

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 25/39

NAME OF APPLICANT: SBLN T/A Fairport

ADDRESS FOR CORRESPONDENCE: c/o Kevin Hughes, Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, D02 FX60.

NATURE OF APPLICATION: request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the use of the existing guesthouse development to provide accommodation for persons seeking International Protection is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Emmet House, Emmet Street, Birr, Co. Offaly, R42 X017.

WHEREAS a question has arisen as to whether the change of use of the existing guesthouse to provide accommodation for persons seeking international protection is or is not development and is or is not exempted development at 'Emmet House', Emmet Street, Birr, Co. Offaly, R42 X017.

AS INDICATED on the particulars received by the Planning Authority on the 26th February 2025.

AND WHEREAS SBLN T/A Fairport c/o Kevin Hughes of Hughes Planning & Development Consultants, 85 Merrion Square, Dublin 2, D02 FX60 has requested a declaration on the said question from Offaly County Council.

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to -

- (a) Section 2 of the Planning & Development Act 2000 (as amended).
- (b) Section 3(1) of the Planning & Development Act 2000 (as amended).
- (c) Section 4(2)(a) of the Planning & Development Act 2000 (as amended).
- (d) Section 57 of the Planning & Development Act 2000 (as amended).
- (e) Article 5(1) of the Planning and Development Regulations 2001 (as amended) and the attendant definition of protected persons.
- (f) Article 6 of the Planning and Development Regulations 2001 (as amended).
- (g) Article 9 of the Planning and Development Regulations 2001 (as amended).
- (h) Schedule 2, Part 1, Class 14(h) of the Planning & Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the change of use of the existing guesthouse to provide accommodation for persons seeking international protection is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the change of use of the existing guesthouse to provide accommodation for persons seeking international protection is **development and is exempted development** at 'Emmet House', Emmet Street, Birr, Co. Offaly, R42 X017.

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and regulations made thereunder, it was required to have regard. Such matters include any submissions and observations received by it in accordance with statutory provisions.


Administrative Officer


Date

Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

Planning Report - Section 5 Declaration

File Reference:	Dec. 25/39
Question:	Whether or not the use of the existing guesthouse development to provide accommodation for persons seeking international protection is development and is or is not exempted development at 'Emmet House', Emmet Street, Birr, Co. Offaly, R42 X017
Applicant:	SBLN T/A Fairport
Correspondence Address:	c/o Kevin Hughes, Hughes Planning & Development Consultants, 85 Merrion Square, Dublin 2, D02 FX60
Location:	'Emmet House', Emmet Street, Birr, Co. Offaly, R42 X017

1. Introduction

The question has arisen as to whether or not the use of the existing guesthouse development to provide accommodation for persons seeking international protection is development and is or is not exempted development at 'Emmet House', Emmet Street, Birr, Co. Offaly, R42 X017.

2. Site Description

The subject building is located within Birr Town Centre, on National road the N52, at the corner of Emmet Street and Emmet Square. The site is zoned as Town Centre/Mixed Use under the Birr Local Area Plan 2023 – 2029. In accordance with the Record of Protected Structures for the county, the subject site is a protected structure:

RPS ref. 49-210

- **Description:** Corner-sited three-bay two and three-storey house, built c.1900, now in use as a guest house, fronting onto Emmet Street and Emmet Square. Pitched slate and tiled roof with rendered chimneystacks and cast-iron rainwater goods. Smooth rendered plinth, pebbledashed walls with smooth rendered full-height Doric pilasters to gable and end bay, surmounted by frieze and eaves-cornice. Smooth rendered sill courses to first and second floors. Emmet Square elevation with stucco frieze having guilloche and flower head motif to first floor level. Replacement uPVC windows with stone sills, stucco surround and carved stone mask in keystone of ground floor window on Emmet Street and first floor window on Emmet Square. Square-headed door opening with block-and-start stucco surround with masked keystone. Timber pilastered doorcase with console brackets, fluted frieze surmounted by overlight, with timber panelled double doors. Door accessed by limestone step. Emmet Square entrance with square-headed opening, stucco surround with masked keystone, replacement timber double doors and openwork timber overlight. Accessed by modern limestone steps. Front site to Emmet Square enclosed by rendered plinth wall, surmounted by tooled limestone coping stones and wrought-iron railings. Modern metal gate gives access to front site.
- **Appraisal:** Emmet Guest House, located on the corner between Emmet Street and Emmet Square is situated in a prominent location within the town of Birr. Through its irregular plan, the house expresses an individual character. Following the design of the adjacent rendered house on Emmet Square, its south-facing elevation is two-storeys high with an attic and terminates in a gable. Its west-facing elevation, which fronts onto Emmet Street blends well with the building stock of that street. The structure retains much of its early fabric and is artistically appealing. Details such as the varied carved

