

#### 4. Development Details:

Please provide details of the proposed development for which an exemption under Section 5 of the Planning and Development Act is applied for.

(Note: only works and uses listed and described under this section will be assessed under this Section 5 Application. Use additional sheets if required.)

The temporary change-of-use of the property to accommodate displaced persons
or persons seeking international protection (as set out in S.I. 376/2023)
*Refer to additional information overleaf
Proposed floor area of proposed works/uses: 1205 sqm

#### 5. Legal Interest of Applicant in the Land or Structure:

<i>Please tick appropriate box to show applicant's legal interest in the land or structure</i>	A. Owner <input checked="" type="checkbox"/>	B. Occupier
	C. Other	
<i>Where legal interest is 'Other', please expand further on your interest in the land or structure</i>		
<i>If you are not the legal owner, please state the name and address of the owner</i>	Name: Address:	

Signature of Applicant(s) Pat O'Leary

Date: 16.01.2025

**Note: If the proposed development consists of works to a (Proposed) Protected Structure and/or any structure within the curtilage of a (Proposed) Protected Structure, an application for a Section 57 Declaration may be more appropriate.**

## GUIDANCE NOTES

- (1) All queries on the form must be completed and the form must be accompanied by the relevant fee. The amount of the fee is currently **€80.00**.
- (2) This application should be accompanied by **TWO COPIES** of the following documentation
- OSI Site Location Map with the site outlined clearly – 1:1000 in urban areas and 1:2500 in rural areas
  - Floor Plans & Elevations at a scale of not less than 1:200
  - Site layout plan indicating position of proposed development relative to premises and adjoining properties
  - Other details e.g. brochures, photographs if appropriate.
- (All dimensions must be given in metric scale and drawings should be accompanied by a brief description outlining the use of the proposed development)
- (3) Where a proper and complete application is received, a decision must be conveyed to the applicant within four (4) weeks except where additional necessary information is required.

**This application form and relevant fee should be submitted to:**

<b>Planning Section, Tipperary County Council, Civic Offices, Limerick Road, Nenagh, Co. Tipperary</b>	<b><u>OR</u></b>	<b>Planning Section, Tipperary County Council, Civic Offices, Emmet Street, Clonmel, Co. Tipperary</b>
<b>Enquires:</b>  <b>Telephone 0818 06 5000</b>  <b>E-Mail <a href="mailto:planning@tipperarycoco.ie">planning@tipperarycoco.ie</a></b>		

### FOR OFFICE USE ONLY

#### DATE STAMP

**Fee Recd.** € 80.00  
**Receipt No** NENAMI/0/12898  
**Date** 20/1/2025  
**Received by** Maura Lillis

## Appendix A

We act on behalf of Kilbrin Homes Ltd. with an address at C/O Mc2 Accountants Limited, Penrose Wharf, Penrose Quay, Cork, and wish to submit the accompanying application for Section 5 Declaration to support our notification to the Council in accordance with CLASS 20F of the 2022 Planning Regulations (S.I. No. 605/2022 - Planning and Development (Exempted Development) (No. 4) Regulations 2022)<sup>[1]</sup>, in relation to the Former Fitzgibbon's Furniture Store and Warehouse, Mitchel Street, Thurles, Co. Tipperary, E41 H932. As you will be aware, CLASS 20F relates to the temporary use of certain buildings, including shops/warehouses, to accommodate displaced persons or persons seeking international protection:<sup>[2]</sup>

*"CLASS 20F: 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" (emphasis added).*

In accordance with the requirements associated with Class 20F, the temporary use of the property will only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection. It is also required that the relevant local authority shall be notified of the location where the change is taking place prior to the commencement of the change of use - please take this letter as formal notification of the proposed change of use of the Former Fitzgibbon's Furniture Store and Warehouse from retail/warehouse to accommodate displaced persons or international protection applicants. It is anticipated that the proposed use will commence in June 2025.

We confirm that the subject property is not a Protected Structure.

Previously, a question arose as to an element of unpermitted accommodation on site. Patrick O Toole of this office and your Ms. Anne Marie Devaney engaged in a comprehensive review of the historic planning permissions, and the extent of the accommodation proposed is wholly within the extent of the permitted development, as agreed with your Ms. Devaney in correspondence dated 29.11.2024.

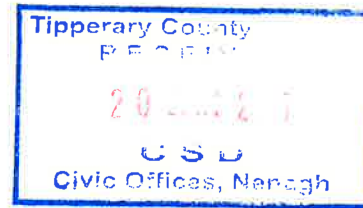
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[1] Part 1 of Schedule 2 to the Planning and Development Regulations 2001 (S.I. No. 600 of 2001) was amended by inserting Class 20F after Class 20E.

[2] "International Protection", for the purpose of Class 20F, has the meaning given to it in section 2(1) of the International Protection Act 2015 (No. 66 of 2015). "Displaced persons", for the purpose of this Class 20F, means persons whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022.

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**The Planning Department  
Tipperary County Council  
Civic Offices  
Nenagh  
County Tipperary**



16<sup>th</sup> January, 2025

Our ref: 231028/231028-let-002/POT/AB

Dear Sir/Madam,

**Re: Application for a Section 5 Declaration in respect of proposed change-of-use of property at Mitchel Street, Thurles, Co. Tipperary, E41 H932.**

I am writing to seek a formal declaration under Section 5 of the Planning and Development Act 2000 (as amended) that the proposed change-of-use of the property at Mitchel Street, Thurles, Co. Tipperary, to temporary residential accommodation for refugees constitutes exempted development and does not require planning permission.

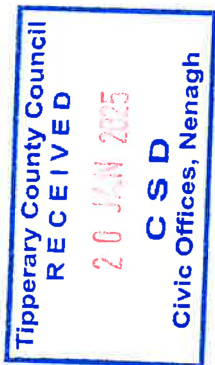
### **Background**

The subject property has been vacant for over 4 years and is currently unused. It is proposed to utilise the property as temporary residential accommodation to house refugees, providing an essential service in response to current humanitarian and housing needs.

