

Leitrim County Council
Section 5 Declaration of Exempted Development Report



To:	Mary Quinn - Director of Services
From:	Bernard Greene - Senior Planner
Reference No.:	ED 25-10
Referrer:	Sheila O’Riordan (c/o Everluke Ltd.)
Subject Matter:	Determination under Section 5 of the Planning and Development Act 2000, as amended as to whether the change of use of River Shannon Lodge, Roosky Village from B&B guest accommodation to use as IPAS Accommodation (‘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).
Location	River Shannon Lodge, Roosky Village, Carrick-on-Shannon, Co Leitrim, Y35HX74
Date Received:	18/03/2025
Date of Report	08/04/2025

1. Introduction

This is a request for a determination under Part 1, Section 5 of the Planning and Development Act 2000, as amended, as to whether development is or is not exempted development. This referral case concerns the question as to whether the change of use of River Shannon Lodge, Roosky Village from established use providing B&B guest accommodation to use as IPAS Accommodation (‘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)) is or is not exempted development. It is stated on the application form that the type of declaration sought is that the proposed change of use is exempted development as provided for under Class 14H of the Planning and Development Regulations 2001, as amended.



Figure 1: River Shannon Lodge, Roosky Village

2. Referral Submissions

The subject application was received by the Planning Authority on the 18th of March 2025 from James O'Mahony of JPO Architectural Associates on behalf of Sheila O'Riordan (c/o Everluke Ltd.) the stated owner of the subject property. I have confirmed these details on LandDirect.ie

Accompanying the Section 5 Declaration application form, cover letter and fee, has been the following:

1. A site location map.
2. A copy of drawings prepared by JPO Architectural Associates.
3. Authorisation letter.
4. Copy of signed Section 47 agreement.

3. Planning History

Planning permission was granted to Mr. Derek Rowley pursuant to planning register ref. no. P.12744, to '*retain existing bed & breakfast property and garage as constructed at Aughamore, Dromod, Co. Leitrim*' on 23rd October 1996. The property is, therefore, authorised to provide overnight guest accommodation with a total of 7 no. bedrooms shown on the submitted drawings along with ancillary accommodation comprising of kitchen / dining room / living room with separate lounge and utility rooms. 6 no. of the 7 no. bedrooms were served by ensuite bathrooms with the 7th no. bedroom served by a toilet. There was also an external timber stair structure provided on the northern gable to enable access to attic storage space - the attic is not permitted as habitable space. This stair structure has since been removed.

From the perspective of the subject Section 5 declaration, the above is the most relevant planning history. There has been no subsequent planning application made with respect to this property.

4. Enforcement Proceedings

- 4.1 The Planning Authority served the owners of the property with a Warning Letter on 15th January 2024, ref. E/24/001. The nature of the anticipated unauthorised development was stated as follows:

It has come to the attention of the Planning Authority by way of complaint that works have been and / or are being carried out at the subject property which increases the number of bedrooms contained within the existing structure. The Planning Authority is also aware by way of enquiry from the Procurement Team of the Department of Children, Equality, Disability, Integration and Youth that the subject property was offered to provide accommodation to persons seeking international protection on the basis of 13 no. bedrooms capable of accommodating 52 no. persons. It is the view of the Planning Authority that the intensification of use of this property to provide in excess of 7 no. bedrooms for overnight guest accommodation constitutes unauthorized development and would require a separate grant of planning permission.

- 4.2 A drawing was submitted to the Planning Authority on 16th December 2024 which demonstrated that the former lounge had been converted into 2 no. additional bedrooms, that the former living room has been converted into an additional bedroom with the remainder of the space providing for an extended dining room and that the utility room had also been converted into an additional bedroom. This increased the number of bedrooms in the structure to 11 no. bedrooms. Furthermore, the garage structure to the rear had been converted into residential accommodation to provide for an additional 2 no. bedrooms. This explains the 13 no. bedrooms within the property which had been offered to the Procurement Team of the Department of Children, Equality, Disability, Integration and Youth to provide accommodation to persons seeking international protection. I would advise that I inspected the subject property on 18th December 2024 and was satisfied that the works within the main structure had been undertaken quite a significant time ago by virtue of the solid wall construction, decoration, flooring and in particular, the sanitary ware within the en-suite bathrooms. I was equally satisfied that whilst works were being undertaken within the former garage structure that these works were renovating / upgrading whereas the conversion to residential use had taken place a significant number of years previous. The only amendment related to the conversion of a garage type door to windows.
- 4.3 Arising from correspondence between the owners of the subject property and the Planning Authority over a number of months, a Section 48 agreement was entered into on 17th January 2025. The owners signed a covenant with the Planning Authority to use only 7 no. rooms within the overall property for the provision of bedroom accommodation for protected persons. The use of rooms labelled Room 1, Room 2, Room 8 and Room 9 on the drawing furnished on 16th December 2024 and the use of the former domestic garage to the rear shall not be used as bedroom accommodation but may be used for other purposes in conjunction with the use of the overall property to provide accommodation for protected persons.
- 4.4 No decision has yet been taken with regard to this enforcement matter. Equally, having regard to the anticipatory nature of the Warning Letter, no Enforcement Notice was served. Should the exemption applied for in this declaration be confirmed in this determination, the enforcement file will be closed off in due course.

