

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 24/32

NAME OF APPLICANT: Anthony Ryan

ADDRESS FOR CORRESPONDENCE: Clermont, Kilruane, Nenagh, Co. Tipperary.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Tunnel House, Derrycorus, Edenderry, Co. Offaly.

WHEREAS a question has arisen as to whether or not the change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants is or is not development and is or is not exempt development at Tunnel House, Derrycorus, Edenderry, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 27th March 2024.

AND WHEREAS Anthony Ryan 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 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and;
- (c) Schedule 2, Part 1, Class 14 (f) (exempted Development –Change of Use) 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 proposed change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants **is development and is exempt development** at Tunnel House, Derrycorus, Edenderry, 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 included 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

File Reference:	Dec. 24/32
Question:	<i>Whether or not the change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants is or is not development and is or is not exempt development.</i>
Applicant:	<i>Anthony Ryan</i>
Correspondence Address:	<i>Clermont, Kilruane, Nenagh, Co. Tipperary</i>
Location:	<i>Tunnel House, Derrycorus, Edenderry, Co. Offaly</i>

1. Introduction

The question has arisen as to whether or not the change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants is or is not development and is or is not exempt development.

2. Background

The site is located within an Area of High Amenity and has a high landscape classification. The site is located off L-1001-2, a local primary road.

3. Site History

On site

Ref 95191: Philip Maher was granted permission conditionally for an extension to dwellinghouse.

Ref 22286: Suzanne and Gerard Fleming were granted retention permission conditionally for existing rear extension carried out to existing dwelling house and ancillary site works

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.

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 – Change of Use, Class 14 specifies:

‘Development consisting of a change’

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

This is considered to be exempted development if the following limitations are complied with:

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

The Applicant has stated the proposed number of residents is 6 and proposed number of care assistants is 2. The proposal complies.

5. Proposal by Applicants

The Applicant has advised of proposed change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants.

I consider that the proposed development complies with the provisions of Class 14 (f) of Part 1, Schedule 2 and is thereby considered to constitute exempted development in accordance with Article 6 of the Regulations. I have reviewed Article 9 of the Planning and Development Regulations (as amended), I am satisfied that none of the restrictions of Article 9 apply.

6. Appropriate Assessment

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.

7. Conclusion

Having regard to:

- Sections 2 & 3 of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended) and;
- Schedule 2, Part 1, Class 14 (f) (exempted Development – Change of use, of the Planning and Development Regulations 2001 (as amended);

It is considered that the proposal for the change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants at Tunnel House, Derrycorus, Edenderry, Co. Offaly **constitutes development** as 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 or not the change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants is or is not development and is or is not exempt development at Tunnel House, Derrycorus, Edenderry, Co. Offaly.

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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 proposed change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants is **development** and is **exempt development** at Tunnel House, Derrycorus, Edenderry, 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.



Enda Dolan
Assistant Planner

Date: 22nd April 2024



Ed Kelly
ASEP

Date: 22nd April 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 24/32

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not the change of use of dwelling to provide residential care for a max of 6 residents and 2 care assistants is or is not development and is or is not exempt development.		
Site location:	Tunnel House, Derrycorus, Edenderry, Co. Offaly.		
Site size:	0.3ha	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	The Long Derries, Edenderry SAC – 2.46km		
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):			
The Long Derries SAC – Features of interest include:	<ul style="list-style-type: none"> • 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: The Long Derries SAC Site Code: 000925 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000925.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:	Enda Dolan 		
Position:	Assitant Planner	Date:	22 nd April 2024.