### **Grounds for Exemption**

The relevant legislative provisions are cited as follows:

- 1. The Planning and Development (Exempted Development) (No. 4) Regulations 2022:**  
These regulations, introduced in response to the ongoing humanitarian crisis, allow for the temporary use of certain properties to accommodate persons seeking asylum or international protection. Under these provisions, a change-of-use for residential accommodation for such individuals can be exempted, provided it meets the regulatory requirements and timelines.
- 2. Article 20F of the Planning and Development Regulations 2001 (as amended):**  
Article 20F provides specific exemptions for the change-of-use of a building to temporary residential accommodation for persons seeking international protection. It explicitly states that such change-of-use is permitted where the building has been vacant for more than 12 months and the use is temporary in nature, aligning with the current proposal.
- 3. Section 4(1)(h) of the Planning and Development Act 2000 (as amended):**  
This section allows for works that are necessary for the purposes of maintenance, improvement, or other alterations that affect only the interior of the structure and do not materially affect the external appearance. Since the



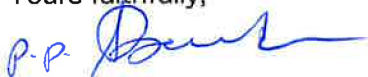
proposed use will require minimal to no external alterations, this further supports the exemption.

-

Based on the above, I respectfully submit that the proposed change-of-use of the property at Mitchel Street, Thurles to temporary residential accommodation for refugees is exempt from the requirement to obtain planning permission, under the provisions of the Planning and Development Act 2000 (as amended), the Planning and Development Regulations 2001 (as amended), and the Planning and Development (Exempted Development) (No. 4) Regulations 2022, including Article 20F.

I kindly request that the Planning Authority issue a formal determination under Section 5 of the Act at your earliest convenience. Should you require any additional information or clarification, please do not hesitate to contact me.

Yours faithfully,



Patrick O Toole, MRIAI

# Planning Pack Map



Tailte  
Éireann

CENTRE:  
COORDINATES:  
ITM: 61250,658939  
20 JAN 2025  
PUBLISHED:  
ORDER NO.:  
12/12/2024 50439269\_1  
FILE NO: 55125105

MAP SERIES:  
1:1,000  
1:1,000

MAP SHEETS:  
4696-07  
4696-12

meitheal  
architects  
OSI LICENCE NO.:  
CYAL50309657

## COMPILED AND PUBLISHED BY:

Tailte Éireann,  
Phoenix Park,  
Dublin 8,  
Ireland.  
D08F6E4

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The representation on this map  
of a road, track or footpath  
is not evidence of the existence  
of a right of way.

This topographic map  
does not show  
legal property boundaries,  
nor does it show  
ownership of physical features.

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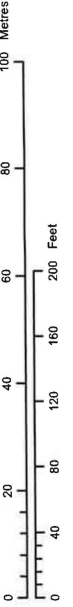
Site Boundary Line



LEGEND:  
The legend visit  
[www.tailte.ie](http://www.tailte.ie) and search for  
'Large Scale Legend'

CAPTURE RESOLUTION:  
The map is accurate to the  
resolution at which they were captured.  
Output scale is not indicative of data capture scale.  
Further information is available at:  
[www.tailte.ie](http://www.tailte.ie); search 'Capture Resolution'

OUTPUT SCALE: 1:1,000



THIS DRAWING IS FOR PLANNING PERMISSION PURPOSES ONLY. FURTHER DRAWINGS AND STUDIES WILL BE REQUIRED FOR CONSTRUCTION AND TO ENSURE COMPLIANCE WITH RELEVANT BUILDING REGULATIONS AND STANDARDS.

Rev	Ch	Change Name	Date
P01	Ch 187	Issued for Section 5 Application	16/01/2025

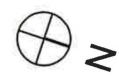
RECEIVED  
TIPPERARY CC COUNCIL  
20 JAN 2025  
PLANNING SECTION  
FILE NO. 25/25/05  
Site Boundary Line

- Legend:
- Existing
  - Proposed
  - Site Boundary Line
  - Extent to Remain (Authorised Development as per conversation with Tipperary County Council Planning 29.11.24)
  - Extent to Demolished (Unauthorised Development) as per conversation with Tipperary County Council Planning 29.11.24
  - Access to the Building
  - Number of Room Occupants

NOTES:

All sanitary facilities are designed in accordance with TGD Part M, 2022 regulations and the Guidance for Development of New Emergency Accommodation by the Department of Housing, Planning, and Local Govern.

TOTAL AREAS SCHEDULE (GIA)	
Level	Area
Ground Floor	602.5
First Floor	602.7
	1,205.2 m <sup>2</sup>



meitheal architects  
Client: MC2  
Project: Mixed Use  
Site: Mitchell St, Thurles, Co. Tipperary  
Title: Proposed over Existing Temp. Accommodation Scheme - Ground & First Floor Plan Layout  
Project Architect: Patrick O'Toole  
Project No: 231028-MA-XX-ZZ-DR-A-1101-P0  
S:\2023\MA231028\Working Drawings\231028-085-001-K.plt Friday 17 January 2025

Issued for Section 5 Application	AB	PS	16/01/2025	P01
Revision Description	dm	cd	date	rev



Proposed First Floor Plan Layout  
1:200

Proposed Ground Floor Plan Layout  
1:200



Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann  
Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary  
E91 N512

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
An tAonach,  
Co. Thiobraid Árann  
Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary  
E45 A099

t 0818 06 5000  
e customerservice  
@tipperarycoco.ie  
[tipperarycoco.ie](http://tipperarycoco.ie)

Date: 22<sup>nd</sup> January, 2025

Our Ref: S5/25/05

Civic Offices, Nenagh

**Kilbrin Homes Ltd  
C/O Patrick O'Toole  
Meitheal Architects  
One South Mall  
Cork  
T12 CCN3**

**Re: Application for a Section 5 Declaration – The temporary change-of-use of the property to accommodate displaced persons or persons seeking international protection at Former Fitzgibbons Furniture Store, Mitchel Street, Thurles, Co. Tipperary.**

Dear Mr O'Toole,

I acknowledge receipt of your application for a Section 5 Declaration received on 22<sup>nd</sup> January, 2025, in connection with the above.

I wish to advise that you will be notified of a decision on your application in due course.

Yours sincerely

  
for **Director of Services**

**TIPPERARY COUNTY COUNCIL**  
**Application for Declaration under Section 5**

Planning & Development Act 2000, as amended  
Planning & Development Regulations 2001, as amended

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<b>Planning Reference:</b>	Section 5/25/05
<b>Applicant:</b>	Kilbrin Homes Ltd.
<b>Development Address:</b>	Former Fitzgibbon Furniture Store, Mitchel Street, Thurles, Co. Tipperary
<b>Proposed Development:</b>	Temporary change of use of the property to accommodate displaced persons seeking international protection as set out in S.I 376/2023).

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**1. GENERAL**

On the 20<sup>th</sup> January 2025 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended by Patrick O' Toole on behalf of Kilbrin Homes Ltd as to whether or not the following works constituted development and if so, whether same was exempted development:

*"Temporary change of use of the property to accommodate displaced persons seeking international protection as set out in S.I 376/2023)."*

The application as submitted includes;

- Section 5 application form
- Cover Letter
- Site Location Map
- Proposed floor plans

The submitted application form and cover letter state minimal to no external alterations are proposed.

