

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

REFERENCE: DEC 24/92

NAME OF APPLICANT: Emmet Lynch

ADDRESS FOR CORRESPONDENCE: C/O Kenneth Byrne, Project Design Architects, Unit 1, Beech Court, Kilcoole, Co. Wicklow, A63 E5D0.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the change of use of existing approved emergency short stay accommodation for Ukraine refugees (social care accommodation) to temporary use for purpose of accommodating persons seeking international protection under class 20f no material works envisioned is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Lynch's Townhouse, Ardan Road, Tullamore, Co. Offaly, R35 C950

WHEREAS a question has arisen as to whether or not the change of use of existing approved emergency short stay accommodation for Ukraine refugees (social care accommodation) to temporary use for purpose of accommodating persons seeking international protection under class 20f is or is not development and if so, is or is not exempted development at Lynch's Townhouse, Ardan Road, Tullamore, Co. Offaly. R35 C950

AS INDICATED on the particulars received by the Planning Authority on the 28th August 2024.

AND WHEREAS Emmet Lynch, C/O Kenneth Byrne, Project Design Architects, Unit 1, Beech Court, Kilcoole, Co. Wicklow A63 E5D0 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:

- Sections 2(1) & 3(1) of the Planning & Development Act 2000, as amended.
- Section 4(2)(a)(i) of the Planning & Development Act 2000, as amended.
- Class 20F, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- Planning permission 23/373 which specifies in condition 4 that the structure has planning permission to house protected persons.

AND WHEREAS Offaly County Council has concluded that the proposed change is development and is not 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 change of use of existing approved emergency short stay accommodation for Ukraine refugees (social care accommodation) to temporary use for purpose of accommodating persons seeking international protection under class 20f is **development and is not exempted development** as the use is permitted under section 34 of the Planning Act and Planning Permission Ref No 23/373 at Lynch's Townhouse, Ardan Road, Tullamore, Co. Offaly, R35 C950

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

23/09/2024

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 24/92
Question:	WHETHER OR NOT THE CHANGE OF USE OF EXISTING APPROVED EMERGENCY SHORT STAY ACCOMMODATION FOR UKRAINE REFUGEES (SOCIAL CARE ACCOMMODATION) TO TEMPORARY USE FOR PURPOSE OF ACCOMMODATING PERSONS SEEKING INTERNATIONAL PROTECTION UNDER CLASS 20F NO MATERIAL WORKS ENVISIONED IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT
Applicant:	EMMET LYNCH C/O KENNETH BYRNE PROJECT DESIGN ARCHITECTS UNIT 1, BEECH COURT, KILCOOLE CO. WICKLOW A63 E5D0
Location:	LYNCH'S TOWNHOUSE, ARDAN ROAD, TULLAMORE, CO. OFFALY. R35 C950
Date received:	28 th AUGUST 2024

