

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

**REFERENCE:** DEC 24/24

**NAME OF APPLICANT:** NUA Healthcare Services

**ADDRESS FOR CORRESPONDENCE:** C/O Sharon Liu, Building & Planning Department, The Atrium,  
John's Lane, Naas, Co Kildare, W91 WC78

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and is or is not exempted development.

**LOCATION OF DEVELOPMENT:** Clonliff, Shannonbridge, Co. Offaly, N37 KX08

**WHEREAS** a question has arisen as to whether the change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and, where it is development, whether or not it is or is not exempted development at Clonliff, Shannonbridge, Co. Offaly, N37 KX08.

**AS INDICATED** on the particulars received by the Planning Authority on the 6th March 2024.

**AND WHEREAS** NUA Healthcare Services, c/o Sharon Liu, Building & Planning Department, The Atrium, John's Lane, Naas, Co Kildare, W91 WC78 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-

- Sections 2, 3 and 4 of the Planning & Development Act 2000 as amended.
- Articles 6, 9 and 10 of the Planning and Development Regulations 2001, as amended.
- Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, 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 change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons is development and is exempted development at Clonliff, Shannonbridge, Co. Offaly, N37 KX08.

**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*

2/4/2024  
\_\_\_\_\_  
*Date*

**Note:** 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

<b>File Reference:</b>	<b>Dec 24/24</b>
<b>Question:</b>	<i>Whether the change of use from dwelling to community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and is or is not exempted development.</i>
<b>Applicant:</b>	<i>NUA Healthcare</i>
<b>Correspondence Address:</b>	<i>c/o Sharon Liu, Building &amp; Planning Department, The Atrium, John's Lane, Naas, Co Kildare, W91 WC78</i>
<b>Location:</b>	<i>Cloniff, Shannonbridge, Co. Offaly, N37 KX08</i>

#### 1. Introduction

The question has arisen as to whether the change of use from dwelling to provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and is or is not exempted development.

#### 2. Site Location and Description

The subject site which amounts to c.0.429ha is located approximately 2km to the north east of Shannonbridge Town. To the south west of the site is a residential property while agricultural lands border the site to the east/south east (rear) and north east. The regional road, R444, forms the border along the front of the site. The topography of the land rises c. 2.2m from the roadside boundary to the rear. Existing mature boundaries are along the side boundaries of the site.

The Area Planner carried out a site visit in March 2024.



Figure 1 – Site Location.

#### 3. Site History

The following planning applications have been made on the subject site:

- 21/453: Andrew Kenny Andrew Kenny sought retention permission for alterations and elevational changes and conservatory to dwelling on revised boundaries to previously approved permission reference 05/835 and permission to complete partially constructed dwelling, domestic garage, and installation of proprietary effluent treatment system and percolation area, and all associated works – **Granted.**
- 05/835: Andrew Kenny construction of a dwelling house, domestic garage and septic tank / effluent treatment system – **Granted.**
- 01/997: Andrew Kenny sought outline permission for a dwelling house & septic tank – **Granted.**

*Enforcement:* No record of any enforcement matters on the subject site.

*Adjoining Lands:* No recent planning history associated with the adjacent lands.



*Photo 1 – Subject Site.*



*Photo 2 – Subject Site.*

#### **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 other structures 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.*

##### **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”.*

Article 9 of the Planning and Development Regulations 2001 (as amended), identifies restrictions on exemption.

*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.*

Article 10 relates to changes of use. 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, providing that the development if carried out would not:

- (a) involve the carrying out of any works other than the 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 permission,*
- (d) be a development where the existing use is an unauthorised use save where such a change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

Schedule 2, Part 1 of Article 6 contains the following specific class of development under Class 14(f):

*Development consisting of a change of use –*

*(f) from use of a house, to use as a residence for persons with an **intellectual or physical disability or mental illness** and persons providing care for such persons.*

Provided:

*The number of persons with and intellectual or physical disability or a mental illness living in such a residence shall not exceed 6 and the number of resident carers shall not exceed 2.*

## **5. Proposal by Applicants**

The Applicant Sharon Liu on behalf of Nua Healthcare Services wishes to ascertain whether the change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and is or is not exempted development.

The Planner notes that there have been some external changes to the permitted dwelling design but given that these are minor in nature, they do not warrant any further assessment.

## **6. Evaluation**

**Question:** *Is the proposed change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual disability and other mental issues considered as Development?*

It is considered that the change from a use from a domestic dwelling to use as a residential care home 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?***

Under Class 14(f) of the Planning and Development Regulations 2001 (as amended), development consisting of a *'change of use from use of a house, to use as a residence for persons with an intellectual or physical disability or mental illness and persons providing care for such persons'* is exempted development provided that *'the number of persons with an intellectual or physical disability or a mental illness living in such a residence shall not exceed 6 and the number of resident carers shall not exceed 2'*.

