

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 19/12

NAME AND ADDRESS OF APPLICANT:

Aidan Burke
C/o Frank Murray
Murray Architectural Services
Four Winds, Pallas Park
Blueball, Tullamore, Co. Offaly

ADDRESS FOR CORRESPONDENCE:

Frank Murray
Murray Architectural Services
Four Winds, Pallas Park
Blueball, Tullamore, Co. Offaly

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the building of a concrete block wall 2 metres high with a nap plaster or stone finish behind the rear building line of the house and associated works at a site at Clara Road, Tullamore, Co. Offaly, is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Clara Road, Tullamore, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 16th July 2019 has arisen as to whether the building of a concrete block wall 2 metres high with a nap plaster or stone finish behind the rear building line of the house and associated works at a site at Clara Road, Tullamore, Co. Offaly is or is not development and is or is not exempted development under the Planning and Development Act 2000, (as amended).

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Sections 2 of the Planning and Development Act 2000, as amended
- (b) Sections 3 of the Planning and Development Act 2000, as amended.
- (c) Articles 6 of the Planning and Development Regulations 2001 as amended.
- (d) Articles 9 of the Planning and Development Regulations 2001 as amended.
- (e) Schedule 2, Part One Class 5 of the planning and development regulations as amended.
- (f) Planning condition two of planning permission reference number PD885.

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 powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended hereby decides that the building of a concrete block wall 2 metres high with a nap plaster or stone finish behind the rear building line of the house and associated works at a site at Clara Road, Tullamore, Co. Offaly **IS DEVELOPMENT AND IS NOT 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

12/08/2019
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 Dec 19/12

Re: Section 5 Declaration

A question has arisen as to whether:

The building of a concrete block wall 2 metres high with a nap plaster or stone finish behind the rear building line of the house and associated works at a site on Clara Road, Tullamore Co Offaly is development and is not exempted development.

Assessment

I refer to the above. I have inspected the site and noted and considered the submissions on file. I would consider the proposed changes to be development and is not exempted development having regard to the following:

Section 2

2.—(1) In this Act, except where the context otherwise requires—
“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

Section 3:

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.

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.

Article 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,

Schedule 2, Part One Class 5 of the planning and development regulations as amended:

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Subject to the following conditions and limitations

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.

2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence.

There are two planning history files for the site PD 1070 and PD 885. Planning condition two of PD 885 indicates that "The existing hedgerow/ trees on the site boundary shall be preserved."

The proposed wall is development and the proposed wall would contravene a planning condition of PD 885 as the wall is proposed to be bounding the rear garden, which will require knocking of the existing boundary hedgerow. The proposed wall therefore is not exempted development.

I would therefore recommend that the following Managers Order issue

WHEREAS a question has arisen as to whether the:

The building of a concrete block wall 2 metres high with a nap plaster or stone finish behind the rear building line of the house

At a site on Clara Road, Tullamore and associated works is development and is or is not exempted development.

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 and
- (b) Sections 3 of the Planning & Development Act 2000 as amended and
- (c) Article 6. of the Planning & Development Regulations 2001 as amended and
- (d) Article 9. of the Planning & Development Regulations 2001 as amended and
- (e) Schedule 2, Part One Class 5 of the planning and development regulations as amended and
- (f) Planning condition two of planning permission reference number PD 885

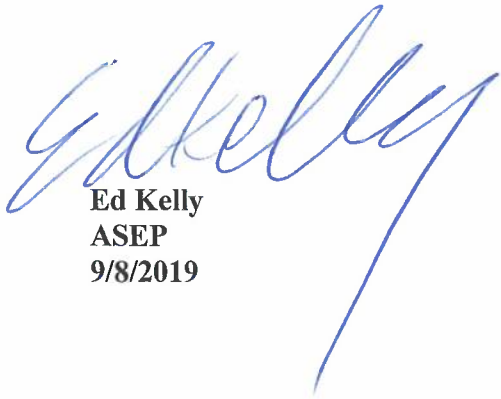
AND WHEREAS Offaly County Council has concluded that –

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) hereby decides that the

The building of a concrete block wall 2 metres high with a nap plaster or stone finish behind the rear building line of the house

at Clara Road, Tullamore Co Offaly Co Offaly and associated works is development and is not exempted development.

A handwritten signature in blue ink, appearing to read "Ed Kelly". The signature is fluid and cursive, with a long, sweeping tail that extends downwards and to the right.

Ed Kelly
ASEP
9/8/2019





