

**OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED**

REFERENCE: DEC 24/68

NAME OF APPLICANT: Josh Maher and Katiemarie Lynch

ADDRESS FOR CORRESPONDENCE:

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the proposed rear extension, internal works, removal of garage door and installation of window is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Killane, Edenderry, Co. Offaly, R45 YC17.

WHEREAS a question has arisen as to whether the proposed works; extension to the rear of dwelling and including internal works, removal of garage door and installation of window of the dwelling is, or is not development, and, if so, is or is not exempted development at Killane, Edenderry, Co. Offaly R45 YC17.

AS INDICATED on the particulars received by the Planning Authority on the 18th June 2024.

AND WHEREAS Josh Maher and Katiemarie Lynch requested a declaration on the said question from Offaly County Council;

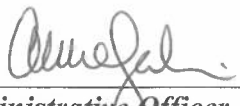
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- Section 2, 3(1), 4(1)(h) and 4(2)(a) of the Planning & Development Act 2000, (as amended).
- Article 6 of the Planning and Development regulations 2001 (as amended)
- Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 of the Planning & Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development having particular regard to 4(1)(h) of the aforementioned act and Schedule 2 Part I, Class 1 of the aforementioned regulations

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 proposed works (extension to the rear of dwelling and including internal works, removal of garage door and installation of window of the dwelling) **is development and is exempted development** at Killane, Edenderry, Co. Offaly R45 YC17.

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 included any submissions and observations received by it in accordance with statutory provisions.



Administrative Officer

12/07/24

Date

Note: 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.

Planning Report

Section 5 Declaration

File Reference:	Dec. 24/68
Question:	Whether or not the proposed rear extension, internal works, removal of garage door and installation of window is or is not development and is or is not exempted development at Killane, Edenderry, Co. Offaly R45 YC17
Applicant:	Josh Maher and Katiemarie Lynch
Correspondence Address:	
Location:	Killane, Edenderry, Co. Offaly R45 YC17

1. Introduction

The question has arisen as to, whether or not, the proposed rear extension, internal works, removal of garage door and installation of window is, or is not development, and is, or is not exempted development.

2. Background

The existing dwelling is located in Municipal District of Edenderry off the Regional Road R-441. In the *Offaly County Development Plan 2021-27* the area is classified as a *Rural Area under Strong Urban Influence* with a low sensitivity landscape classification.



Figure 1: site location map (red line boundary)

