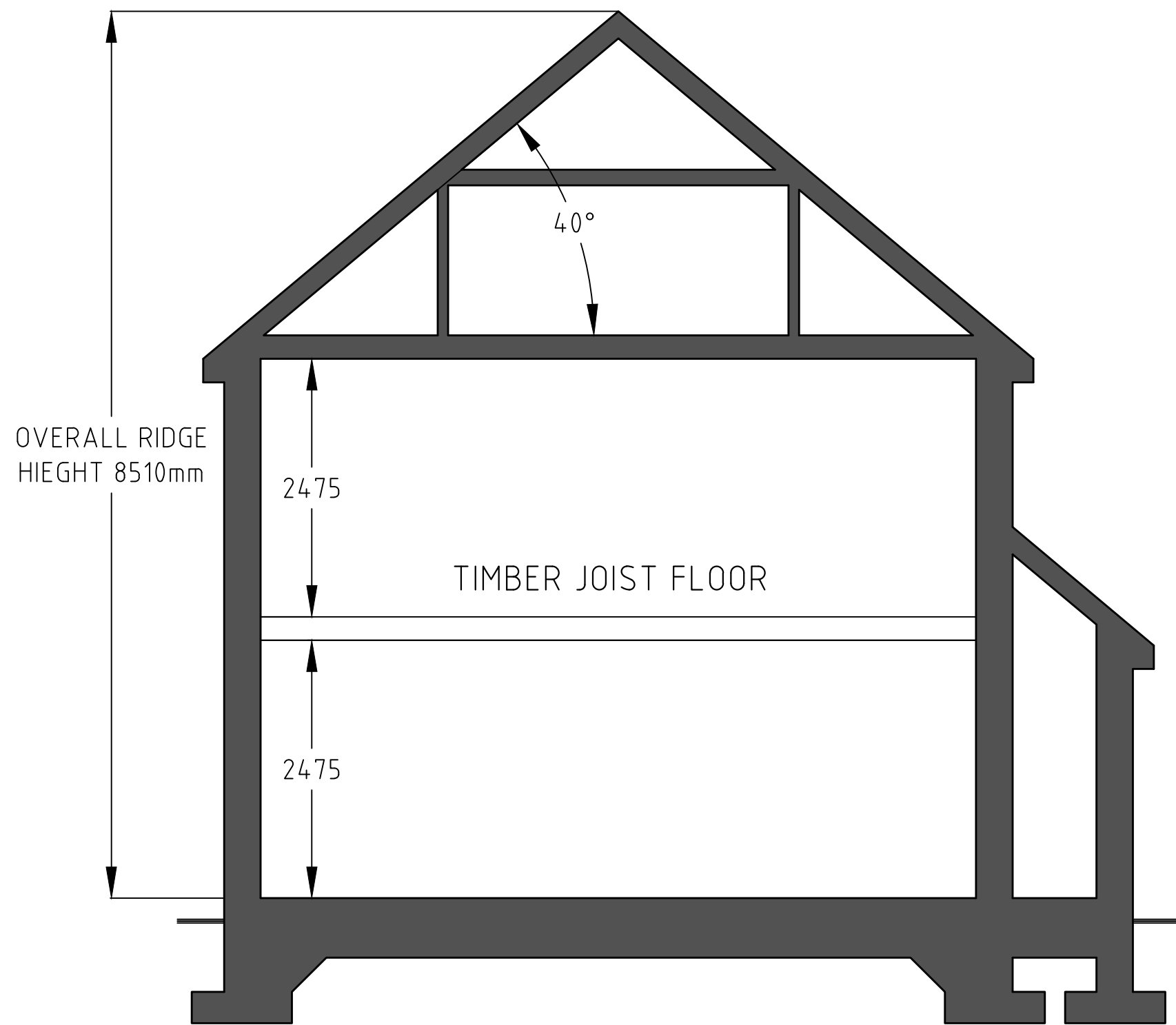
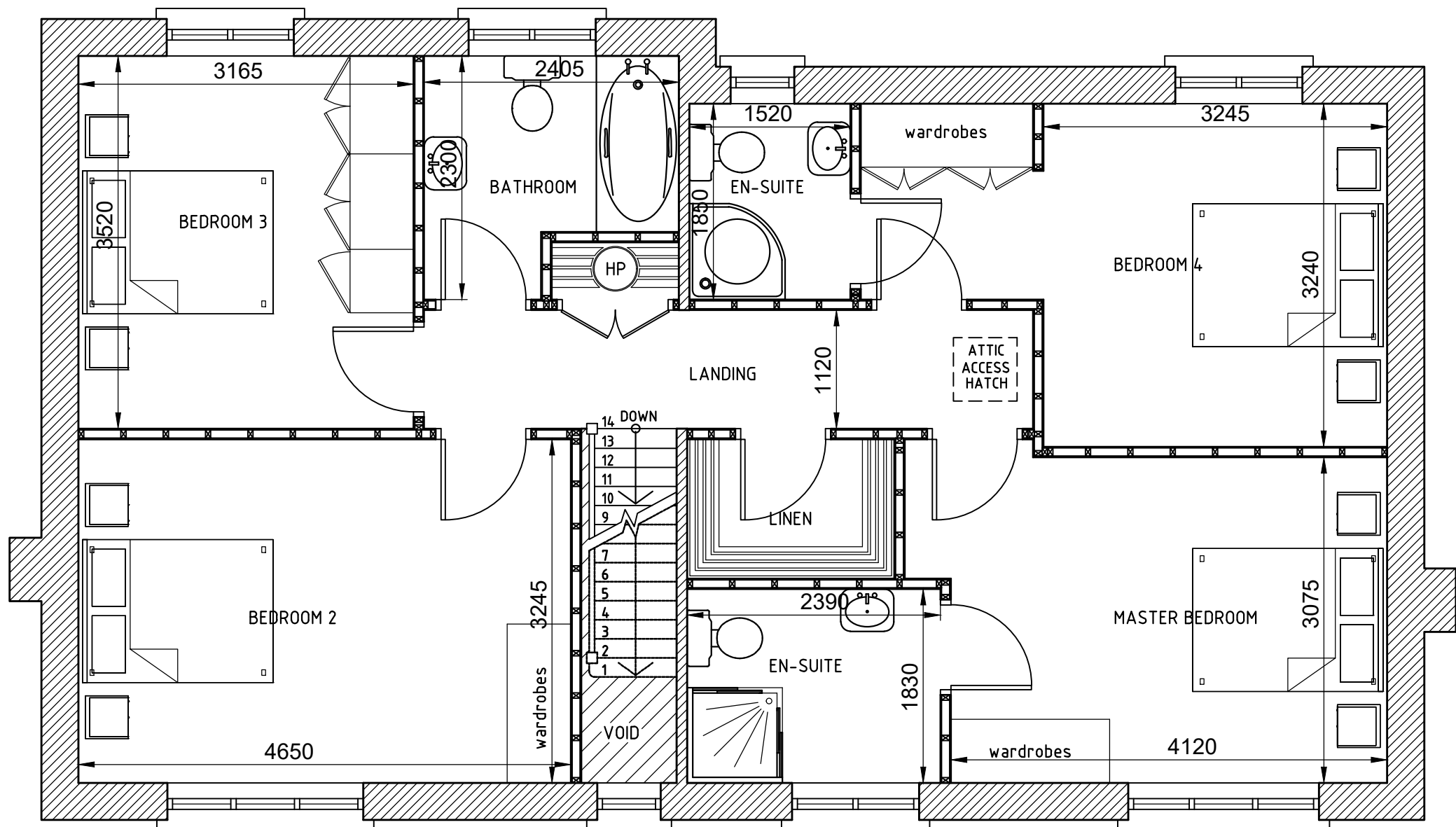
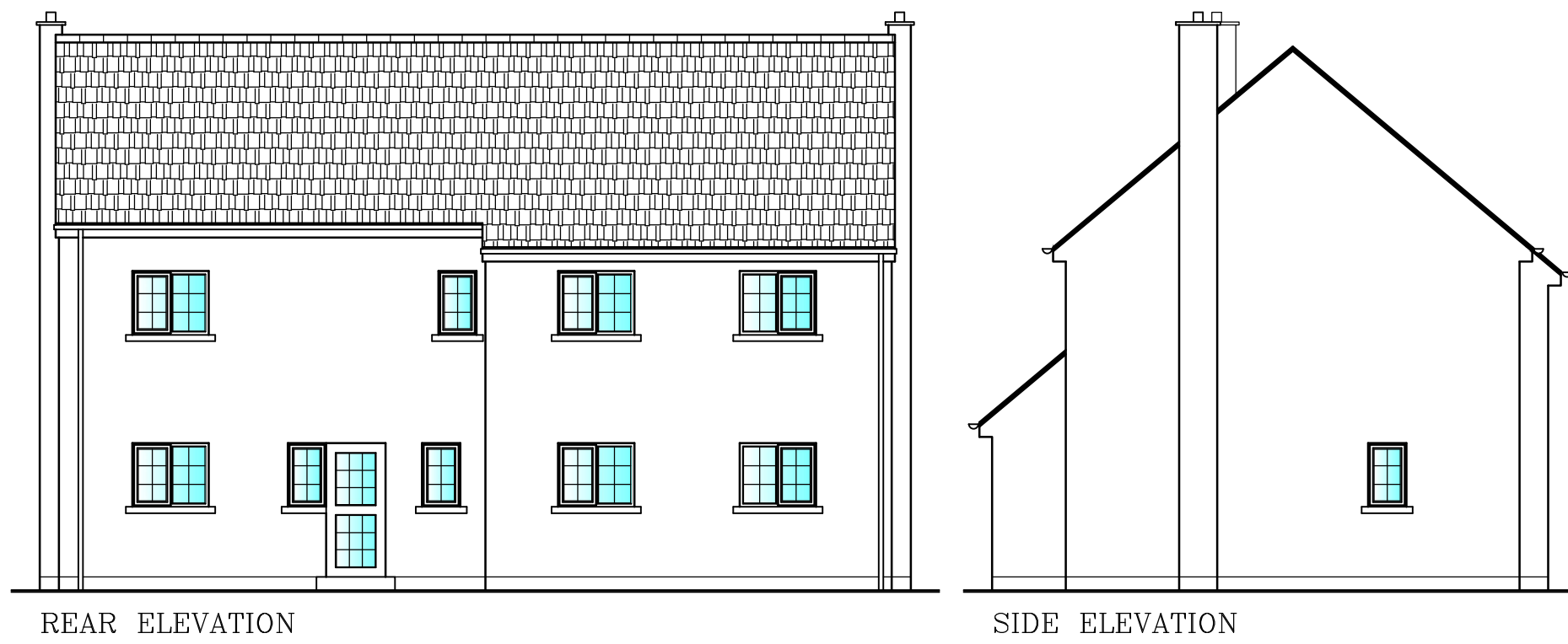
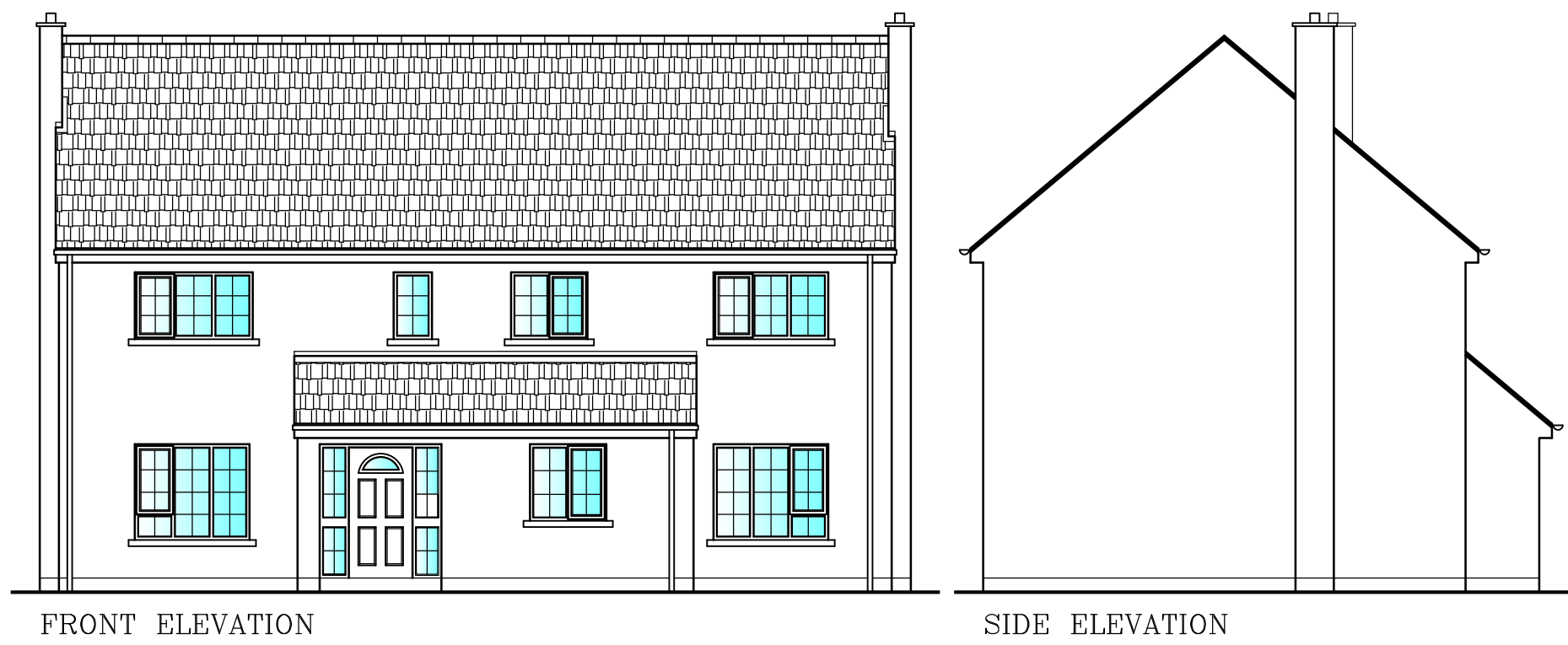
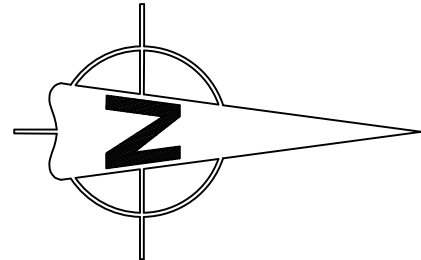
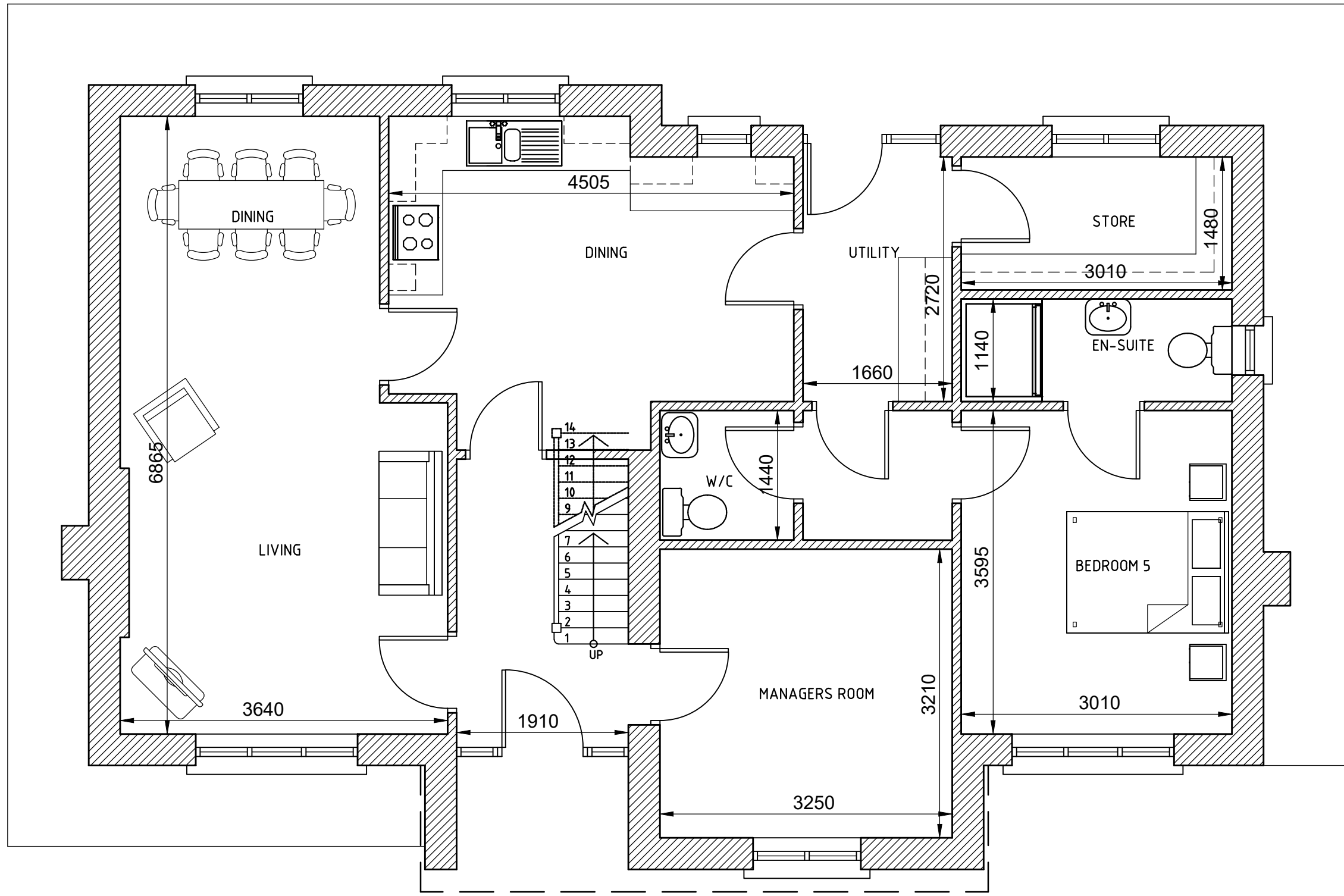
Name of Applicant(s):	B. M. McDaid
Agent Name: (if applicable)	Michael Friel
Location of Proposed Development / Works: (Townland or postal address as appropriate and Eircode if available)	1 Clachan Mór Windyhill Letterkenny County Donegal F92 X08D
Description of Proposed Development including details of works (where applicable): (Only works listed below will be assessed under <u>this</u> section 5 application)	
<p>The continued use of an existing residential property to provide accommodation for persons availing of International Protection.</p> <p>The Department of Justice intends to continue to utilize the property for the accommodation of International Protections Applicants.</p> <p>S.I No.582/2015 – Planning and development (amendment)(No.4) Regulations 2015 provides under Class 14(h), a “Change of use of various forms of premises providing residential or overnight accommodation to specific use as accommodation for refugees and asylum seekers, as defined in legislation” which will be deemed to be exempt development, thus not requiring Planning permission for the change of use.</p> <p>As a guest house is defined as providing overnight accommodation, the exemption permits a change of use as an exempted Development to be permitted where it is intended that a Guesthouse permitted under Planning Ref No: 25/60200 is now utilized as per the exemption which forms part of the statute under Class 14(h) to provide accommodation for space for the Government to provide a premises for residential of overnight accommodation as accommodation for Refugees and asylum seekers who are seeking and receiving refuge form the state.</p>	