5. Relevant Legislation

5.1 Planning and Development Act, 2000 (as amended)

Section 2(1) of the Act states the following:

- ‘*development*’ has the meaning assigned to it by Section 3;
- ‘*unauthorised use*’ means, in relation to land, use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than—
 - a) exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act), or
 - b) development which is the subject of a permission granted under Part IV of the Act of 1963 F23[or under section 34, 37G, 37N or 293 of this Act], being a

permission which has not been revoked, and which is carried out in compliance with that permission or any condition to which that permission is subject;

- ‘works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal

Section 3 (1) In this Act ‘development’ means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land.

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).

The following shall be exempted developments for the purposes of this Act—

development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

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, as amended.

5.2 Planning and Development Regulations 2001, as amended

Part 2 Exempted Development Article 5 provides the following interpretations for this Part-

Article 6(1) states 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.

Article 9(1)(a) relates to ‘Restrictions on Exemption’. This outlines circumstances in which development to which article 6 relates, shall not be exempted development

Article 10 Changes of use.

10 (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 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.

Schedule 2 of Part 1 to the Regulations relates to '*Exempted Development – General*' and sets out the classes of exempted development.

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 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. (Emphasis Added)

The provisions of Class 14(h) are not qualified by any conditions and limitations.

A further relevant exemption is Class 20F, inserted by the Planning and Development (Exempted Development) (No. 4) Regulations 2023, S.I. No. 376 of 2023, dated 19th July 2023. Those regulations provide as follows:

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.

This qualified by the following conditions and limitations:

1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.
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 2022 comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001.
3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.

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.
5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.
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.
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).
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.'

Class 14(h) applies to '*protected persons*' which are what might be deemed '*ordinary*' asylum seekers and applicants for subsidiary protection applying under the International Protection Act 2015. Class 20F applies both to those seeking protection under the 2015 Act, and to '*displaced persons*' which is a limited category created by Article 2 of E.U. Directive 2022/382.

4.3 Environmental (Miscellaneous Provisions) Act 2011

Section 17(1)(b) amends section 4 of the Planning and Development Act 2000 (as amended) by the provision 'that notwithstanding exemptions under subsection (1)(a), (i), (ia) or (l) or regulations made under subsection (2) development shall not be exempted development if Environmental Impact Assessment or Appropriate Assessment of the development is required. The Planning and Development Regulations 2001, as amended, are made under section 4 (amongst others) of the Planning and Development Act 2000, as amended.

Assessment

- 5.1 I have considered all relevant exemptions available under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended). In my assessment of this application, I have had regard to the submitted application documentation and to the planning history of the subject site.
- 5.2 It is known that the subject property has been vacant and unused for more than a decade. The drawing submitted with the declaration application is effectively a copy of the permitted internal floor plan from the P12744 planning application. This is not the layout now in place internally as verified in section 4.2 above. No copy of the actual layout of the existing structure has been submitted with the Section 5 application. The applicants should not be relying on the drawing submitted on 16th December 2024 in response to separate correspondence which issued in respect to the investigation of alleged unauthorised development anticipated as likely to occur. That said, it is noted that a copy of the signed Section 47 legal agreement has been submitted which does refer (paragraph 5) to the drawing submitted on 16th December 2024. I am satisfied that the 7 no. bedrooms contained in the drawing submitted with this application correlate with the 7 no. bedrooms referenced in the

section 48 agreement. I am satisfied that the Planning Authority can attach a copy of the drawing submitted on 16th December 2024 with the section 48 agreement on the website after a decision has been made. I do not consider that the planning process would benefit from what in reality would be a pedantic request for further information to furnish a document to us which is already in our possession.