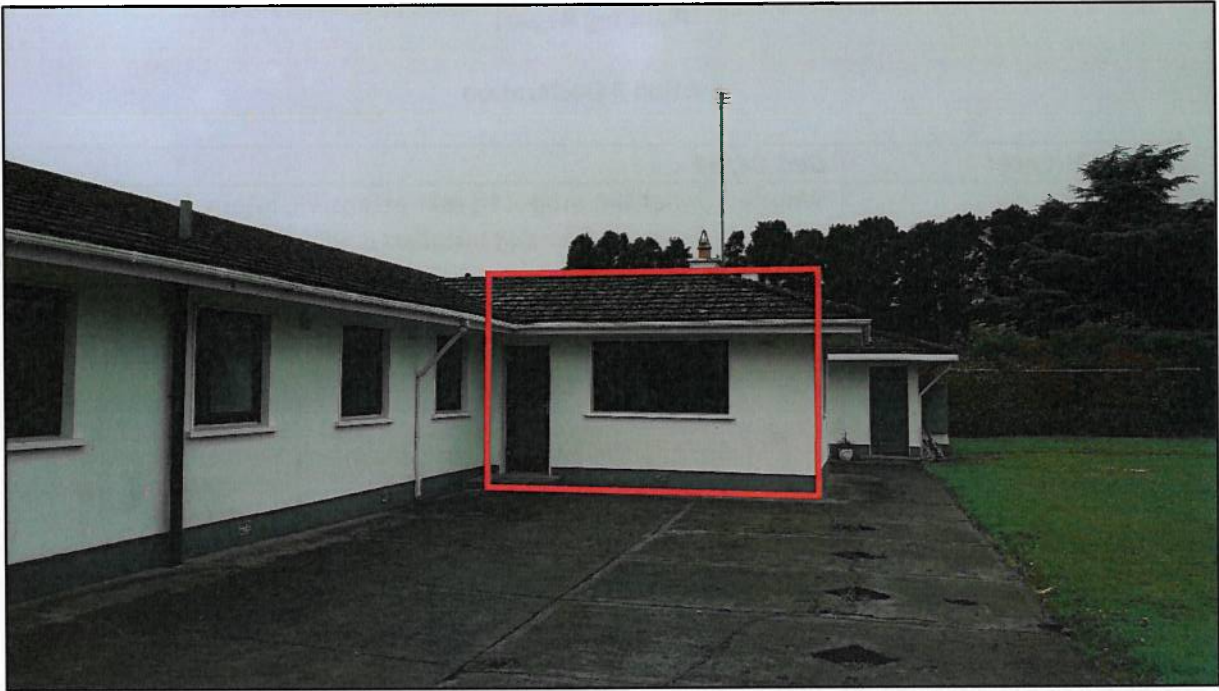


Photo 1: Rear of dwelling showing living room (outlined in red) to be extended

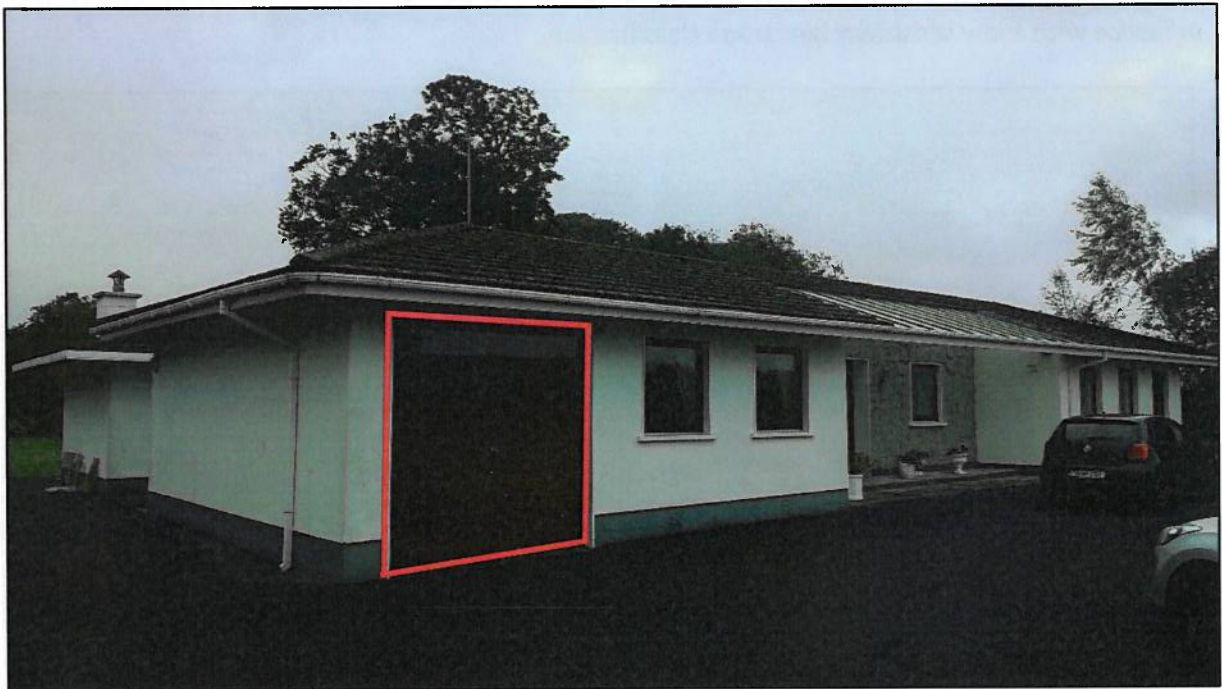


Photo 2: Front view of existing dwelling with garage door (outlined in red) to be removed and replaced with a window.

