

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 25/66

NAME OF APPLICANT: Cederglade Ltd

ADDRESS FOR CORRESPONDENCE: C/o David Mulcahy Planning Consultants Ltd, 67 Old Mill Race, Athgarvan, Newbridge, Co. Kildare.

NATURE OF APPLICATION: request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not replacement of underground tanks (as detailed in the submitted documentation) is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Centra/Top Service Station, Main Street, Shinrone, Co. Offaly

WHEREAS a question has arisen as to whether or not replacement of underground tanks (as detailed in the submitted documentation) is or is not development and is or is not exempted development at the existing Centra/Top Service Station, Main Street, Shinrone, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 8<sup>th</sup> May 2025.

AND WHEREAS Cederglade Ltd, C/o David Mulcahy Planning Consultants Ltd, 67 Old Mill Race, Athgarvan, Newbridge, Co. Kildare has requested a declaration on the said question from Offaly County Council;

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

- (a) Section 2(1), 3(1) and 4(1)(h), of the Planning & Development Act 2000, as amended.

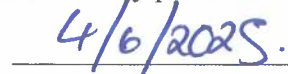
AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

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

- The replacement of underground tanks (as detailed in the submitted documentation) **is development** and **is exempted development** at the existing Centra/Top Service Station, Main Street, Shinrone, Co. Offaly.

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

  
Administrative Officer

  
Date

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

## Planning Report

### Section 5 Declaration

<b>File Reference:</b>	Dec. 25/66
<b>Question:</b>	Whether or not replacement of underground tanks is or is not development and is or is not exempted development
<b>Applicant:</b>	Cederglade Ltd
<b>Correspondence Address:</b>	c/o David Mulcahy Planning Consultants Ltd, 67 Old Mill Race, Athgarvan, Newbridge, Co. Kildare
<b>Location:</b>	Centra/Top Service Station, Main Street, Shinrone, Co. Offaly

#### 1. Introduction

The question has arisen as whether or not replacement of underground tanks is or is not development and is or is not exempted development at the existing Centra/Top Service Station in Shinrone, Co. Offaly.

#### 2. Background

The existing fuel filling station is located within Shinrone Village and is zoned as Village Centre/Mixed Use under the Shinrone Village Plan as contained in Volume 2 of the Offaly County Development Plan 2021 -2027.



*Photo 1 - Subject Site Location.*

#### 3. Site History

*On Site* – Recent planning history associated with the subject site including the following:

- 96/29: William Feighery sought permission for the renovation of dwellinghouse – **Granted**.
- 96/515: William Feighery sought permission for alterations to existing filling station - **Granted**.
- 05/705: Tom Hogan sought permission for the construction of a single storey convenience store / supermarket comprising of 400 sqm retail space with an entrance off existing filling station and associated car parking and civil works - **Granted**.

- 11/85: KLS Supermarkets Ltd sought retention permission for roof, facade and alterations to interior layout which does not affect footprint of building and permission to use supermarket as supermarket with off licence - **Granted**.

*Enforcement* – No recent history associated with the subject site.

*Adjoining Lands* - No recent planning history associated with the adjoining lands.



*Photo 1 - Subject Site (source: Google Maps – Oct. 2024).*



*Photo 2 - Subject Site (source: Google Maps – Oct. 2024).*

#### **4. Legislative Context**

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

##### **Statutory Provisions**

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



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

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

*“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.*

#### 5. Proposal by Applicants

The Applicant has provided the following details:

- The existing fuel filling station has 3 no. underground fuel tanks south of the fuel pumps with a combine capacity of 35,000l. These tanks are over 25 years old and have a single skin so it is best practice to replace them.

