

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 25/31

NAME OF APPLICANT: Gary Mullins

ADDRESS FOR CORRESPONDENCE: C/O Ruairi Whelan, Consultant Engineer, Canal Road,  
Portarlinton, Co. Laois.

NATURE OF APPLICATION: Request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the modification of an existing agricultural entrance is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Killeenmore, Killeigh, Tullamore, Co Offaly.

WHEREAS a question has arisen as to whether the modification of an agricultural entrance is or is not development and is or is not exempted development at Killeenmore, Killeigh, Tullamore, Co Offaly

AS INDICATED on the particulars received by the Planning Authority on the 17th February 2025.

AND WHEREAS Gary Mullins c/o Ruairi Whelan, Consultant Engineer, Canal Road, Portarlinton, Co. Laois have 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:


- (a) Section 2, 3(1), 4(2)(a)(i) of the Planning and Development Act 2000, as amended.
- (b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- (c) Class 9 (Sundry works) in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- (d) Article 9 (1) (ii) Restrictions on Exemption, of the Planning and Development Regulations 2001 (as amended).
- (e) Class 9 in Part 1, of Schedule 2 of the Planning and Development Regulations 2001

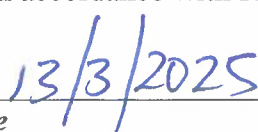
AND WHEREAS Offaly County Council has concluded that the proposed works is development and is not exempted development.

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 modification of an existing agricultural entrance **is development and is not exempted development** at Killeenmore, Killeigh, Tullamore, Co Offaly due to the location of an existing services pole the modified entrance will become a traffic hazard once the existing boundary is moved to facilitate the modified entrance.

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 include 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>         | Dec. 25/31  |
| <b>Question:</b>               | Whether or not the modification of an existing agricultural entrance is or is not development and is or is not exempted development |
| <b>Applicant:</b>              | Gary Mullins  |
| <b>Correspondence Address:</b> | C/O Ruairi Whelan, Consultant Engineer, Canal Road, Portarlinton, Co. Laois   |
| <b>Location:</b>               | Killeenmore, Killeigh, Tullamore, Co Offaly   |

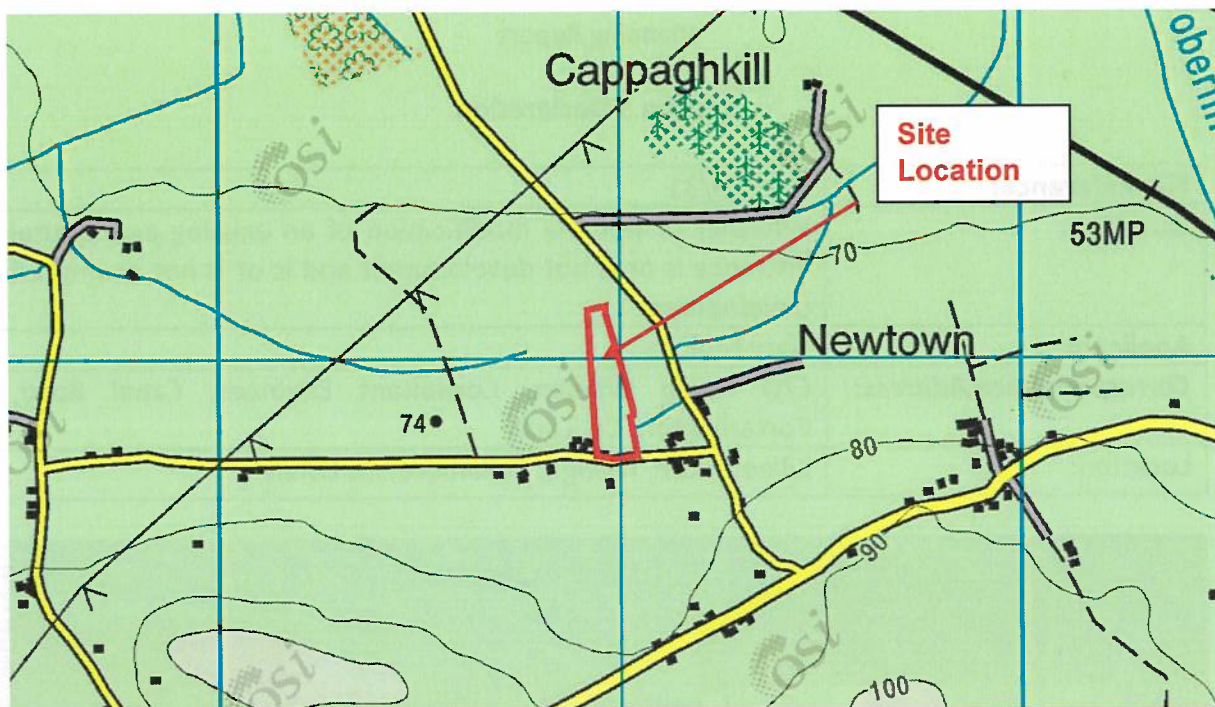


#### 1. Introduction

Whether or not the modification of an existing agricultural entrance is or is not development and is or is not exempted development

