

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 23/22

NAME OF APPLICANT: Heart Go Dti Heart

ADDRESS: 1C Potato Market, Carlow Town, Co. Carlow.

ADDRESS FOR CORRESPONDENCE: C/O Eamonn Burke, Ballycarnan, Portlaoise, Co. Laois.

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 a 4 bedroom private dwelling to child care home is or is not development, and is or is not exempted development.

LOCATION OF DEVELOPMENT: Bogtown Cross, Clonygowan, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 10/08/2023 as to whether or not the change of use of a 4 bedroom private dwelling to child care home at Bogtown Cross, Clonygowan, Co. Offaly is or is not development, and is or is not exempted development.

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

- (a) Planning and Development Act 2000 (as amended) and
- (b) Planning and Development Regulations 2001 (as amended);

AND WHEREAS Offaly County Council has concluded that the proposal comprises of development to which the provisions of the following applies:

- (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 works are considered 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 the proposal for the change of use of a 4 bedroom private dwelling to a child care home at Bogtown Cross, Clonygowan, Co. Offaly is **development** and is **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 23/22
Question:	Whether or not the change of use of a 4 bedroom private dwelling to child care home is or is not development, and is or is not exempted development.
Applicant:	Heart Go Dti Heart
Location:	Bogtown Cross, Clonygowan, Co. Offaly.
Date received:	10 th August 2023

1. Proposal

The question has arisen as to whether or not the change of use of a 4 bedroom private dwelling to child care home is or is not development at Bogtown Cross, Clonygowan, Co. Offaly is or is not development, and is or is not exempted development.

2. Background

Currently location on the site is an existing habitable dwelling with direct access onto the L-5022-1 Local Secondary road.

3. Relevant Planning History:

02/1217: Tom & Mary O'Brien applied for permission for the conversion of dwelling house to dormer house and retention for change of use of garage to living accommodation. The file was deemed **Withdrawn**.

08/743: Tom & Mary O'Brien was **Granted** permission for the re-roofing of existing single storey domestic residence with a dormer style roof, incorporating 3 no dormer windows to front and 5 no velux windows to the rear and associated site works subject to 7 conditions.

20/368: Tom & Mary O'Brien was **Granted** retention permission for change of use of domestic garage to living accommodation and retention of dwelling house extension which incorporates the garage subject to 2 conditions

4. Legislative Context

Section 2(1) of the Planning and Development Act 2000 (as amended) provides a definition of "works" in the Act:

“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) of the Planning and Development Act 2000 (as amended) defines development:

In this Act, “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.

In this regard, the proposed development comprises works and also therefore is considered ‘development’.

Exempted Development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) and further prescribed under Article 6 (1) which is stated as follows:

“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.”

The provisions of Article 9 were reviewed in the context of this application, and it is considered that Article 9 does not apply in this case.

Planning and Development Regulations 2001 (as amended)

Article 6(1)

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

Assessment

The declaration is being sought under the provisions of Class 14 Changes of Use, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Class 14 is noted as follows:

Column 1:

Development Description:

Development consisting of a change of use-

- (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'

Column 2 outlines conditions and limitations.

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 description of the proposed development is for a change of use of a 4 bedroom private dwelling to a childcare home. The Applicant has indicated there will be 4 adult's residents (two per 12 hour shift) and two children in care. It is further noted the dwelling in question is being rented out to a private company, Heart Go Dti Heart 1C, Potato Market, Carlow Town , who are contracted to Tusla the child and family agency

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.

5. 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.

6. 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 a change of use from a of a 4 bedroom private dwelling to child care home providing care for such persons (comprising 2 residents and 2 per 12 hour shift) at Bogtown Cross, Clonygowan, 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 a 4 bedroom private dwelling to child care home is or is not development at Bogtown Cross, Clonygowan, Co. Offaly is or is not development, and is or is not exempted development.

AND WHEREAS Heart Go Dti Heart requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) Planning and Development Act 2000 (as amended) and
- (b) Planning and Development Regulations 2001 (as amended);

AND WHEREAS Offaly County Council has concluded that the proposal comprises of development to which the provisions of the following applies:

- (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 works are considered development and is exempted development.

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

- The proposal for the change of use of a 4 bedroom private dwelling to a child care home at Bogtown Cross, Clonygowan, Co. Offaly is **development** and is **exempted development**.

Michael Duffy

Michael Duffy

Executive Planner

6th September 2023

Carroll Melia

Carroll Melia

Acting Senior Executive Planner

6th September 2023

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:

Offaly County Council

Planning Application Ref. No.:

DEC 23/22

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:

Proposed development:	WHETHER OR NOT THE CHANGE OF USE OF A 4 BEDROOM PRIVATE DWELLING TO CHILD CARE HOME IS OR IS NOT DEVELOPMENT, AND IS OR IS NOT EXEMPTED DEVELOPMENT		
Site location:	BOGTOWN, CLONYGOWAN, CO. OFFALY		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby <i>European</i> Site(s):	Barrow and river Nore SAC		
Distance to <i>European</i> Site(s):	5.2km		
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 <i>European</i> site:	None		
Is the application accompanied by an EIAR?	No		

(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):

The reasons for the designation of the <i>European</i> site:	
The site is a SAC selected for alluvial wet woodlands and petrifying springs, priority habitats on Annex I of the E.U. Habitats Directive. The site is also selected as a candidate SAC for old oak woodlands, floating river vegetation, estuary, tidal mudflats, <i>Salicornia</i> mudflats, Atlantic salt	

adows, Mediterranean salt meadows, dry heath and eutrophic tall herbs, all habitats listed on Annex I of the E.U. Habitats Directive. The site is also selected for the following species listed on Annex II of the same directive - Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Nore Freshwater Pearl Mussel, Crayfish, Twaite Shad, Atlantic Salmon, Otter, Desmoulin's Whorl Snail *Vertigo moulinsiana* and the Killarney Fern.

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.)**

1016 Desmoulin's whorl snail *Vertigo moulinsiana*
 1029 Freshwater pearl mussel *Margaritifera margaritifera*
 1092 White-clawed crayfish *Austropotamobius pallipes*
 1095 Sea lamprey *Petromyzon marinus*
 1096 Brook lamprey *Lampetra planeri*
 1099 River lamprey *Lampetra fluviatilis*
 1103 Twaite shad *Alosa fallax*
 1106 Atlantic salmon (*Salmo salar*) (only in fresh water) 1130 Estuaries
 1140 Mudflats and sandflats not covered by seawater at low tide
 1310 Salicornia and other annuals colonizing mud and sand
 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
 1355 Otter *Lutra lutra* 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
 1421 Killarney fern *Trichomanes speciosum*
 1990 Nore freshwater pearl mussel *Margaritifera durrovensis*
 3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
 4030 European dry heaths
 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
 7220 * Petrifying springs with tufa formation (*Cratoneurion*)
 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
 91E0 * Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.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:

(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).

Given the location the limited nature and size of the development applied for and the characteristics of *European* sites in the vicinity it is considered that 100 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 100 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.

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 <i>European</i> site?	There will be no reduction in the habitat area.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the <i>European</i> 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 <i>European</i> 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 <i>European</i> site?	Not likely to have an adverse impact due to its location, scale and characteristics.
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 <i>European</i> 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 Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i>
	<i>Conclusion:2</i>

Justify why it falls into relevant category above:
Given the location and the nature and size of the development applied for and the characteristics of European sites in the vicinity and the appropriate assessment guidelines it is considered that the development will be unlikely to have significant effects on any European sites.

Signed:

Michael Duffy

Date:

5th September 2023