

OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/23

NAME OF APPLICANT: CIARAN FITZPATRICK, FITZPATRICK AND HEAVEY HOMES LIMITED

ADDRESS:

ADDRESS FOR CORRESPONDENCE: FITZPATRICK AND HEAVEY HOMES LIMITED
B10 & B11 GREENOGUE SQUARE,
GREENOGUE BUSINESS PARK,
RATHCOOLE CO. DUBLIN,

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the removal of the chimneys from house types A,B,C permitted under planning Reg. Ref 18235 is or is not exempted development and whether the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing is or is not exempted development and whether the removal of the Georgian glazing bars from the windows of house types A,B,C permitted under planning Reg. Ref. 18235 is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Woodfield, Tullamore Road, Townparks, Birr, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 28/7/21 as to whether the removal of the chimneys from house types A,B,C permitted under planning Reg. Ref 18235 is or is not exempted development and whether the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing is or is not exempted development and whether the removal of the Georgian glazing bars from the windows of house types A,B,C permitted under planning Reg. Ref. 18235 at Woodfield, Tullamore Road, Townparks, 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, 3 and 4(1) h of the Planning & Development Act 2000 as amended.
- (b) Article 9 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that –

The removal of the chimneys from house types A, B, C; the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing; and, the removal of the Georgian glazing bars from the windows of house types A, B, C as permitted under the grant of planning permission ref. 18/235 is development and is not exempted development.

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 removal of the chimneys from house types A, B, C; the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing; and, the removal of the Georgian glazing bars from the windows of house types A, B, C as permitted under the grant of planning permission ref. 18/235 at Woodfield, Tullamore Road, Townparks, Birr, 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.

Rubonell
Administrative Officer

Date

24/8/2021

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. 21/23
Question:	<i>Whether the removal of the chimneys from house types A,B,C permitted under planning Reg. Ref 18235 is or is not exempted development and whether the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing is or is not exempted development and whether the removal of the Georgian glazing bars from the windows of house types A,B,C permitted under planning Reg. Ref. 18235 is or is not exempted development.</i>
Applicant:	<i>Ciaran Fitzpatrick, Fitzpatrick and Heavey Homes Limited.</i>
Correspondence Address:	<i>Fitzpatrick and Heavey Homes Limited. B10 & B11 Greenogue Square, Greenogue Business Park, Rathcoole Co. Dublin,</i>
Location:	<i>Woodfield, Tullamore Road, Townparks, Birr, Co. Offaly.</i>

1. Introduction

The question has arisen as to whether:

- (a) The removal of the chimneys from house types A, B, C permitted under planning Reg. Ref 18/235 is or is not exempted development
- (b) The replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing is or is not exempted development
- (c) The removal of the Georgian glazing bars from the windows of house types A, B, C permitted under planning Reg. Ref. 18/235 is or is not exempted development.

2. Background / Site History

Subject Site

18/235: Liam Walsh & Company Limited sought permission for a residential development consisting of 16 no. houses as follows: Type A, 3 no. 3 bedroom 2 storey terrace houses on site 1 - 3 inclusive. Type B, 3 no. 3 bedroom 2 storey terrace houses on sites 4 - 6 inclusive. Type C, 10 no. 3 bedroom 2 storey semi-detached houses on sites 7 - 16 inclusive. Connection to mains sewer, landscaping, access road via McAuley Drive western boundary and all associated site development works – **GRANTED** (currently under construction).

Adjoining Lands

19/282: Liam Walsh & Company Limited sought permission for a residential development consisting of 18 no. houses as follows: (a) this application is for Phase 2 of previously approved development PL ref no. 18/235 house Type D, 18 no. 3 bedroom 2 storey terrace houses on site 1- 18 inclusive (b) connection to mains sewer, landscaping, access road via permitted development PL ref no. 18/235 & McAuley drive western boundary and all associated site development works – **GRANTED**.

3. Legislative Context

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

Statutory Provisions

Section 2 (1) Planning and Development Act 2000, as amended, states as follows:

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

“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) Planning and Development Act 2000, as amended, defines development.

