

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/96

NAME OF APPLICANT: Avril Foran.

ADDRESS FOR CORRESPONDENCE: 43 Heather Grove,  
Clara,  
Co. Offaly.

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 office/meeting room in a communal facility to a sensory room is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Community Building, Garran an Chaisleain, Kilcoursey, Clara, Co. Offaly.

WHEREAS a question has arisen as to whether or not the change of use of office/meeting room in a communal facility to a sensory room is or is or is not development and if so, are they exempted development at Communal Building, Garran an Chaisleain, Kilcoursey, Clara, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 9<sup>th</sup> September 2024.

AND WHEREAS Avril Foran has requested a declaration on the said question from Offaly County Council;

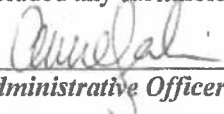
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to -

- 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,
- Classes 3, 8 and 10 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- The Planning History of the Communal Facility.

AND WHEREAS Offaly County Council has concluded that the change of use of office/meeting room in a communal facility to a sensory room 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 proposed change of use of office/meeting room in an Communal facility to a sensory room is **development** and is **not exempted development** at Community Facility, Garran an Chaisleain, Kilcoursey, Co. Offaly as it is considered that the proposed material change in the use of an Office/ Meeting Room in a Communal Facility would not come within the scope of exempted development under Article 10(1) as it would not consist of a change of use within either Class 3 or Class 10 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

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

03/10/24  
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.

**OFFALY COUNTY COUNCIL**

**Planning Report**

**Section 5 Declaration**

<b>File Reference:</b>	DEC 24/96
<b>Question:</b>	WHETHER OR NOT THE CHANGE OF USE OF OFFICE/MEETING ROOM IN AN COMMUNAL FACILITY TO A SENSORY ROOM IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT
<b>Applicant:</b>	AVRIL FORAN
<b>Location:</b>	COMMUNITY BUILDING, GARRAN AN CHAISLEAIN
<b>Date received:</b>	9 <sup>th</sup> SEPTEMBER 2024
<b>Date due:</b>	6 <sup>th</sup> OCTOBER 2024



**1. Proposal**

The question has arisen as to whether or not the change of use of office/meeting room in an communal facility to a sensory room is or is not development and is or is not exempted development

**2. Background**

The site is located within the town boundary of Clara on land zoned 'existing residential' with direct access onto the public road. It is noted the structure which is the subject under the section 5 declaration was granted permission as an communal facility under planning reference 98/687.

It is noted the Communal Facility granted under planning reference 98/687 indicates the room which is subject to the change of use is identified as an office/meeting room (Fig 2 below).

Additionally Fig 2 below also indicates part of the Communal Facility a separate room (not part of this declaration) to be used as a Playgroup

