

OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENC. DEC 2018

NAME OF APPLICANT: MICHELLE LOONAM (CHAIRPERSON) ON BEHALF OF
KINNITTY COMMUNITY PLAYSCHOOL LIMITED BY GUARANTEE
BOARD OF DIRECTORS

ADDRESS KINNITTY COMMUNITY HALL,
KINNITTY,
BIRR,
CO. OFFALY, R42 EK57

ADDRESS FOR CORRESPONDENCE: KINNITTY COMMUNITY PLAYSCHOOL,
COMMUNITY HALL,
KINNITTY,
BIRR,
CO. OFFALY, R42 EK57

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000,
as amended as to whether the change of use of a room within the building (Kinnitty Community Hall) increasing capacity
from 22 no. children to 44 no. children at Kinnitty Community Hall, Co. Offaly is or is not development and is or is not
exempted development

LOCATION OF DEVELOPMENT: KINNITTY COMMUNITY HALL, KINNITTY, BIRR,
CO. OFFALY, R42 EK57

WHEREAS a question referred to Offaly County Council on 28/09/2020 as to whether the change of use of a room within
the building (Kinnitty Community Hall) increasing capacity from 22 no. children to 44 no. children at Kinnitty Community
Hall, Kinnitty, Birr, 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(1) & 3 (1) of the Planning and Development Act 2000, as amended.
- (b) Schedule 2, Part 4, Article 10; Class 8 and Class 10 – Exempted Development - Classes of Use of the Planning and
Development Regulations 2001, as amended.

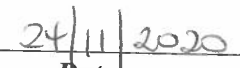
AND WHEREAS Offaly County Council has concluded that:

The change of use of a room within the building (Kinnitty Community Hall) increasing capacity from 22 no. children to 44
no. children (as indicated on the documentation submitted by the Applicant on the 28th September 2020 and the 5th
November 2020) **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 change of use of a room within the building (Kinnitty
Community Hall) increasing capacity from 22 no. children to 44 no. children **is development** and **is not exempted
development** at existing dwelling at Kinnitty Community Hall, Kinnitty, Birr, Co. Offaly

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.


A/Senior Executive 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

File Reference:	Dec 20-18
Question:	<i>Whether the change of use of a room within the building (Kinnitty Community Hall) increasing capacity from 22 no. children to 44 no. children is or is not development and is or is not exempted development.</i>
Applicant:	<i>Michelle Loonan</i>
Correspondence Address:	<i>c/o Kinnitty Community Playschool Kinnitty, Birr, Co. Offaly</i>
Location:	<i>Kinnitty Community Hall, Co. Offaly.</i>

SECOND REPORT ON FILE

1. Introduction

The question has arisen as to whether the change of use of a room within the Kinnitty Community Hall increasing capacity from 22 no. children to 44 no. children is development, and if so, is it exempted development under Schedule 2, Part 1 Class 14(f) of the Planning and Development Regulations 2001 (as amended).

2. Further Information

Further information (FI) was sought by the Planning Authority on 23rd October 2020 and subsequently received by the Planning Authority on 5th November 2020. This report should be read in conjunction with the previous planner's report dated 23rd October 2020. The following FI was sought and the response is as follows:

- (a) *A review of the planning application history associated with subject site does not confirm whether planning permission was sought for the change of use from community hall/tourism centre to the current childcare facility. The Applicant is required to demonstrate whether the appropriate planning permission was sought or alternatively, whether written planning advice was provided by the Planning Authority.*

Applicant's Response: They were unable to find evidence of planning permission or written planning advice for the existing childcare facility. They note that the playschool has gone through numerous Boards of Management over the years and so there is no one point of reference.

- (b) *The Applicant is required to provide a site layout plan of the subject site which clearly shows the access to the site and the associated number of car parking spaces and drop off facilities for the childcare facility.*

Applicant's Response: Site layout plan has not been provided but the Planner notes that photographs of the car park have been submitted. The Applicant confirms that there are 28 no. spaces in total including 4 no. spaces for the less mobile and 2 no. parent and child spaces.

- (c) *The Applicant is requested to clarify the total number of staff at the (i) existing, and (ii), proposed extended playschool.*

Applicant's Response: There are 7 no. existing staff and no increase in staff number is proposed.

- (d) *The Applicant is requested to clarify if any internal works are required for the proposed change of use.*

Applicant's Response: They advise that there are no foreseeable material changes or internal works which will need to be carried out to open the new room (unless otherwise advised by Tulsa) except putting in playschool toys and equipment.