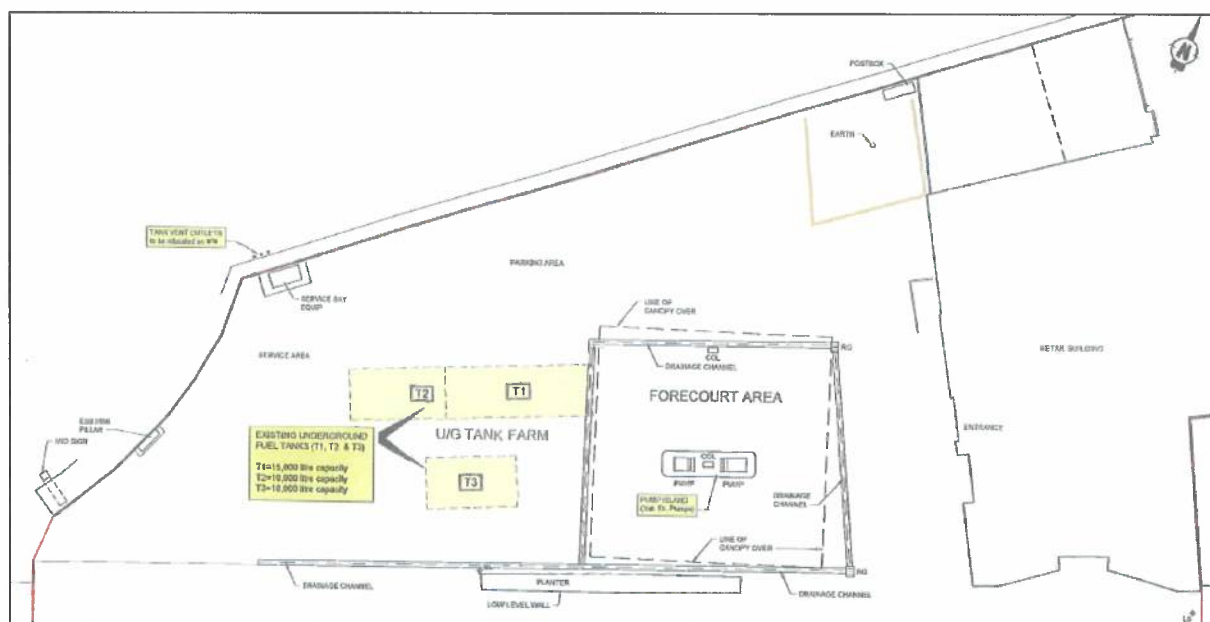


Figure 1: Existing site plan (as submitted).

- The Applicants intends to replace the existing underground tanks with 1 no. tank with a capacity of 40,000l. This tank will be located at the same location as the existing tanks.

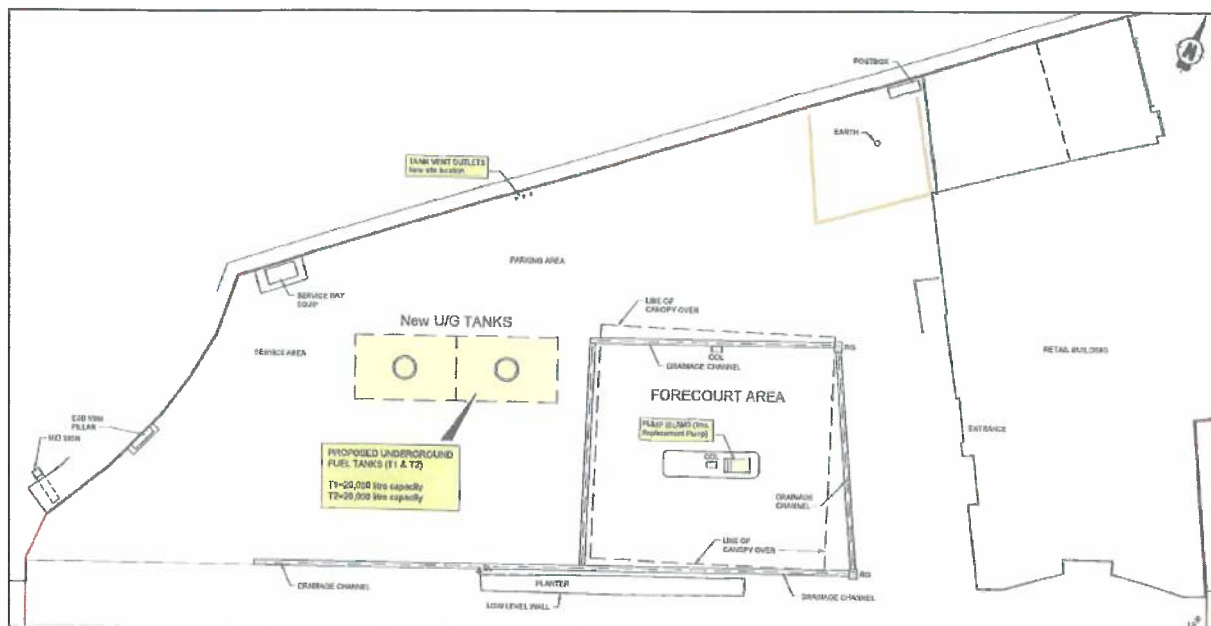


Figure 2: Proposed site plan (as submitted).

