

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

REFERENCE: DEC 24/95

NAME OF APPLICANT: Little Haven Education Centre

ADDRESS FOR CORRESPONDENCE: C/O Anne Bergin,
Little Haven Education Centre,
Syngefield Industrial Estate, Birr,
Co. Offaly. R42 DX81.

NATURE OF APPLICATION: request for declaration under section 5 of the planning & development act 2000, as amended as to whether the change of use from an educational unit granted permission under planning ref. BR 1237 to a full day care/education centre for children is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Little Haven Education Centre, Syngefield Industrial Estate, Birr, Co. Offaly. R42 DX81.

WHEREAS a question has arisen as to whether the change of use from an educational unit granted permission under planning ref. BR 1237 to a full day care / education centre for children is or is or is not development and if so, are they exempted development at Little Haven Education Centre, Syngefield Industrial Estate, Birr, Co. Offaly. R42 DX81.

AS INDICATED on the particulars received by the Planning Authority on the 10th September 2024.

AND WHEREAS Anne Bergin has requested a declaration on the said question from Offaly County Council;

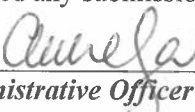
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to -

- Sections 2(1) and 3(1)(a) of the Planning and Development Act, 2000, as amended,
- Articles 10(1) and 10(2) of the Planning and Development Regulations, 2001, as amended,
- The Education Act 1998.
- The planning history of the subject site.

AND WHEREAS Offaly County Council has concluded that the change of use from an educational unit (granted permission under planning ref. BR 1237 and which accounts for c.26% of the total floor area) to a full day care / education centre for children 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 change of use of the permitted education unit (granted permission under planning ref. BR 1237 and which accounts for c.26% of the total floor area) to a full day care / education centre for children is **development** and is **exempted development** at Little Haven Education Centre, Syngefield Industrial Estate, Birr, Co. Offaly. R42 DX81.

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

7.10.24
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

File Reference:	<i>Dec 24-95</i>
Question:	<i>Whether the change of use from an educational unit granted permission under planning ref. BR 1237 to a full day care / education centre for children is or is not development and is or is not exempted development.</i>
Applicant:	<i>Little Haven Education Centre</i>
Correspondence Address:	<i>c/o Anne Bergin, Little Haven Education Centre, Syngefield Industrial Estate, Birr, Co. Offaly. R42 DX81.</i>
Location:	<i>As above.</i>

1. Introduction

The question has arisen as to whether the change of use from an educational unit granted permission under planning ref. BR 1237 to a full day care / education centre for children is or is not development and is or is not exempted development.

2. Background

The subject site is located within the established Syngefield Industrial Estate located c. 1.5km south east of Birr Town Centre. Under the Birr Town Local Area Plan 2023 – 2027, the site is zoned as Industrial and Warehousing. The Little Haven Education Centre has been in operation since 2004 and located at the current premises in Syngefield since 2012.

Their website advises that Little Haven caters for children from 6 months upwards, offering full and sessional daycare service which includes infant, toddler, junior preschool, senior preschool and montessori. They also offer a Breakfast Club & Afterschool Club. In the submitted documentation, the Applicant notes that in recent years, the centre has been classed by Pobal¹ as Early Years Educators.

The centre operates from 7.45am to 5.45pm, Monday to Friday, 51 weeks of the year and are currently registered with Tulsa for 145 no. early years children and 72 no. school age children. At present, the centre has 30 staff members.

3. Site History

Planning application ref. BR1237: Brendan Garry was granted planning permission in June 2002 for a new commercial / office building incorporating 3 no. warehouse units with associated offices and 1 no. education unit comprising of classrooms, workshops, canteen, offices and toilets with all associated site development works.

Condition No. 3 outlines that the *'development hereby approved shall be used for the purposes of light industry/warehouse with ancillary offices and training/education unit only'*.