**2. STATUTORY PROVISIONS**

The following statutory provisions are relevant to this referral case;

Section 2(1) of the Planning and Development Act, 2000, as amended, states as follows;

*"In this Act, except where the context otherwise requires – "development" has the meaning assigned to it by Section 3 and development shall be construed accordingly."*

And,

*"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) of the Planning and Development Act 2000, as amended, states 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.”*

Section 4 provides for Exempted Development and Section 4(1) sets out works which shall be exempted development for the purposes of the Planning and Development Act 2000, as amended. Section 4(2)(a) of the same Act states 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) of the Planning and Development Act 2000, as amended, states as follows:-

*Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

Section 57 (Works affecting character of protected structures or proposed protected structures) is not considered relevant as the Section 5 relates to a change of use only.

### **Planning and Development Regulations, 2001, as amended**

Article 5 defines

**“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(1) states;

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.

Class 14(h), 14(i), 14(j) and Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) is relevant and are set out below.

Change of use CLASS 14	
(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	

<p>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</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>
<p><i>Temporary structures and uses</i> CLASS 20F</p> <p>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.</p>	<ol style="list-style-type: none"> <li>1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection</li> <li>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<sup>1</sup> comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001<sup>2</sup>.</li> <li>3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.</li> <li>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.</li> <li>5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.</li> <li>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.</li> <li>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).</li> <li>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</li> </ol>

Article 9 states - Restrictions on exemption

*Article 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,*

The proposal does not contravene any permission associated with the development.

*(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,*

There is no proposal to open an access

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users,*

There is no proposal to alter access etc so the proposal does not endanger public safety

*(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,*

N/A

*(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,*

The main building has been extended without the benefit of planning permission. Furthermore, a shed to the rear of the site does not appear to have planning permission. The applicant has proposed to demolish such structures however the floor area of such structures has not been provided and therefore it is unknown whether the applicant can avail of the exemption set out under Class 50 (a), Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

*(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,*

There is no objective in the Development Plan in relation to the continuance of the building for use as a furniture store/retail unit

Article 10 legislates for a change of use and article 10(1) states the following:

“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.”

S.I. No. 306 of 2022 EUROPEAN UNION (PLANNING AND DEVELOPMENT) (DISPLACED PERSONS FROM UKRAINE TEMPORARY PROTECTION) REGULATIONS 2022

Section 391 of said regulations states:

3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons

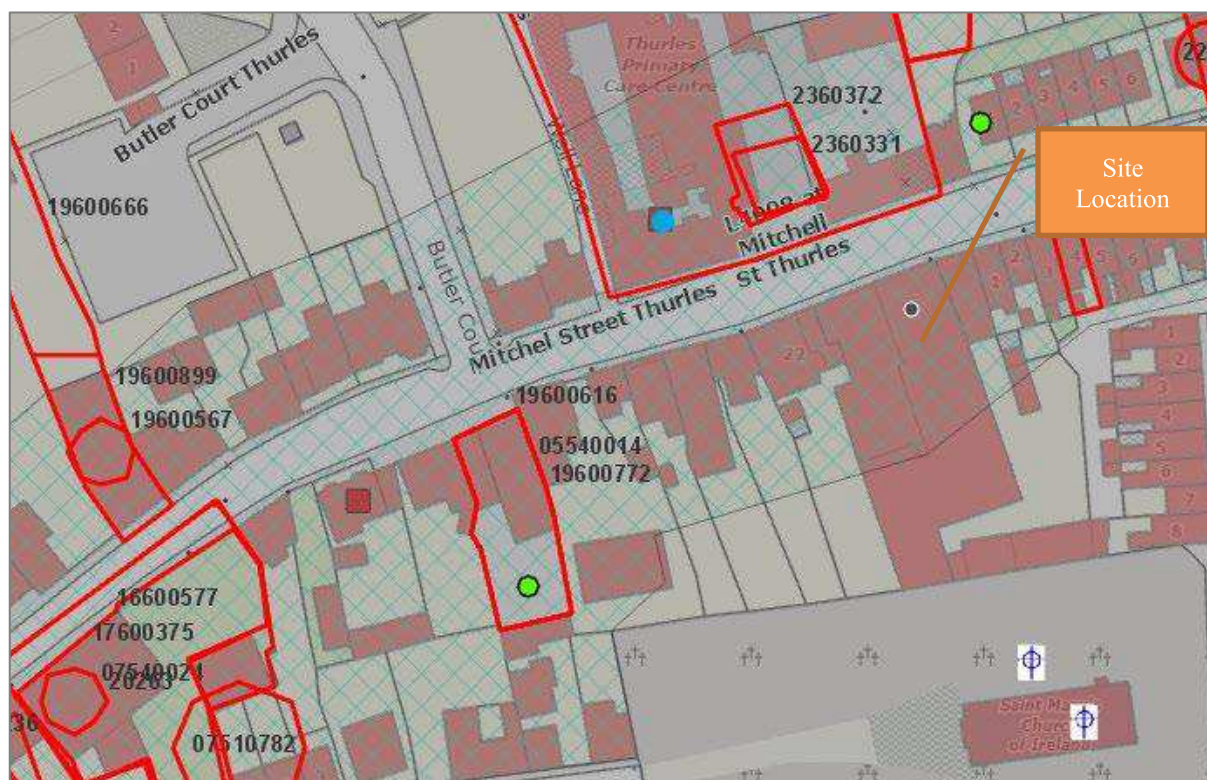
The schedule under said regulations are as follows:

1. Reception and integration facilities.
2. Residential accommodation, including ancillary recreational and sporting facilities.
3. Medical and other health and social care accommodation.
4. Education and childcare facilities, including ancillary recreational and sporting facilities.
5. Emergency management coordination facilities.
6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.
7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

### **3. ASSESSMENT**

#### ***a. Site Location***

The site is situated within the development plan boundary of Thurles town on Mitchell Street. The site is located within a zone of archaeological potential and within the Thurles ACA.



#### ***b. Relevant Planning History***

50/192	Reconstruction of a building	Permission Granted
50/869	Reroof building and extend over adjoining area	Permission Granted
50/1192	Demolish house and provide unloading area and window display	Permission Granted

#### ***C. Assessment***

A) "Is or is not Development"

In order for a change of use to be considered development, it must be a material change in use as per the definition of development provided in Section 3(1)(a) of the Planning and Development Act 2000, as amended.

