

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 18/7

NAME AND ADDRESS OF APPLICANT: Moneygall Development Association Company Limited
by Guarantee,
Moneygall,
Birr,
Co. Offaly

ADDRESS FOR CORRESPONDENCE: C/o Henry Healy,
Moneygall,
Birr,
Co. Offaly

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Acts 2000, as amended as to whether works involved in the erection of 1.2 metre spectators fence along the community walking track at Moneygall Football Club Ltd., Moneygall, Birr, Co. Offaly, is or is not development or is or is not exempted development under the Planning and Development Act 2000, as amended

LOCATION OF DEVELOPMENT: Moneygall Football Club Ltd, Moneygall, Birr, Co. Offaly

WHEREAS a question referred to Offaly County Council on 5th September 2018 has arisen as to whether works which involve the erection of a 1.20 metre spectators fence along the community walking track of Moneygall football Club Ltd., is or is not development or is or is not exempted development under the Planning and Development Act 2001, (as amended).

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

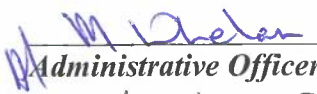
- (a) Section 2 of the Planning & Development Act 2000, as amended
- (b) Section 3 (1) of the Planning & Development Act 2000, as amended
- (c) Section 4 (2) of the Planning & Development Act 2000, as amended
- (d) Articles 6 and 9 of the Planning and Development Regulations, 2001 as amended
- (e) Class 11(a) of Part 1 Schedule 2 Planning and Development Regulations 2001 as amended

AND WHEREAS Offaly County Council has concluded that:

The proposed development **IS Development and IS Exempted Development**

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended hereby decides that works which involve the erection of a 1.2 metre spectators fence along the community walking track at Moneygall Football Club Ltd., Moneygall, Birr, Co. Offaly **IS DEVELOPMENT AND IS 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
1/10/2018
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:	Dec 18/7
QUESTION:	A question has arisen whether works which “involves the erection of 1.20 metre spectators fence along by our community walking track”
APPLICANT:	Moneygall Development Association Company Limited by Guarantee
CORRESPONDENCE ADDRESS:	Moneygall Development Association Ltd, Moneygall, Birr, Co Offaly
LOCATION:	Moneygall Football Club Ltd Moneygall, Birr, Co Offaly

A question has arisen whether works which “involves the erection of a 1.20 metre spectators fence along the community walking track at Moneygall, Birr, Co. Offaly is or is not development and is or is not exempted development.

Development Plan Policy: The subject site is located on whitelands lands, on the outskirts of Moneygall village.

SITE HISTORY

17/68 - Moneygall Football Club Ltd by Guarantee sought permission for the erection of a ball-stop net and boundary fencing. **Granted.**

17/124 - Moneygall Football Club Ltd by Guarantee sought permission for construction of a community garden. **Granted.**

S.5 Dec 17/1 - Moneygall Development Association Ltd, a question was raised whether works which involve development consisting of the provision of a walking track for community use on the land of Moneygall Football Club Ltd, at Moneygall, Birr, Co. Offaly”. It was determined that the works were considered exempted development within the provisions of Class 33(c) in Part 1, Schedule 2, of the

Planning and Development Regulations, 2001 (as amended), provided no charge is made for admission of the public.

PL2 15/94 - Moneygall football Club Ltd sought permission for a natural grass playing pitch, widening existing entrance and a car park. **Granted.**

LEGISLATIVE FRAMEWORK

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

Planning and Development Act, 2000 as amended

Section 2 provides a definition of:

“Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 3 provides a definition of development.

S.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.

S. 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,

(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.

Planning and Development Regulations 2001

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 of the Planning and Development Regulations 2001 (as amended), identifies restrictions on exemption.

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

Article 9 goes on to identify various circumstances where such development is de-exempted, however having reviewed the particular circumstances none are relevant to the development proposed.

Planning and Development Regulations 2001

Class 11 of Part 1, Schedule 2 of the regulations "The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house" deems the following exempt development:

The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house -

(a) any fence (not being a hoarding or sheet metal fence):- The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.

PROPOSAL BY APPLICANTS:

The applicant wishes to erect a 1.2m fence to separate and define the walking space for the community walking track of Moneygall Football Club Ltd.

ASSESSMENT:

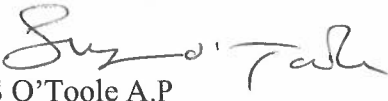
The 2000 Act makes explicit provision for certain types of development to be exempted from planning permission. The essential position is that these types are listed in Section 4(1) and Section 4(2) of the Act.

The proposal does not contravene Article 9 of the Planning and Development Regulations 2001 (as amended).

Having regard to the details submitted by the applicant, the Planning Authority considers that works which "involves the erection of a 1.20 metre spectators fence along the community walking track of Moneygall Football Club Ltd, at Moneygall, Birr, Co. Offaly" is considered exempted development.

Conclusion:

Having considered Section 4 of the Planning and Development Act 2000 (as amended) and the provisions of Schedule 2, Part I, Class 11 (a) of the Planning and Development Regulations, 2001 as amended the proposed development is considered to be Development and is Exempted Development.



S O'Toole A.P

27th September 2018

WHEREAS a question has arisen as to whether:

A question has arisen whether works which “involves the erection of a 1.20 metre spectators fence along the community walking track of Moneygall Football Club Ltd, is considered exempt under Class 11 (a) of the planning and Development Regulations 2001 as amended.

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

- (a) Section 2 of the Planning and Development Act, 2000, as amended.
- (b) Section 3 (1) of the Planning and Development Acts, 2000 as amended.
- (c) Section 4 (2) of the Planning and Development Acts, 2000 as amended.
- (d) Articles 6 and 9 of the Planning and Development Regulations 2001 as amended.
- (e) Class 11(a) of Part 1, Schedule 2 Planning and Development Regulations 2001 as amended.

AND WHEREAS Offaly County Council has concluded that –

The proposed development IS development and IS Exempted development.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by section 5 (2) of the Planning and Development Act 2000, as amended, hereby decides That works which “involves the erection of a 1.20 metre spectators fence along the community walking track of Moneygall Football Club Ltd, Moneygall, Birr, Co. Offaly **IS Development** and is **Exempted** development.

Corrall Melia

A/SEP

28/9/2018