

**OFFALY COUNTY COUNCIL**

**DECLARATION UNDER SECTION 5 OF THE**

**PLANNING & DEVELOPMENT ACT 2000, AS AMENDED**

**REFERENCE:** DEC 24/64

**NAME OF APPLICANT:** Ronan Clarke

**ADDRESS FOR CORRESPONDENCE:** c/o Clarke and Co, Highland View Terrace, Fairgreen, Naas, Co Kildare, W91 A278.

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not toilets and lunchroom within existing farm shed building for enjoyment of people involved in farm is or is not development and is or is not exempted development.

**LOCATION OF DEVELOPMENT:** Coolderry House, Birr, Co. Offaly, R42 NS93.

**WHEREAS** a question has arisen as to whether the provision of a toilet and lunchroom within an existing farm shed building at Coolderry House, Birr, Co. Offaly, R42 NS93 is or is not development and is or is not exempted development.

**AS INDICATED** on the particulars received by the Planning Authority on the 5th June 2024.

**AND WHEREAS** Ronan Clarke c/o Clarke & Co, Highland View Terrace, Fairgreen, Naas, Co. Kildare, W91 A278 requested a declaration on the said question from Offaly County Council;

**AND WHEREAS** Offaly County Council, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard particularly to –

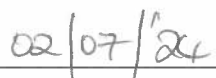
- Section 2, 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.
- Class 9, Schedule 2. Part 3 of the Planning & Development Regulations 2001, as amended.

**AND WHEREAS** Offaly County Council has concluded that the proposed works is development and is not exempted development as no exemption exists for the conversion of a farm shed to a toilet and lunch room.

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) of the Planning and Development Act, as amended, hereby decides that the provision of a toilet and lunchroom within an existing farm shed building at Coolderry House, Birr, Co. Offaly, R42 NS93 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.



## Planning Report - Section 5 Declaration

<b>File Reference:</b>	<b>Dec. 24/64</b>
<b>Question:</b>	Whether or not toilets & lunchroom within existing farm shed building for enjoyment of people involved in farm is or is not development and is or is not exempted development
<b>Applicant:</b>	Ronan Clarke
<b>Correspondence Address</b>	c/o Clarke & Co, Highland View Terrace, Fairgreen, Naas, Co. Kildare. W91 A278
<b>Location:</b>	Coolderry House, Birr, Co. Offaly. R42 NS93

### 1. Introduction

The question has arisen as to whether toilets & lunchroom within existing farm shed building for enjoyment of people involved in farm is or is not development and is or is not exempted development at Coolderry House.

### 2. Background

The subject site is located in the open countryside approximately 1km northwest of Coolderry Village. The subject site is part of an established farmyard complex which is located to the rear of the associated farmhouse. The Planning Authority note that part of the farmyard complex comprises of 3 no. self catering lodges – refer to [www.coolderrylodges.ie](http://www.coolderrylodges.ie). The dwelling but not the farmyard complex is located within a Source Protection Zone of the Coolderry GAA Borehole which is part of the Coolderry Public Group Scheme.

### 3. Site History

- 24/60214 – Ronan Clarke has sought permission for the construction of a farm building (area 657.18m<sup>2</sup>) of height 7.52m. The construction of yard, fence and all associated site works – *Decision due date is 1<sup>st</sup> August 2024.*