“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.

Section 4 - Exempted Development

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

(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 and 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 neighbouring structures.*

Section 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.*

Regulatory Provisions

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 - (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.*

4. Proposal by Applicants

Item A - removal of the chimneys from house types A, B, C permitted under planning Reg. Ref 18/235.

In the submitted documentation, the Applicant states that in their view, the chimneys are a poor addition to the units as they are *'a bolt on plastic/fiberglass product which add very little to the elevational treatment of the units'*. They advise that these chimneys will not withstand ultraviolet light and will fade over time.

Condition No. 13(d) of grant of permission is as follows:

Dwellings shall be constructed as per elevational plans and floor plans received by the Planning Authority on May 31st, 2018, subject to the following;

- (d) A revised set of floor plans and elevations shall be submitted to the Planning Authority for written agreement and approval showing chimneys running along the ridge of the roof of the proposed dwellings.*

The Planner notes there is no discussion/justification with regard to this design element of the development within the planner's report.

Having visited the subject site, the Planner notes that while the older dwellings within the surrounding area have chimneys, the development granted under planning ref. 19/282 does not incorporate chimneys in the design of the dwellings.

Item B - replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing.

The Applicant advises that they are keen to *'create a better supervised open space, both from our development and Presentation Place to the south'* and wish to respect and retain the existing hedgerow and biodiversity of the hedgerow. They also state that they are keen to avoid the construction of a 2m high block wall at this location as the *'existing root structures and maintenance of the hedgerow will be compromised'*. As an alternative, they proposed a 2m high twin steel fence in a dark green colour.

Condition No. 10 of grant of permission is as follows:

- (a) Concrete capped walls and consistent with the external finishes of dwellings contained in the proposed development, 2 metres high, shall be provided along the overall site boundary;*

- (b) Garden walls, 2 metres high, shall be provided along the rear garden boundary of each dwelling and along both side boundaries extending from the rear boundary to the front building line. The rear/side garden boundary walls shall be capped and the finish of the walls shall be consistent with the external finishes of the dwelling house.

Below is the site layout plan (Dwg. No. 002A1) which was submitted to the Planning Authority on the 2nd November 2018 forming part of a response to a Request for Further Information; the boundary in question is highlighted. This drawing proposed the retention of the existing hedgerow with infill planting to be provided however as outlined above Condition 10(a) sought the provision of a 2m high wall along the overall site boundary.



Figure 1: Site Layout Plan

Having visited the site, the Planner notes that there is a significant difference in the ground level of the open space area and the adjoining dwellings on Presentation Place. The construction of a 2m high wall along the site boundary at this location would have an overbearing visual impact and likely to have a detrimental impact on the existing mature hedgerow boundary.

Item C - removal of the Georgian glazing bars from the windows of house types A, B, C

The Applicant seeks the removal of the glazing bars from the windows as they are considered to have a detrimental effect on the U-value of the chosen windows. They advise that the minimum U-value of windows as permitted under Part L 2019 is 1.4W/m²k and the spacers between the glazing installed with the glazing bars increase the U-value to 1.6W/m²k. They state that they 'can only provide glazing bars that are stuck to the outer pane of the glazing to ensure compliance with the building regulations' which they feel are a poor addition that may require future maintenance.

Condition No. 13(b) of grant of permission is as follows:

Dwellings shall be constructed as per elevational plans and floor plans received by the Planning Authority on May 31st, 2018, subject to the following;

(b) No changes are permitted to the agreed window sizes, materials or designs.

5. Evaluation

Question: *Whether the removal of the chimney is development and if so, is it exempted development?*

In considering the proposed works against the definitions of 'development' and 'works' as provided in the Act, it is the view of the Planning Authority that the proposed works are deemed as development as it includes alterations to the permitted residential development which was granted planning permission under the planning ref. 18/235.

Question: *Is this proposal considered as Exempted Development?*

With regard to the proposed works which are described in the submitted documents, the Planning Authority notes the following:

Item A - removal of the chimneys from house types A, B, C permitted under planning Reg. Ref 18/235.