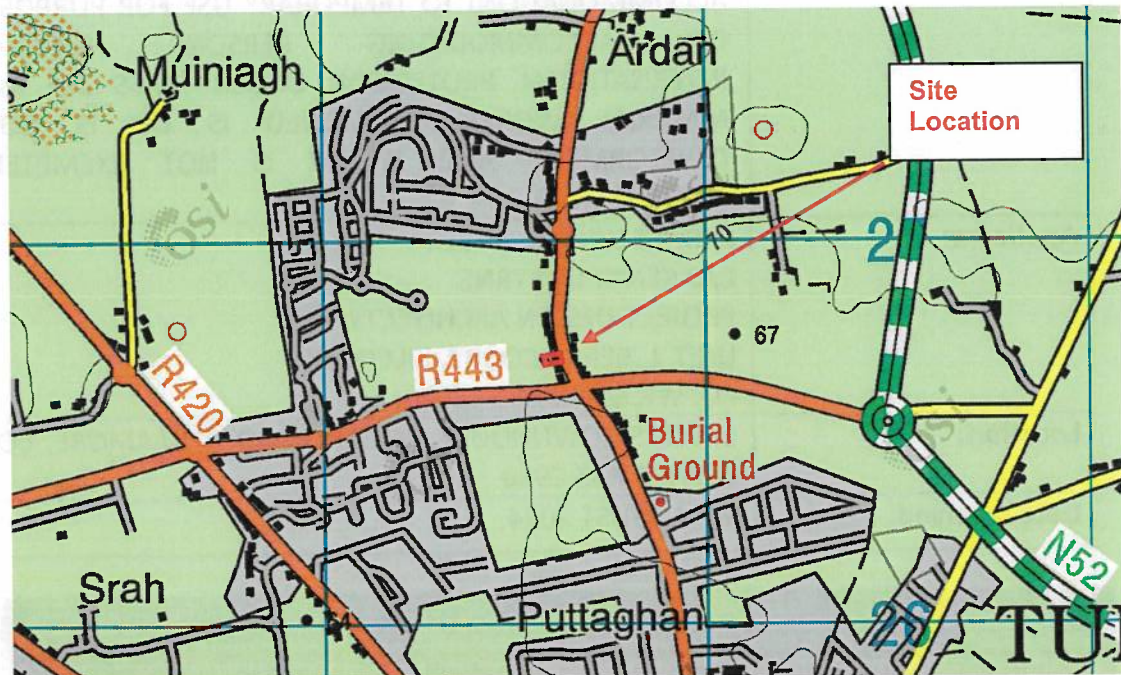


1. Proposal

The question has arisen as to whether or not the change of use of existing Ukraine temporary protection (social care accommodation) to temporary use for purpose of accommodating persons seeking international protection under class 20F (no material works envisioned) is or is not development and is or is not exempted development.

2. Background

The subject site is located within the town boundary of Tullamore on 'Existing Residential' zoned land with direct access onto the public road.



Figs 1: Site Location (Discovery Series)



Figs 2: Site Location



Figs 3: Aerial image of location of site

3. Relevant Planning History:

23/373: Emmet Lynch was **Granted** for the retention of the conversion of existing previously approved two storey dwelling and retention of single storey outbuildings as emergency short stay accommodation, consisting of 15 number bedroom suites, car parking, cooking facilities and communal areas including 1 number laundry and plant room. The development is a single property and all suites avail of communal areas

and management subject to 4 conditions. It is noted condition 2 states the following:

The development hereby granted is for the purposes of housing only protected persons as defined by the planning and development regulations 2001 (as amended) and displaced persons as defined by Council Implementing Decision (EU) 2022/382 of 4th March 2022.

18/191: Emmet Lynch was Granted for the construction of a new single storey garage/family room/utility room extension along the north side of the existing house incorporating a roof light (north elevation) and any associated site works subject to 6 conditions.

4. Legislative Context

Planning and Development Act 2000 (as amended)

Section 2(1) of the Planning and Development Act 2000 (as amended) provides a definition of “works” in the Act:

“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) of the Planning and Development Act 2000 (as amended) defines development:

In this Act, “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.—(1) of the Planning and Development Act 2000 (as amended) defines development:

(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

Planning and Development Regulations 2001 (as amended)

Article 6 of the Planning and Development Regulations 2001 (as amended) states

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

Class 20F, in Part 1, of Schedule 2

Temporary use by or on behalf of the Minister for Children, Equality, Disability, Integration and Youth to accommodate or support displaced persons or persons seeking international protection of any structure or part of a structure used as a school, college, university, training centre, social centre, community centre, non-residential club, art gallery, museum, library, reading room, sports club or stadium, gymnasium, hotel, convention centre, conference centre, shop, office, Defence Forces barracks, light industrial building, airport operational building, wholesale warehouse or repository, local authority administrative office, play centre, medical and other health and social care accommodation, event and exhibition space or any structure or part of structure normally used for public worship or religious instruction.