I consider that the nature and characteristics of a facility accommodating international protection applicants is materially different to that of a furniture store and warehouse. It is my opinion therefore that the change of use of a shop to a facility accommodating international protection applicants is a material change of use which constitutes "*development*" within the meaning of Section 3 of the Act.

While the Declaration application relates to the temporary change of use of the property a review of the submitted plans show that works are proposed. The application does not include existing floor plans therefore it is difficult to determine the extent of proposed works. The applicant also proposes to construct 2 no. temporary structures to the rear of the building; denoted as laundry room and storage. The applicant has not provided elevation drawings of proposed structures. Further information should be sought to determine whether the declaration is limited to use only or whether it extends to the works proposed. If the latter is to be included full details of the works proposed are required and an existing building survey drawing is required so that the proposed changes can be compared against same.

It is also noted that the drawings indicate proposals to demolish structures on the site that are unauthorised. There is no issue with removal of unauthorised structures

B) "Is or is not Exempted Development"

In considering whether the exemptions available under Class 20F can be availed of in this instance it is important to note that these exemptions provide for displaced persons or persons seeking international protection. It is noted the application refers to displaced persons or persons seeking international protection which it is considered would fall under this category.

**"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;

It is considered that the use of the furniture store and warehouse (which can reasonably be considered as a shop) for the purposes of accommodating displaced persons or persons seeking international protection, may avail of the exemptions set out under Class 20F of Part 1 of Schedule 2 of the Regulations. In line with condition / limitation 5 of Class 20F the correspondence included with the Declaration constitutes notification of the change of use taking place.

As stated further information is required to establish the scope of the request noting the works proposed.

C) Restrictions under Article 9

This can be evaluated on receipt of the further information.

**4. RECOMMENDATION**

I recommend that the applicant should be requested to submit the following further information:

1. The Planning Authority note the Declaration application relates to the temporary change of use of the property. However a review of the submitted plans show that works are proposed.

The applicant is requested to confirm whether the declaration request is limited to the change of use only or whether it extends to the works. If the latter is to be included full details of the works proposed are required and an existing building survey drawing is required so that the proposed changes can be compared against same.

Signed: 

Date: 12/02/2025

Executive Planner

A/Senior Executive Planner: 

Date: 14/2/2025

## HABITATS DIRECTIVE APPROPRIATE ASSESSMENT (AA) SCREENING REPORT

### STEP 1. Description of the project/proposal and local site characteristics:

(a) File Reference No:	S5/25/05
(b) Brief description of the project or plan:	As per planners report
(c) Brief description of site characteristics:	As per planners report
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	None

### STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.

European Site (code)	List of Qualifying Interest/Special Conservation Interest <sup>1</sup>	Distance proposed development <sup>2</sup> (km)	Connections (Source-Pathway-Receptor)	Considered further screening Y/N
Lower River Suir SAC 002137	<a href="https://www.npws.ie/protected-sites/sac/002137">https://www.npws.ie/protected-sites/sac/002137</a>	Less than 15km	None	No

### STEP 3. Assessment of Likely Significant Effects

(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:

Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
<b>Construction phase e.g.</b> <ul style="list-style-type: none"> <li>Vegetation clearance</li> <li>Demolition</li> <li>Surface water runoff from soil excavation/infill/landscaping (including borrow pits)</li> <li>Dust, noise, vibration</li> <li>Lighting disturbance</li> <li>Impact on groundwater/dewatering</li> <li>Storage of excavated/construction materials</li> <li>Access to site</li> <li>Pests</li> </ul>	No works proposed. Proposal relates to a change of use only.
<b>Operational phase e.g.</b> <ul style="list-style-type: none"> <li>Direct emission to air and water</li> <li>Surface water runoff containing contaminant or sediment</li> <li>Lighting disturbance</li> <li>Noise/vibration</li> <li>Changes to water/groundwater due to drainage or abstraction</li> <li>Presence of people, vehicles and activities</li> <li>Physical presence of structures (e.g. collision risks)</li> <li>Potential for accidents or incidents</li> </ul>	No works proposed. Proposal relates to a change of use only. Existing hotel
In-combination/Other	

**(b) Describe any likely changes to the European site:**

Examples of the type of changes to give consideration to include:	None
<ul style="list-style-type: none"> <li>• Reduction or fragmentation of habitat area</li> <li>• Disturbance to QI species</li> <li>• Habitat or species fragmentation</li> <li>• Reduction or fragmentation in species density</li> <li>• Changes in key indicators of conservation status value (water or air quality etc.)</li> <li>• Changes to areas of sensitivity or threats to QI</li> <li>• Interference with the key relationships that define the structure or ecological function of the site</li> </ul>	

**(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?**

☐ Yes ☒ No

**STEP 4. Screening Determination Statement****The assessment of significance of effects:**

Describe how the proposed development (alone or in-combination) is/is **not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

No works proposed. Proposal relates to a change of use only. Existing hotel and gold club discharges to the Multeen and is subject to a waste licence. **Proposal is not likely** to have **significant** effects on European site(s) in view of its conservation objectives.

**Conclusion:**

	Tick as Appropriate:	Recommendation:
(i) It is clear that there is <b>no likelihood</b> of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.
(ii) It is <b>uncertain</b> whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
(iii) <b>Significant effects</b> are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
<b>Signature and Date of Recommending Officer:</b>	Naomi Scully	<b>Date:</b> 12/02/2025

EIA Pre-Screening Establishing a development is a 'sub-threshold development'			
File Reference:		S5/25/05	
Development Summary:		Change of use of a former hotel into a direct provision accommodation Centre to provide accommodation to international protection applicants.	
Was a Screening Determination carried out under Section 176A-C?		<input type="checkbox"/> Yes, no further action required <input checked="" type="checkbox"/> No, Proceed to <b>Part A</b>	
<b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)			
<input type="checkbox"/> Yes, specify class _____		<b>EIA is mandatory</b> No Screening required	
<input checked="" type="checkbox"/> No		Proceed to <b>Part B</b>	
<b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) <b>and</b> does it meet/exceed the thresholds? (Tick as appropriate)			
<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2		<b>No Screening required</b>	
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 <b>and</b> meets/exceeds the threshold, specify class (including threshold): _____		<b>EIA is mandatory</b> No Screening required	
<input type="checkbox"/> Yes the project is of a type listed <b>but</b> is <i>sub-threshold</i> : _____		Proceed to <b>Part C</b>	
<b>C. If Yes</b> , has Schedule 7A information/screening report been submitted?			
<input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant		<b>Screening Determination required</b>	
<input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant		<b>Preliminary Examination required</b>	
Signature and Recommending Officer:	Date of	Naomi Scully	Date: 12.02.2025



Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Clonmel,  
Co. Tipperary

E91 N512

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
An tAonach,  
Co. Thiobraid Árann

Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary

E45 A099

t 0818 06 5000  
e customerservice  
@tipperarycoco.ie

[tipperarycoco.ie](http://tipperarycoco.ie)

Date: 14<sup>th</sup> February, 20245    Our Ref: S5/25/05

Civic Offices, Nenagh

**Kilbrin Homes Ltd  
C/O Patrick O'Toole  
Meitheal Architects  
One South Mall  
Cork  
T12 CCN3**

**Re: Application for a Section 5 Declaration – Temporary change of use of the property to accommodate displaced persons seeking international protection as set out in S.I 376/2023 at Former Fitzgibbon Furniture Store, Mitchel Street, Thurles, Co. Tipperary**

Dear Mr O'Toole,

I refer to an application received from you on 20<sup>th</sup> January, 2025 requesting a Declaration from this Planning Authority as to whether or not certain works constitute development within the meaning of the Planning and Development Act 2000, as amended.

Further information is requested as follows;

It is recommended to request the following further information pursuant to Section 5 (2) (b) of the Planning and Development Act 2000, as amended

1. The Planning Authority note the Declaration application relates to the temporary change of use of the property. However a review of the submitted plans show that works are proposed.

The applicant is requested to confirm whether the declaration request is limited to the change of use only or whether it extends to the works. If the latter is to be included full details of the works proposed are required and an existing building survey drawing is required so that the proposed changes can be compared against same.

**Further consideration of your request for a declaration cannot be considered until the above information is received.**

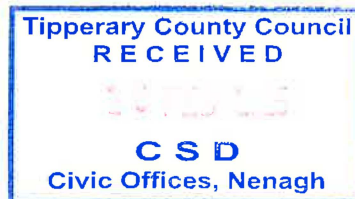
Yours sincerely

*Geraldine Quinn*

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for **Director of Services**

**The Planning Department  
Tipperary County Council  
Civic Offices  
Nenagh  
County Tipperary**



25<sup>th</sup> February, 2025

Our ref: 231028/231028-let-003/POT/AW

Dear Sir/Madam,

**Re: Application for a Section 5 Declaration in respect of proposed change-of-use of property at Mitchel Street, Thurles, Co. Tipperary, E41 H932.**

Thank you for your correspondence dated 14.02.2025.

We confirm that the declaration is sought only in respect of the principle of the change-of-use.

The property for which the declaration is sought is deemed authorised development from a planning perspective as confirmed in correspondence with your Ms. Ann Marie Devaney dated 29.11.2024.

Notwithstanding same, please note the following;

- No external alterations are proposed.
- The submission of internal layouts to support the declaration was for illustrative purposes only. The layouts are being developed in dialogue with the Department of Children, Equality, Disability, Integration and Youth and are a work in progress. Evidence of the Department's interest in the project is enclosed.
- All internal works will be exempted development as described in Section 4(1)(h) of the Planning and Development Regulations or be subject to an application for planning permission in due course, if necessary.

Thank you again for your response and we trust that this clarifies the matter.

We look forward to the issuance of the Section 5 Declaration at your earliest convenience.

Yours faithfully,

*Patrick O Toole*

Patrick O Toole, MRIAI

Encl. Letter of Intent



Kilbrin Homes LTD,  
Penrose Wharf,  
Penrose Quay,  
Cork,  
Ireland,  
T23 XN53.

31<sup>st</sup> July 2024

**RE: Provision of Accommodation for International Protection Applicants at Fitzgibbons furniture store and warehouse, Mitchel street, Thurles, Co.Tipperary .**

Dear Mr. Russell,

I can confirm that the Department is interested utilising the above property for the accommodation of International Protection applicants subject to all planning, change of use, building control, Certificate of Compliance on Completion (CCC), fire and insurance certifications being in place and subject to contract/contract denied.

If you have any queries regarding the above, please contact me at [Sean.Woods@equality.gov.ie](mailto:Sean.Woods@equality.gov.ie), 015393836 or +353 087 655 7461.

Yours sincerely,



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Seán Woods



Comhairle Contae Thiobraid Árann  
Tipperary County Council

Comhairle Contae  
Thiobraid Árann,  
Oifigí Cathartha,  
Cluain Meala,  
Co. Thiobraid Árann  
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Co. Thiobraid Árann  
Tipperary County Council,  
Civic Offices, Nenagh,  
Co. Tipperary  
E45 A099

t 0818 06 5000/600  
e customerservice  
@tipperarycoco.ie

[tipperarycoco.ie](http://tipperarycoco.ie)

Date: 26<sup>th</sup> February, 2025

Our Ref: S5/25/05

Civic Offices, Nenagh

**Kilbrin Homes Ltd  
C/O Patrick O' Toole  
Meitheal Architects  
One South Mall  
Cork  
T12 CCN3**

**SCANNED**

**Re: Application for a Section 5 Declaration re.: Temporary change of use of the property to accommodate displaced persons seeking international protection as set out in S.I 376/2023) at Former Fitzgibbon Furniture Store, Mitchel Street, Thurles, Co. Tipperary**

Dear Mr O'Toole

I acknowledge receipt of Further Information received on 26<sup>th</sup> February, 2025 in connection with the above.

I wish to advise that you will be notified of a decision on your application in due course.

Yours sincerely

  
for **Director of Services**

**TIPPERARY COUNTY COUNCIL**  
**Application for Declaration under Section 5**

Planning & Development Act 2000, as amended  
Planning & Development Regulations 2001, as amended

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<b>Planning Reference:</b>	Section 5/25/05
<b>Applicant:</b>	Kilbrin Homes Ltd.
<b>Development Address:</b>	Former Fitzgibbon Furniture Store, Mitchel Street, Thurles, Co. Tipperary
<b>Proposed Development:</b>	Temporary change of use of the property to accommodate displaced persons seeking international protection as set out in S.I 376/2023).

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**1. GENERAL**

On the 20<sup>th</sup> January 2025 a request was made for a declaration under Section 5 of the Planning and Development Act, 2000 as amended by Patrick O' Toole on behalf of Kilbrin Homes Ltd as to whether or not the following works constituted development and if so, whether same was exempted development:

*"Temporary change of use of the property to accommodate displaced persons seeking international protection as set out in S.I 376/2023)."*

The application as submitted includes;

- Section 5 application form
- Cover Letter
- Site Location Map
- Proposed floor plans

The submitted application form and cover letter state minimal to no external alterations are proposed.