#### 2. Site Location and Description

The site is located within the rural townland of Killeenmore, Killeigh, Tullamore, Co Offaly with direct access onto the L-60034-1 local tertiary road



**Figs 1: Site Location (Discovery Series)**




**Figs 2: Site Location**



**Figs 3:** Aerial image of location of site.

### 3. Referrals

|                       |  |
|-----------------------|--|
| <p>Area Engineer:</p> | <p>States 'The existing Services Pole will become a traffic hazard once the existing boundary is moved to facilitate the proposed new entrance as outlined on the drawing submitted.'</p>  |
|-----------------------|--|

### 4. Planning History

None indicated on the GIS Planning Register

### 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:

#### (a) Statutory Provisions

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

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to 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.**

*“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 sets out what is exempted development for the purposes of this Act including:

*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, or*

*(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).*

*(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.*

*(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.*

**(b)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.*

**6. Proposal by the Applicant**

The Applicant has advised that they intend to revise an existing agricultural entrance.

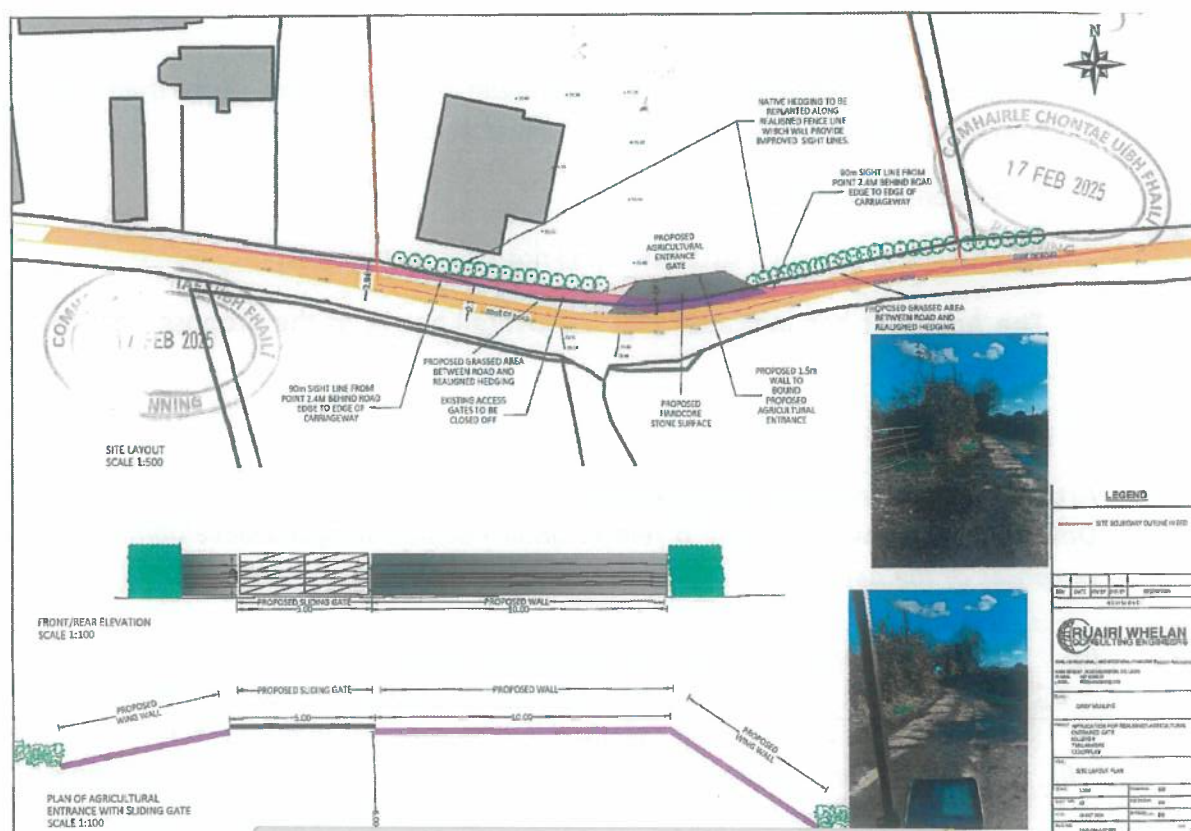


Fig 4: Proposed Site Layout and elevations of the revised entrance.