masks on the keystones and stuccowork create interest on the façade and allow the exterior to stand out from its plainer neighbours.

The Applicant advises that since 2023, the existing guesthouse has provided residential accommodation to IPAS for internal protected person on behalf of the Minister for the Department of Children, Equality, Disability, Integrations and Youth.

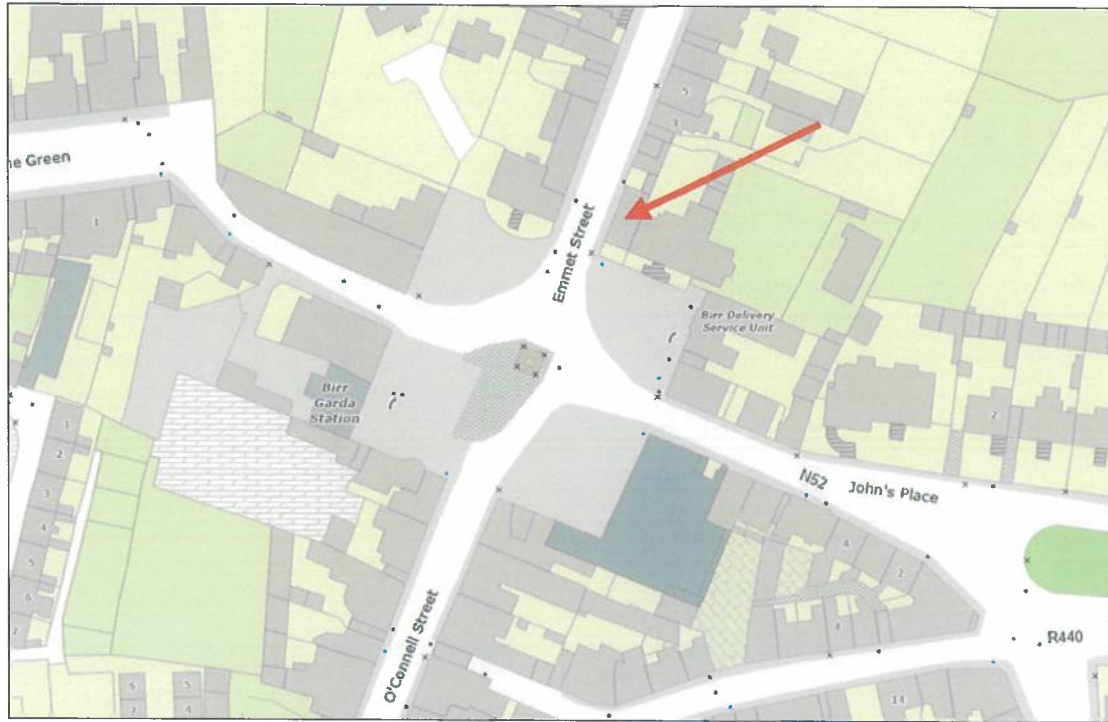


Figure 1: Site Location (source: www.landdirect.ie)



Photo 1: Subject Site.

