

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

REFERENCE: DEC 24/48

NAME OF APPLICANT: Jordan Darrah

ADDRESS FOR CORRESPONDENCE: Spinner's, Castle Street, Birr, Co. Offaly, R42 XK20.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the change of use to house international refugees is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Spinner's, Castle Street, Birr, Co. Offaly, R42 XK20.

WHEREAS a question has arisen as to whether the temporary change of use to house international refugees and asylum seekers is or is not development and if so is or is not exempted development at Spinners, Castle Street, Birr, Co. Offaly, R42 XK20.

AS INDICATED on the particulars received by the Planning Authority on the 30th April 2024 and 29th May 2024.

AND WHEREAS Jordan Darrah 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, 3(1) and 4(2) of the Planning & Development Act 2000 (as amended).
- Article 5, 6 and 9 of the Planning and Development Regulations 2001 (as amended).
- Schedule 2, Part 1, Class 14 of the Planning & Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the temporary change of use to house international refugees and asylum seekers is 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 temporary change of use to house international refugees and asylum seekers **is development and is exempted development** at Spinners, Castle Street, Birr, Co. Offaly, R42 XK20.

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

18/6/24

Date

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.

Planning Report - Section 5 Declaration

File Reference:	<i>Dec. 24/48</i>
Question:	<i>Whether a change of use to houses international refugees is or is not development and if so is or is not exempted development</i>
Applicant:	<i>Jordan Darrah</i>
Location:	<i>Spinners, Castle Street, Birr R42 XK20</i>

Second Report

1. Introduction

The question has arisen as to whether a change of use to house protected persons is or is not development and is or is not exempted development.

2. Site Description / Site History

The subject site is located on lands zoned as Town Centre/Mixed Use under the Birr Local Area Plan 2023 – 2029. The site is within an SMP zone. A site location map has been provided.

The following planning permission have been granted in the vicinity of the subject works:

- **BR338** Renovation of dwelling **granted** 2/12/1976.
- **BR634** Conversion and Renovations **granted** 20/03/1986.
- **BR844** tourist holiday hostel & retail unit **granted** 31/03/1994.
- **BR 908** Change of use of old warehouse to bistro + living accommodation granted 9/8/1995.
- **BR994** change of use of top portion of old wooden mill to form private dwelling accommodation situated to rear of existing hostel at Castle St + with entrance to dwelling at junction of Castle St/William St **granted** 14/10/1997.
- **1881** JORDAN DARRAH **was granted** change of use of parts of an existing storage barn, to a private dwelling and the following 3 commercial elements - an ensuite bedroom, new toilet block and additional space for dining. Alterations to the north west elevation to include a new fire escape with window above and the omission of an existing window. The change of use of a first-floor private living space to commercial usage providing 3 additional ensuite bedrooms, with an extension to the existing restaurant on the ground floor. Alterations to existing window and door openings to the barn on the west elevation (towards the courtyard) with the replacement of its existing roof to include rooflights and associated internal modifications and siteworks. These works are proposed to and within the curtilage of a protected structure listed under the record of protected structures in the Birr Town and Environs Development Plan (ROS ref. 53-205).

3. Review of Further Information

Further information (FI) was sought by the Planning Authority on the 27th May 2024 and subsequently, a response from the Applicant was received by the Planning Authority on the 29th May 2024. This report should be read in conjunction with the previous planner's report dated 24th May 2024. The following FI was sought and the response is as follows:

1. *Please submit a full set of floor plans and elevations drawings at 1:500 scale of the structures subject of this declaration.*

The Applicant has submitted a full set of floor plans and elevations drawings. A site visit by the Planner confirms that the floor plans correspond with the internal layout of the premises.

2. *Please indicate if the proposed change of use is temporary or permanent. Please note that exemptions in the planning regulations under class 20F are of a temporary nature.*

The Applicant advises that the proposed change of use is temporary as they noted that they are 'currently only looking to secure a two-year contract with the Minister for Justice and Equality'.

3. *Please indicate if the change of use is to house solely Ukrainian refugees to whom the European Union (Planning and Development) (Displaced Persons from Ukraine Temporary Protection) Regulations 2022 (S.I. No 306 of 2022) are applicable.*

The Applicant states that the proposed facilities will be used to house asylum seekers and refugees.

4. *Please indicate if the proposal will house protected persons (as defined in article 5 of the planning and development regulations 2001, as amended.).*

In response, the Applicant states yes.