The Applicant confirms that the dwelling currently accommodates 3 no. resident service users and that the number of resident carers staying overnight will not exceed 2. The Planner notes that the current layout provided 3 no. bedrooms with ensuites; 1 no. sleepover room; 1 no. office; lounge; living/dining; kitchen/dining with attached utility room; and 1 no. accessible toilet.

As the dwelling will remain in use as a single residential unit, the Planning Authority are satisfied that the change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons will not contravene any condition attached to the grant of relevant planning permission 21/453. I note this permission did not include an occupancy condition. I also note that the development on site could be defined as a house on the date of completion of construction having regard to 21/453.

It is concluded that the proposed use of the dwelling as outlined by the Applicant in their application is exempted development.

**7. Evaluation**

It is recommended that the change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons **does constitute development** defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and **is exempted development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

**Declaration on Development and Exempted Development**

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

**WHEREAS** a question has arisen as to whether the change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons is or is not development and, where it is development, whether or not it is or is not exempted development at Cloniff, Shannonbridge, Co. Offaly, N37 KX08.

**AS INDICATED** on the particulars received by the Planning Authority on the 6<sup>th</sup> March 2024.

**AND WHEREAS** NUA Healthcare c/o Sharon Liu, Building & Planning Department, The Atrium, John's Lane, Naas, Co Kildare, W91 WC78 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) Sections 2, 3 and 4 of the Planning & Development Act 2000 as amended.
- (b) Articles 6, 9 and 10 of the Planning and Development Regulations 2001, as amended.
- (c) Class 14(f) of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, 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 change of use of the existing dwelling to a community dwelling for provision of care to persons with intellectual or physical disability or mental illness and persons providing care for such persons **is development and is exempted development** at Cloniff, Shannonbridge, Co. Offaly, N37 KX08.

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



**Una McCafferkey**  
Executive Planner

**27<sup>th</sup> March 2024**

Date





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Ed Kelly  
(A/Senior Executive Planner)

Date 28/3/2024

## 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. 24/24

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the change of use from dwelling to community dwelling for provision of care to persons with intellectual disability and other mental issues is or is not development and is or is not exempted development.		
Site location:	Cloniff, Shannonbridge, Co. Offaly, N37 KX08.		
Site size:	c. 0.429ha	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Middle Shannon Callows SPA – 0.38km River Shannon Callows SAC – 0.39km Mongan Bog SPA – 5.18km River Suck Callows SPA – 2.42km Fin Lough (Offaly) SAC – 4.85km		
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?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	
(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: <ul style="list-style-type: none"> <li>• Whooper Swan (<i>Cygnus cygnus</i>) [A038]</li> <li>• Wigeon (<i>Anas penelope</i>) [A050]</li> <li>• Corncrake (<i>Crex crex</i>) [A122]</li> <li>• Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>• Lapwing (<i>Vanellus vanellus</i>) [A142]</li> <li>• Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</li> <li>• Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>• Wetland and Waterbirds [A999]</li> </ul> River Shannon Callows SAC – Features of interest include: <ul style="list-style-type: none"> <li>• Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinia caerulea</i>) [6410]</li> <li>• Lowland hay meadows (<i>Alopecurus pratensis</i>, <i>Sanguisorba officinalis</i>) [6510]</li> </ul>			

- Limestone pavements [8240]
  - Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
  - Lutra lutra (Otter) [1355]
- Mongan Bog SPA – Features of interest include:
- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]
- River Suck Callows – 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](http://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 SHANNON CALLOWS SAC, SITE CODE: 000216  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000216.pdf>  
 SITE NAME: RIVER SUCK CALLOWS SPA, SITE CODE: 004097  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004097.pdf>  
 SITE NAME: MONGAN BOG SPA, SITE CODE: 004017  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004017.pdf>  
 SITE NAME: FIN LOUGH (OFFALY) SAC, SITE CODE: 000576  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000576.pdf>  
 SITE NAME: MONGAN BOG SAC, SITE CODE: 000580  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000580.pdf>

**(C) NPWS ADVICE:**

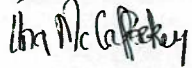
Advice received from NPWS over phone:	None Received
Summary of advice received from NPWS in written form <b>(ATTACH SAME):</b>	None Received

**(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)*

<b>Would there be...</b> ... 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.

<p>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.</p>	<p>No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.</p>
<p><b>(E) SCREENING CONCLUSION:</b></p>	
<p><b>Screening can result in:</b></p>	
<p>1.</p>	<p><i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.</p>
<p>2.</p>	<p><i>No potential for significant effects / AA is not required.</i></p>
<p>3.</p>	<p><i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</p>
<p>Therefore, does the project fall into category 1, 2 or 3 above?</p>	<p>Category 2</p>
<p>Justify why it falls into relevant category above:</p>	<p>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.</p>
<p><b>Name:</b></p>	<p>Úna McCafferkey </p>
<p><b>Position:</b></p>	<p>Executive Planner</p>
<p><b>Date:</b></p>	<p>27<sup>th</sup> March 2024</p>