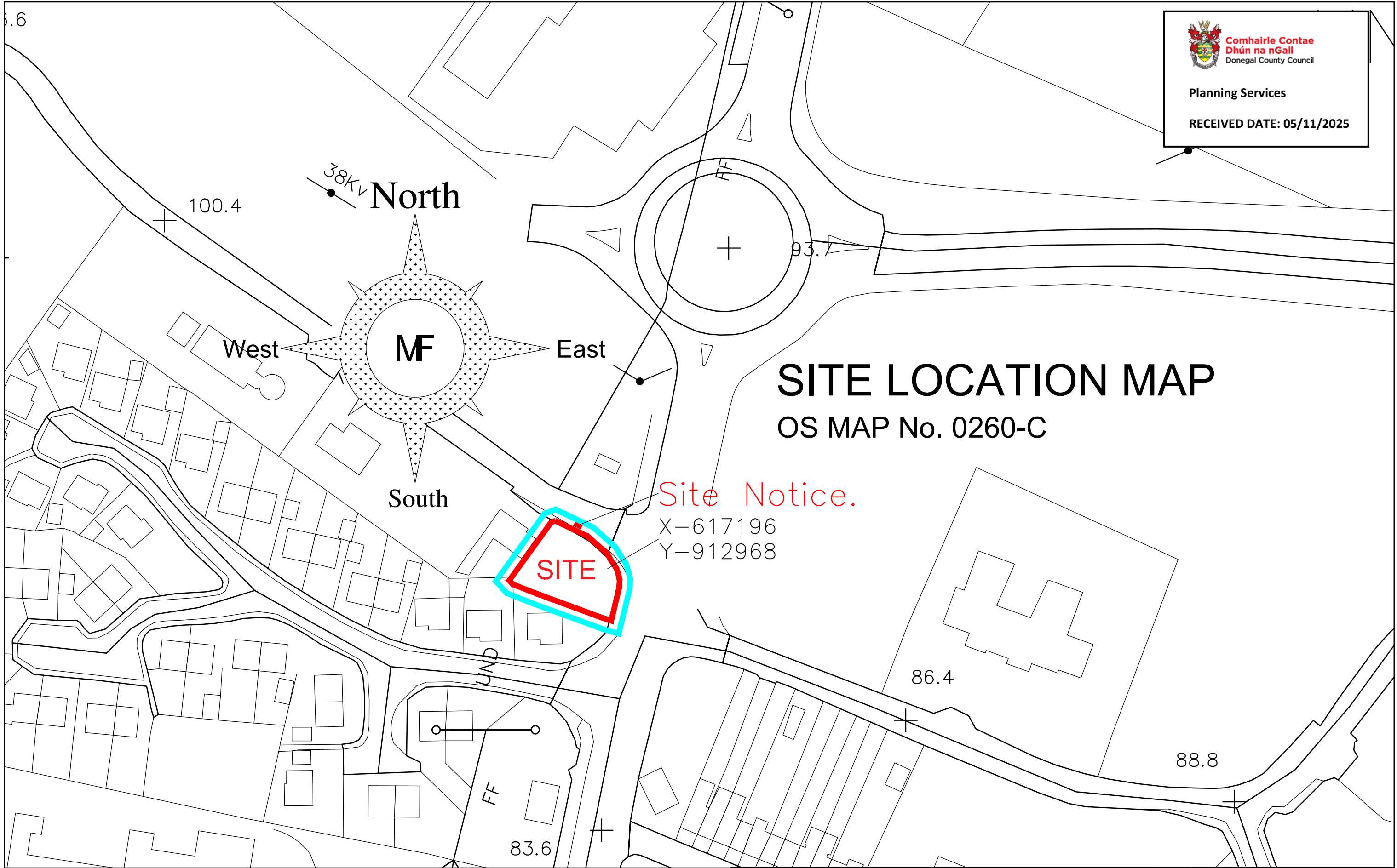


Comhairle Contae
Dhún na nGall
Donegal County Council

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:	N/A	
Please list types of plans, drawings etc. submitted with this application:	1/2500 Scale Site Location Map 1/500 Scale Layout Plan 1/50 Scale General Arrangement Drawings.	
Planning History - list any relevant planning application reference numbers:	25/60200	
Are you aware of any enforcement proceedings connected to the site? If so, please supply details:	None	

I hereby certify that the information provided is true and accurate	
Signature of Applicant/Agent:	
Date:	31 st October 2025







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

Planning Services

RECEIVED DATE: 05/11/2025



Registered
Architect

2025

Architect
Accredited in
Conservation

G3

PSDP
Accreditation

P

Job Title:
Retention Planning,
1 Clachan Mór, Windyhall
Letterkenny, Co. Donegal
F92 X08D

Client:
B. McDaid

Drawing Title:
SITE LOCATION MAP

Scale:
1:2500

Job No.
25XXX

Date:
FEB. 2025.