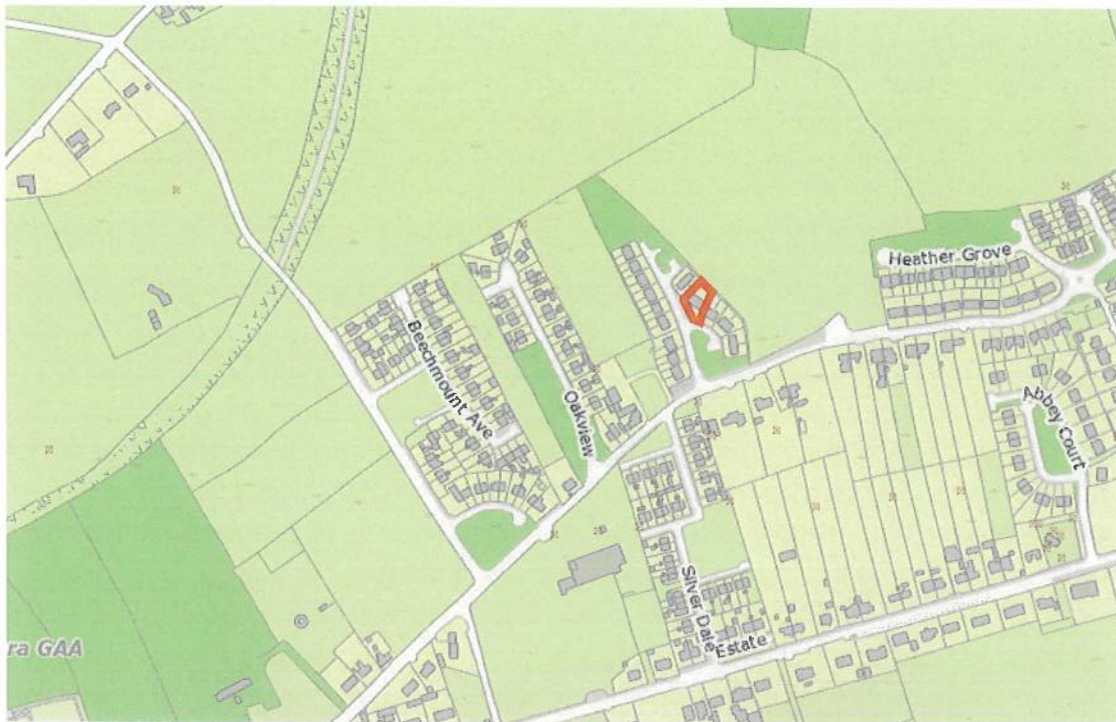


Fig 1: Map indicating the location of the communal facility which is the subject of the Section 5 Declaration.

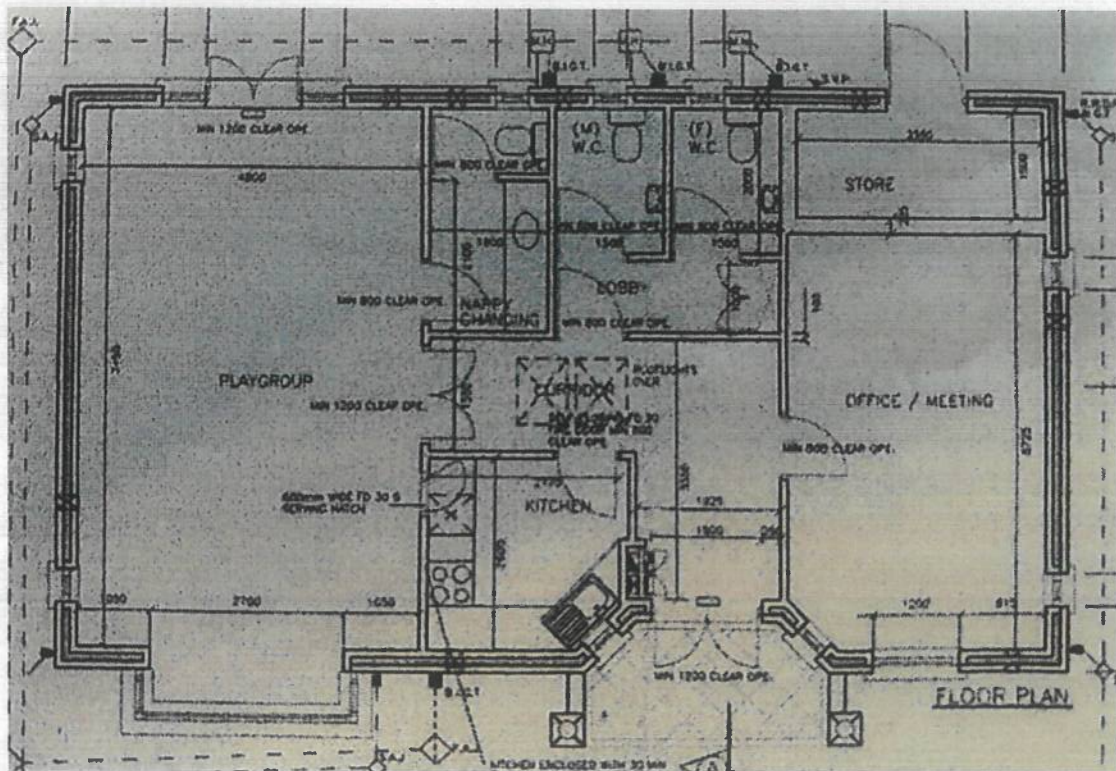


Fig 2: Floor Plan of Communal Facility granted permission under planning reference 98/687 which indicates the room which is subject of The Section 5 is identified as an Office/Meeting Room

