

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

**PLANNING & DEVELOPMENT ACT 2000, AS AMENDED**

**REFERENCE:** DEC 21/29

**NAME OF APPLICANT:** DEASUN BAGGOT

**ADDRESS:** C/O DAVID MULCHAY PLANNING CONSULTANTS LTD.  
67 OLD MILL RACE,  
NEWBRIDGE,  
CO. KILDARE.

**ADDRESS FOR CORRESPONDENCE:** C/O DAVID MULCHAY PLANNING CONSULTANTS LTD.  
67 OLD MILL RACE,  
NEWBRIDGE,  
CO. KILDARE.

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the use of an existing public house at Baggots Back Door, The Square, Clara, Co. Offaly as a shop, along with associated minor works is or is not development and is or is not exempted development.

**LOCATION OF DEVELOPMENT:** Baggots Back Door, The Square, Clara, Co. Offaly.

**WHEREAS** a question referred to Offaly County Council on 05<sup>th</sup> October 2021 as to whether the use of an existing public house at Baggots Back Door, The Square, Clara, Co. Offaly as a shop, along with associated minor works 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) Part 1, Section 3(1) of the Planning and Development Act 2000 (as amended)
- (b) Part 1, Section 4, part (h) of the Planning and Development Act 2000 (as amended)
- (c) Schedule 2, Part 1, Class 14 of the Planning and Development Regulations 2001 (as amended);
- (d) Article 6 the Planning and Development Regulations 2001 (as amended);
- (e) Article 9 the Planning and Development Regulations 2001 (as amended)

**AND WHEREAS** Offaly County Council has concluded that the the change of use of a public house to an extended shop and associated minor works **is development** and **is 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 change of use of a public house to an extended shop and associated minor works at Baggots Back Door, The Square, Clara, 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**

01/11/2021  
\_\_\_\_\_  
**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

<b>File Reference:</b>	<i>Dec 21/29</i>
<b>Question:</b>	<i>Whether the change of use of a public house to an extended shop and associated minor works is development and is or is not exempted development</i>
<b>Applicant:</b>	<i>Deasun Baggot</i>
<b>Location:</b>	<i>Baggots Back Door, The Square, Clara</i>
<b>Date received:</b>	<i>5<sup>th</sup> October 2021</i>
<b>Date due:</b>	<i>1<sup>st</sup> November 2021 (file was not on list)</i>

**1. Proposal**

Change of use of public house to a shop and post office which will form part of an existing shop.

Floor area: 136sqm

Works include removal of two doorways which access the alleyway to the north, one will be replaced by a window, the other will be blocked up.

**2. Brief Site Description**

The site is located on the east side of The Square, Clara. There is an existing three storey terraced building on site. There is an alleyway to the north of the structure. Access to the public house is via the alleyway. The public house is not in use and is presently in use as storage space for the existing adjoining shop (Centra) to the south of the public house. The shop is within the landholding of the applicant and it is this shop that the applicant wants to extend into.

The site is zoned mixed use/town centre in the Offaly County Development Plan 2021-2027.



Plate 1: View of entrance to alleyway way to access public house



Plate 2: view of adjoining building to the north (outside landholding)

### 3. Relevant Planning History:

96/458 Permission granted TO EXTEND GROCERY SHOP INTO EXISTING BAR/LOUNGE, TO EXTEND & RE-ROOF BAR/LOUNGE, TO REMOVE EXISTING SHEDS & TO RELOCATE EXISTING STORES, subject to conditions.

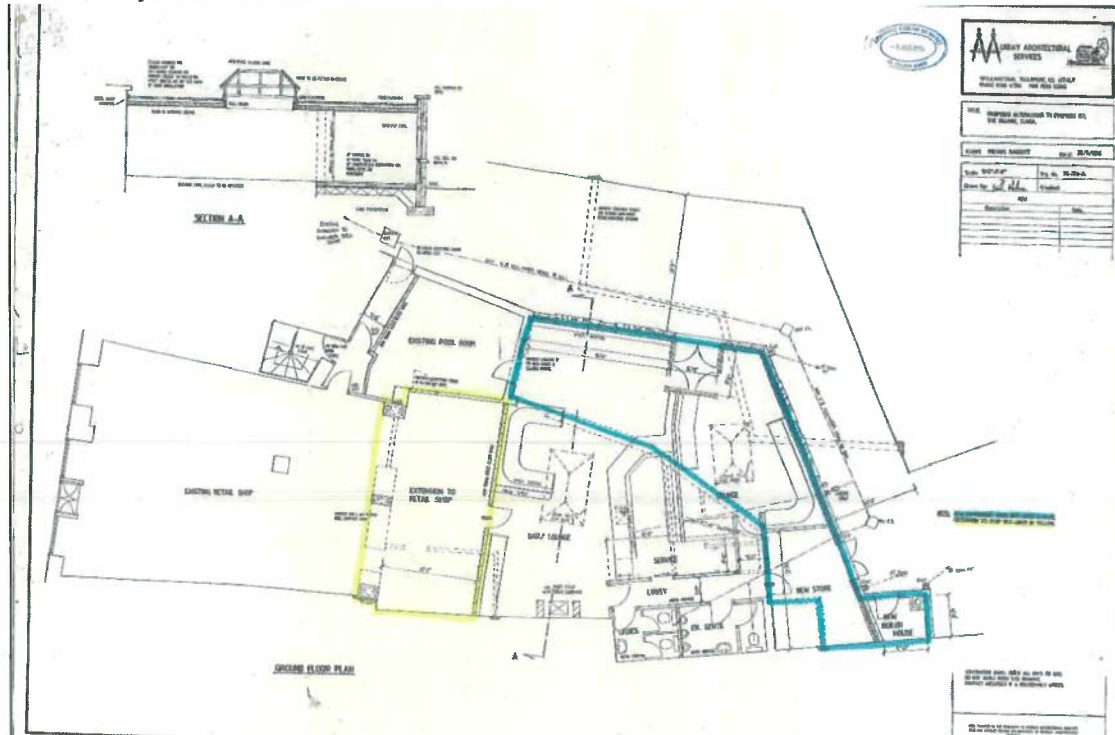


Plate 3: extract from 96/458

### 4. Legislative Context

Planning and Development Act 2000, as amended:

