

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 23/15

NAME OF APPLICANT: Capital Homes

ADDRESS: Capital Homes, Block 6, Central Business Park, Clonminch, Tullamore, Co. Offaly. R35 NX47.

ADDRESS FOR CORRESPONDENCE: C/O Perer Thomas, Planning Solutions. 4 Priory Grove, Kells, Co. Kilkenny.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as whether the construction of a hardstanding area for storage of material and vehicles and resurfacing of the existing entrance route off Clara Road to facilitate delivery and construction traffic is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Clara, Road, Tullamore, Co. Offaly.

WHEREAS A question referred to Offaly County Council on 26/05/2023 as to whether the construction of a hardstanding area for storage of material and vehicles and resurfacing of the existing entrance route off Clara Road to facilitate delivery and construction traffic is or is not development and is or is not exempted development. under the Planning and Development Act 2000, (as amended)

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Section 2 of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4(1) of the Planning & Development Act 2000, as amended.
- (d) Article 6(1) of the Planning and Development Regulations 2001, as amended.
- (e) Schedule 2, Part 1, Class 9 of the Planning and Development Regulations 2001, as amended
- (f) Schedule 2, Part 1, Class 16 of the Planning and Development Regulations 2001, as amended
- (g) Article 9 of the Planning and Development Regulations 2001, as amended
- (h) The intensification of traffic use of the entrance to the public road from the hardstanding area.
- (i) The traffic hazard of using the entrance to the public road from the hardstanding area.
- (j) The material widening of the entrance as a means of access to a public road

AND WHEREAS Offaly County Council has concluded that –

- The work is considered **development and is not exempted development.**

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2) hereby decides that;

- The construction of a hardstanding area for storage of material and vehicles and resurfacing of the existing entrance route off Clara Road to facilitate delivery and construction traffic **is development and is not exempted development.**

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.

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

File Reference:	Dec 23/15
Question:	Whether the construction of a hardstanding area for storage of material and vehicles and resurfacing of the existing entrance route off Clara road to facilitate delivery and construction traffic is or is not development and is or is not exempted development.
Applicant:	Capital Homes
Location:	Clara Road, Tullamore
Date received:	26/5/2023
Date due:	24/6/2023

1. Proposal

The question has arisen as to whether the construction of a hardstanding area for storage of material and vehicle and resurfacing of the existing entrance route off Clara Road to facilitate delivery and construction traffic is or is not development and is or is not exempted development.

It should be noted these works have already occurred and have included the resurfacing, expansion and the removal of gates on an existing entrance to the adjoining public road.

Location

The site is located on Clara Road, Tullamore.

See photo of works below:



Below, Google Maps Street views of entrance dated 2017:



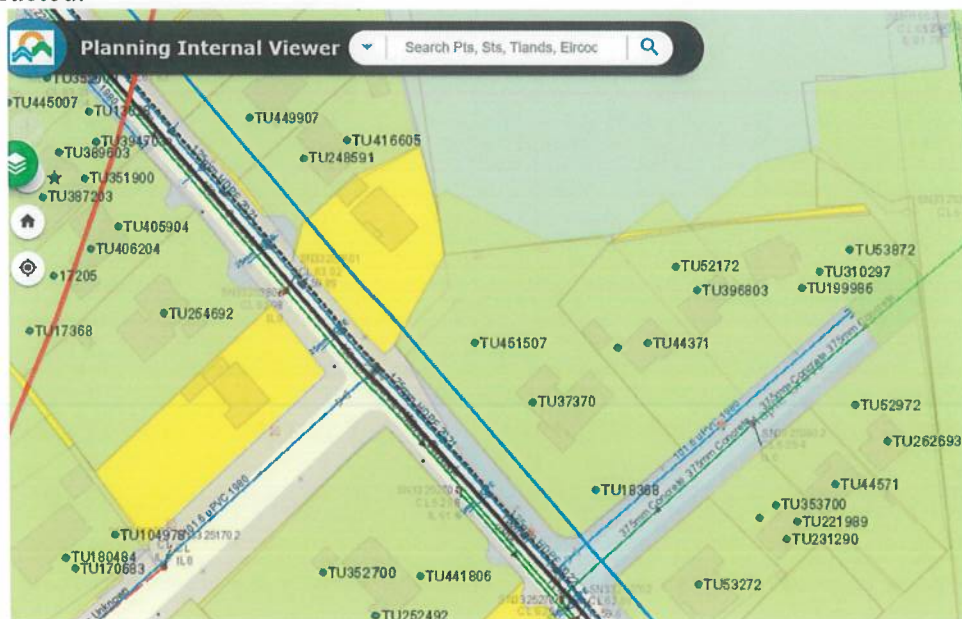


2. Relevant Planning History:

On this site:

TU 451507. JAMES & KATHLEEN SPOLLEN granted
CONSTRUCTION OF PROPOSED NEW DORMER TYPE DWELLING, NEW ENTRANCE,
CONNECTION TO PUBLIC FOUL SEWER AND PUBLIC WATER MAINS SUPPLY AND ALL
ASSOCIATED SITE WORKS

It should be noted that the dwelling granted under this permission was never constructed.