5. *Please indicate the existing uses of the structures subject of this declaration. Please provide planning permission reference numbers (where relevant) of the structures subject of this declaration.*

The Applicant states that the existing premises is currently used as a Bed & Breakfast and notes the following planning application references: BR844, BR908 and BR994.

Planner's Appraisal following review of FI response

Schedule 2 – Article 6

Part 1 of Schedule 2 of the Planning & Development Regulations deals with 'Exempted Development – General'.

Column 1 sets out the classes of development that are exempted and Column 2 sets out the conditions and limitations on the exemption.

Class 20F as outlined in the previous planner's report does not apply to the proposed Change of Use as the current landuse of bed and breakfast (guest house) is not listed in Column 1.

Class 14 does apply given the current landuse of bed and breakfast (guest house).

The Planning and Development (Amendment) (No. 4) Regulations 2015 (S.I. No. 582 of 2015) amend the exempted development provisions of the Planning and Development Regulations 2001 to 2015 (the Principal Regulations). The primary purpose of these Regulations was to insert 4 new elements of exempted development into Class 14 of Schedule 2, Part 1 of the

Principal Regulations which have the effect that the changes of use specified in the new classes below are exempted from the requirement to obtain planning permission.

Column 1 Description of Development	Column 2 Conditions & Limitations
<p>Class 14 Development consisting of a change of use—</p> <p>(h) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (i) of the said premises or institution, or part thereof, to use as to use as accommodation for protected persons,</p> <p>(i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons, and</p> <p>(j) from the change of use specified in paragraph (h) or (i) or both, to the permitted use of the premises immediately prior to the change of use specified in the said paragraph (h) or (i) or both.</p>	<p>Class 14(j) shall not apply after a period of 3 years from the date of the commencement of the change of use specified in Class 14(h) or (i) or both, whichever date is the earliest.</p>

Given the current landuse at the subject site (i.e. bed and breakfast which may also be referred to as guesthouse), the proposed change of use may be considered having regard to the provisions allowed under Class 14.

The Planning and Development (Amendment) (No. 4) Regulations 2015 (S.I. No. 582 of 2015) defined a 'protected person' as:

- | |
|---|
| <p>(a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013),</p> <p>(b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or</p> <p>(c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996;”.</p> |
|---|

Circular Letter PL 12/ 2015 dated 18th December 2015 and issued by the Minister for the Environment, Community and Local Government defines “protected persons” as *‘refugees and asylum seekers defined in accordance with relevant legislation for which the Minister for Justice and Law Reform is responsible’*. It also states that *‘this new class of exempted development will particularly assist in the implementation of the Government’s Irish Refugee*

[Protection Programme \(IRRP\)](#) as part of the Irish contribution to the EU Relocation Programme for Migrants’.

As outlined on the Irish Department of Justice website (www.justice.ie), ‘on 10 September 2015, as part of Ireland’s response to the migration crisis in central and southern Europe, the Government established the Irish Refugee Protection Programme (IRPP). Under this programme, the Government committed to accept up to 4,000 people into the State, through a combination of the European Union Relocation Programme established by two EU Council Decisions in 2015 to assist Italy and Greece, and the UNHCR-led Refugee Resettlement Programme currently focussed on resettling refugees from Lebanon and Jordan’.

An extract from the Irish Government website, www.gov.ie notes the following:

Background to the Irish Refugee Protection Programme

From [Department of Children, Equality, Disability, Integration and Youth](#)

Published on 20 September 2023

Last updated on 20 September 2023

The Irish Refugee Protection Programme (IRPP) was established by Government Decision of September 2015 (S.I. 80/20/10/0122H) as a key part of Ireland’s response to the global humanitarian migration crisis. The Decision of 2015 committed Ireland to accept 4,000 persons under various strands, including the EU Relocation Mechanism and UNHCR-led Resettlement Programme.

In a further Government Decision of December 2019 (SI 80/20/10/0122H) Ireland pledged to welcome up to 2,900 refugees between 2020 and 2023 through Resettlement. Government approval for the next phase of the Programme will be sought before the end of 2023.