4. 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:

¹ Pobal works on behalf of Government to support communities and local agencies toward achieving social inclusion and development. They administrate Government and EU funding to the areas of social inclusion, early childhood care and education, community development, peace and reconciliation, equality, labour market supports and education and training.

Statutory Provisions - Planning and Development Act 2000 (as amended)

Section 2 (1) 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) 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

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 - Planning and Development Regulations 2001 (as amended)

Article 10 (1) - Changes of Use states:

'Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act'.

Part 2, Exempted Development, Article 5 – Interpretation for this Part states that 'school' has the meaning assigned to it by the Education Act 1998.

Part I - Preliminary and General, Section 2 – Interpretation of the Education Act 1998 states that 'school' means an establishment which—

- (a) *provides primary education to its students and which may also provide early childhood education,*
or
(b) *provides post-primary education to its students and which may also provide courses in adult, continuing or vocational education or vocational training.*

5. Proposal by Applicants

The Applicant wishes to ascertain whether the change of use of a room from an educational unit granted permission under planning ref. PD 1237 to full day care service is or is not development and is or is not exempted development.

6. Appropriate Assessment

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

7. Environmental Impact Assessment Screening

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001 (as amended) and therefore is not subject to EIA requirements.

8. Evaluation

Having viewed the submitted documentation, the planning file for planning ref. PD1237 and carried out a site inspection, the Planner notes the following:

- The permitted education unit was 1 of 4 no. permitted units on the ground floor of the premises at the subject site. The remaining units were granted as warehouse units with associated offices permitted for the entire first floor.
- The permitted education unit is shown on the plans as a 'educational/training unit'. The layout of this unit included 2 no. classrooms; literacy room; dewing/crafts room; metalwork/woodwork and car maintenance room; kitchen/canteen; toilets; associated staff & managers office; and reception area.
- The existing Little Haven premises occupies the entire building, both ground floor and first floor.
- The premises also includes outdoor enclosed play areas and recreational area for staff members.
- Little Haven has occupied and being operating from the subject site since early 2013; the property has not come to the attention of Planning Enforcement.
- The Applicant confirms that no new building works or any structural changes to the existing building are required or sought at this time however the Planner notes that extensive external and internal works have been carried out to date.
- The Applicant is seeking clarification on the planning status of the premises as a result of a Tulsa inspection.

Having reviewed the submitted information and the relevant planning policy, the Planning Authority concludes the following:

a) "Is or is not Development"

In this instance, the proposal involved the change of use of the entire permitted development to a childcare facility (full day care / education centre) and internal and

external alterations to the building would involve “works” within the meaning of Section 3 of the Act. Such works are considered “development” within the meaning of the Act.

b) “Is or is not Exempted Development”

The Applicant has sought confirmation on whether the change of use from an educational unit granted permission under planning ref. BR 1237 to a full day care / education centre for children is or is not development and is or is not exempted development.

When the Planning Authority consider the intent of the permitted educational unit (i.e. appears to be for courses in adult, continuing or vocational education or vocational training) and the interpretation of school under the Education Act 1998, it is reasonable to accept that the existing use carried out by Little Haven (discussed earlier in this report) is not a material change of use.

However, the Planning Authority note that the permitted education unit accounts for only c.26% of the total floor area, noting that the 3 no. ground floor warehouse areas are double height. Little Haven currently occupies the entire building and therefore the remainder of the building requires a Change of Use planning permission. Permission is also required for the internal and external alterations that have been carried out to the entire building.

7. Conclusion

It is recommended that the change of use of the permitted education unit (granted permission under planning ref. BR 1237 and which accounts for c.26% of the total floor area) to a full day care / education centre for children **does constitute development and is exempted development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

However, the Applicant shall be advised:

- This exemption only extends to the use of education unit as permitted under planning ref. BR 1237 and as detailed on plans received by the Planning Authority on the 17th June 2002.
- The exemption does not extend to the internal or external works to the existing building which have been carried out to date – planning permission is required for these works.
- The exemption does not extend to the change of use of the remainder of the existing building i.e. 3 no. warehouse units with associated offices permitted under planning ref. BR 1237 – planning permission is required for the change of use of these areas to a full day care / education centre for children.