In considering the change to the design of the dwelling, the Planning Authority conclude that the removal of the chimney from the houses cannot be deemed as exempted development as it would contravene Condition No. 13(d) attached to a permission granted under planning ref. 18/235.

Item B - replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing.

In considering the change to the design of the dwelling, the Planning Authority conclude that the replacement of the required 2m high block wall along the site boundary adjacent to the public open space area and house no. 3 is not exempted development as it would contravene Condition No. 10(a) and (b) attached to a permission granted under planning ref. 18/235.

Item C - removal of the Georgian glazing bars from the windows of house types A, B, C

In considering the change to the type of window of the permitted dwellings, the Planning Authority note the requirements of the Building Regulations. It is concluded that the removal of Georgian glazing bars from the windows of house types A, B, C is not exempted development as it would contravene Condition No. 13 (b) attached to a permission granted under planning ref. 18/235.

6. Conclusion

It is recommended that the development as described in the application **is development and is not 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 or not the removal of the chimneys from house types A, B, C; the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing; and, the removal of the Georgian glazing bars from the windows of house types A, B, C as permitted under the grant of planning permission ref. 18/235 is or is not development and, where it is development, whether or not it is or is not exempted development at Woodfield, Tullamore Road, Townparks, Birr, Co. Offaly.

AND WHEREAS Ciaran Fitzpatrick of Fitzpatrick and Heavey Homes Limited requested a declaration on the said question from Offaly County Council;

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


- (a) Sections 2, 3 and 4(1) h of the Planning & Development Act 2000 as amended.
- (b) Article 9 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that –

The removal of the chimneys from house types A, B, C; the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing; and, the removal of the Georgian glazing bars from the windows of house types A, B, C as permitted under the grant of planning permission ref. 18/235 is development and is not exempted development.


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;

The removal of the chimneys from house types A, B, C; the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing; and, the removal of the Georgian glazing bars from the windows of house types A, B, C as permitted under the grant of planning permission ref. 18/235 at Woodfield, Tullamore Road, Townparks, Birr, Co. Offaly is development and is not exempted development.



Una McCafferkey
Assistant Planner

19th August 2021
Date



Alaine Clarke
(A/Senior Executive Planner)

23rd August 2021
Date

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 21-23

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	The removal of the chimneys from house types A, B, C; the replacement of a 2m high block wall along the south west boundary of the open space with 2 meter high twin wire steel fencing; and, the removal of the Georgian glazing bars from the windows of house types A, B, C as permitted under the grant of planning permission ref. 18/235		
Site location:	Woodfield, Tullamore Road, Townparks, Birr, Co. Offaly		
Site size:	1.6 ha	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Dovegrove Callows SPA – 1.54km River Little Brosna Callows SPA – 4.94km		
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):			
Dovegrove Callows SPA - Features of interest include:	<ul style="list-style-type: none"> • Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395] 		
River Little Brosna Callows SPA - Features of interest include:	<ul style="list-style-type: none"> • Whooper Swan (<i>Cygnus cygnus</i>) [A038] • Wigeon (<i>Anas penelope</i>) [A050] • Teal (<i>Anas crecca</i>) [A052] • Pintail (<i>Anas acuta</i>) [A054] • Shoveler (<i>Anas clypeata</i>) [A056] • Golden Plover (<i>Pluvialis apricaria</i>) [A140] • Lapwing (<i>Vanellus vanellus</i>) [A142] • Black-tailed Godwit (<i>Limosa limosa</i>) [A156] • Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] • Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395] • Wetland and Waterbirds [A999] 		
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.)			
SITE NAME: DOVEGROVE CALLOWS SPA SITE CODE: 004137 Dovegrove Callows is an area of callowland beside the Little Brosna River 2 km downstream from Birr, Co. Offaly and 5 km			

upstream from the start of the main area of River Little Brosna callows. The main habitat is wet grassland which floods. The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for Greenland White-fronted Goose.