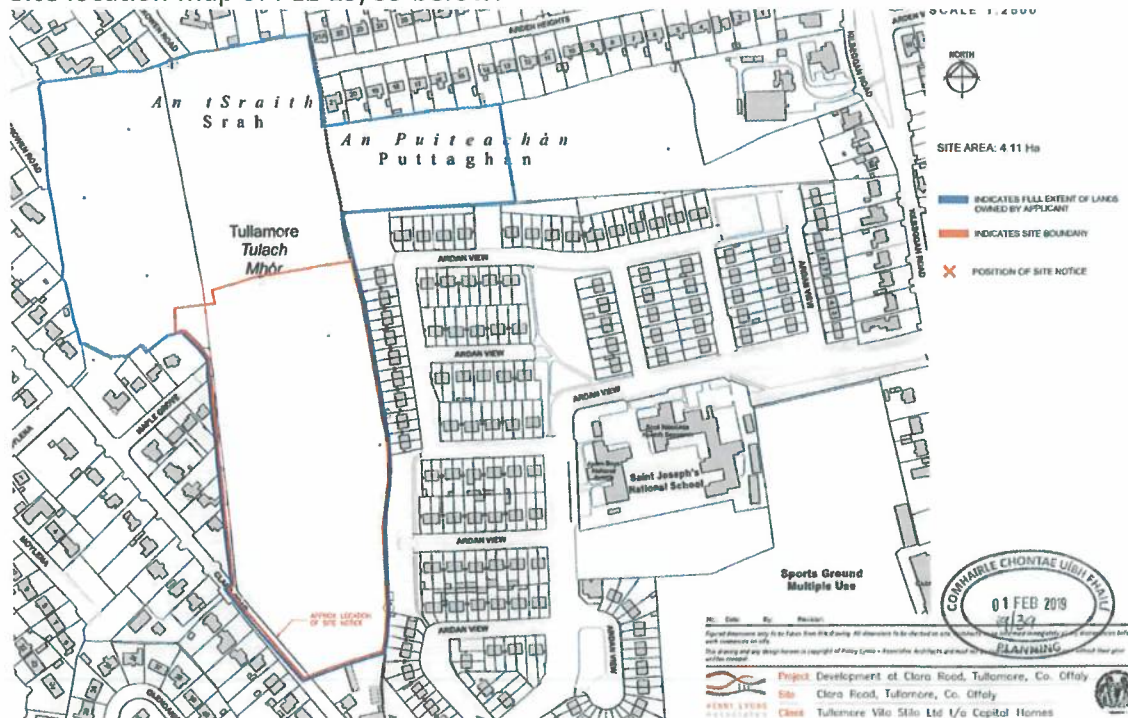


On lands to the East of the subject development:

PL2 19/39. TULLAMORE VITA STILO LTD T/A CAPITAL HOMES granted:

(A) CONSTRUCTION OF 99 NO. DWELLINGS, COMPRISING OF 54 NO. THREE-BEDROOM TWO STOREY SEMI-DETACHED (TYPE A), 14 NO. FOUR-BEDROOM TWO STOREY SEMI-DETACHED (TYPE B), 8 NO. THREE-BEDROOM TWO STOREY END TERRACE (TYPE C), 8 NO. THREE-BEDROOM STOREY AND A HALF MID TERRACED (TYPE D), 7 NO. THREE-BEDROOM BUNGALOWS (TYPE E), 5 NO. FOUR-BEDROOM TWO STOREY DETACHED WITH GARAGE TO REAR (TYPE F) AND 3 NO. FOUR-BEDROOM TWO STOREY DETACHED (TYPE G). EACH DWELLING IS TO INCLUDE AN OPTION FOR SOLAR PANELS ON THE ROOF SLOPE. UNITS A, B, F AND G INCLUDE OPTION FOR CONVERSION OF ATTIC SPACE INTO ADDITIONAL ACCOMMODATION; (B) THE PROVISION OF SITE DEVELOPMENT WORKS INCLUDING NEW SITE ENTRANCE, ROADS, PATHS, PAVING, PARKING, DRAINAGE, AMENITY SPACE, LANDSCAPED PUBLIC OPEN SPACE, STREET LIGHTING AND ASSOCIATED BOUNDARY TREATMENTS; (C) ALTERATIONS TO THE EXISTING DRAINAGE CROSSING THE SITE AND NEW SURFACE WATER AND STORM DRAINAGE CONNECTION ALONG THE CLARA ROAD AND RAHAN ROAD; AND ALL ASSOCIATED SITE DEVELOPMENT WORKS TO COMPLETE THE DEVELOPMENT

Site location map of PL2 19/39 below:



UD 23/33 This enforcement file relates to the works subject of this declaration.