**2. STATUTORY PROVISIONS**

The following statutory provisions are relevant to this referral case;

Section 2(1) of the Planning and Development Act, 2000, as amended, states as follows;

*"In this Act, except where the context otherwise requires – "development" has the meaning assigned to it by Section 3 and development shall be construed accordingly."*

And,

*"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) of the Planning and Development Act 2000, as amended, states 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.”*

Section 4 provides for Exempted Development and Section 4(1) sets out works which shall be exempted development for the purposes of the Planning and Development Act 2000, as amended. Section 4(2)(a) of the same Act states 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) of the Planning and Development Act 2000, as amended, states as follows:-

*Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

Section 57 (Works affecting character of protected structures or proposed protected structures) is not considered relevant as the Section 5 relates to a change of use only.

### **Planning and Development Regulations, 2001, as amended**

Article 5 defines

**“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(1) states;

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.

Class 14(h), 14(i), 14(j) and Class 20F of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) is relevant and are set out below.

Change of use CLASS 14	
(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	

<p>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</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>
<p><i>Temporary structures and uses</i> CLASS 20F</p> <p>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.</p>	<ol style="list-style-type: none"> <li>1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection</li> <li>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<sup>1</sup> comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001<sup>2</sup>.</li> <li>3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.</li> <li>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.</li> <li>5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.</li> <li>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.</li> <li>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).</li> <li>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</li> </ol>

#### Article 9 states - Restrictions on exemption

*Article 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,*

The proposal does not contravene any permission associated with the development.

*(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,*

There is no proposal to open an access

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users,*

There is no proposal to alter access etc so the proposal does not endanger public safety

*(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,*

N/A

*(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,*

The main building has been extended without the benefit of planning permission. Furthermore, a shed to the rear of the site does not appear to have planning permission. The applicant has proposed to demolish such structures however the floor area of such structures has not been provided and therefore it is unknown whether the applicant can avail of the exemption set out under Class 50 (a), Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended).

*(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,*

There is no objective in the Development Plan in relation to the continuance of the building for use as a furniture store/retail unit

Article 10 legislates for a change of use and article 10(1) states the following:

“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.”

S.I. No. 306 of 2022 EUROPEAN UNION (PLANNING AND DEVELOPMENT) (DISPLACED PERSONS FROM UKRAINE TEMPORARY PROTECTION) REGULATIONS 2022

Section 391 of said regulations states:

3. (1) The Act of 2000 (other than sections 181A to 181C) shall not apply to the classes of development specified in the Schedule carried out by, or on behalf of, a State authority during the relevant period for the purposes of providing temporary protection to displaced persons

The schedule under said regulations are as follows:

1. Reception and integration facilities.
2. Residential accommodation, including ancillary recreational and sporting facilities.
3. Medical and other health and social care accommodation.
4. Education and childcare facilities, including ancillary recreational and sporting facilities.
5. Emergency management coordination facilities.
6. Structures or facilities ancillary to development referred to in paragraphs 1 to 5, including administration and storage facilities.
7. Infrastructure and other works ancillary to development referred to in paragraphs 1 to 6.

### **3. ASSESSMENT**

#### ***a. Site Location***

The site is situated within the development plan boundary of Thurles town on Mitchell Street. The site is located within a zone of archaeological potential and within the Thurles ACA.



#### ***b. Relevant Planning History***

50/192	Reconstruction of a building	Permission Granted
50/869	Reroof building and extend over adjoining area	Permission Granted
50/1192	Demolish house and provide unloading area and window display	Permission Granted

#### ***C. Assessment***

A) "Is or is not Development"

In order for a change of use to be considered development, it must be a material change in use as per the definition of development provided in Section 3(1)(a) of the Planning and Development Act 2000, as amended.

I consider that the nature and characteristics of a facility accommodating international protection applicants is materially different to that of a furniture store and warehouse. It is my opinion therefore that the change of use of a shop to a facility accommodating international protection applicants is a material change of use which constitutes "*development*" within the meaning of Section 3 of the Act.

While the Declaration application relates to the temporary change of use of the property a review of the submitted plans show that works are proposed. The application does not include existing floor plans therefore it is difficult to determine the extent of proposed works. The applicant also proposes to construct 2 no. temporary structures to the rear of the building; denoted as laundry room and storage. The applicant has not provided elevation drawings of proposed structures. Further information should be sought to determine whether the declaration is limited to use only or whether it extends to the works proposed. If the latter is to be included full details of the works proposed are required and an existing building survey drawing is required so that the proposed changes can be compared against same.

It is also noted that the drawings indicate proposals to demolish structures on the site that are unauthorised. There is no issue with removal of unauthorised structures

B) "Is or is not Exempted Development"

In considering whether the exemptions available under Class 20F can be availed of in this instance it is important to note that these exemptions provide for displaced persons or persons seeking international protection. It is noted the application refers to displaced persons or persons seeking international protection which it is considered would fall under this category.

**"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;

It is considered that the use of the furniture store and warehouse (which can reasonably be considered as a shop) for the purposes of accommodating displaced persons or persons seeking international protection, may avail of the exemptions set out under Class 20F of Part 1 of Schedule 2 of the Regulations. In line with condition / limitation 5 of Class 20F the correspondence included with the Declaration constitutes notification of the change of use taking place.

As stated further information is required to establish the scope of the request noting the works proposed.

C) Restrictions under Article 9

This can be evaluated on receipt of the further information.

**4. RECOMMENDATION**

I recommend that the applicant should be requested to submit the following further information:

1. The Planning Authority note the Declaration application relates to the temporary change of use of the property. However a review of the submitted plans show that works are proposed.

The applicant is requested to confirm whether the declaration request is limited to the change of use only or whether it extends to the works. If the latter is to be included full details of the works proposed are required and an existing building survey drawing is required so that the proposed changes can be compared against same.

Signed: 

Date: 12/02/2025

Executive Planner

A/Senior Executive Planner: 

Date: 14/2/2025

## 5. FURTHER INFORMATION RESPONSE & ASSESSMENT

Further information was requested on the 14<sup>th</sup> February 2025 and a response was received on the 26<sup>th</sup> February 2025 as set out below:

*It is recommended to request the following further information pursuant to Section 5 (2) (b) of the Planning and Development Act 2000, as amended*

1. *The Planning Authority note the Declaration application relates to the temporary change of use of the property. However, a review of the submitted plans show that works are proposed.*

*The applicant is requested to confirm whether the declaration request is limited to the change of use only or whether it extends to the works. If the latter is to be included full details of the works proposed are required and an existing building survey drawing is required so that the proposed changes can be compared against same*

In response to item no.1 the applicant submitted a response to the Planning Authority which states a declaration is only being sought with respect to the principle of the change of use.

