

**OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE**

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/22

NAME OF APPLICANT: BOARD OF MANAGEMENT, SCOIL N. MHUIRE,

ADDRESS: CLONYGOWAN,
TULLAMORE,
CO. OFFALY

ADDRESS FOR CORRESPONDENCE:

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether replacing window with temporary emergency exit from new ASD (Autistic Spectrum Disorder) Classroom enabling a distressed ASD child enter a play area without being guided through the mainstream school is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Scoil N. Mhuire, Clonygowan, Tullamore, Co. Offaly

WHEREAS a question referred to Offaly County Council on 29th July 2021 as to whether replacing window with temporary emergency exit from new ASD (Autistic Spectrum Disorder) Classroom enabling a distressed ASD child enter a play area without being guided through the mainstream school at Scoil N. Mhuire, Clonygowan, 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, 3 & 4 of the Planning and Development Act 2000 (as amended);

AND WHEREAS Offaly County Council has concluded that replacing window with a temporary emergency exit from new ASD (Autistic Spectrum Disorder) Classroom does constitute development as defined in Section 3(1) of the Planning and Development Act 2000 as amended and IS exempted development as defined by the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001 as amended.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2)(a) of the Planning and Development Act 2000, as amended hereby decides that the replacing of a window with a temporary emergency exit from a new ASD (Autistic Spectrum Disorder) Classroom at Scoil N. Mhuire National School, Clonygowan, 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.

R. W. O'Connell

Administrative Officer

25/8/2021

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.

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

File Reference:	Dec 21/22
Question:	Whether replacing window with temporary emergency exit from new ASD (Autistic Spectrum Disorder) Classroom enabling a distressed ASD child enter a play area without being guided through the mainstream school is or is not development and is or is not exempted development
Applicant:	Board of Management, Scoil N. Mhuire, Clonygowan, Tullamore, Co. Offaly
Correspondence Address:	See application form
Location:	Scoil N. Mhuire, Clonygowan, Tullamore, Co. Offaly
Date received:	29 th July 2021
Date due:	25 th August 2021

1. Proposal

The question has arisen as to whether the replacing of a window with temporary emergency exit from new ASD (Autistic Spectrum Disorder) Classroom enabling a distressed ASD child enter a play area without being guided through the mainstream school is or is not development and is or is not exempted development.

2. BRIEF SITE DESCRIPTION:

The site contains a national school, situated in the village of Cloneygowan on 'Public/Community/Educational' zoned land.

3. Relevant Planning History:

PL2/13/3: The Board of Management of Scoil Naomh Mhuire was **Granted** permission for (a) demolition of external shelter and store to rear of school, (b) construction of a new single storey extension to the west side of the existing school building, consisting of 4 no. Classrooms, circulation and ancillary areas, (c) relocation of main entrance with provision of new canopy over, (d) alterations and refurbishment to the existing school and all ancillary site works subject to 5 conditions.

PL2/12/309: The Board of Management of Scoil Naomh Mhuire applied for permission for the (a) demolition of external shelter and store to rear of school, (b) construction of a new single storey extension to the west side of the existing school building, consisting of 4 no. Classrooms, circulation and ancillary areas, (c) relocation of main entrance with provision of new canopy over, (d) alterations and refurbishment to the existing school and all ancillary site works. The file was deemed **Incomplete**

PL2/01/819: Board of Management Clonygowan Ns (Scoil N Mhuire) was **Granted** permission for a prefabricated buildings comprising of 1 no classroom & 1 no remedial room subject to 5 conditions

4. Relevant Legislative Background

Planning and Development Act 2000 (as amended)

Section 2(1)

'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.

Exempted Development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) and further prescribed under Article 6 of the Planning and Development Regulations 2001 (as amended). Article 6 prescribes development of a class specified in column 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended) shall be exempted development, 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) further restricts the application of Article 6 in certain circumstances. The provisions of Articles 6 and 9 were reviewed in the context of this application and it is considered they do not apply as the development falls under Section 4(1)(h) of the Planning and Development Act 2000 (as amended) and as set out below.

Section 4(1)(h)

Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect

only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

5. Assessment

The question under consideration is stated as follows 'the replacement of a window with a door at Scoil N. Mhuire, Clonygowan, Tullamore, Co. Offaly' and thereby altering the facade or elevation of a structure constitutes 'works' as defined by Section 2 of the Act and 'development' as defined by Section 3 of the Act.

The legislation provides for the carrying out of works for the improvement of a structure which *do not materially affect the external appearance* so as to render the appearance inconsistent with the character of the structure or of neighbouring structures.

The plans submitted with the Declaration indicate that the subject door is located on the front elevation. It is considered that the replacement of a window with a door on the front elevation is consistent with the character and scale of the existing development and neighbouring properties. For this reason, it is considered that the proposed development comes within the scope of section 4(1)(h).

Conclusion.