## 7. Legislative Context

### Planning and Development Act 2000 (as amended)

- Section 2  
“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)

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.

### Planning and Development Regulations 2001 (as amended)

- Article 6  
(1) 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.

Schedule 2, Part 1, Class 9

CLASS 9 The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

Conditions and Limitations:

The height of any such structure shall not exceed 2 metres.

The Applicant has indicated that the overall height of the proposed entrance is 1.5m

- Article 9(1) - Restrictions on exemption.  
*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,*
- VIII. *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.*

## **8. Proposal by Applicant**

The applicant wishes to ascertain to whether or not the modification of an existing entrance is or is not development and is or is not exempted development.

## **9. APPROPRIATE ASSESSMENT (AA)**

The subject site is located 5.87km from SAC 000572- River Barrow And River Nore SAC. Having regard to nature of the development which comprises of permission for the construction of a four bedroom 2 storey dwelling and garage. the application will also include a new biofilter treatment system and percolation area, new entrance and all associated site works at Killeenmore, Killeigh, Tullamore, Co Offaly and due to a lack of any pathway to a European site it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

## **10. EIA SCREENING:**

No Screening required, see appendix A attached.

**11. OTHER SCREENING:**

The proposed development is not contrary to the RSES and so it was not referred to the Eastern and Midland Regional Assembly.

**12. Evaluation****Question: Is the following works considered as Development?**

It is considered that the proposal constitutes 'development' as defined by Section 3(1) of the Act.

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

It is necessary to consider whether the development complies with the limitations set out under Class 9:

**Article 9 – Restrictions on exemptions**

Relevant considerations set out below:

As stated above:

*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,*

As no previous planning permission is located within the boundary of the site in question, it is considered that the subject development will not contravene a planning condition

*(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,*

The Declaration request has been referred to the Area Engineer Office for comment in respect of the above limitations subsequently the Area Engineer has clarified that 'the existing Services Pole will become a traffic hazard once the existing boundary is moved to facilitate the proposed new entrance as outlined on the drawing submitted.'

*(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,*

The proposed development would not interfere with any designations.

*(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,*

The proposed development is not restricted by any objectives of the Planning Authority to ensure that the building or other structure would remain available for such use.

### **13. Conclusion**

Due the location of an existing service pole the modification of the existing entrance will become a traffic hazard once the existing boundary is removed to facilitate the modified entrance, it is therefore recommended that the applicant is advised that the development as described in the application 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 modification of an agricultural entrance is or is not development and is or is not exempted development at Killeenmore, Killeigh, Tullamore, Co Offaly

**AS INDICATED** on the particulars received by the Planning Authority on the 17<sup>th</sup> February 2025.

**AND WHEREAS** Gary Mullins c/o Ruairi Whelan, Consultant Engineer, Canal Road, Portarlinton, Co. Laois have 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:

- (a) Section 2, 3(1), 4(2)(a)(i) of the *Planning and Development Act 2000, as amended*.
- (b) Article 6 of the *Planning and Development Regulations 2001 (as amended)*.
- (c) Class 9 (Sundry works) in Part 1, of Schedule 2 of the *Planning and Development Regulations 2001 (as amended)*.
- (d) Article 9 (1) (ii) *Restrictions on Exemption*, of the *Planning and Development Regulations 2001 (as amended)*.
- (e) Class 9 in Part 1, of Schedule 2 of the *Planning and Development Regulations 2001*

**AND WHEREAS** Offaly County Council has concluded that the proposed works 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 modification of an existing agricultural entrance is **development** and is **not exempted development** at Killeenmore, Killeigh, Tullamore, Co Offaly due the location of an existing services pole the modified entrance will become a traffic hazard once the existing boundary is moved to facilitate the modified entrance.

*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*

*Acting Senior Executive Planner*

*12<sup>th</sup> March 2025*

## Appendix A

| <b>Establishing if the proposal is a 'sub-threshold development':</b>  |  |
|--|--|
| Planning Register Reference:   | DEC 25/31  |
| Development Summary:   | The modification of an existing agricultural entrance is or is not development and is or is not exempted development |
| Was a Screening Determination carried out under Section 176A-C?  | No, Proceed to <b>Part A</b>   |
| <b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)?<br>(Tick as appropriate)  |  |
| No   | Proceed to <b>Part B</b>   |
| <b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds?<br>(Tick as appropriate) |  |
| No, the development is not a project listed in Schedule 5, Part 2  | <b>No Screening required</b>   |