3. Evaluation

Having reviewed the Applicants response to the RFI, the Planner concludes the following:

a) **"Is or is not Development"**

In this instance, the proposal involved the martial change of use of a section of the existing Kinnitty Community Hall to a child care facility (preschool) would involve "works" within the meaning of Section 3 of the Act. Such works constitute "development" within the meaning of the Act.

b) **"Is or is not Exempted Development"**

The change of use from a community hall to a childcare facility (preschool) does constitute a change of use from Class 10 to Class 8 and therefore does not constitute exempted development under the above mentioned Act and Regulations.

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'.

From the Planner's review of the subject site, the Planning Authority concludes that retention permission is required for the existing childcare facility.

6. Conclusion

It is recommended that the change of use of a room within the building (Kinnitty Community Hall) increasing capacity from 22 no. children to 44 no. children **does constitute development** defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and **is not exempted development** as defined by the Planning and Development Act 2000 (as amended) and 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:

The change of use of a room within the building (Kinnitty Community Hall) increasing capacity from 22 no. children to 44 no. children is or is not development and is or is not exempted development under the Planning and Development Act 2000 (as amended).

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

- (a) Sections 2(1) & 3 (1) of the Planning and Development Act 2000, as amended.
- (b) Schedule 2, Part 4, Article 10; Class 8 and Class 10 – Exempted Development - Classes of Use of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

The change of use of a room within the building (Kinnitty Community Hall) increasing capacity from 22 no. children to 44 no. children (as indicated on the documentation submitted by the Applicant on the 28th September 2020 and the 5th November 2020) 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 change of use of a section of the existing Kinnitty Community Hall to a child care facility (preschool) is **development** under the Planning and Development Act 2000 (as amended) and is **not exempted development**.



Úna McCafferkey
Assistant Planner

11th November 2020

Date



Carroll Melia
(A/Senior Executive Planner)

24th November 2020

Date

Advice Note to Applicant:

Notwithstanding the above, in accordance with the provisions of Section 157 (4) (a) *Prosecution of Offences* of the Planning and Development Act (as amended), the planning authority cannot apply enforcement action against an unauthorised development after a seven-year period has passed. As there is evidence that the existing childcare facility (currently operating as Kinnitty Community Playschool) has been in use at the Kinnitty Community Hall for more than 7 years, no enforcement action can be taken by the Planning Authority for the childcare facility as currently operated. However, the Applicant should note that this childcare use is deemed to have no planning status and rectification of this planning status will be required if any subsequent alterations or statutory applications are to be made or, if the related property is to be sold.

APPENDIX A

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 Authority: OCC

Planning Application Ref. No: DEC 20/18

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Change of use of a room within the building (Kinnitty Community Hall) increasing capacity from 22 no. children to 44 no. children.		
Site location:	Kinnitty Community Playschool @ Kinnitty Community Hall		
Site size:	Not specified	Floor Area of Proposed Development:	Not specified
Identification of nearby European Site(s):	Slieve Bloom Mountains SPA – 1.6km Slieve Bloom Mountains SAC – 3.2km		
Distance to European Site(s):	As above – all as crow flies		
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 European site:	None		
Is the application accompanied by an EIAR?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Slieve Bloom Mountains SPA– Features of interest include:	<ul style="list-style-type: none"> Hen Harrier (Circus cyaneus) [A082] 		
Slieve Bloom Mountains SAC - Features of interest include:	<ul style="list-style-type: none"> Northern Atlantic wet heaths with Erica tetralix [4010] Blanket bogs (* if active bog) [7130] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] 		
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 European site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)			
PLEASE SEE SITE SYNOPSIS and CONSERVATION OBJECTIVES SHEET ATTACHED.			
(C) NPWS ADVICE:			
Advice received from NPWS over phone:	None Received		
Summary of advice received from NPWS in written form (ATTACH SAME):	None Received		

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:	
(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).	
If the answer is 'yes' to any of the questions below, then the effect is significant. (Please justify your answer. 'Yes' / 'No' alone is insufficient)	
Would there be... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... a reduction in habitat area on a European site?	There will be no reduction in the habitat area. The site is sufficient distance from the European site.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?	Not likely due to the location and type of development The site is sufficient distance from the European site.
... serious / ongoing disturbance to species / habitats for which the European 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 European site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?	None likely due to the location and type of development The site is sufficient distance from the European 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 European 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. The site is sufficient distance from the European site.
(E) SCREENING CONCLUSION:	
Screening can result in:	
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?	
Category 2	
Justify why it falls into relevant category above:	
There would be no likely significant impact on the European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Site.	
Name:	Úna McCafferkey 
Position:	Assistant Planner
Date:	11 th November 2020