

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

REFERENCE: DEC 24/105

NAME OF APPLICANT: TANWEER AHMED SOOMRO

ADDRESS FOR CORRESPONDENCE: 22 THE VIEW, SAINT WOLSTAN'S ABEEY, CELBRIDGE,
CO. KILDARE, W23X7WF.

NATURE OF APPLICATION: request for declaration under section 5 of the planning & development act 2000, as amended as to whether change of use of ground floor from surgery to residential unit with use of one of the rooms as a kitchen is or is not development, and is or is not, exempted development.

LOCATION OF DEVELOPMENT: 1 BOYNE MEADOWS, EDENDERRY, CO OFFALY.

WHEREAS a question has arisen as to:

- Whether change of use of ground floor from surgery to residential unit with use of one of the rooms as a kitchen

At 1 Boyne Meadows, Edenderry, Co Offaly

AND WHEREAS Tanweer Ahmed Soomro 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)Planning permission 00/548.

AND WHEREAS Offaly County Council has concluded that –

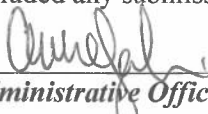
- The work is considered development and is not exempted development.

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

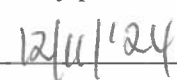
The change of use of ground floor from surgery to residential unit with use of one of the rooms as a kitchen

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 24/105
Question:	Whether change of use of ground floor from surgery to residential unit with use of one of the rooms as a kitchen Is/ is not development and is /is not exempted development
Applicant:	Tanweer Ahmed Soomro
Location:	1 Boyne Meadows, Edenderry, Co Offaly
Date received:	7/10/2024
Date due:	12/11/2024

1. Proposal

The question has arisen as to whether change of use of ground floor from surgery to residential unit with use of one of the rooms as a kitchen is/ is not development and is /is not exempted development.

Location

The site is located in Edenderry Town in an existing housing estate. There is an existing detached house on site.

2. Relevant Planning History:

00/548 Dr Philip Brady granted change of use of ground floor to surgery, extension to rear of dwelling & alterations to first floor.

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 structure

4(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).

Article 10(6) of the Planning and Development Regulations 2001, as amended:

Changes of use.

(6) (a) In this sub-article—

“habitable room” means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;

“relevant period” means the period from the making of these Regulations until 31 December 2021.

(b) This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3 or 6 of Part 4 to Schedule 1.

(c) Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—

(i) the structure concerned was completed prior to the making of the Planning and Development

(Amendment) (No. 2) Regulations 2018,

(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3 or 6, and

(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,

then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).

(d) (i) The development is commenced and completed during the relevant period.

(ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.

(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.

(iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the

upper floors of the structure concerned.

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing:

Design Standards for New Apartments — Guidelines for Planning Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of

Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall accordingly notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure, and

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit,

shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

(iii) During the years 2019, 2020, 2021 and 2022, each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).

Part 4, Class 8 of the Planning and Development Regulations 2001, as amended:

SCHEDULE 2

PART 4 CLASS 8 Use— (a) as a health centre or clinic or for the provision of any medical or health services (but not the use of the house of a consultant or practitioner, or any building attached to the house or within the curtilage thereof, for that purpose), 422 (b) as a crèche, (c) as a day nursery, (d) as a day centre.

4. Screening

Having regard to nature of the development, the conversion of doctors surgery to residential uses its location in Edenderry Town and lack of any pathway to a European site given that the proposal connects to a public sewer it is considered that the proposed development would not be likely to have a significant effect

individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

Please see EIA Screening attached which concludes EIA is not required.

5. Evaluation

Question: Is the following works considered as Development?

Yes

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

I note it is unclear from the description whether the works subject of this declaration consist of a separate dwelling unit or an extension to the existing dwelling. Notwithstanding this issue I note no exemption to convert a doctors surgery clinic to residential use. I note that the exemption under article 10(6) does not apply to class 8 developments. Class 8 uses include doctors surgeries. The works are deemed not to be 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 change of use of ground floor from surgery to residential unit with use of one of the rooms as a kitchen

At 1 Boyne Meadows, Edenderry, Co Offaly

AND WHEREAS Tanweer Ahmed Soomro 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) Planning permission 00/548

AND WHEREAS Offaly County Council has concluded that –

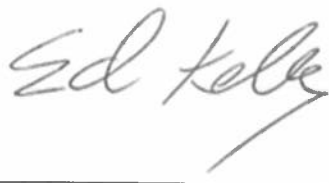
- The work is considered development and is not exempted development.

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

The change of use of ground floor from surgery to residential unit with use of one of the rooms as a kitchen

Is development and is not exempted development.

Signature



Ed Kelly

ASEP

Date 12/11/2024



EIA Screening Form

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	Dec 24/105
Development Summary:	Doctors surgery to residential use
Was a Screening Determination carried out under Section 176A-C?	No, Proceed to Part A
A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1 , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
No	Proceed to Part B
B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2 , of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)	
No, the development is not a project listed in Schedule 5, Part 2	No Screening required