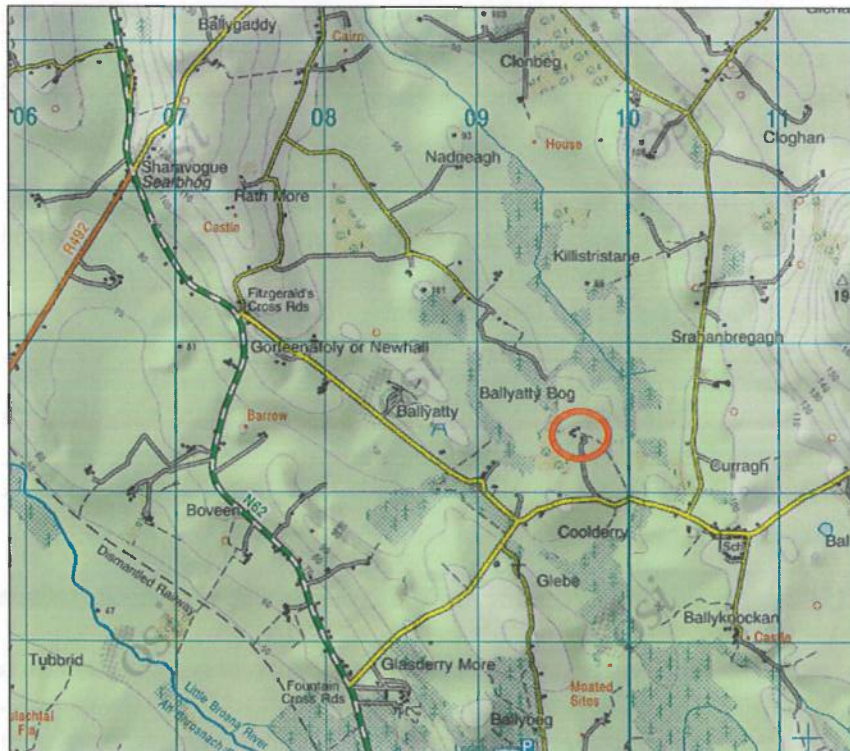


Figure 1 – Subject Site Location (highlighted in red).

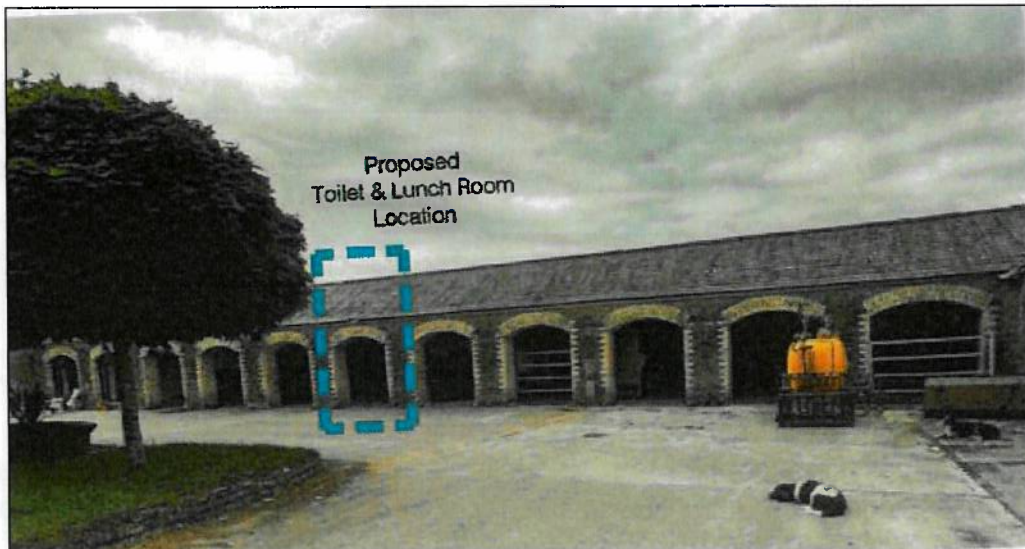


Photo 1: Subject Site – as submitted by the Applicant.

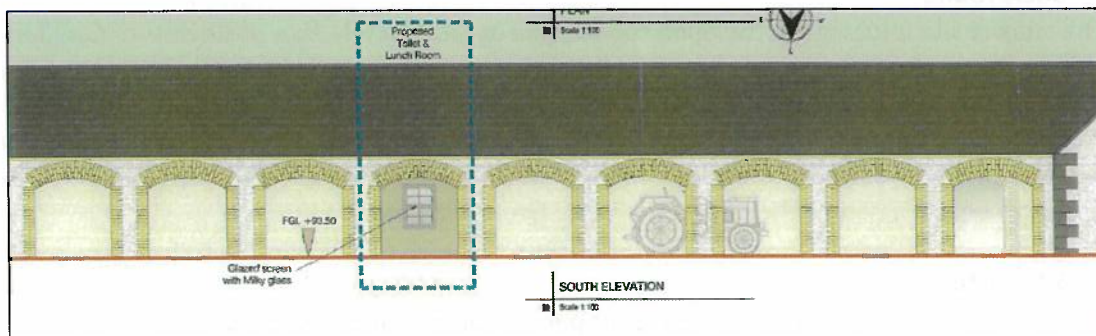


Figure 2 – Proposed Elevation (as submitted by Applicant).

#### 4. Proposal by Applicants

The Applicant wishes to ascertain whether the toilets & lunchroom within existing farm shed building for enjoyment of people involved in farm is or is not development and is or is not exempted development. On the submitted application form they make reference to the following noting the 'reason for exemption':

- Section 4 (1) (h) of the Planning and Development Regulations 2001 (as amended) by virtue of the nature of works proposed, the location within an existing building and to the limited scale of development.
- Schedule 2, Part 3, Exempted Development – Rural – Class 9.