1. The temporary use shall only be for the purposes of accommodating displaced persons or for the purposes of accommodating persons seeking international protection.
2. Subject to paragraph 4 of this class, the use for the purposes of accommodating displaced persons shall be discontinued when the temporary protection introduced by the Council Implementing Decision (EU) 2022/382 of 4 March 2022¹ comes to an end in accordance with Article 6 of the Council Directive 2001/55/EC of 20 July 2001².
3. The use for the purposes of accommodating persons seeking international protection shall be discontinued not later than 31 December 2028.
4. Where the obligation to provide temporary protection is discontinued in accordance with paragraph 2 of this class, on a date that is earlier than 31 December 2028, the temporary use of any structure which has been used for the accommodation of displaced persons shall continue for the purposes of accommodating persons seeking international protection in accordance with paragraph 3 of this class.
5. The relevant local authority must be notified of locations where change of use is taking place prior the commencement of development.
6. 'displaced persons', for the purpose of this class, means persons to whom temporary protection applies in accordance with Article 2 of Council Implementing Decision (EU) 2022/382 of 4 March 2022

5. Evaluation

Question: Whether the proposed change of use of existing approved emergency short stay accommodation for ukraine refugees (social care accommodation) to temporary use for purpose of accommodating persons seeking international protection under class 20f (no material works envisioned) is or is not development and is or is not exempted development.

The works subject of this declaration are not exempted development.

For works to be exempted for the purposes of the planning act they require a change of land use from that which is present and permitted on site.

It is noted that the existing planning permission on site Ref No 23/373 specifies under condition 4 that:

The development hereby granted is for the purposes of housing only protected persons as defined by the planning and development regulations 2001 (as amended) and displaced persons as defined by Council Implementing Decision (EU) 2022/382 of 4th March 2022.

This declaration seeks to provide accommodation for persons protected by class 20f of the planning regs.

Persons protected by class 20f are 'displaced persons or persons seeking international protection'

The planning regulations define protected persons as follows:

"protected person", for the purposes of Schedule 2, means— (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), (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996;

Therefore I consider that the use of the structure to home persons seeking international protection is a permitted use of the structure under planning permission 23/373.

The use of the structure for the purposes of accommodating of persons seeking international protection is not exempted development from the purposes of the Planning Act but rather is a permitted use under section 34 of the Planning act and Planning permission 23/373.

6. Conclusion

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 or not the change of use of existing approved emergency short stay accommodation for Ukraine refugees (social care accommodation) to temporary use for purpose of accommodating persons seeking international protection under class 20f

is or is not development and if so, is or is not exempted development at Lynch's Townhouse, Ardan Road, Tullamore, Co. Offaly. R35 C950

AS INDICATED on the particulars received by the Planning Authority on the 28th August 2024.

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AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- (a) Sections 2(1) & 3(1) of the Planning & Development Act 2000, as amended.
- (b) Section 4(2)(a)(i) of the Planning & Development Act 2000, as amended.
- (c) Class 20F, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- (d) Planning permission 23/373 which specifies in condition 4 that the structure has planning permission to house protected persons.

AND WHEREAS Offaly County Council has concluded that the proposed change is development and is not 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 change of use of existing approved emergency short stay accommodation for Ukraine refugees (social care accommodation) to temporary use for purpose of accommodating persons seeking international protection under class 20f is development and is not exempted development as the use is permitted under section 34 of the Planning Act and Planning Permission Ref No 23/373 at Lynch's Townhouse, Ardan Road, Tullamore, Co. Offaly. R35 C950

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.

Michael Duffy

Michael Duffy

Executive Planner

17th September 2024

Ed Kelly

Ed Kelly

ASEP

20th September 2024

[Redacted area]

**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 24-92

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	WHETHER OR NOT THE CHANGE OF USE OF EXISTING APPROVED EMERGENCY SHORT STAY ACCOMMODATION FOR UKRAINE REFUGEES (SOCIAL CARE ACCOMMODATION) TO TEMPORARY USE FOR PURPOSE OF ACCOMMODATING PERSONS SEEKING INTERNATIONAL PROTECTION UNDER CLASS 20F NO MATERIAL WORKS ENVISIONED IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT		
Site location:	LYNCH'S TOWNHOUSE, ARDEN ROAD, TULLAMORE , CO. OFFALY , R35 C950		
	N/A	Floor Area of Proposed Development:	N/A
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:	
<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>	
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)	
Would there be... ... 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.
	None likely due to the location and type of development

... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?	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 because the project is directly connected with / necessary to the nature conservation management of the site.</i>
2.	<i>No potential for significant effects / AA is not required.</i>
3.	<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>
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:	Michael Duffy
Position:	Executive Planner
Date:	18th September 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>

