

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

**REFERENCE:** DEC 23/65

**NAME OF APPLICANT:** Vincent Cunningham

**ADDRESS FOR CORRESPONDENCE:** c/o John Cunningham, 38 Tegan Court, Mucklagh, Tullamore, Co. Offaly

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not refurbishment works to an existing above shop apartment to include dry lining, ceiling replacement, re wiring, re plumbing, new heating system, carpentry works, new kitchen, new bathroom, painting and decorating and ancillary items is or is not development and is or is not exempted development.

**LOCATION OF DEVELOPMENT:** 31 High Street, Tullamore, Co. Offaly

**WHEREAS** question has arisen as to whether refurbishment works to an existing above shop apartment which include dry lining, ceiling replacement, re wiring, re plumbing, new heating system, carpentry works, new kitchen, new bathroom painting and decorating and ancillary items at 31 High Street, Tullamore is or is not development and is or is not exempted development.

**AS INDICATED** on the particulars received by the Planning Authority on the 6th December 2023 and 21<sup>st</sup> June 2024.

**AND WHEREAS** Vincent Cunningham 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:

- Section 2 of the Planning & Development Act 2000, as amended.
- Section 3(1) of the Planning & Development Act 2000, as amended.
- Section 4(1) (h) of the Planning & Development Act 2000, 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 refurbishment works to an existing above shop apartment which include dry lining, ceiling replacement, re wiring, re plumbing, new heating system, carpentry works, new kitchen, new bathroom painting and decorating and ancillary items at 31 High Street, Tullamore, 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.

  
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*Administrative Officer*

*Date* 28/6/24

*Note: 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.*



OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

<b>File Reference:</b>	<b>DEC 23/65</b>
<b>Question:</b>	Whether  refurbishment works to an existing above shop apartment to include dry lining, ceiling replacement, re wiring, re plumbing, new heating system, carpentry works, new kitchen, new bathroom painting and decorating and ancillary items  <b>Is/ is not development and is /is not exempted development</b>
<b>Applicant:</b>	Vincent Cunningham
<b>Location:</b>	31 High Street, Tullamore
<b>Date received:</b>	6/12/2023

**1. Proposal**

The question has arisen as to whether refurbishment works to an existing above shop apartment to include dry lining, ceiling replacement, re wiring, re plumbing, new heating system, carpentry works, new kitchen, new bathroom painting and decorating and ancillary items

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

**2. Relevant Planning Issues:**

Protected structure 23-253 Shishir Indian Restaurant

<b>23-253</b>	<b>Shishir Indian Restaurant</b> TULLAMORE High Street Tullamore Tullamore		<b>14807057</b> Regional		End-of-terrace five-bay two-storey house, built c.1840, with added with rendered chimneystacks, terracotta pots. Ruled-and-lined ren with painted sills. Round-headed doorway with painted stone surrc timber door. Replacement timber shopfront to north with timber p windows with timber fascia board. Replacement timber door with j
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**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—

(h) 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 or 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 of neighbouring structures;

Section 57.— Planning and Development Act 2000, as amended:

(1) Notwithstanding section 4(1)(a), (h), (i), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

#### **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?

I note that a qualified architect has submitted a report, as a response to a further information request, indicating that the works subject of this declaration will not materially effected the character of the structure.

**6. Conclusion**

It is recommended that the applicant be advised that the proposed development is ~~is not~~ development and is ~~is not~~ exempted development.

EK



Ed Kelly

ASEP

28/6/2024

**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 refurbishment works to an existing above shop apartment which include dry lining, ceiling replacement, re wiring, re plumbing, new heating system, carpentry works, new kitchen, new bathroom painting and decorating and ancillary items

**AT 31 High Street, Tullamore is or is not development and is or is not exempted development.**

**AND WHEREAS Vincent Cunningham** 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) (h) of the Planning & Development Act 2000, 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 refurbishment works to an existing above shop apartment which include dry lining, ceiling replacement, re wiring, re plumbing, new heating system, carpentry works, new kitchen, new bathroom painting and decorating and ancillary items

- **Is development and is exempted development.**

Signature

A handwritten signature in black ink, appearing to read "Ed Kelly". The signature is written in a cursive style with a long, sweeping underline.

Ed Kelly

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*Acting Senior Executive Planner*

28/6/2024

*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 23/65**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:	
Proposed development:	Refurb apartment
Site location:	High St, Tullamore
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC
Distance to European Site(s):	1.2Km
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 <a href="http://www.npws.ie">www.npws.ie</a> ) (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	
<b>(C) NPWS ADVICE:</b>	
Advice received from NPWS over phone:	None received

<b>(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:</b>	
<i>(The purpose of this is to identify if the effect(s) identified could be significant – if <b>uncertain</b> assume the effect(s) are significant).</i>	
If the answer is 'yes' to any of the questions below, then the effect is significant. <i>(Please justify your answer. 'Yes' / 'No' alone is insufficient)</i>	
<b>Would there be...</b>  ... 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	Not likely due to the location and type of development

<p>quality and supply, soil compaction) in the European site?</p>	<p>The site is sufficient distance from the European site.</p>
<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>	<p>Not likely due to the location and type of development</p> <p>The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	<p>None likely due to the location and type of development</p> <p>The site is sufficient distance from the European site</p>
<p>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.</p>	<p>No other plans known of in the vicinity of the site.</p> <p>The site is sufficient distance from the European site.</p>
<p><b>(E) SCREENING CONCLUSION:</b></p>	
<p><b>Screening can result in:</b></p>	
<p>1.</p>	<p><i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i></p>
<p>2.</p>	<p><i>No potential for significant effects / AA is not required.</i></p>
<p>3.</p>	<p><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></p>
<p>Therefore, does the project fall into category 1, 2 or 3 above?</p>	<p><b>Category 2</b></p>
<p>Justify why it falls into relevant category above:</p>	<p><b>There would be no likely significant impact on European sites from the proposed development.</b></p>

<b>Name:</b>	Ed kelly		
<b>Position:</b>	ASEP	<b>Date:</b>	28/6/2024

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>

