

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 19/3

NAME AND ADDRESS OF APPLICANT: The Select Vestry of Tullamore Union
of Parishes The Charleville Centre,
Church Avenue,
Tullamore,
Co. Offaly.

ADDRESS FOR CORRESPONDENCE: C/O Alan Wallace,
Beechhill,
Ballyduff,
Tullamore,
Co. Offaly.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the the replacement of the old walkway to provide a new wheelchair walkway at Church Avenue, Tullamore, Co. Offaly, is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Church Avenue, Tullamore, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 22nd February 2019 has arisen as to whether the replacement of the old walkway to provide a new wheelchair walkway at Church Avenue, Tullamore, Co. Offaly is or is not 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) Section 2. and of the Planning & Development Act 2000 as amended and
- (b) Section 3. and of the Planning & Development Act 2000 as amended and
- (c) Section 57 and of the Planning & Development Act 2000 as amended and
- (d) Article 6 of the Planning and Development Regulations 2001 (as amended)
- (e) Schedule 2 Part 1 of the Planning and Development Regulations 2001 Class 33.

AND WHEREAS Offaly County Council has concluded that –

The proposed works **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 the replacement of the old walkway to provide a new wheelchair walkway at Church Avenue, Tullamore, 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

17/4/19

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 19/3

Re: Section 5 Declaration

A question has arisen as to whether:

The replacement of old walkway marked X to Y as specified on a map dated submitted on the 22/3/2019 to provide a new wheel chair walkway and associated works at Church Avenue Tullamore Co Offaly is/is not development and is or is not exempted development.

Assessment

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.

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 having considered Sections 3 of the Planning & Development Act 2000 as amended.

I note that the proposed works are deemed to be within the curtilage of a protected structure. 23-282 Detached cruciform Church of Ireland church. I note the following section of the act:

Section 57

57. Notwithstanding *section 4(1)(a),(h),(i),(ia)(j),(k), or(l)* and any regulations made under *section 4(2)*, the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

The following section of the Planning and Development Regulations 2001(as amended) are also relevant.

ARTICLE 6 of the planning and development regulations 2001 (as amended)

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 of the planning and development regulations 2001 (as amended)

Development for amenity or recreational purposes

CLASS 33 Development consisting of the laying out and use of land— (a) as a park, private open space or ornamental garden,

By means of a response to a further information request the applicants have submitted a contour map of the site with the proposed path indicated.

I note no handrails or rest areas are indicated and the surface is cream coloured tarmacadam.

Please see comments from the OCC conservation architect attached.

In this regard it is considered that the development under consideration is development and is exempted development.

I would therefore recommend that the following C.E. order issue.

WHEREAS a question has arisen as to whether the:

The replacement of old walkway marked X to Y as specified on a map submitted on the 22/3/2019 to provide a new tarmacadam wheel chair walkway, with no railings, and associated works as specified on a map submitted 28/3/2019 at Church Avenue Tullamore Co Offaly is or is not development and is or is not exempted development.

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

- (a) Sections 2 and of the Planning & Development Act 2000 as amended and
- (b) Sections 3 and of the Planning & Development Act 2000 as amended and
- (c) Sections 57 and of the Planning & Development Act 2000 as amended and
- (d) Article 6 of the planning and development regulations 2001 (as amended)

(e) SCHEDULE 2 PART 1 of the planning and development regulations 2001 Class
33

AND WHEREAS Offaly County Council has concluded that –

The proposed works is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) hereby decides that the

The replacement of old walkway marked X to Y as specified on a map submitted on the 22/3/2019 to provide a new tarmacadam wheel chair walkway, with no railings, and associated works as specified on a map submitted 28/3/2019

at Church Avenue Tullamore Co Offaly Co Offaly is development and is exempted development.



Ed Kelly
Exec Planner
15/4/2019



Carroll Melia
AJ Snr Exec Planner

Edward Kelly

From: Rachel McKenna
Sent: 08 April 2019 11:16
To: Lisa Molloy; Edward Kelly
Subject: RE: F.I. Rec'd regarding Application under Section 5

Hi Ed,

With regard to the information sent highlighting the material proposed for the path to the rear of St Catherine's Church – The material is good, the previous sketch showed a wavy narrow path also good. There was no further clarity regarding handrails, or any other items (rest areas etc.), if the works do not include these and involve only the path as indicated, I would not have any objections.

Kind regards,

Rachel Mc Kenna
Senior Executive Architect

Offaly County Council
Áras an Chontae
Charleville Road
Tullamore
County Offaly
Tel: 057 93 46800



From: Lisa Molloy
Sent: 03 April 2019 11:20
To: Rachel McKenna <rmckenna@offalycoco.ie>
Subject: F.I. Rec'd regarding Application under Section 5
Importance: High

Rachel,

Attached please find the F.I. received for DEC 19/3 DECLARATION UNDER SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED IN RELATION TO WHETHER THE REPLACEMENT OF THE OLD WALKWAY MARKED X TO Y ON ACCOMPANYING MAP TO PROVIDE A NEW WHEELCHAIR WALKWAY AT CHURCH AVENUE, TULLAMORE, CO OFFALY, IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT.

Could you please send your comments by 10/04/2019.

Thanks.

Kind regards,

Lisa

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