

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 25/8

NAME OF APPLICANT: Brian O'Carroll

ADDRESS FOR CORRESPONDENCE: C/O Hugh O'Rourke, Thor Design & Management, Ballindara, Birr, Co. Offaly, R42 PD76.

NATURE OF APPLICATION: request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether (a) the use of the property as a B&B/Guesthouse prior to 2004 constituted a lawful use for planning purposes and (b) the continued use of the property as a B&B/Guesthouse since 2004 is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ely House, Shannonbridge, Co. Offaly, N37 A400.

WHEREAS a question has arisen as to whether (a) the use of the property as a B&B/guesthouse prior to 2004 constituted a lawful use for planning purposes and (b) the continued use of the property as a B&B/guesthouse since 2004 is or is not development and is or is not exempted development at Ely House, Shannonbridge, Co. Offaly, N37 A400

AS INDICATED on the particulars received by the Planning Authority on the 23rd January 2025.

AND WHEREAS Brian O'Carroll c/o Hugh O'Rourke, Thor Design & Management, Ballindara, Birr, Co. Offaly. R42 PD76 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:

- Section 2, 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.
- Article 10(4) of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is not 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:

- (a) The use of the property as a B&B/guesthouse prior to 2004 constituted an unlawful use for planning purposes as it is deemed as **development and is not exempted development**; and,
- (b) The continued use of the property as a B&B/guesthouse since 2004 is **development and is not exempted development** at Ely House, Shannonbridge, Co. Offaly, N37 A400.

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

18/2/2025.

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

Planning Report - Section 5 Declaration

File Reference:	Dec. 25/08
Question:	Whether (a) the use of the property as a B&B/guesthouse prior to 2004 constituted a lawful use for planning purposes and (b) the continued use of the property as a B&B/guesthouse since 2004 is or is not development and is or is not exempted development
Applicant:	Brian O'Carroll
Correspondence Address:	c/o Hugh O'Rourke, Thor Design & Management, Ballindara, Birr, Co. Offaly. R42 PD76
Location:	Ely House, Shannonbridge, Co. Offaly, N37 A400.

1. Introduction

The question has arisen as to whether (a) the use of the property as a B&B/guesthouse prior to 2004 constituted lawful use for planning purposes and (b) the continued use of the property as a B&B/guesthouse since 2004 is or is not development and is or is not exempted development at Ely House, Shannonbridge, Co. Offal. N37 A400.

2. Background

The existing guest accommodation / dwelling is located within the defined boundary of Shannonbridge Village and is zoned as existing residential as detailed in Volume 2 of Offaly County Development Plan 2021 – 2027.



Figure 1: Shannonbridge Village Plan (site indicated with arrow).

3. Site History

On Site – Planning history associated with the subject site includes:

- 90/293: Leslie Price sought outline permission for 2 no. sites at Raghra, Shannonbridge, Co. Offaly – **Granted**.
- 95/419: Noel Corbett sought permission for a dwellinghouse and garage – **Granted**.
- 97/100: Jim Reynolds sought permission for a dwellinghouse and garage – **Granted**.

- 00/1239: Jim & Noreen Reynolds sought permission for an extension to dwelling, dormer windows, garage, fuel store & retention of attic conversion - **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: Goggle Maps – Nov. 2022)

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.*

Regulatory Provisions

Article 10 - Changes of Use states:

(4) Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

The Planning Authority note that the original version of the 2001 Planning & Development Regulations contains the following:

PART 2 - Exempted Development – Schedule 10 (4) states:

Development consisting of the use of not more than 4 bedrooms in a house, where each bedroom is used for the accommodation of not more than 4 persons as overnight guest accommodation, shall be exempted development for the purposes of the Act, provided that such development would not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

5. Proposal by Applicants

The Applicant is seeking to establish whether the use of the property as a B&B/guesthouse prior to 2004 constituted lawful use for planning purposes and (b) the continued use of the property as a B&B/guesthouse since 2004 is or is not development and is or is not exempted development.

They advise that they purchased the property in 2004 and at the time of purchase, the property had been in use as a B&B/guesthouse. It is unclear how long the property has been operating as guest accommodation prior to them purchasing the property. Since then, they have continued to operate it as a B&B/guesthouse until October 2022 when it underwent a 'temporary change of use under the temporary duration exemptions permitted by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support persons seeking international protection'.

