

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

REFERENCE: DEC 23/30

NAME OF APPLICANT: Fergal Mac Cabe

ADDRESS: 4 Summerhill Parade, Sandycove, Co. Dublin. A96 OC6.

ADDRESS FOR CORRESPONDENCE: 4 Summerhill Parade, Sandycove, Co. Dublin. A96 OC6.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether 1.50 sqm illuminated digital commercial advertising sign **is/ is not development and is /is not exempted development.**

LOCATION OF DEVELOPMENT: O'Connor SQ Tullamore, Co. Offaly.

WHEREAS A question referred to Offaly County Council as to whether 1.50 sqm illuminated digital commercial advertising sign.

- O Connor Square, Tullamore, Co Offaly

AND WHEREAS Fergal Mac Cabe has requested a declaration on the said question from Offaly County Council.

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

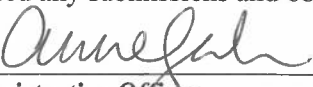
- Section 2 of the Planning & Development Act 2000, as amended.
- Section 3(1) of the Planning & Development Act 2000, as amended.
- Section 4(2) of the Planning & Development Act 2000, as amended.
- Article 6(1) of the Planning and Development Regulations 2001, as amended. Schedule 2, Part 1, Class 31 of the Planning and Development Regulations 2001, as

AND WHEREAS Offaly County Council has concluded that –

- The work is 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 that the 1.50 sqm illuminated digital commercial advertising sign ancillary to a telephone kiosk **is development and is exempted development** at O'Connor SQ Tullamore, 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

3rd November 2023

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 23/30
Question:	Whether 1.50 sqm illuminated digital commercial advertising sign. Is/ is not development and is /is not exempted development
Applicant:	Fergal Mac cabe
Location:	O Connor Square
Date received:	9/10/2023
Date due:	5/11/2023

1. Proposal

The question has arisen as to whether 1.50 sqm illuminated digital commercial advertising sign.

Is/ is not development and is /is not exempted development

Location

The site is located in O Connor Square

2. Relevant Planning History:

No record of any relevant planning history on site.

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.

SCHEDULE 2
PART 1
CLASS 31
The carrying out by a statutory undertaker authorised to provide a telecommunications service of development consisting of the provision of— (c) telephone kiosks or other telephone facilities in a public place not being on, over or along a public road,
Conditions and Limitations
No such kiosk or facility shall be situated within 10 metres of the curtilage of any house, save with the consent in writing of the owner or occupier thereof.

4. Appropriate Assessment

A screening exercise for an appropriate assessment has been carried out and it has been deemed that the development 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?

Yes as the signage as an ancillary item to a telephone kiosk. Please see photos on next page.



Question: Does the development require environmental impact assessment?

No

6. Conclusion

It is recommended that the applicant be advised that the proposed development is **development and is 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 1.50 sqm illuminated digital commercial advertising sign.

-

A O Connor Square, Tullamore, Co Offaly LOCATION

AND WHEREAS Fergal Mac Cabe 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(2) 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 31 of the Planning and Development Regulations 2001, as amended

AND WHEREAS Offaly County Council has concluded that –

- The work is 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 1.50 sqm illuminated digital commercial advertising sign ancillary to a telephone kiosk is **development and is exempted development.**

**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 23/30

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:	
Proposed development:	Telephone kiosk
Site location:	O Connor Sq, Tullamore
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC
Distance to European Site(s):	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 European 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 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...</p> <p>... any impact on an Annex 1 habitat?</p> <p>(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.

... 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.	<i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.
2.	<i>No potential for significant effects / AA is not required.</i>
3.	<i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a NIS 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 European sites from the proposed development.
Name:	Ed Kelly
Position:	ASEP
Date:	3/11/2023

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>