*'use', in relation to land, does not include the use of the land by the carrying out of any works thereon;*

*'structure' means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined;*

*'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.*

*S.3 (1) In this Act 'development' means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land.*

*S. 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;

**Planning and Development Regulations 2001, as amended:**

Article 6 of the Planning and Development Regulations 2001 (as amended) states:

- (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.*

**Article 9 – Restrictions on exemptions**

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,*

*(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users,*

*(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

*(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a*

*development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

*(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

*(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

*(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.*

*(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

*(xi) obstruct any public right of way,*

*(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,*

*(b) in an area to which a special amenity area order relates, if such development would be development:—*

*(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33  
(c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or*

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or

(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or

(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

Part 1 of Schedule 2 of the P&D Regulations deals with 'Exempted Development – General'. Column 1 sets out the classes of development that are exempted and Column 2 sets out the conditions and limitations on the exemption.

Column 1 Description of Development	Column 2 Conditions and Limitations
Class 14 Development consisting of a change of use— (b) from use as a public house, to use as a shop,	n/a

#### 4. Appropriate Assessment Screening

A screening exercise for an appropriate assessment has been carried out and it has been deemed that the development is unlikely to have significant effects on any European sites. Please see attached report.

Other than the European sites addressed in the AA no other AA is potentially within the zone of influence of the project.

#### 5. Environmental Impact Assessment Screening

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001- 20 (as amended) and therefore is not subject to EIA requirements.

#### 6. Evaluation

**Question: Is the following works considered as Development?**

Yes, the proposed change of use and works to the structure is development.

**Question: Is the following works proposal considered as Exempted Development?**

It is necessary to consider whether the development complies with the limitations set out under Class 9:

**Article 9 – Restrictions on exemptions**

Relevant considerations set out below:

As stated above:

*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,*

The proposed development would not contravene a condition attached to a permission (i.e. 96/458).

*(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users,*

The Declaration request has been referred to the District Engineer for comment in respect of the above limitations. Following discussion with the District Engineer there are no concerns arising in respect of the traffic hazard /obstruction of road users or widening of access.

*(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

The proposed development would not interfere with any designations.

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

The proposed development is not restricted by any objectives of the Planning Authority to ensure that the building or other structure would remain available for such use.

**7. Recommendation**

It is recommended that the applicant is advised that the development as described in the application is development and is exempted development.



**Declaration on Development and Exempted Development**

**under 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 public house to an extended shop is development and associated minor works is or is not exempted development at Baggots Back Door Public House, The Square, Clara, Co. Offaly,

**AS INDICATED** on the particulars received by the Planning Authority on 5<sup>th</sup> October 2021, is development and is or is not exempted development,

**AND WHEREAS** Deasun Baggot, Baggots Back Door, The Square, Clara requested a declaration on the said question from Offaly County Council;

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

- (a) Part 1, Section 3(1) of the Planning and Development Act 2000 (as amended)
- (b) Part 1, Section 4, part (h) of the Planning and Development Act 2000 (as amended)
- (c) Schedule 2, Part 1, Class 14 of the Planning and Development Regulations 2001 (as amended);
- (d) Article 6 the Planning and Development Regulations 2001 (as amended);
- (e) Article 9 the Planning and Development Regulations 2001 (as amended)

**AND WHEREAS** Offaly County Council has concluded that the the change of use of a public house to an extended shop and associated minor works is development and is exempted development

**NOW THEREFORE** Offaly County Council, in exercise of the 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 a public house to an extended shop and associated minor works 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 Pleanala within 4 weeks of the issuing of the decision.

*Alaine Clarke*

\_\_\_\_\_  
Alaine Clarke  
Executive Planner

4<sup>th</sup> November 2021

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Date

Carroll Melia

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Carroll Melia  
A/Senior Executive Planner

8<sup>th</sup> November 2021

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Date

**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**

**Section 5 Ref. No: 21/29**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the change of use of a public house to an extended shop is development and is or is not exempted development		
Site location:	Baggot's Back Door pub, The Square, Clara		
Site size:	Not known	Floor Area of Proposed Development:	136sqm
Identification of nearby European Site(s):	Clara Bog SAC		
Distance to European Site(s):	1km		
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):	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150] Bog woodland [91D0]		
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 <a href="http://www.npws.ie">www.npws.ie</a> ) (ATTACH INFO.)	<a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000572.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000572.pdf</a>		

<b>(C) NPWS ADVICE:</b>	
Advice received from NPWS over phone:	None Received
Summary of advice received from NPWS in written form <b>(ATTACH SAME):</b>	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)*

<b>Would there be...</b> ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	No
... a reduction in habitat area on a European site?	No
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?	No
... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?	No
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?	No
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 because the project is directly connected with / necessary to the nature conservation management of the site.</i>
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:	<b>There are no likely significant impact on the European site from the development due to its scale and the separation distance between the subject site and European Site.</b>	
N a m e:	Alaine Clarke		
P o s i t i o n:	EP	Date:	4 <sup>th</sup> November 2021