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 change of use from an educational unit granted permission under planning ref. BR 1237 to a full day care / education centre for children is or is or is not development and if so, are they exempted development at Little Haven Education Centre, Syngfield Industrial Estate, Birr, Co. Offaly. R42 DX81.

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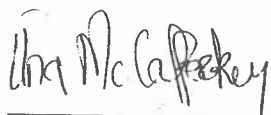
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Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.



Úna McCafferkey
Executive Planner

7th October 2024
Date



Michael Duffy
Acting Senior Executive Planner

7th October 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 24/95

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the change of use from an educational unit granted permission under planning ref. BR 1237 to a full day care / education centre for children is or is not development and is or is not exempted development.		
Site location:	Little Haven Education Centre, Syngfield Industrial Estate, Birr, Co. Offaly. R42 DX81.		
Site size:	Not specified	Floor Area of Proposed Development:	Not specified
Identification of nearby European Site(s):	Dovegrove Callows SPA – 2.81km Lisduff Fen SAC – 4.41km Sharavogue Bog – 5.45km Ridge Road, SW of Rapemills SAC – 5.51km Ballyduff/Clonfinane Bog SAC – 5.71km River Little Brosna SPA – 6.14km Island Fen SAC – 6.19km All Saints Bog and Esker SAC – 7.51km All Saints Bog SPA – 7.51km		
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):	Dovegrove Callows SPA – Features of interest include: <ul style="list-style-type: none"> • Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395] Lisduff Fen SAC – Features of interest include: <ul style="list-style-type: none"> • Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220] • Alkaline fens [7230] • <i>Vertigo geyeri</i> (Geyer's Whorl Snail) [1013] Sharavogue Bog SAC – Features of interest include: <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 <i>Rhynchosporion</i> [7150] Ridge Road, SW of Rapemills SAC – Features of interest include:		

- Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]

Ballyduff/Clonfinane Bog SAC – Features of Interest Include:

- Active raised bogs [7110]
- Degraded raised bogs still capable of natural regeneration [7120]
- Depressions on peat substrates of the Rhynchosporion [7150]
- Bog woodland [91D0]

River Little Brosna SPA – Features of Interest:

- 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]
- Wetland and Waterbirds [A999]

Island Fen SAC – Features of interest include:

- *Juniperus communis* formations on heaths or calcareous grasslands [5130]
- Alkaline fens [7230]

All Saints Bog and Esker SAC – Features of interest include:

- Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]
- Active raised bogs [7110]
- Degraded raised bogs still capable of natural regeneration [7120]
- Depressions on peat substrates of the Rhynchosporion [7150]
- Bog woodland [91D0]

All Saints Bog SPA – 7.51km – Features of interest include:

- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]

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.)

Site Name: Dovegrove Callows SPA, Site Code: 004137

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004137.pdf>

Site Name: Lisduff Fen SAC, Site Code: 002147

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002147.pdf>

Site Name: Sharavogue Bog, Site Code: 000585

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000585.pdf>

Site Name: Ridge Road, SW of Rapemills SAC, Site Code: 000919

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000919.pdf>

Site Name: Ballyduff/Clonfinane Bog SAC, Site Code: 000641

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000641.pdf>

Site Name: River Little Brosna SPA, Site Code: 004086

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004086.pdf>

Site Name: Island Fen SAC, Site Code: 002236

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002236.pdf>

Site Name: All Saints Bog and Esker SAC, Site Code: 000566

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000566.pdf>

Site Name: All Saints Bog SPA, Site Code: 004103

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004103.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)

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.

... 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 *in-combination effects* 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?

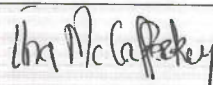
Category 2

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:

Úna McCafferkey



Position:

Executive Planner

Date:

3rd October 2024