### 3. Referrals

None

### 4. Relevant Planning History:

98/687: Permission **Granted** to Respond Housing Voluntary Agency for 26 no dwellinghouses & communal facility subject to 15 conditions

### 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 - 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)(a)** 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.

#### **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'.

#### **Article 10(2)(a)**

notes that a use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.

**Part 4, Article 10: Exempted Development** – Classes of Use includes the following:

CLASS 3: Use as an office, other than a use to which class 2 of this Part of this Schedule applies.

CLASS 8: Use for the provision of:

- (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)
- (b) as a crèche
- (c) as a day nursery
- (d) as a day centre

CLASS 10: Use for the provision of:

- (a) an art gallery (but not for the sale or hire of works of art)
- (b) a museum
- (c) a public library or public reading room
- (d) a public hall
- (e) an exhibition hall
- (f) a social centre, community centre or non-residential club but not as a dance hall or concert hall.

#### Planning Enforcement

Section 157 (4) (a) *Prosecution of Offences* of the Planning and Development Act (as amended) states:

*'No warning letter or enforcement notice shall issue and no proceedings for an offence under this Part shall commence—(i) in respect of a development where no permission has been granted, after seven years from the date of the commencement of the development'*.

#### **6. Proposal by Applicant**

The applicant wishes to ascertain whether or not the change of use of office/meeting room to a sensory room in an established pre-school is or is not development and is or is not exempted development

#### **7. Appropriate Assessment**

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.

#### **8. 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.

#### **9. Evaluation**

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

There is no statutory definition of an sensory room, however as part of this Section 5, the Sensory Room is taken as a use ancillary to the existing Play-School located within the Community Facility.

Article 10(1) of the Planning Regulations provides that a change of use within any one of the classes of use specified in Schedule 2, Part 4 shall be exempted development for the purposes of the Act. Class 8(b), Part 4, Schedule 2 of the Planning Regulations relates to 'use as a crèche' and Class 8(c) relates to 'use as a day nursery', whereas an Office falls under Class 3 and a Meeting room (in community facility) falls under Class 10.

It is therefore considered that the proposed material change in the use of an Office/ Meeting Room in a Communal Facility would not come within the scope of exempted development under Article 10(1) as it would not consist of a change of use within either Class 3 or Class 10 of Part 4 of Schedule 2 of the said Regulations

### **Conclusion**

It is recommended that the Applicant be advised that the proposed works is **development** and is **not exempted development** as it is considered that the proposed material change in the use of an Office/ Meeting Room in a Communal Facility would not come within the scope of exempted development under Article 10(1) as it would not consist of a change of use within either Class 3 or Class 10 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

**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 office/meeting room in an communal facility to a sensory room is or is or is not development and if so, are they exempted development at Communal Building, Garran An Chaisleain, Kilcoursey, Co. Offaly

**AS INDICATED** on the particulars received by the Planning Authority on the 9<sup>th</sup> September 2024.

**AND WHEREAS** Avril Foran 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,
- Classes 3, 8 and 10 of Part 4 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- The Planning History of the Communal Facility;

**AND WHEREAS** Offaly County Council has concluded that the proposed extension to the rear of an existing dwelling 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 proposed change of use of office/meeting room in an Communal facility to a sensory room is **development** and is **not exempted development** at Community Facility, Garran An Chaisleain, Kilcoursey, Co. Offaly as it is considered that the proposed material change in the use of an Office/ Meeting Room in a Communal Facility would not come within the scope of exempted development under Article 10(1) as it would not consist of a change of use within either Class 3 or Class 10 of Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended)