Drawing No.
03.



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michael@mfielarchitects.ie



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Planning Services
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Issued by E-mail: office@mfrielarchitects.ie

Our Ref: S525/94

6th November 2025

B. M. McDaid
C/o Michael Friel Architects
Creeshlough
Letterkenny
Co. Donegal
F92 TF60

Re: Section 5 - Application for the continued use of an existing residential property to provide accommodation for persons availing of International Protection at 1 Clachan Mór, Windyhill, Letterkenny, Co. Donegal, F92 X08D.

A Chara,

I wish to acknowledge receipt of your application received on 5th November 2025 in relation to the above.

Yours sincerely,

Donegal County Council
Planning Services



SECTION 5 REFERRAL REPORT – Ref. No: S5 25/94

1.0 BACKGROUND

1.1 Location:

1 Clachan Mór, Windyhill, Letterkenny, County Donegal F92 X08D.



1.2 Site Description:

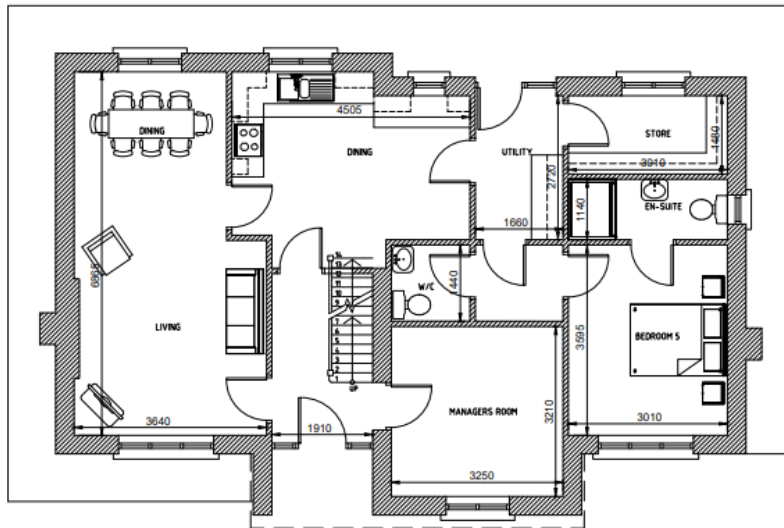
The site is located within Letterkenny town. The site is occupied by a detached 2 storey building and outbuilding to the rear. The building fronts onto the regional road R-229-1, however, is accessed from the local road L1152-1. The surrounding area is defined by a mix of residential and educational uses.



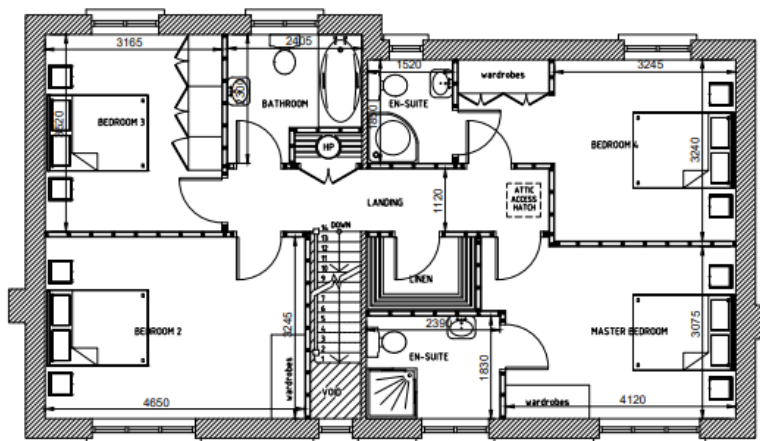
1.3 Planning History

File No.	Decision	Decision Date	Name	Description
2560200	Conditional	14/04/2025 Monday	BRENDAN MCDAID	CHANGE OF USE OF A DWELLING HOUSE TO HOSTEL RESIDENTIAL ACCOMMODATION

Ground floor layout (25/60200)



First floor layout (25/60200)



1.4 ABP referral Cases cited by the applicant

ABP-322208-25 (Fairleigh House, High Road, Letterkenny)

Having regard to the foregoing and based on my site inspection, I am satisfied that the residential accommodation is being operated in a similar manner to other self-contained apartment developments. There was no evidence of communal facilities beyond those that would normally form part of an apartment complex. The building is not operating as an emergency reception for the care of protected persons, and it is functioning as self-contained residential accommodation, as per the permitted use. The status or personal circumstances of the residents is not a material planning issue. I am therefore satisfied that the current use of the self-contained apartments, does not constitute a change of use from the permitted residential use and, therefore, does not constitute development.