As part of the application, the Applicant has provided a planning report prepared by David Mulcahy Planning Consultants Ltd. This report includes references of similar Section 5 Declarations which have been deemed as exempted development – please refer to Appendix A of this report. It is noted that case 35.RL2850 was deemed exempted development by the Board members in 2011 contrary to the recommendation of the Inspector.

In terms of RL.3069 I note the following from the inspectors report:

*“The referrer’s strongest argument in my opinion relates to section 4(1)(h). I am satisfied that the replacement of the two tanks with one larger bunded tank is reasonably described as works for ‘the maintenance, improvement or other alteration’ of a structure. The planning authority disputes the relevance of section 4(1)(h) on the basis that the development relates to a new structure. In this regard I consider that the decision by the Board under RL2850 is relevant. That decision considered the redevelopment of a service station and determined inter alia that the replacement of a 20,000 litre capacity tank with two 30,000 storage tanks is exempted development under section 4(1)(h).”*

The board agreed with the inspector in 2013 that the works subject of RL.3069 were exempted

## 6. Evaluation

**Question: Whether the proposed works (as listed) 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 the replacement of existing tanks.

**Question: Is this proposal considered as Exempted Development?**

With regard to the proposed works which are described in the submitted documents, the Planning Authority are satisfied that the proposed works can be described as improvement of the existing tanks. The replacement tanks will be located underground in the same location as the existing tanks and the Planning Authority are satisfied that the proposed works would not result in a material alteration to the appearance of the existing fuel filling station and would not be inconsistent with the character of area.

It is therefore the opinion of the Planning Authority that these works meet the criteria of exempt development under statutory provisions.

#### **7. Appropriate Assessment**

Having regard to nature of the development which comprises of the replacement of exiting underground tanks at an existing fuel station; distance of 1km from Sharavogue Bog SAC and the lack of any pathway to a European site it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

#### **8. Environmental Impact Assessment Screening**

Please refer to Appendix B.

#### **9. Conclusion & 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 or not replacement of underground tanks (as detailed in the submitted documentation) is or is not development and is or is not exempted development at the existing Centra/Top Service Station, Main Street, Shinrone, Co. Offaly.

**AS INDICATED** on the particulars received by the Planning Authority on the 8<sup>th</sup> May 2025.

**AND WHEREAS** Cederglade Ltd c/o David Mulcahy Planning Consultants Ltd, 67 Old Mill Race, Athgarvan, Newbridge, Co. Kildare has requested a declaration on the said question from Offaly County Council;

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

(a) Section 2(1), 3(1) and 4(1)(h), of the Planning & Development Act 2000, as amended.

**AND WHEREAS** Offaly County Council has concluded that the proposed works is development and is exempted development.

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

- The replacement of underground tanks (as detailed in the submitted documentation) is **development** and is **exempted development** at the existing Centra/Top Service Station, Main Street, Shinrone, Co. Offaly.

*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.*



Úna McCafferkey

Executive Planner

3<sup>rd</sup> June 2025

Date



Ed Kelly

ASEP

3<sup>rd</sup> June 2025

Date

**APPENDIX A – Examples of similar Section 5 Applications (provided by the Applicant)**

**7.2 Woodstock Service Station, Woodstock Street, Athy, County Kildare: ABP Ref: 35.RL.2850**

Questions came before the Board as to whether the renovation of a service station to include:

1. **the removal of underground fuel storage tanks (20,000 litres) and the installation of two underground fuel storage tanks (30,000 litres);**
  2. the construction of a new drainage layout and services duct layout;
  3. the erection of four number "Amber" signs and droplet logo signs on the stanchions of the canopy structure;
  4. the erection of new side cladding and three number "Amber" signs and droplet logos on the canopy structure; and
  5. the erection of new cladding and the new logo "Diesel", "Petrol", "Costcutter" "Hotfood/Deli" and "Fresh Coffee" on the roadside double pole ID sign;
- at Woodstock Service Station, Woodstock Street, Athy, County Kildare, are or are not exempted development:

An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) section 4 of the Planning and Development Act 2000, as amended,
- (b) articles 6, 9 and Part 2 of Schedule 2 to the Planning and Development Regulations 2001, and
- (c) the planning history of the site.

An Bord Pleanála concluded, inter alia, that -

- (a) The removal of underground fuel storage tanks (20,000 litres) and the installation of two underground fuel storage tanks (30,000 litres) of limited scale, located underground, does not result in intensification of the site, does not raise new planning issues and comes within the scope of section **4(1)(h) of the Planning and Development Act, 2000:**

Therefore An Bord Pleanála, decided that the said renovation of a service station at Woodstock Service Station, Woodstock Street, Athy, County Kildare is **exempted development**.