Section 3 (1) of the Planning and Development Act, 2000, as amended, 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*”. It is evident from the documentation submitted that the proposed change of use will involve the carrying out of any works. Notwithstanding the fact that the property has been vacant for more than a decade, this would not alter the fact that the structure is still being capable of being considered a ‘*guesthouse*’. This use is an authorised use subject to no more than 7 no. bedrooms being used. I would be satisfied therefore that the proposed change of use therefore adheres to the provisions of Class 14H of Schedule 2 of Part 1 to the Planning and Development Regulations 2001 (*‘Exempted Development – General’*). The provisions of Class 14(h) are not qualified by any conditions and limitations.

5.4 Article 10 (1) of the Planning and Development Regulations, 2001, as amended states that 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 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.

5.5 I am conscious of the judgment of Mr. Justice Humphreys in *Leitrim County Council vs. Dromaprop Ltd.* [2024] IEHC 233 in relation to the possible hollowing out of the intention of the Minister by a narrow interpretation of these provisions. I am satisfied that the proposed change of use is not affected by any of the provisions or considerations of Article 10.

6. Screening for Appropriate Assessment (AA) under Natura 2000 Sites

The nearest Natura 2000 site is Cloneen Bog SAC (Site Code 002348) which is approximately 2 km to the south with Lough Forbes Complex SAC (Site Code 001818) due south and contiguous. There is no obvious hydrological link between the subject site and either of the aforementioned Natura 2000 sites. The proposed change of use would not result in any additional loading over and above that permitted noting that the septic tank has been decommissioned and the property has been connected to the public sewer in the control of Uisce Éireann. As the proposed development relates in effect to a change of occupancy from commercial guests to persons seeking international protection, I see no considerations arising from the Habitats Directive which would apply in this instance. No further consideration is therefore warranted.

7. Environmental Impact Assessment (EIA) Preliminary Examination

Development in respect of which an environmental impact assessment or appropriate assessment is required cannot be exempted development (Section 4(4) of the Planning and Development Act 2000, as amended refers). Schedule 5, Part 1 and Part 2 of the Planning and Development Regulations, 2001 as amended sets out specified development for which EIA is mandatory and development which requires screening for EIA.

Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required

8. Recommendation

Having examined the planning history which confers a guesthouse use to the subject building, to the provisions of Class 14H of Schedule 2 of Part 1 to the Planning and Development Regulations 2001 (*‘Exempted Development – General’*), to the documents submitted with this application and having carried out an external and internal inspection of the subject property, I am satisfied that the proposed change of use is development and is exempted development.

WHEREAS a question has arisen as to whether the change of use of the River Shannon Lodge, Roosky Village, Carrick-on-Shannon, Co. Leitrim Y35HX74 from B&B guest accommodation to use as IPAS Accommodation ('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) is or is not development or is or is not exempted development.

AND WHEREAS Sheila O'Riordan (c/o Everluke Ltd.) requested a declaration on this question from Leitrim County Council on the 18th day of March 2025

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

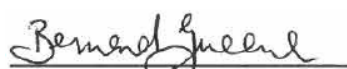
- a) Sections 2(1), 3(1), 4(1)(h) and 4(2) of the Planning and Development Act, 2000, as amended,
- b) Article 6(1), 9(1) and 10(1) of the Planning and Development Regulations, 2001, as amended,
- c) Class 14H of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- d) the planning history and permitted use of the building,
- e) the submissions on file,
- f) the report of the assigned planning officer:

AND WHEREAS Leitrim County Council has concluded that

The proposed use of the River Shannon Lodge, Roosky Village, Carrick-on-Shannon, Co. Leitrim Y35HX74 as IPAS Accommodation ('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)

- a) would constitute development under Section 3(1) of the Planning and Development Act 2000, as amended, and
- b) the proposed change of use from B&B guest accommodation to use as accommodation for protected persons would constitute exempt development and would fall within the scope of Class 14H of Schedule 2 of Part 1 of the Planning and Development Regulations 2001 (as amended).

NOW THEREFORE Leitrim County Council, in exercise of the powers conferred on it by section 5 of the Planning and Development Act 2000, as amended, hereby decides that the change of use of the River Shannon Lodge, Roosky Village, Carrick-on-Shannon, Co. Leitrim Y35HX74 from B&B guest accommodation to use as accommodation for protected persons is development and is exempted development.



Bernard Greene

Senior Planner

Date: 08/04/2025