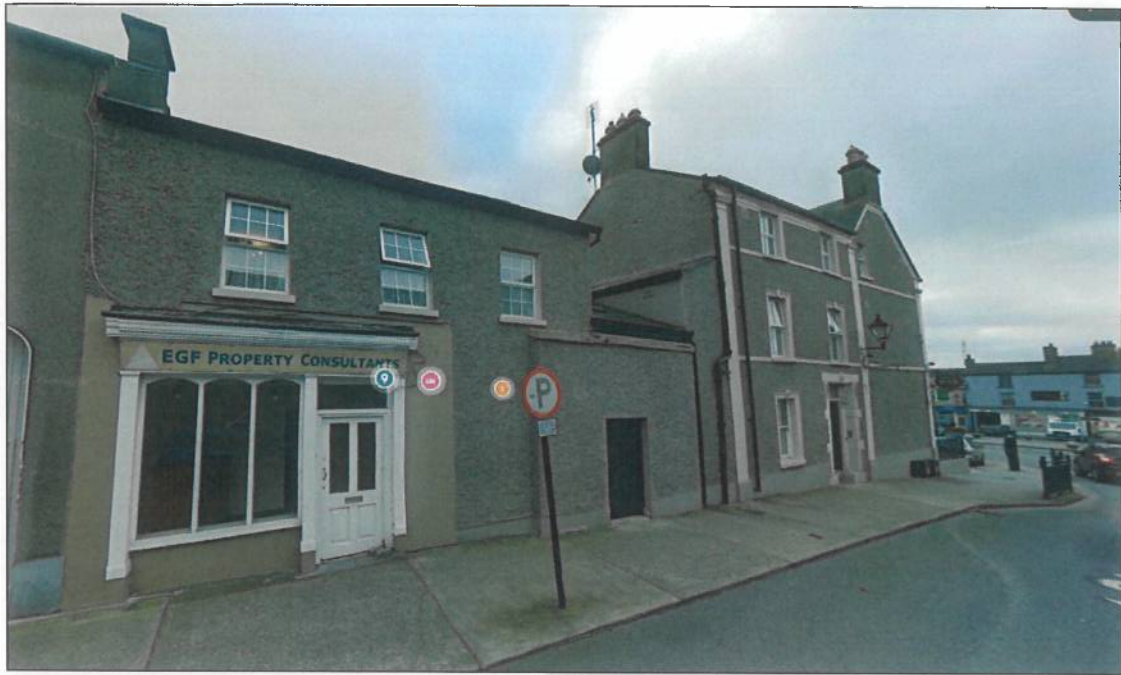


Photo 2: Subject Site.

3. Site History

BR1370: Haiyang Zhang sought permission for a change of use of portion of existing dwelling house to restaurant with all ancillary works – REFUSED (2004).

The Applicant notes:

Prior to the use of the 'Emmet House' guesthouse for use as accommodation for international protected persons, the subject site had a long-established guesthouse use on site and maintained pre-63' status (i.e., prior to the commencement of the Local Government (Planning and Development) Act, 1962 on 1st October 1964).

4. Legislative Context

In order to assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

Statutory Provisions

Section 2 (1) Planning and Development Act 2000, as amended, states as follows:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 (1) Planning and Development Act 2000, as amended, defines development as:

“development” 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' (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

- (h) *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 and 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 neighbouring structures.*

Section 4 (2) (a) - The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that -

- (i) *by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development.*

Section 57 Planning and Development Act 2000, as amended, states as follows:

57.—(1) Notwithstanding *section 4(1)(a), (h), (i), ia (j), (k), or (l)* and any regulations made under *section 4(2)*, the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Regulatory Provisions

Article 5 (1) of the Planning and Development Regulations 2001 (as amended) states:

In this Part—

.....

“protected person”, for the purposes of Schedule 2, means—

(a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013), (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996;

Article 6 of the Planning and Development Regulations 2001 (as amended) states:

- (1) *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 – Restrictions on Exemptions

9. (1) 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—

(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,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area 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,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(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, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

(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,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area 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,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area 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 and the development would materially affect the character of the area,

(b) in an area to which a special amenity area order relates, if such development would be development:—

(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or

(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or

(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

It is not that these restrictions are not applicable in this case.

Schedule 2 – Article 6

Part 1 of Schedule 2 of the Planning & Development Regulations deals with ‘*Exempted Development – General*’.

Column 1 sets out the classes of development that are exempted and Column 2 sets out the conditions and limitations on the exemption.