ABP-32210-25 (McClure's House, High Road, Letterkenny)

The permitted and current use of the premises as self-contained residential apartments, as long-term residential accommodation for protected persons where care is not provided, 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.

1.5 Other relevant referrals

ABP-321373-24 (Dun a Rí House Hotel, Cavan)

(a) The change of use of a guesthouse at Dun a Ri House Hotel, Kingscourt, Co. Cavan, to provide accommodation for persons seeking international protection constitutes a material change of use and therefore is development as defined under Section 3(1)(a) of the Planning and Development Act 2000 (as amended).

(b) the change of use of a guesthouse at Dun a Ri House Hotel to provide accommodation for persons seeking international protection is exempted development as it comes within the scope of Class 14 – Part 1 of Schedule 2 – ‘Exempted Development - General’ inserted by The Planning and Development (Amendment) (No.4) Regulations 2015 (S.I No 582/2015).

ABP-320031-24

(a) The change of use from the established use as a dwelling house to the proposed use as accommodation for protected persons constitutes 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

2.0. THE QUESTION

The agent Michael Friel, on behalf of the applicant B. M. McDaid, has made a submission to Donegal County Council seeking a Declaration of Exemption under Schedule 2, Part 1 Class 14(h) of the Planning and Development Regulations 2001 (as amended) as to whether or not the following is not deemed to be development as per statute:

The continued use of a residential property to provide accommodation for persons availing of International Protection.

It is intended that a hostel (incorrectly referred to as a guesthouse on both the application form and cover letter) permitted under Planning Ref. No: 25/60200 is now utilized to provide a premises for residential or overnight accommodation as accommodation for refugees and asylum seekers who are seeking refuge from the state.

The attached cover letter states that the property is used for long-term residential accommodation for protected persons.

3.0 STATUTORY PROVISIONS

3.1 Planning and Development Act, 2000 (as amended)

Section 2(1) – Interpretation

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

"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 4 – Exempted Development

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.

Section 4 (2) (a) of the Act provides that the Minister may, by regulations provide for any class of development to be exempted development for the purposes of this Act.

Section 4(4) provides that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

Section 177U

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

3.2 Planning and Development Regulations, 2001 (as amended)

Article 6(1) – Exempted Development

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.

Article 9 (1) – Restrictions on Development

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

- (a) 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,
 - (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
 - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
 - (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
 - (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan, save any excavation, pursuant to and in accordance with a licence granted under section 26 of the National Monuments Act, 1930 (No. 2 of 1930),
 - (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.

Article 10 (1) Changes of Use

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted to development for the purposes of the Act, provided that the development, if carried out would not –

- (a) involve the carrying out of any works other than works which are exempted development,
- (b) contravene a condition attached to a permission under the act,
- (c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised, and which has not been abandoned.

Class 14 – Part 1 of Schedule 2 – ‘Exempted Development - General’

The Planning and Development (Amendment) (No.4) Regulations 2015 (S.I No 582/2015) amend Part 1 of Schedule 2, entitled ‘Exempted Development - General’ to insert a new section in Class 14 (h), (i) and (j) exemption to allow a change of use of certain class/use of building for protected persons (i.e. an applicant for international protection).

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 (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, and

(j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both.

Conditions and Limitations

Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.

4.0 ASSESSMENT

4.1 Is or is not development

The information on the application form and cover letter states that a change of use has occurred from a ‘permitted hostel’ (granted 14th April 2025) however no information/evidence has been received to prove the use as a hostel ever commenced.

Subject to further information being received to prove that the previous grant of permission was actually implemented prior to the building being used to provide accommodation for persons seeking international protection, the original established use of the building is accepted as a hostel.

The Planning Authority is satisfied that the use of a hostel to provide accommodation for persons seeking international protection constitutes a material change of use and is therefore 'development' as defined in Sections 3(1)(a) of the Act.

4.2 Is or is not exempted development

As noted above a category of exempted development is provided under Class 14(h) inserted by article 4 of S.I. No. 582/2015 Planning and Development (Amendment) (No. 4) Regulations 2015 which allows for change of use: "(h) from use as a hostel..., to use as accommodation for protected persons," subject to class 14 (j), the use ceasing and returning back to the previous use immediately prior to the change and not after a period of 3 years from the date of the commencement of the change of use.

The use as a hostel comes within the scope of Class 14 of Planning and Development Regulations 2001 (as amended) therefore the change of use from a hostel to accommodation of protection persons is exempt under Class 14 (h).