The response further states the following:

- No external alterations are proposed
- The submission of internal layouts to support the declaration was for illustrative purposes only
- All internal works will be exempted development as described in Section 4(1)(h) of the Planning and Development Regulations or be subject to an application for planning permission in due course, if necessary.

## 6. ASSESSMENT

### A) "Is or is not Development"

In order for a change of use to be considered development, it must be a material change in use as per the definition of development provided in Section 3(1)(a) of the Planning and Development Act 2000, as amended.

I consider that the nature and characteristics of a facility accommodating international protection applicants is materially different to that of a furniture store and warehouse. It is my opinion therefore that the change of use of a shop to a facility accommodating international protection applicants is a material change of use which constitutes "*development*" within the meaning of Section 3 of the Act.

### B) "Is or is not Exempted Development"

In considering whether the exemptions available under Class 20F can be availed of in this instance it is important to note that these exemptions provide for displaced persons or persons seeking international protection. It is noted the application refers to displaced persons or persons seeking international protection which it is considered would fall under this category.

**"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;

It is considered that the use of the furniture store and warehouse (which can reasonably be considered as a shop) for the purposes of accommodating displaced persons or persons seeking international

protection, avail of the exemptions set out under Class 20F of Part 1 of Schedule 2 of the Regulations. In line with condition / limitation 5 of Class 20F the correspondence included with the Declaration constitutes notification of the change of use taking place.

Noting the further information reply the scope of the Declaration and this assessment relates to a change of use only.

C) Restrictions under Article 9

I note no restrictions under Article 9 that would apply.

**7. REQUIREMENT FOR Appropriate Assessment (AA) & Environmental Impact Assessment (EIA)**

AA

The proposal has been assessed having regard to the requirements of the EU Habitats Directive. The proposed development has been screened for AA and it has been determined that an AA is not required. See also Appropriate Assessment (AA) screening report attached.

EIA

The proposal is not a category of project that requires EIA.

**8. RECOMMENDATION**

A question has arisen as to whether

*“The temporary change of use of the property to accommodate displaced persons seeking international protection (as set out in S.I 376/2023).”*

At Former Fitzgibbon Furniture Store, Mitchel Street, Thurles, Co. Tipperary

*Is development and is or is not exempted development*

Tipperary County Council, in considering this referral, had regard particularly to

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended
- b) Article 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended,
- c) Class 20(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- d) The details as submitted with the application AND details submitted by the applicant as part of the further information response on the 26th February 2025.

Tipperary County Council has concluded that –

The temporary change of use of the property to accommodate displaced persons seeking international protection (as set out in S.I 376/2023) is development and is exempted development. The proposal meets the exempted development provisions as set out under Class 20(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

**Advice Note:** This Section 5 Declaration refers to a temporary change of use only and does not include for any works.

Signed: rose.

Executive Planner

Date: 6<sup>th</sup> March 2025

A/Senior Executive Planner:

Jonathan Flood

Date: 12/03/2025

## HABITATS DIRECTIVE APPROPRIATE ASSESSMENT (AA) SCREENING REPORT

### STEP 1. Description of the project/proposal and local site characteristics:

(a) File Reference No:	S5/25/05
(b) Brief description of the project or plan:	As per planners report
(c) Brief description of site characteristics:	As per planners report
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	None
(e) Response to consultation:	None

### STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.

European Site (code)	List of Qualifying Interest/Special Conservation Interest <sup>1</sup>	Distance from proposed development <sup>2</sup> (km)	Connections (Source-Pathway-Receptor)	Considered further screening Y/N
Lower River Suir SAC 002137	<a href="https://www.npws.ie/protected-sites/sac/002137">https://www.npws.ie/protected-sites/sac/002137</a>	Less than 15km	None	No

### STEP 3. Assessment of Likely Significant Effects

(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:

Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
<b>Construction phase e.g.</b> <ul style="list-style-type: none"> <li>Vegetation clearance</li> <li>Demolition</li> <li>Surface water runoff from soil excavation/infill/landscaping (including borrow pits)</li> <li>Dust, noise, vibration</li> <li>Lighting disturbance</li> <li>Impact on groundwater/dewatering</li> <li>Storage of excavated/construction materials</li> <li>Access to site</li> <li>Pests</li> </ul>	No works proposed. Proposal relates to a change of use only.
<b>Operational phase e.g.</b> <ul style="list-style-type: none"> <li>Direct emission to air and water</li> <li>Surface water runoff containing contaminant or sediment</li> <li>Lighting disturbance</li> <li>Noise/vibration</li> <li>Changes to water/groundwater due to drainage or</li> </ul>	No works proposed. Proposal relates to a change of use only. Existing shop

abstraction <ul style="list-style-type: none"> <li>• Presence of people, vehicles and activities</li> <li>• Physical presence of structures (e.g. collision risks)</li> <li>• Potential for accidents or incidents</li> </ul>													
In-combination/Other													
<b>(b) Describe any likely changes to the European site:</b>													
Examples of the type of changes to give consideration to include: <ul style="list-style-type: none"> <li>• Reduction or fragmentation of habitat area</li> <li>• Disturbance to QI species</li> <li>• Habitat or species fragmentation</li> <li>• Reduction or fragmentation in species density</li> <li>• Changes in key indicators of conservation status value (water or air quality etc.)</li> <li>• Changes to areas of sensitivity or threats to QI</li> <li>• Interference with the key relationships that define the structure or ecological function of the site</li> </ul>	None												
<b>(c) Are 'mitigation' measures necessary to reach a conclusion that likely significant effects can be ruled out at screening?</b>													
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No													
<b>STEP 4. Screening Determination Statement</b>													
<b>The assessment of significance of effects:</b>													
Describe how the proposed development (alone or in-combination) is/is <b>not likely</b> to have <b>significant</b> effects on European site(s) in view of its conservation objectives.													
No works proposed. Proposal relates to a change of use only. Existing hotel and gold club discharges to the Multyen and is subject to a waste licence. <b>Proposal is not likely</b> to have <b>significant</b> effects on European site(s) in view of its conservation objectives.													
<b>Conclusion:</b>													
	<table border="1"> <thead> <tr> <th></th> <th>Tick as Appropriate:</th> <th>Recommendation:</th> </tr> </thead> <tbody> <tr> <td>(i) It is clear that there is <b>no likelihood</b> of significant effects on a European site.</td> <td><input checked="" type="checkbox"/></td> <td>The proposal can be screened out: Appropriate assessment not required.</td> </tr> <tr> <td>(ii) It is <b>uncertain</b> whether the proposal will have a significant effect on a European site.</td> <td><input type="checkbox"/></td> <td> <input type="checkbox"/> Request further information to complete screening  <input type="checkbox"/> Request NIS  <input type="checkbox"/> Refuse planning permission               </td> </tr> <tr> <td>(iii) <b>Significant effects</b> are likely.</td> <td><input type="checkbox"/></td> <td> <input type="checkbox"/> Request NIS  <input type="checkbox"/> Refuse planning permission               </td> </tr> </tbody> </table>		Tick as Appropriate:	Recommendation:	(i) It is clear that there is <b>no likelihood</b> of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.	(ii) It is <b>uncertain</b> whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission	(iii) <b>Significant effects</b> are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
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Signature and Date of Recommending Officer:	<table border="1"> <tr> <td>Naomi Scully</td> <td>Date:</td> <td>06/03/2025</td> </tr> </table>	Naomi Scully	Date:	06/03/2025									
Naomi Scully	Date:	06/03/2025											

