

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 23/3

NAME OF APPLICANT: Keith Naylor on Behalf of Rockbawn Property's Ltd.

ADDRESS: Derry, Rathcabbbin, Roscrea Co. Tipperary

ADDRESS FOR CORRESPONDENCE: C/O Margaret Kirwan, Limford Building Surveyors, Limford House, 21 The Orchard, Millersbrook, Nenagh, Co. Tipperary. E45 HE06.

NATURE OF APPLICATION: REQUEST FOR DECLARATION UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000, AS AMENDED AS WHETHER THE CHANGE OF USE OF A DISUSED CONVENT BUILDING TO 18 NO. FLATS FOR UKRAINIAN WAR REFUGEES & OTHER PROTECTED PERSONS IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT

LOCATION OF DEVELOPMENT: Former La Sainte Union Convent, Main Street, Banagher, Birr, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 28/02/2023 & 11/05/2023 as to whether the change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons is or is not development and is or is not exempted development at Former La Sainte Union Convent, Main Street, Banagher, Birr, Co. Offaly under the Planning and Development Act 2000, (as amended).

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

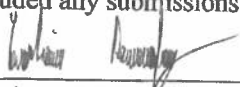
- (a) Section 2,3(1) and 4(1) of the Planning & Development Act 2000 (as amended);
- (b) Article 10 of the Planning and Development Regulations 2001 (as amended); and,
- (c) Schedule 2, Part 1, Class 14(h) of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that –

The change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons **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 the change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons **is development** and is not **exempted development** at the former La Sainte Union Convent, Main Street, Banagher, Birr, 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 31/5/2023

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

<b>File Reference:</b>	<b>Dec. 23/03</b>
<b>Question:</b>	<i>Whether the change of use of a disused convent building to 18 no. flats for Ukrainian war refugees &amp; other protected persons is or is not development and is or is not exempted development.</i>
<b>Applicant:</b>	<i>Rockbawn Property Ltd.</i>
<b>Correspondence Address:</b>	<i>c/o Margaret Kirwan, Limford Building Surveyors, Limford House, 21 The Orchard, Millersbrook, Nenagh, Co. Tipperary. E45 HE06</i>
<b>Location:</b>	<i>Former La Sainte Union Convent, Main Street, Banagher, Birr, Co. Offaly.</i>

### 1. Introduction

The question has arisen as to whether the change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons is or is not development and is or is not exempted development. The exemption is sought for the provision of 18 no. residential units comprising of 1 no. basement flat; 8 no. ground floor flats; 7 no. first floor flats; and, 2 no. second floor flats located at the former La Sainte Union Convent.

### 2. Review of Further Information

Further information (FI) was sought by the Planning Authority on the 27<sup>th</sup> March 2023 and subsequently received by the Planning Authority also on the 11<sup>th</sup> May 2023.

This report should be read in conjunction with the previous planner's report dated 24<sup>th</sup> March 2023.

The following FI was sought and the response is as follows:

*Having regard to the Circular Letter: EUIPR 3/2022 'European Union (Planning and Development)(Displaced Persons from Ukraine Temporary Protection) Regulations 2022' issued by the Department of Housing, Local Government and Heritage and dated 1st July 2022, the Applicant shall clarify whether they are carrying out the change of use and associated works on behalf of a State Authority i.e. a Minister of the Government or the Commissioners of Public Works in Ireland. If this applies, the Applicant shall provide written confirmation from the relevant State Authority.*

In response, the Applicant advises that the change of use is not being carried out by or on behalf of a State Authority.

### 3. Evaluation

Having regard to *S.I. No. 306 of 2022 - European Union (Planning and Development) (Displaced Persons From Ukraine Temporary Protection) Regulations 2022*, the Planning Authority note that the Regulations relate to the non-application of the Planning and Development Act 2000 to certain classes of development by or on behalf of a State authority, which is defined as a Minister of the Government or the Commissioners of Public Works in Ireland.

The Applicant has confirmed that the proposed change of use of a disused convent building to 18 no. flats for Ukrainian war refugees and other protected persons is not been carried out by or on behalf of a State Authority. Therefore, the provisions of the Planning and Development Act 2000 (as amended) and Planning and Development Regulations 2001 (as amended) are applicable.

Based on the information submitted as part of the application, the Planning Authority are satisfied that the change of use is development.

Article 10 (1) Changes of Use of the Planning and Development Regulations 2001 (as amended) outlines that the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, if the works carried out are exempted development.

Section 4 (1)(h) of the Planning Act states that exempted development consists of *'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'*.

It is the view of the Planning Authority that the proposed works will materially affect the external appearance of the existing building and have an impact on the character of the structure and are therefore not exempted development.

Therefore, it is the view of the Planning Authority that the change of use is development and is not exempted development.

### 4. Recommendation

Having assessed the Further Information received and the previous planning report on file, it is considered the proposed change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons **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 change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons is or is not development and is or is not exempted development at the former La Sainte Union Convent, Main Street, Banagher, Birr, Co. Offaly.

**AS INDICATED** on the particulars received by the Planning Authority on the 28<sup>th</sup> February 2023 and 11<sup>th</sup> May 2023,

**AND WHEREAS** Rockbawn Property Ltd. c/o Margaret Kirwan, Limford Building Surveyors 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, 3(1) and 4(1) of the Planning & Development Act 2000 (as amended);
- (b) Article 10 the Planning and Development Regulations 2001 (as amended); and,
- (c) Schedule 2, Part 1, Class 14(h) of the Planning and Development Regulations 2001 (as amended).

**AND WHEREAS** Offaly County Council has concluded that the change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons 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 the change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons is **development** and is **not exempted development** at the former La Sainte Union Convent, Main Street, Banagher, Birr, 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 Pleanala within 4 weeks of the issuing of the decision.*



Úna McCafferkey  
Executive Planner

30<sup>th</sup> May 2023

Date



Carroll Melia  
A/Senior Executive Planner

31<sup>st</sup> May 2023

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 23/03

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the change of use of a disused convent building to 18 no. flats for Ukrainian war refugees & other protected persons is or is not development and is or is not exempted development.		
Site location:	Former La Sainte Union Convent, Main Street, Banagher, Birr, Co. Offaly.		
Site size:	Not provided	Floor Area of Proposed Development:	1,479.5m <sup>2</sup> (as stated)
Identification of nearby European Site(s):	Middle Shannon Callows SPA: 0.85km River Shannon Callows SAC: 0.85km		
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):			
<p><b>Middle Shannon Callows SPA – features of interest include:</b></p> <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> <p><b>River Shannon Callows SAC – features of interest include:</b></p> <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> <li>Limestone pavements [8240]</li> <li>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</li> <li><i>Lutra lutra</i> (Otter) [1355]</li> </ul>			
<p>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 <a href="http://www.npws.ie">www.npws.ie</a>) (ATTACH INFO.)</p>			
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>

**(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).*

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 *in-combination effects* 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:**

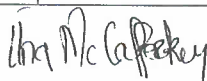
1. AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.
2. No potential for significant effects / AA is not required.
3. Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement 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:**

Úna McCafferkey



**Position:**

Executive Planner

**Date:**

30<sup>th</sup> May 2023