Having regard to:

- Sections 2, 3 & 4 of the Planning and Development Act 2000 (as amended);

It is considered that replacing a window with a temporary emergency exit from a new ASD (Autistic Spectrum Disorder) Classroom enabling a distressed ASD child enter a play area without being guided through the mainstream school does constitute development as defined in Section 3(1) of the Planning and Development Act 2000 as amended and IS exempted development as defined in Section 4(1)(h) Planning and Development Act 2000 as amended and the Planning

Recommendation

It is recommended that the applicant be advised that the development as described in the application is development and is 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 replacing window with a temporary emergency exit from new ASD (Autistic Spectrum Disorder) Classroom is or is not development and is or is not exempted development at Scoil N. Mhuire National School, Clonygowan, Tullamore, Co. Offaly

AND WHEREAS the Board of Management of Scoil N. Mhuire National School, Clonygowan, Tullamore, Co. Offaly has requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard particularly to -

- (a) Sections 2, 3 & 4 of the Planning and Development Act 2000 (as amended);

AND WHEREAS Offaly County Council has concluded that replacing window with a temporary emergency exit from new ASD (Autistic Spectrum Disorder) Classroom does constitute development as defined in Section 3(1) of the Planning and Development Act 2000 as amended and IS exempted development as defined by the Planning and Development Act 2000 as amended and the Planning and Development Regulations 2001 as amended.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) of the Planning and Development Act, as amended, hereby decides that:

The replacing of a window with a temporary emergency exit from a new ASD (Autistic Spectrum Disorder) Classroom at Scoil N. Mhuire National School, Clonygowan, Tullamore, Co. Offaly **is development and is exempted development**

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
Assistant Planner
17th August 2021

Alaine Clarke
A/Senior Executive Planner
18th August 2021

**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:

Offaly County Council

Planning Application Ref. No.:

DEC 21/22

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether replacing window with temporary emergency exit from new ASD (Autistic Spectrum Disorder) Classroom enabling a distressed ASD child enter a play area without being guided through the mainstream school is or is not development and is or is not exempted development		
Site location:	Scoil N. Mhuire, Clonygowan, Tullamore, Co. Offaly		
Site size:	Not Known	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	River Barrow And River Nore SAC		
Distance to European Site(s):	4.56km		
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?	No		
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site:	The site is a candidate SAC selected for alluvial wet woodlands and petrifying springs, priority habitats on Annex I of the E.U. Habitats Directive. The site is also selected as a candidate SAC for old oak woodlands, floating river vegetation, estuary, tidal mudflats, <i>Salicornia</i> mudflats, Atlantic salt meadows, Mediterranean salt meadows, dry heath and eutrophic tall herbs, all habitats listed on Annex I of the E.U. Habitats Directive. The site is also selected for the following species listed on Annex II of the same directive - Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Nore Freshwater Pearl Mussel, Crayfish, Twaite Shad, Atlantic Salmon, Otter, Desmoulin's Whorl Snail <i>Vertigo moulinsiana</i> and the Killarney Fern.		
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.)

1016 Desmoulin's whorl snail *Vertigo moulinsiana*
 1029 Freshwater pearl mussel *Margaritifera margaritifera*
 1092 White-clawed crayfish *Austropotamobius pallipes*
 1095 Sea lamprey *Petromyzon marinus*
 1096 Brook lamprey *Lampetra planeri*
 1099 River lamprey *Lampetra fluviatilis*
 1103 Twaité shad *Alosa fallax*
 1106 Atlantic salmon (*Salmo salar*) (only in fresh water) 1130 Estuaries
 1140 Mudflats and sandflats not covered by seawater at low tide
 1310 Salicornia and other annuals colonizing mud and sand
 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
 1355 Otter *Lutra lutra* 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
 1421 Killarney fern *Trichomanes speciosum*
 1990 Nore freshwater pearl mussel *Margaritifera durrovensis*
 3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
 4030 European dry heaths
 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
 7220 * Petrifying springs with tufa formation (*Cratoneurion*)
 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
 91E0 * Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.pdf

(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).

Given the location the limited nature and size of the development applied for and the characteristics of *European* sites in the vicinity it is considered that 100 metres should be used as a potential zone of impact of the project in accordance with section 3.2.3 of the appropriate assessment guidelines. There are no *European* sites within 100 metres of the development applied for and therefore no significant effects on any *European* sites either alone or in combination with other plans and projects.

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 <i>European</i> site?	There will be no reduction in the habitat area.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the <i>European</i> site?	Not likely due to the location and type of development. The site is sufficient distance from the European site.

<p>... serious / ongoing disturbance to species / habitats for which the <i>European</i> site is selected (e.g. because of increased noise, illumination and human activity)?</p>	<p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> site?</p>	<p>Not likely to have an adverse impact due to its location, scale and characteristics.</p>
<p>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 <i>European</i> sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.</p>	<p>No</p>
	<p></p>
	<p></p>
	<p></p>
	<p></p>
<p>(E) SCREENING CONCLUSION:</p>	
<p>Screening can result in:</p>	
<p>1</p>	<p><i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i></p>
<p>2</p>	<p><i>No potential for significant effects / AA is not required.</i></p>
<p>3</p>	<p><i>Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i></p>
<p></p>	<p><i>Conclusion:2</i></p>
<p></p>	<p>Justify why it falls into relevant category above: <i>Given the location and the nature and size of the development applied for and the characteristics of European sites in the vicinity and the appropriate assessment guidelines it is considered that the development will be unlikely to have significant effects on any European sites.</i></p>
<p>Signed:</p>	<p>Michael Duffy</p>
<p>Date:</p>	<p>17TH August 2021</p>