3. Site History

No relevant site history on this site or adjoining lands.

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:

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

“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.

“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

Section 4 (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.

5. Regulatory Provisions

Article 6 of the *Planning and Development Regulations 2001* (as amended) states, *inter alia*, that:

“Subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development

complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1”.

Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 specifies:

“The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.”

There are several conditions and limitations attached to Class 1, which are listed and assessed below.

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

2.(a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

6 Proposal by Applicants

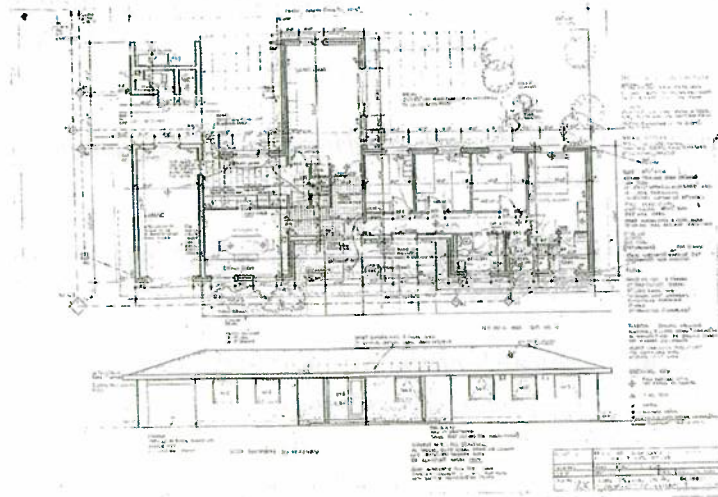
The Applicant has advised that they seek to build a rear extension, carry out internal works and removal of garage door and installation of window. All works to be carried out within the curtilage of the site.



Scan 1: Elevations of existing dwelling



Scan 2: Elevations of proposed development



Scan 3: Original site plan submitted in 1973

7. Assessment

The works detailed in this declaration are subject to the provisions of Class 1, in Part 1, of Schedule 2 of the *Planning and Development Regulations 2001* (as amended). Class 1 limitations to be complied with are as follows:

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

The house has not been extended recently (see Scan 3 above). The proposed extension to the existing living room is approx. 25sqm.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

Not applicable.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

The proposed extension will be at ground level only.

2.(a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

Not applicable. It is noted that the area to be demolished formed part of the original house on site.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

Not applicable.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been.

Not applicable.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

The proposed extension complies with this requirement.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

The proposed extension complies with this requirement.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

Not applicable.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

The proposed extension complies with this requirement.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

The proposed extension complies with this requirement.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

The proposed extension complies with this requirement.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

Not applicable.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

Not applicable.

7. The roof of any extension shall not be used as a balcony or roof garden.

The proposed extension complies with this requirement.

8. Screening

A screening exercise for an appropriate assessment has been carried out and it is concluded that the development is unlikely to have significant effects on any European sites. Please see attached report under Appendix A.

It is considered that the proposed development does not constitute a development listed in Schedule 5 of the Planning and Development Regulations 2001 as amended. Accordingly an EIAR is not required.

9. Evaluation

Question: Whether the proposed works to the existing dwelling are development and, if so, are they exempted development?

In considering the proposed works against the definitions of 'development' and 'works' as provided in the Act, it is the view of the Planning Authority that the proposed works are deemed as development as it includes alterations to the existing dwelling.

Question: Is this proposal considered as Exempted Development?

Based on the information received, the Planning Authority are satisfied that the proposed extension located to the rear of the existing dwelling complies with Class 1, in Part 1, of Schedule 2 of the *Planning and Development Regulations 2001* (as amended). In addition, the proposed works will not materially affect the external appearance of the structure.

