

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 21/25

NAME OF APPLICANT: FARRY TOWN PLANNING LTD

ADDRESS: SUITE 180, 28 SOUTH FREDRICK STREET
DUBLIN 2

ADDRESS FOR CORRESPONDENCE: SUITE 180. 28 SOUTH FREDRICK STREET
DUBLIN 2

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 the ground floor of an existing building from a bank to a shop is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 48 JKL Street, Edenderry, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 29th July 2021 as to whether the change of use of the ground floor of an existing building from a bank to a shop at 48 JKL Street, Edenderry, 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 and 3 of the Planning and Development Act 2000 (as amended);
- (b) Articles 5 and 6 of the Planning and Development Regulations 2001 (as amended); and;
- (c) Schedule 2, Part 1, Class 14 (d) (exempted development – Change of use of the Planning and Development Regulations 2001 (as amended)).
- (d) Schedule 2, Part 4, Class 1 & 2 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the change of use of the ground floor at 48 JKL Street, Edenderry, Co. Offaly from a former bank to a shop 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 change of use of the ground floor at 48 JKL Street, Edenderry, Co. Offaly from a former bank to a shop **is development** and **is exempted development** at 48 JKL Street, Edenderry, 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.

R. W. O'Connell
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.

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

File Reference:	Dec 21/25
Question:	Whether the change of use of the ground floor of an existing building from a bank to a shop is or is not development and is or is not exempted development
Applicant:	Farry Town Planning Ltd
Correspondence Address:	See application form
Location:	48 JKL Street, Edenderry
Date received:	29 th July 2021
Date due:	25 th August 2021

1. Proposal

The question has arisen as to whether the change of use at 48 JKL Street, Edenderry of the ground floor of an existing building from a bank to a shop is or is not development and is or is not exempted development

The applicant states that Class 14 of Schedule 2 (Part 1) of the Planning and Development Regulations, 2001 allows for change of use from a use to which class 2 of Part 4 of the Schedule applies (financial services) to a shop without consent.

2. Background

The subject site is zoned for 'town centre' use in the Edenderry Local Area Plan 2017-2023. There is an existing three storey terraced building on site, which fronts onto JKL Street. The building in question was formerly occupied by Ulster Bank. The referrer converted the ground floor of the subject building to a shop, for the sale and display of bathroom suites.

3. Relevant Planning History:

PL2/95/226: Ulster Bank was **Granted** permission for the installation of a new A.T.M. and sign to Ulster Bank at 48 JKL Street, Edenderry subject to 3 conditions

PL2/05/120: Ulster Bank was **Granted** permission for the construction of new disabled access ramp, steps, incorporating corporate signage and

ancillary site works to main entrance of front façade subject to 1 condition.

PL2/08/794: Ulster Bank was **Granted** permission for the installation of air conditioning units placed internally and air condensing units placed externally subject to 1 condition.

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.

Planning and Development Regulations 2001 (As Amended)

Article 5(1) of the Planning and Development Regulations, 2001 provides interpretation for the purposes of exempted development. The following are relevant in the context of this Section 5 referral.

'Shop' means a structure used for any or all of the following purposes, where the sale, display or service is principally to visiting members of the public –

- a) for the retail sale of goods,*
- b) as a post office,*
- c) for the sale of tickets or as a travel agency,*
- d) for the sale of sandwiches or other food or of wine for consumption off the premises, where the sale of such food or wine is subsidiary to the main retail use, and 'wine' is defined as any intoxicating liquor which may be sold under a wine retailer's off – licence (within the meaning of the Finance Act, 1910),*
- e) for hairdressing,*
- f) for the display of goods for sale,*
- g) for the hiring out of domestic or personal goods or articles,*
- h) as a laundrette or dry cleaners,*
- i) for the reception of goods to be washed, cleaned or repaired*

but does not include any use associated with the provision of funeral services or as a funeral home, or as a restaurant or a public house, or for the sale of hot food or intoxicating liquor for consumption off the premises, except under paragraph (d), or any use to which Class 2 or 3 of Part 4 of Schedule 2 applies.