6. Evaluation

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

It is considered that the change from a use from a domestic dwelling to use as a B&B/guesthouse represents a material change in the use of the structure and as such, the proposal constitutes development as defined by Section 3 of the Planning and Development Act (as amended).

Question: Is this proposal considered as Exempted Development?

Having regard to the exemption permissible under Article 10 (4), the Planner notes that the submitted floor plans confirm that the structure contains more than 4 bedrooms which are used for guest accommodation.

In total, there are a total of 12 no. bedrooms with bed spaces for 31 people:

- Ground Floor = 8 no. bedrooms with bed spaces for 19 no. persons.
- First Floor = 4 no. bedrooms with bed spaces for 12 no. persons.

Therefore, it is concluded that the proposed use of the dwelling as outlined by the Applicant in their application is not exempted development either presently or in 2004.

The Planner notes that there is no record of any planning permission applications seeking a change of use from dwelling to B&B/guesthouse for the subject site.

7. Appropriate Assessment & Screening

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

Regional Impacts: The development subject of this application is not contrary to the RSES and so it was not referred to the Eastern and Midland Regional Assembly.

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. Furthermore, it is not a sub-threshold development. Accordingly, an EIA is not required.

8. Conclusion

It is recommended that the Applicant be advised that the development **is development and is not 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 (a) the use of the property as a B&B/guesthouse prior to 2004 constituted a lawful use for planning purposes and (b) the continued use of the property as a B&B/guesthouse since 2004 is or is not development and is or is not exempted development at Ely House, Shannonbridge, Co. Offaly, N37 A400.

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- (b) The continued use of the property as a B&B/guesthouse since 2004 **is development** and is **not exempted development** at Ely House, Shannonbridge, Co. Offaly, N37 A400.

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

17th February 2025

Date



Ed Kelly

ASEP

18th February 2025

Date

APPENDIX A

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: OCC

Planning Application Ref. No: DEC 25/08

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:

Proposed development:	Whether (a) the use of the property as a B&B/guesthouse prior to 2004 constituted a lawful use for planning purposes and (b) the continued use of the property as a B&B/guesthouse since 2004 is or is not development and is or is not exempted development		
Site location:	Ely House, Shannonbridge, Co. Offaly, N37 A400.		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	River Shannon Callows SAC - c.45m Middle Shannon Callows SPA - c.0.46m River Suck Callows SPA – c.83m		
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):

Middle Shannon Callows SPA – Features of interest include:

- Whooper Swan (Cygnus cygnus) [A038]
- Wigeon (Anas penelope) [A050]
- Corncrake (Crex crex) [A122]
- Golden Plover (Pluvialis apricaria) [A140]
- Lapwing (Vanellus vanellus) [A142]
- Black-tailed Godwit (Limosa limosa) [A156]
- Black-headed Gull (Chroicocephalus ridibundus) [A179]
- Wetland and Waterbirds [A999]

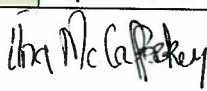
River Shannon Callows SAC– Features of interest include:

- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]
- Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) [6510]
- Limestone pavements [8240]
- Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]
- Lutra lutra (Otter) [1355]

River Suck Callows SPA – Features of interest include:

- Whooper Swan (Cygnus cygnus) [A038]
- Wigeon (Anas penelope) [A050]
- Golden Plover (Pluvialis apricaria) [A140]
- Lapwing (Vanellus vanellus) [A142]
- Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]

• Wetland and Waterbirds [A999]	
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: MIDDLE SHANNON CALLOWS SPA, SITE CODE: 004096 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004096.pdf	
SITE NAME: RIVER SUCK CALLOWS SPA, SITE CODE: 004097 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004097.pdf	
SITE NAME: RIVER SHANNON CALLOWS SAC, SITE CODE: 000216 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000216.pdf	
(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:	
<i>(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).</i>	
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 <i>in-combination effects</i> 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 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 impact on the European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Site.	
Name:		Una McCafferkey 	
Position:		Executive Planner	Date: 17 th February 2025