Column 1 Description of Development	Column 2 Conditions & Limitations
<p>Class 14 Development consisting of a change of use—</p> <p>(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 to use as accommodation for protected persons,</p> <p>(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.</p>	<p>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.</p>

5. Proposal by Applicants

The Applicant seeks to obtain a Section 5 Declaration confirming that the use of the property for accommodating international protected persons is exempted development under Class 14(h). They advise that no physical works are proposed, and the determination of the Planning Authority is solely requested in relation to the use of the property as outlined in Class 14(h) of the Regs.

This declaration does not refer to any physical works to the protected structure therefore the works subject of this declaration would not materially affect the character of the protected structure.

6. Appropriate Assessment Screening

Having regard to nature of the development (i.e. use of the existing guesthouse development to provide accommodation for persons seeking international protection) at Emmet Square, Birr Town and the lack of any pathway to a European site it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

7. Environmental Impact Assessment Screening

Please refer to Appendix A.

8. Other Screening

The proposed development is not contrary to the RSES and so it was not referred to the Eastern and Midland Regional Assembly.

9. Evaluation

The Applicant submits that the continued use of the property as accommodation for protected persons is applicable under the provisions of Class 14(h).

As noted earlier in this report, the Applicant advises that the existing guesthouse has provided residential accommodation to IPAS for protected person on behalf of the Minister for the Department of Children, Equality, Disability, Integrations and Youth since 2023 (date not specified).

The Planning Authority confirms that the landuse of 'guesthouse' is listed in the exemption provided under Class 14(h). Given that the existing landuse at the subject site is a guesthouse, the proposed development meets the criteria listed in Class 14(h).

Based on the information submitted as part of the application, the Planning Authority are satisfied that the change of use is development and is exempted development.

10. Recommendation

Having assessed the documentation submitted by the Applicant, it is considered the proposed temporary change of use of the existing guesthouse 'Emmet House', to provide accommodation for persons seeking international protection is development and is exempted development.

Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to whether the change of use of the existing guesthouse to provide accommodation for persons seeking international protection is or is not development and is or is not exempted development at 'Emmet House', Emmet Street, Birr, Co. Offaly, R42 X017.

AS INDICATED on the particulars received by the Planning Authority on the 26th February 2025,

AND WHEREAS SBLN T/A Fairport c/o Kevin Hughes of Hughes Planning & Development Consultants, 85 Merrion Square, Dublin 2, D02 FX60 has requested a declaration on the said question from Offaly County Council.

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to -

- (a) Section 2 of the Planning & Development Act 2000 (as amended).
- (b) Section 3(1) of the Planning & Development Act 2000 (as amended).
- (c) Section 4(2)(a) of the Planning & Development Act 2000 (as amended).
- (d) Section 57 of the Planning & Development Act 2000 (as amended).
- (e) Article 5(1) of the Planning and Development Regulations 2001 (as amended) and the attendant definition of protected persons.
- (f) Article 6 of the Planning and Development Regulations 2001 (as amended).
- (g) Article 9 of the Planning and Development Regulations 2001 (as amended).
- (h) Schedule 2, Part 1, Class 14(h) of the Planning & Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the change of use of the existing guesthouse to provide accommodation for persons seeking international protection is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the:

- The change of use of the existing guesthouse to provide accommodation for persons seeking international protection is **development** and is **exempted development** at 'Emmet House', Emmet Street, Birr, Co. Offaly, R42 X017.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.



Una McCafferkey
Executive Planner

24th March 2025

Date



Ed Kelly
A/Senior Executive Planner

25th March 2025

Date

APPENDIX A

EIA Screening

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	Dec 25-39
Development Summary:	Whether or not the use of the existing guesthouse development to provide accommodation for persons seeking international protection is development and is or is not exempted development at 'Emmet House', Emmet Street, Birr, Co. Offaly, R42 X017
Was a Screening Determination carried out under Section 176A-C?	No, Proceed to Part A
A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1, of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
No	Proceed to Part B
B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2, of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)	
No, the development is not a project listed in Schedule 5, Part 2	No Screening required



Una McCafferkey
Executive Planner

24th March 2025
Date