3. Legislative Context:

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

In this Act, except where the context otherwise requires—
“development” has the meaning assigned to it by section 3, and “develop”
shall be construed accordingly;

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

“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 Planning and Development Act 2000, as amended:

4.—(1) The following shall be exempted developments for the purposes of this Act—

(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, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

(b) Regulations under *paragraph (a)* may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of *paragraph (a)*, provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

Article 6(1) of the Planning and Development Regulations 2001, as amended:

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 6(1) of the Planning and Development Regulations 2001, as amended:

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

<i>PART 1</i>	
<i>Sundry Works</i>	
<i>CLASS 9</i>	
<i>The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.</i>	<i>The height of any such structure shall not exceed 2 metres.</i>
<i>CLASS 16</i>	
<i>The erection, construction or placing on land on, in, over or under which, or on land adjoining which, development consisting of works (other than mining) is being or is about to be, carried out pursuant to a permission under the Act or as exempted development, of structures, works, plant or machinery needed temporarily in connection with that development during the period in which it is being carried out.</i>	<i>Such structures, works, plant or machinery shall be removed at the expiration of the period and the land shall be reinstated save to such extent as may be authorised or required by a permission under the Act.</i>

Article 9 of the Planning and Development Regulations 2001, as amended:

Development to which article 6 relates shall not be exempted development for the purposes of the Act—

if the carrying out of such development would—

- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

4. Appropriate Assessment

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

Other than the European sites addressed in the AA no other AA is potentially within the zone of influence of the project.

5. Evaluation

Question: Is the following works considered as Development?

Yes

Question: Is the following works proposal considered as Exempted Development?

No.

The works are not exempt under Class 9 or 16 of Schedule 2 Part 1.

The works subject of this declaration include the alteration of what was an existing entrance at a point where the public road is greater than 4 meters in width. The Tullamore MD Town Engineer John Connolly SEE has indicated that the entrance is a traffic hazard. Please see email attached.

On the basis of article 9, no exemptions are available for the aforementioned works.

I furthermore consider that the use of the entrance for construction related traffic related to a housing estate is a material intensification of its use which requires planning permission.

Question: Does the development require environmental impact assessment or an appropriate assessment of the development?

No

6. Conclusion

It is recommended that the applicant be advised that the proposed 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 the construction of a hardstanding area for storage of material and vehicles and resurfacing of the existing entrance route off Clara road to facilitate delivery and construction traffic is or is not development and is or is not exempted development.

At Clara Road, Tullamore

AND WHEREAS Capital Homes 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 of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4(1) of the Planning & Development Act 2000, as amended.
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Ed Kelly

Ed Kelly
Executive Planner

14/6/2023

Date

Carroll Melia

Carroll Melia
Acting Senior Executive Planner

15/6/2023

Date

**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 Application Ref. No.: DEC

23/15

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:	
Proposed development:	Construction compound and enlarged entrance onto road
Site location:	Clara Road, Tullamore
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC
Distance to European Site(s):	1.26km
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: <input checked="" type="checkbox"/>
(B) IDENTIFICATION OF THE RELEVANT European SITE(S):	
The reasons for the designation of the European site:	
The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes): [91E0] Alluvial Forests* [1016] Desmoulin's Whorl Snail (Vertigo moulinsiana)	
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 Natura 2000 site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)	

Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Code Description 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae)* * denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail *Vertigo moulinsiana*

(C) NPWS ADVICE:

Advice received from NPWS over phone:	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)*

<p>Would there be... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	Not likely due to the location and type of development.
	The site is sufficient distance from the European site.
<p>... a reduction in habitat area on a European site?</p>	There will be no reduction in the habitat area.
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
<p>... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?</p>	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.	<i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i>
2.	<i>No potential for significant effects / AA is not required.</i>
3.	<i>Significant effects are certain, likely or uncertain. (In this situation seek a NIS from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i>
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 European sites from the proposed development.
Name: Ed Kelly	
Position: Exec. Planner	Date: 14/6/2023

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. There are no European sites within 500 metres of the development applied for and therefore no significant effects on any European sites either alone or in combination with other plans and projects.

<https://www.npws.ie/protected-sites/sac/000571>

Below Comments from OCC SEE John Connelly regarding entrance:

From: John Connelly <jconnelly@offalycoco.ie>
Sent: Tuesday 30 May 2023 16:09
To: Edward Kelly <ekelly@offalycoco.ie>
Cc: Carroll Melia <cmelia@offalycoco.ie>
Subject: Clara Road entrance

Ed, per our discussion the existing entrance on the Clara Road (opp. Moylena junction) has been widened and hardcore put down in the field and the verge. To answer your query the use of this entrance for construction traffic is likely to cause a traffic hazard in that the sightline to the north is deficient. DMURS calls for a sight distance of 45m in a 50kph zone. If you require further information please let me know.

Regards,



John Connelly

District Engineer

Municipal District of Tullamore
Acres' Hall, Cormac St,

Tullamore, Co Offaly,
R35 WV59
057 9352470| jconnelly@offalycoco.ie |