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

Schedule 2

PART 2

Class 14

Development consisting of a change of use—

d) from use to which class 2 of Part 4 of this Schedule applies, to use as a shop,

PART 4

Exempted development- Classes of Use

Class 2

Use for the provision of—

(a) financial services,

(b) professional services (other than health or medical services),

(c) any other services (including use as a betting office),

where the services are provided principally to visiting members of the public.

5. Description of the Development

The question under consideration is stated as follows;

Whether the change of use at 48 JKL Street, Edenderry of the ground floor of an existing building from a bank to a shop is or is not development and is or is not exempted development

Section 3(1) in the Planning and Development Act 2000 defines development as 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.

“Works” are defined in Section 2 of the Act as including ‘any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

It is considered, in light of the aforementioned definitions that the alterations proposed involve ‘works’ and ‘development’ within the meaning of the Act.

The subject property had an established financial use as a bank which is considered to fall within Class 2 of Part 4 of the Planning and Development Regulations, 2001 (as amended)

The change of use in question relations to the conversions of a bank to a shop is considered to fall within Class 14(d) of Schedule 2 (Part 1) of the Regulations, 2001 (as amended) for the provision of a financial services to a shop

Conclusion.

Having regard to:

- Sections 2 & 3 of the Planning and Development Act 2000 (as amended), and
- Articles 5 and 6 of the Planning and Development Regulations 2001 (as amended)
- Schedule 2, Part 1, Class 14 (d) (exempted development – Change of use of the Planning and Development Regulations 2001 (as amended)).
- Schedule 2, Part 4, Class 1 & 2 of the Planning and Development Regulations 2001 (as amended).

It is considered that the change of use of the ground floor from a former bank to a shop 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.

**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 the ground floor of an existing building from a bank to a shop is or is not development and is or is not exempted development at 48 JKL Street, Edenderry, Co. Offaly.

AND WHEREAS Farry Town Planning Ltd 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 and 3 of the Planning and Development Act 2000 (as amended);
- (b) Articles 5 and 6 of the Planning and Development Regulations 2001 (as amended); and;
- (c) Schedule 2, Part 1, Class 14 (d) (exempted development – Change of use of the Planning and Development Regulations 2001 (as amended)).
- (d) Schedule 2, Part 4, Class 1 & 2 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the change of use of the ground floor at 48 JKL Street, Edenderry, Co. Offaly from a former bank to a shop 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 change of use of the ground floor at 48 JKL Street, Edenderry, Co. Offaly from a former bank to a shop **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
11th August 2021

Alaine Clarke

Alaine Clarke
A/SEP
20th August 2021



APPROPRIATE ASSESSMENT SCREENING

REPORT FOR PLANNING APPLICATION



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: DEC/21/25

(A) BACKGROUND SITE INFORMATION :

Nature of Project:	Whether the change of use of the ground floor of an existing building from a bank to a shop is or is not development and is or is not exempted development		
Site location:	48 JKL Street, Edenderry		
Site Area:	Not Known	Floor Area	Not Known
Identification of nearby European Site(s):	European site(s): The Long Derries, Edenderry SAC 925		
Distance to European Site(s):	4.26km.		
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:	Given the scale of the development applied for, it is not considered that it will have any interactive / cumulative impacts with any other plan or project in the vicinity.		
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(s):

The site is a Special Area of Conservation (SAC) selected for the following habitats:

- [6210] Orchid-rich Calcareous Grassland

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 Natura 2000 site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) **(ATTACH INFO.)**

To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected:

Code Description 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco Brometalia) (* important orchid sites)* * denotes a priority habitat	
(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:	
<i>(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).</i>	
If the answer is 'yes' to any of the questions below, then the effect is significant. <i>(Please justify your answer. 'Yes' / 'No' alone is insufficient)</i>	
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(s)?	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 European Site(s)?	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?	Not likely to have an adverse impact due to its location, scale and characteristics.
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

(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:	The proposed development is unlikely to have significant effects on any European site.
Signed:	Michael Duffy
Date:	17th August 2021