4.3 Article 9(1) de-exemptions

The proposal is considered against Article 9 (1) which provides restrictions on exempted development, specifically Article 9(1)(a)(i) insofar as does the development contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

Condition 3 of the permitted hostel use (25/60200) is notable and requires that, *'The hostel accommodation shall be used as short-term tourist accommodation for a maximum stay of 60 consecutive days only and shall not be used as long-term or permanent residential accommodation.'*

The long-term residential accommodation for protected persons would therefore contravene the above condition therefore the development is de-exempted under Article 9(1)(a)(i) of the Planning and Development Regulations 2001, as amended.

5.0 AA SCREENING

Having regard to the nature and small scale of the proposed development and the distance from the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect, individually, or in combination with other plans or projects, on any European site.

6.0 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

Subject development:

The continued use of a hostel to provide long-term accommodation for persons availing of International Protection at 1 Clachan Mór, Windyhill, Letterkenny, County Donegal F92 X08D

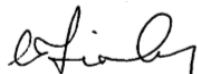
The Planning Authority, in considering this referral, had regard particularly to -

Sections 2, 3, 4 and 177U of the Planning and Development Act, 2000 (as amended), and Articles 6(3), 9(1), 10(6) and Class 14(h) of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

and concludes that:

The proposal IS DEVELOPMENT within the meaning of Planning and Development Act, 2000 (as amended) and IS NOT EXEMPTED DEVELOPMENT as it contravenes Article 9, Sub-article (a)(1)(i) of the Planning and Development Regulations, 2001(as amended).

Signed:



Position: Assistant Planner

Date: 25th November 2025



26/11/2025

Advice

As the development contravenes Article 9, Sub-article (a)(1)(i) of the Planning and Development Regulations, 2001(as amended), evidence to prove the hostel use commenced prior to the building being used to accommodate protected persons was not requested.

Chief Executive's Order No: 2025PH3479

Planning and Development Acts 2000 (as amended)

SECTION 5:-

Request received 5th November 2025 from B. M. McDaid C/o Michael Friel Architects & Surveyors Ltd, Creeslough, Letterkenny, Co. Donegal F92 TF60 in relation to the continued use of an existing residential property to provide accommodation for persons availing of International Protection at 1 Clachan Mór, Windyhill, Letterkenny, Co. Donegal F92 X08D.

SUBMITTED:-

Written request received 5th November 2025 as above and report dated 25th November 2025 from the Assistant Planner (Ref. No: S5 25/94 refers).

ORDER:-

Having considered the said request, the report of the Assistant Planner, and the record forwarded to the Council by An Coimisiún 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 PLANNER

DATED THIS 27th DAY OF NOVEMBER 2025

LMG

Chief Executive's Order No: 2025PH3479

Ref.No: S5 25/94

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), and Articles 6(3), 9(1), 10(6) 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 Planning and Development Act, 2000 (as amended) and **IS NOT EXEMPTED DEVELOPMENT** as it contravenes Article 9, Sub-article (a)(1)(i) of the Planning and Development Regulations, 2001(as amended).

Applicant is advised that as the development contravenes Article 9, Sub-article (a)(1)(i) of the Planning and Development Regulations, 2001(as amended), evidence to prove the hostel use commenced prior to the building being used to accommodate protected persons was not requested.

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

DECLARATION

Chief Executive's Order No: 2025PH3479

Reference No: S525/94

Name of Requester: B. M. MCDAID
C/O MICHAEL FRIEL ARCHITECTS & SURVEYOR LTD
CREESLOUGH
LETTERKENNY
CO. DONEGAL
F92 TF60

Summarised Description of development the subject matter of request:

The continued use of an existing residential property to provide accommodation for persons availing of International Protection

Location: 1 Clachan Mór, Windyhill, Letterkenny, Co. Donegal F92 X08D.

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), and Articles 6(3), 9(1), 10(6) 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 Planning and Development Act, 2000 (as amended) and **IS NOT EXEMPTED DEVELOPMENT** as it contravenes Article 9, Sub-article (a)(1)(i) of the Planning and Development Regulations, 2001(as amended).

Applicant is advised that as the development contravenes Article 9, Sub-article (a)(1)(i) of the Planning and Development Regulations, 2001(as amended), evidence to prove the hostel use commenced prior to the building being used to accommodate protected persons was not requested.



For Senior Planner
Planning Services

Dated this 27th day of November 2025



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

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Ref. No: S525/94

27th November 2025

B. M. MCDAID
C/O MICHAEL FRIEL ARCHITECTS & SURVEYOR LTD
CREESLOUGH
LETTERKENNY
CO. DONEGAL
F92 TF60

Re: The continued use of an existing residential property to provide accommodation for persons availing of Internation Protection at 1 Clachan Mór, Windyhill, Letterkenny, Co. Donegal F92 X08D.

A Chara,

I refer to your request received on 5th November 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 Coimisiún Pleanála of such fee as may be prescribed, refer a Declaration for review by the Coimisiún within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,

**For Senior Planner
Planning Services**

/jmmc