### 7.3 Passage West, County Cork: An Bord Pleanála Reference Number: 04-RL-3069

A question arose as to whether the **removal of two oil tanks of 2,500 litres and 3,000 litres capacity with their replacement with a 5,000 litre tank** at the site of an established fuel depot business at Marmullane, Pembroke, Passage West, County Cork is or is not development or is or is not exempted development.

An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) articles 5, 6, and 9 of the Planning and Development Regulations, 2001, as amended, and
- (c) Class 21 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001;

An Bord Pleanála has concluded that –

- (a) the removal of two fuel tanks and their replacement with a single tank does not result in intensification of use of the site,
- (b) does not result in a material alteration of the external appearance of the site, and
- (c) does not raise new planning issues and comes **within the scope of section 4(1)(h) of the Planning and Development Act, 2000**:

An Bord Pleanála decided that the said removal of two oil tanks and their replacement with a larger tank at the site of an established fuel depot business at Marmullane, Pembroke, Passage West, Co. Cork is development and **is exempted development**.

## 7.4 Rochestown Avenue

We refer also to a decision by Dun Laoghaire Rathdown to declare the replacement of underground tanks as being exempted development.



Comhairle Contae Dún Laoghaire Rathdown, Killa an Chionnaí, Dún Laoghaire, Co. Dubhaí, D18 8E69  
Dún Laoghaire Rathdown County Council, Cherry Hall, Dun Laoghaire, Co. Dublin, Ireland, A96 EK79  
T: 01 205 4700 F: 01 205 6949 www.dlr.ie

Planning Department  
Rachóg Beanda  
Registry Section  
Clara Cárroll  
Asst. Staff Officer  
Direct Tel: 01 2054853

David Mulcahy  
67, Old Mill Race  
Athgarvan  
Newbridge  
Co Kildare

Reference No: Ref12421

Application Type: Declaration on Development and Exempted Development Act  
- Section 5, Planning & Development Act (as amended)

Registration Date: 16-Sep-2021

Decision Date: 08-Oct-2021

Location: Texaco, Rochestown Service Station, Rochestown Avenue, Dun  
Laoghaire, Co. Dublin, A96EK7

Development Works: Whether the replacement of 4 no underground  
fuel storage tanks (cumulative capacity of 110,000 litres) and underground fill  
points with 3 no. new underground tanks of 120,000 litre tanks and underground  
fill points at Texaco, Rochestown Service Station, Rochestown Avenue, Dun  
Laoghaire, Co. Dublin, A96EK79 is or is not exempt development.

### NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the Planning & Development Act, 2000 (as amended), Dún Laoghaire-Rathdown County Council has, by Order No. REF145/21 Dated 08-Oct-2021 decided to issue a Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), to, David Mulcahy 67, Old Mill Race, Athgarvan, Newbridge, Co Kildare that having regard to:

- (a) Sections 2,3 and 4(1)(h) of the Planning and Development Act 2000, as amended,
- (b) Article 6 and Article 9(1)(a) of the Planning and Development Regulations, 2001 (as amended),
- (c) The plans and particulars lodged with this Section 5,
- (d) An Bord Pleanála RL2850 and RL3069,

the replacement of 4 no underground fuel storage tanks (cumulative capacity of 110,000 litres) and underground fill points with 3 no. new underground tanks of 120,000 litre tanks and underground fill points at Texaco, Rochestown Service Station, Rochestown Avenue, Dun Laoghaire, Co. Dublin, A96EK79, constitutes development and constitutes exempted development.

Dated: 08-Oct-2021

Signed: Clara Cárroll  
For Senior Executive Officer.

**NOTE:** Where a Declaration is issued under Section 5, any Person issued with such a Declaration, may, on payment to An Bord Pleanála, 64, Marlborough Street, Dublin 1, of a fee of €220, refer the Declaration for review, within 4 weeks of the date of issue of the Declaration.



**Appendix B**  
**EIA Screening**

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	Dec 25-66
Development Summary:	Whether or not replacement of underground tanks is or is not development and is or is not exempted development
Was a Screening Determination carried out under Section 176A-C?	<b>No, Proceed to Part A</b>
<b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, Part 1, of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
No	<b>Proceed to Part B</b>
<b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, Part 2, of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)	
No, the development is not a project listed in Schedule 5, Part 2	<b>No Screening required</b>



Úna McCafferkey

Executive Planner

3<sup>rd</sup> June 2025

Date