8. Recommendation

It is recommended that the Applicant be advised that the proposed development **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 proposed works; extension to the rear of dwelling and including internal works, removal of garage door and installation of window of the dwelling is, or is not development, and, if so, is or is not exempted development at Killane, Edenderry, Co. Offaly R45 YC17.

AS INDICATED on the particulars received by the Planning Authority on the 18th June 2024.

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

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- (c) Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 of the *Planning & Development Regulations 2001* (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development having particular regard to 4(1)(h) of the aforementioned act and Schedule 2 Part I, Class 1 of the aforementioned regulations

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 proposed works (extension to the rear of dwelling and including internal works, removal of garage door and installation of window of the dwelling) is **development** and is **exempted development** at Killane, Edenderry, Co. Offaly R45 YC17.

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.



Enda Finlay

Graduate Planner

Date 3rd July 2024

A handwritten signature in black ink, appearing to read 'Ed Kelly', with a stylized, sweeping flourish at the end.

Ed Kelly

A/Senior Executive Planner

Date 11rd July 2024

APPENDIX 1

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



Screening is used to determine if an AA is necessary by examining:

- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.

Planning Authority: Offaly County Council

Planning Application Ref. No.: DEC24/68

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not the proposed rear extension, internal works, removal of garage door and installation of window is or is not development and is or is not exempted development.		
Site location:	Killane, Edenderry, Co. Offaly R45 YC17		
Site size:	N/A	Floor Area of Proposed Development:	31m ²
Identification of nearby European Site(s):	Long Derries SAC approximately 5km		
Distance to European Site(s):	As above – all as crow flies		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIAR?			No: X
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Long Derries SCA – Features of interest include: SCA – Features of interest include: Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]			
The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the European site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)			
SITE NAME: Long Derries SCA Site Code: 000925			

<https://www.npws.ie/protected-sites/sac/000925>

(C) NPWS ADVICE:

Advice received from NPWS over phone:

None Received

Summary of advice received from NPWS in written form
(ATTACH SAME):

None Received

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).

If the answer is 'yes' to any of the questions below, then the effect is significant.
(Please justify your answer. 'Yes' / 'No' alone is insufficient)

Would there be...

... any impact on an Annex 1 habitat?

(Annex 1 habitats are listed in Appendix 1 of AA Guidance).

Not likely due to the location and type of development.
The site is sufficient distance from the European site.

... a reduction in habitat area on a European site?

There will be no reduction in the habitat area.
The site is sufficient distance from the European site.

... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?

Not likely due to the location and type of development
The site is sufficient distance from the European site.

... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?

Not likely due to the location and type of development
The site is sufficient distance from the European site.

... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?

None likely due to the location and type of development.
The site is sufficient distance from the European site.

Would the project interfere with mitigation measures put in place for other plans / projects. [Look at *in-combination effects* with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.

No other plans/projects known of in the vicinity of the site.
The site is sufficient distance from the European site.

(E) SCREENING CONCLUSION:

Screening can result in:

1.

AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.

2.

No potential for significant effects / AA is not required.

3.

Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement from the applicant or reject the project. Reject if too potentially damaging / inappropriate.

Therefore, does the project fall into category 1, 2 or 3 above?

Category 2

Justify why it falls into relevant category above:

There would be no likely significant impacts on the nearest European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and the European Site.

Name:



Position:

Graduate Planner

Date:

3 July 2024

Given the location, the nature, and size of the development applied for, and the characteristics of European sites in the vicinity, it is considered that 500 metres should be used as a potential zone of impact of the project, in accordance with section 3.2.3 of the appropriate assessment guidelines. The nearest European site is over 5 kilometres from the proposed development, and, due to the development's nature and scale, it is highly unlikely that there will be any significant effects on the nearest European site, either alone, or in combination with other plans and projects.