The site is an important feeding area for the internationally important Little Brosna Greenland White-fronted Goose flock (527 individuals - 5 year mean peak for the period 1994/95 to 1998/99) and is used on an occasional basis when other feeding sites along the middle Shannon and Little Brosna callows are flooded. It is of particular importance as it can support the entire Little Brosna flock. For this reason the site is a key part of this flock's winter range and important for its protection.

Dovegrove Callows SPA is of major conservation significance as a feeding site for an internationally important flock of Greenland White-fronted Goose, a species that is listed on Annex I of the E.U. Birds Directive.

SITE NAME: RIVER LITTLE BROSNA CALLOWS SPA

SITE CODE: 004086

The River Little Brosna Callows SPA follows the River Brosna from its confluence with the River Shannon for approximately 9 km south-eastwards to just beyond New Bridge on the R438 road. The site extends along both sides of the river within counties Offaly and Tipperary. The main habitat present is the extensive area of low-lying callow grassland along the floodplain of the river. These grasslands are subject to prolonged flooding in winter, early spring and occasionally in summer.

The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the following species: Whooper Swan, Greenland White-fronted Goose, Wigeon, Teal, Pintail, Shoveler, Golden Plover, Lapwing, Black-Tailed Godwit and Black-Headed Gull. The site is also of special conservation interest for holding an assemblage of over 20,000 wintering waterbirds. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds.

The River Little Brosna Callows is an internationally important site for wintering waterfowl, being notable both for numbers and diversity of species. Of particular note is the internationally important Greenland White-fronted Goose flock (527) that is based along the Brosna - mean peak count for the five winters 1994/95 to 1998/99. The populations of Golden Plover (10,577 - 3 year mean peak from aerial surveys between 1995/96 and 1999/2000) and Black-tailed Godwit (2,900 - 4 year mean peak between 1995/96 and 1999/2000) are also of international importance. The River Little Brosna Callows is an important spring passage site and the Black-tailed Godwit flock, which is the largest in the country, exceeds over 4,000 birds on some occasions. A further seven species have populations of national importance, i.e. Whooper Swan (122), Wigeon (8,116), Teal (2,683), Pintail (130), Shoveler (164), Lapwing (6,552) and Black-headed Gull (1,939) - all figures are 4 year mean peaks between 1995/96 and 1999/2000 except Lapwing (3 year mean peak from aerial surveys between 1995/96 and 1999/2000) and Black-headed Gull (2 year mean peak for 1999/2000 and 2000/01). The populations of Wigeon, Teal and Golden Plover are consistently among the largest in the country. Other species which occur include Mute Swan (79), Mallard (334), Pochard (38), Dunlin (434) and Curlew (194); the population of Dunlin is of particular note as it comprises the largest inland population in the country.

The callows are also of importance for breeding waders, and such species as Redshank (65 pairs in 1987 and 22 pairs in 2002), Snipe (35 pairs in 1987 and 23 pairs in 2002) and Lapwing (41 pairs in 1987) have been recorded breeding here. Corncrake formerly bred on the Brosna callows (2 calling birds recorded in 1993), and may still breed occasionally.

The River Little Brosna Callows SPA is one of the top sites in the country for wintering waterfowl and part of the site is a Wildfowl Sanctuary. It is of international importance on account of the total numbers of birds that use it, as well as for its Greenland White-fronted Goose, Golden Plover and Black-tailed Godwit populations. In addition, there are a further seven species with nationally important populations, several of which are the largest in the country. Also of note is that three of the species which occur regularly, i.e. Whooper Swan, Greenland White-fronted Goose and Golden Plover, are listed on Annex I of the E.U. Birds Directive.

(C) NPWS ADVICE:

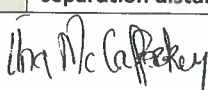
Advice received from NPWS over phone:	None Received
Summary of advice received from NPWS in written form (ATTACH SAME):	None Received

(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)

<p>Would there be...</p> <p>... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	<p>Not likely due to the location and type of development.</p> <p>The site is sufficient distance from the European site.</p>
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... 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:	19 th August 2021