EIA Pre-Screening Establishing a development is a 'sub-threshold development'			
File Reference:		S5/25/05	
Development Summary:		"The temporary change of use of the property to accommodate displaced persons seeking international protection as set out in S.I 376/2023)."	
Was a Screening Determination carried out under Section 176A-C?		<input type="checkbox"/> Yes, no further action required <input checked="" type="checkbox"/> No, Proceed to <b>Part A</b>	
<b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)			
<input type="checkbox"/> Yes, specify class _____		<b>EIA is mandatory</b> No Screening required	
<input checked="" type="checkbox"/> No		Proceed to <b>Part B</b>	
<b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) <b>and</b> does it meet/exceed the thresholds? (Tick as appropriate)			
<input checked="" type="checkbox"/> No, the development is not a project listed in Schedule 5, Part 2		<b>No Screening required</b>	
<input type="checkbox"/> Yes the project is listed in Schedule 5, Part 2 <b>and</b> meets/exceeds the threshold, specify class (including threshold): _____		<b>EIA is mandatory</b> No Screening required	
<input type="checkbox"/> Yes the project is of a type listed <b>but</b> is <i>sub-threshold</i> : _____		Proceed to <b>Part C</b>	
<b>C. If Yes</b> , has Schedule 7A information/screening report been submitted?			
<input type="checkbox"/> Yes, Schedule 7A information/screening report has been submitted by the applicant		<b>Screening Determination required</b>	
<input type="checkbox"/> No, Schedule 7A information/screening report has not been submitted by the applicant		<b>Preliminary Examination required</b>	
Signature and Recommending Officer:	Date of	Naomi Scully	Date: 06.03.2025



**Original**

**TIPPERARY COUNTY COUNCIL**

**DELEGATED EMPLOYEE'S ORDER**

File Ref: **S5/25/05**      **Delegated Employee's Order No:** \_\_\_\_\_

**SUBJECT: Section 5 Declaration**

I, Sharon Kennedy, Director of Services, Tipperary County Council, by virtue of the powers delegated to me in accordance with the provisions of Section 154 of the Local Government Act 2001, as amended by Schedule 1, Part 1 of the Local Government Reform Act 2014 under Chief Executive's Order No. 40781 dated 2<sup>nd</sup> January, 2025, hereby order that pursuant to the provisions of the Planning and Development Act 2000, as amended, that an application under Section 5 from Kilbrin Homes Ltd., C/o Patrick O'Toole, Meitheal Architects, One South Mall, Cork, T12 CCN3, re: temporary change of use of property to accommodate displaced person or person seeking international protection as set out in S. I. 376/2023 at the Former Fitzgibbon Furniture Store, Mitchel St., Thurles, Co. Tipperary, is development and is exempted development.

**AND WHEREAS** Tipperary County Council, in considering this referral, had regard particularly to –

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- b) Article 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended,
- c) Class 20(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- d) The details as submitted with the application AND details submitted by the applicant as part of the further information response on the 26th February 2025.

Tipperary County Council has concluded that the temporary change of use of the property to accommodate displaced persons seeking international protection (as set out in S.I 376/2023) is development and is **exempted development**. The proposal meets the exempted development provisions as set out under Class 20(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

Advice Note: This Section 5 Declaration refers to a temporary change of use only and does not include for any works.

**Signed:**   
\_\_\_\_\_

**Date: 12/03/2025**

**Sharon Kennedy**

**Director of Services**

**Planning and Development (including Town Centre First),**

**Emergency Services and Emergency Planning and**

**Tipperary/Cahir/Cashel Municipal District**



Date: 12<sup>th</sup> March, 2025

Our Ref: S5/25/05

Civic Offices, Nenagh

Kilbrin Homes Ltd.,  
C/o Patrick O'Toole,  
Meitheal Architects,  
One South Mall,  
Cork, T12 CCN3

**Re: Declaration under Section 5 of the Planning and Development Act  
2000**

Dear sir/madam,

I refer to your application for a Section 5 Declaration received on 20<sup>th</sup> January, 2025, and 26<sup>th</sup> February, 2025 in relation to the following proposed works:

**temporary change of use of property to accommodate displaced person  
or person seeking international protection as set out in S. I. 376/2023  
at the Former Fitzgibbon Furniture Store, Mitchel St., Thurles, Co.  
Tipperary**

**WHEREAS** a question has arisen as to whether the proposed development is or is not exempted development:

**AND WHEREAS** Tipperary County Council, in considering this referral, had regard particularly to –

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- b) Article 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended,
- c) Class 20(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended,
- d) The details as submitted with the application AND details submitted by the applicant as part of the further information response on the 26th February 2025.

Tipperary County Council has concluded that the temporary change of use of the property to accommodate displaced persons seeking international

protection (as set out in S.I 376/2023) is development and is exempted development. The proposal meets the exempted development provisions as set out under Class 20(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended.

Advice Note: This Section 5 Declaration refers to a temporary change of use only and does not include for any works.

**NOTE:** Any person issued with a Declaration of a Planning Authority may refer the Declaration for review to An Bord Pleanála, 64 Marlborough Street, Dublin 1, within four (4) weeks of the date of issue of the Declaration and on payment of the prescribed fee.

Yours sincerely

A handwritten signature in cursive script, reading "Geraldine Quinn".

for **Director of Services**