#### 5. Legislative Context

In order to assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

##### Statutory Provisions

**Section 2 (1) Planning and Development Act 2000 (as amended) states as follows:**

*“alteration” includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;*

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

**Section 3 (1) Planning and Development Act 2000 (as amended) defines development as:**

*“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 - Exempted Development, Planning and Development Act 2000 (as amended)**

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

(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 and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of other structures or neighbouring structures.*

Section 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.*

### **Regulatory Provisions**

Article 6 of the Planning and Development Regulations 2001 (as amended) states, *inter alia*, that:

*“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”.*

### **Article 9 – Restrictions on Exemptions**

**9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—**

(a) *if the carrying out of such development would—*

(i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*

(ii) *consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

(iii) *endanger public safety by reason of traffic hazard or obstruction of road users,*

*(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

*(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

*(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

*(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

*(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.*

*(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

*(xi) obstruct any public right of way,*

*(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,*

*(b) in an area to which a special amenity area order relates, if such development would be development:—*

*(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof ), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or*

*(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or*

*(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or*

*(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,*

*(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,*

*(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.*

### ***Schedule 2, Part 3, Exempted Development – Rural – Class 9***

This Class was referenced by the Applicant in the submitted planning documentation.

#### ***Column 1 Description of Development***

*Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres.*

#### ***Column 2 Conditions and Limitations***

- 1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.*

2. *The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.*
3. *No such structure shall be situated within 10 metres of any public road.*
4. *No such structure within 100 metres of any public road shall exceed 8 metres in height.*
5. *No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.*
6. *No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.*

## **6. Evaluation**

### **Question: Is the following works considered as Development?**

As the proposed works comprises of alterations to an existing structure, it is considered that the works are 'development' in accordance with section 3(1) of the Planning and Development Act, 2000, as amended.

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

The Applicant seeks to include a toilet facility within an agricultural outbuilding. No exemption exists for change of use of an agricultural shed to a canteen and toilet. It is not considered that class 9 is relevant to this declaration.

For these reasons, the proposed works are not deemed as exempted development.

## **7. Screening**

A screening exercise for an appropriate assessment has been carried out and it is concluded that the development is unlikely to have significant effects on any European sites. Please see attached report under Appendix A.

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.

## **8. Recommendation**

It is recommended that the Applicant be advised that the proposed development 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 provision of a toilet and lunchroom within an existing farm shed building at Coolderry House, Birr, Co. Offaly, R42 NS93 is or is not development and is or is not exempted development.

**AS INDICATED** on the particulars received by the Planning Authority on the 5<sup>th</sup> June 2024.

**AND WHEREAS** Ronan Clarke c/o Clarke & Co, Highland View Terrace, Fairgreen, Naas, Co. Kildare, W91 A278 requested a declaration on the said question from Offaly County Council;

**AND WHEREAS** Offaly County Council, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard particularly to –

- Section 2, 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.
- Class 9, Schedule 2. Part 3 of the Planning & Development Regulations 2001, as amended.

**AND WHEREAS** Offaly County Council has concluded that the proposed works is development and is not exempted development as no exemption exists for the conversion of a farm shed to a toilet and lunch room.

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) of the Planning and Development Act, as amended, hereby decides that:

- The provision of a toilet and lunchroom within an existing farm shed building at Coolderry House, Birr, Co. Offaly, R42 NS93 is **development** and is **not exempted development**.

*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.*



\_\_\_\_\_  
Úna McCafferkey  
(Executive Planner)

1<sup>st</sup> July 2024  
Date



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Ed Kelly  
(A/Senior Executive Planner)

2<sup>st</sup> July 2024

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 24/64

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not toilets & lunchroom within existing farm shed building for enjoyment of people involved in farm is or is not development and is or is not exempted development		
Site location:	Coolderry House, Birr, Co. Offaly. R42 NS93		
Site size:	Not provided	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	SAC 002147 – Lisduff Fen SAC – 3.79km SAC 000585 - Sharavogue Bog SAC – 4.22km SAC 002236 - Island Fen SAC – 5.94km SAC 000412 - Slieve Bloom Mountains SPA – 6.22km		
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>Lisduff Fen SAC</b> Petrifying springs with tufa formation (Cratoneurion) [7220] Alkaline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013]</p> <p><b>Sharavogue Bog SAC</b> Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150]</p> <p><b>Island Fen SAC</b> Juniperus communis formations on heaths or calcareous grasslands [5130] Alkaline fens [7230]</p> <p><b>Slieve Bloom Mountains SPA</b> Hen Harrier (Circus cyaneus) [A082]</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><b>Lisduff Fen SAC</b> <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002147.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002147.pdf</a></p> <p><b>Sharavogue Bog SAC</b> <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000585.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000585.pdf</a></p> <p><b>Island Fen SAC</b></p>		

[https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO002236.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002236.pdf)

**Slieve Bloom Mountains SPA**

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.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)

<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 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 <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.	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: *Una McCafferkey*  
Una McCafferkey

Position:

Executive Planner

Date:

1<sup>st</sup> July 2024