The IRPP is a distinct programme of tailored supports for persons granted refugee status upon acceptance onto the programme. As such it is completely separate from the services provided to persons arriving spontaneously in order to seek international protection and avail of Direct Provision accommodation (“asylum seekers”), and those Beneficiaries of Temporary Protection (BOTPs) that have arrived since the onset of the ongoing conflict in Ukraine. The IRPP offers a safe haven to persons recognised by UNHCR as refugees under the 1951 Geneva Refugee Convention.

4. Evaluation

The Applicant has confirmed that the proposed change of use of the existing bed & breakfast (guesthouse) will be temporary and is intended to accommodate ‘asylum seekers and refugees’. Such persons must meet the definition of protect person as per the definition in the Planning and Development (Amendment) (No. 4) Regulations 2015 (S.I. No. 582 of 2015).

It is considered that the proposed development does not constitute a development listed in Schedule 5 of the Planning and Development Regulations 2001 as amended. Furthermore, it is not a sub-threshold development. Accordingly an EIAR is not required.

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 temporary change of use to houses international refugees and asylum seekers is or is not development and if so is or is not exempted development at Spinners, Castle Street, Birr R42 XK20.

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Una McCafferkey
Executive Planner

18th June 2024

Date



Ed Kelly
A/Senior Planner

18th June 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 Authority: OCC

Planning Application Ref. No: DEC 2448

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Change of use		
Site location:	Birr		
Site size:	Not provided	Floor Area of Proposed Development:	Not provided
Identification of nearby European Site(s):	Dovegrove Callows SPA – 2.1km Lisduff Fen SAC – 4.76km Ballyduff/Clonfinane Bog SAC – 4.65km River Little Brosna Callows SPA – 5.307m All Saints Bog SPA – 6.48km		
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?			No: X
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
<p>Dovegrove Callows SPA - Features of interest include:</p> <ul style="list-style-type: none"> • Greenland White-fronted Goose (Anser albifrons flavirostris) <p>Lisduff Fen SAC - Features of interest include:</p> <ul style="list-style-type: none"> • Petrifying springs with tufa formation (Cratoneurion) [7220] • Alkaline fens [7230] • Vertigo geyeri (Geyer's Whorl Snail) [1013] <p>Ballyduff/Clonfinane Bog SAC - Features of interest include:</p> <ul style="list-style-type: none"> • Active raised bogs [7110] • Degraded raised bogs still capable of natural regeneration [7120] • Depressions on peat substrates of the Rhynchosporion [7150] • Bog woodland [91D0] <p>River Little Brosna Callows SPA - Features of interest include:</p> <ul style="list-style-type: none"> • Whooper Swan (Cygnus cygnus) [A038] • Wigeon (Anas penelope) [A050] • Teal (Anas crecca) [A052] • Pintail (Anas acuta) [A054] • Shoveler (Anas clypeata) [A056] • Golden Plover (Pluvialis apricaria) [A140] • Lapwing (Vanellus vanellus) [A142] • Black-tailed Godwit (Limosa limosa) [A156] • Black-headed Gull (Chroicocephalus ridibundus) [A179] • Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] 			

<ul style="list-style-type: none"> Wetland and Waterbirds [A999] <p>All Saints Bog SPA - Features of interest include:</p> <ul style="list-style-type: none"> Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395] 	
<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 www.npws.ie) (ATTACH INFO.)</p>	
<p>Site Name: Dovegrove Callows SPA, Site Code: 004137 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004137.pdf</p> <p>Site Name: Lisduff Fen SAC, Site Code: 002147 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002147.pdf</p> <p>Site Name: Ballyduff/Clonfinane Bog SAC, Site Code: 000641 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000641.pdf</p> <p>Site Name: River Little Brosna Callows SPA, Site Code: 004086 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004086.pdf</p> <p>Site Name: All Saints Bog SPA, Site Code: 004103 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004103.pdf</p>	
<p>(C) NPWS ADVICE:</p>	
Advice received from NPWS over phone:	None Received
Summary of advice received from NPWS in written form (ATTACH SAME):	None Received
<p>(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:</p>	
<p><i>(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).</i></p>	
<p>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>	
<p>Would there be...</p> <p>... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	<p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>
<p>... a reduction in habitat area on a European site?</p>	<p>There will be no reduction in the habitat area. The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	<p>Not likely due to the location and type of development. 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. 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. 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. The site is sufficient distance from the European site.</p>
<p>(E) SCREENING CONCLUSION:</p>	
<p>Screening can result in:</p>	
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.	<i>Significant effects are certain, likely or uncertain.</i> (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:	18 th June 2024