*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 Pleanala within 4 weeks of the issuing of the decision.*

Michael Duffy

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*Michael Duffy*

*Acting Senior Executive Planner*

*2<sup>nd</sup> October 2024*



## 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/24-96**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	WHETHER OR NOT THE CHANGE OF USE OF OFFICE/MEETING ROOM IN AN COMMUNAL FACILITY TO A SENSORY ROOM IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT		
Site location:	COMMUNITY BUILDING, GARRAN AN CHAISLEAIN		
Site size:	N/A	Floor Area of Development	N/A
Identification of nearby <i>European</i> Site(s):	2000 site(s): SAC 000572– Clara Bog SAC		
Distance to <i>European</i> Site(s):	1.57km		
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 <i>European</i> site:	None		
Is the application accompanied by an EIS?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	
(B) IDENTIFICATION OF THE RELEVANT NATURA 2000 SITE(S):			
The reasons for the designation of the Natura 2000 site(s):	Clara Bog has long been regarded as one of the most important lowland raised bogs in the country, being the largest remaining example of the true Midland sub-type. The ecology supports breeding Merlin (1-2 pairs), a scarce species in Ireland and one that is listed on Annex I of the EU Birds Directive		
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 <i>European</i> site synopses and, if applicable, a Conservation Management Plan; all available on <a href="http://www.npws.ie">www.npws.ie</a> ) (ATTACH INFO.)	PLEASE SEE SHEET ATTACHED		
(C) NPWS ADVICE:			

Advice received from NPWS over phone:	None received
Summary of advice received from NPWS in written form <b>(ATTACH SAME):</b>	None received
<b>(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:</b>	
<i>(The purpose of this is to identify if the effect(s) identified could be significant – if <b>uncertain</b> assume the effect(s) are significant).</i>	
If the answer is 'yes' to any of the questions below, then the effect is significant. <i>(Please justify your answer. 'Yes' / 'No' alone is insufficient)</i>	
<b>Would there be...</b>	Not likely due to the location and type of
... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	The site is sufficient distance from the <i>European</i> site.
... a reduction in habitat area on a <i>European</i> site?	There will be no reduction in the habitat The site is sufficient distance from the <i>European</i> site.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the <i>European</i> site?	Not likely due to the location and type of The site is sufficient distance from the <i>European</i> site.
... serious / ongoing disturbance to species / habitats for which the <i>European</i> 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 <i>European</i> site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> site?	None likely due to the location and type of The site is sufficient distance from the <i>European</i> 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 <i>European</i> 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 is sufficient distance from the <i>European</i> site.
<b>(E) SCREENING CONCLUSION:</b>	
<b>Screening can result in:</b>	
1.	<i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.
2.	<i>No potential for significant effects / AA is not required.</i>
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?		<b>Category 2</b>
Justify why it falls into relevant category above:		There would be no likely significant impact on the European site from the proposed development.
<b>Name:</b>	Michael Ouffy	
<b>Position:</b>	Acting Senior Executive Planner	<b>Date:</b> 2 <sup>nd</sup> October 2024

Conservation objectives for Clara Bog SAC [000572]

The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. These habitats and species are listed in the Habitats and Birds Directives and Special Areas of Conservation and Special Protection Areas are designated to afford protection to the most vulnerable of them. These two designations are collectively known as the Natura 2000 network. European and national legislation places a collective obligation on Ireland and its citizens to maintain habitats and species in the Natura 2000 network at favourable conservation condition. The Government and its agencies are responsible for the implementation and enforcement of regulations that will ensure the ecological integrity of these sites. The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. Favourable conservation status of a habitat is achieved when: • its natural range, and area it covers within that range, are stable or increasing, and • the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and • the conservation status of its typical species is favourable. The favourable conservation status of a species is achieved when: • population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and • the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and • there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis. 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 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco Brometalia) (\* important orchid sites)\* 7110 Active raised bogs\* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion 91D0 Bog woodland\* \* denotes a priority habitat