

OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/37

NAME OF APPLICANT: GRACE CUMMINS

ADDRESS FOR CORRESPONDENCE: 29 GILROY AVENUE, EDENDERRY, CO. OFFALY R45 HP68

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the use of a shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry for commercial flower arranging, collection and delivery services is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 29 GILROY AVENUE, EDENDERRY, CO. OFFALY.

WHEREAS a question referred to Offaly County Council on 21/12/2021 as to whether or not the use of a shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry, Co. Offaly for commercial flower arranging, collection and delivery services 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) Section 2(1) of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Article 6(3) of the Planning and Development Regulations 2001, as amended

AND WHEREAS Offaly County Council has concluded that the works are considered 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 shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry for commercial flower arranging, collection and delivery services 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.

R. Doyle
Administrative Officer

25/01/2022
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 21/37 |
| Question: | Whether or not the use of a shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry for commercial flower arranging, collection and delivery services is or is not development and is or is not exempted development. |
| Applicant: | Grace Cummins |
| Location: | 29 Gilroy Avenue, Edenderry Co. Offaly |
| Date received: | 21 st December 2021 |
| Date due: | 26 th January 2022 |



1. Proposal

The question has arisen as to whether or not the use of a shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry for commercial flower arranging, collection and delivery services is or is not development and is or is not exempted development.

2. Background

The development in question is located within an existing residential estate in the town of Edenderry with access onto the L-10046-1 local tertiary road.

3. Relevant Planning History:

PL2/17/111: Retention permission **Granted** to Paul Farrell for two detached domestic shed buildings at the rear of the existing dwelling house subject to 3 conditions.

It is noted condition 2 of Planning permission PL2/17/111 states “**The sheds shall not be used for human habitation or any commercial activity or for any other purpose than a purpose incidental to the enjoyment of the dwelling.**”

PL2/10/196: Paul & Laura Farrell were **Granted** permission for the construction of a storey and a half domestic use extension to rear of existing dwelling and all ancillary site works subject to 6 conditions

PL2/09/528: Paul & Laura Farrell were **Refused** permission for the construction of a two-storey domestic use extension to the rear of existing dwelling

4. Legislative Context

Planning and Development Act 2000 and Development Regulations 2001 (as amended)

The Planning and Development Act 2000 (as amended) Section 3(1) defines development:

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.

The Planning and Development Act 2000 (as amended) Section 2(1) provides a definition of “works” in the Act:

“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.

Planning and Development Regulations 2001, as amended:

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.

5. Proposal by Applicant

The applicant wishes to ascertain whether or not the use of a shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry for commercial flower arranging, collection and delivery services is or is not development and is or is not exempted development.

6. Appropriate Assessment

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

7. Evaluation

Question: Is the following works considered as Development?

It is noted under planning reference PL2/17/111 the subject domestic shed was granted retention permission. Furthermore, condition 2 stated *"The sheds shall not be used for human habitation or any commercial activity or for any other purpose than a purpose incidental to the enjoyment of the dwelling."* As the applicant is proposing a material change of use of the domestic shed to commercial use, the proposed works is deemed to be development.

It is considered that the proposal constitutes 'development' as defined by Section 3(1) of the Act.

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

In considering the change of use of a domestic shed to a commercial use, the Planning Authority conclude the proposed change of use cannot be deemed as exempted development as it would contravene Condition No. 2 attached to a permission granted under Planning Ref. PL2/17/111.

8. Conclusion

It is recommended that the applicant be advised that the proposed development 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 use of a shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry for commercial flower arranging, collection and delivery services is or is not development and is or is not exempted development.

At 29 Gilroy Avenue, Edenderry Co. Offaly

AND WHEREAS Grace Cummins 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) Section 2(1) of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Article 6(3) of the Planning and Development Regulations 2001, as amended

AND WHEREAS Offaly County Council has concluded that –

- The works are considered development and is not exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) hereby decides that;

- The change of use of a shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry for commercial flower arranging, collection and delivery services is **development and is not exempted development.**

Michael Duffy

Michael Duffy

Assistant Planner

24th January 2022

Carroll Melia

Carroll Melia

Acting Senior Executive Planner

24th January 2022



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: PL2/17/111

(A) BACKGROUND SITE INFORMATION :

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| Nature of Project: | Whether or not the use of a shed to the rear of a dwelling at 29 Gilroy Avenue, Edenderry for commercial flower arranging, collection and delivery services is or is not development and is or is not exempted development. | | |
| Site location: | 29 Gilroy Ave, Edenderry | | |
| Site Area: | Not stated | Floor Area | Not Stated |
| Identification of nearby European Site(s): | European site(s): The Long Derries, Edenderry SAC 925 | | |
| Distance to European Site(s): | 4.6km. | | |
| 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):

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| The reasons for the designation of the European site(s): | |
| The site is a Special Area of Conservation (SAC) selected for the following habitats: | <ul style="list-style-type: none"> • [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:

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| 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)

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| 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. |

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| <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 European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.</p> | <p>No</p> |
| <p>(E) SCREENING CONCLUSION:</p> | |
| <p>Screening can result in:</p> | |
| <p>1.</p> | <p><i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.</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.</i> (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</p> |
| <p>Therefore, does the project fall into category 1, 2 or 3 above?</p> | <p>Category 2</p> |
| <p>Justify why it falls into relevant category above:</p> | <p>The proposed development is unlikely to have significant effects on any European site.</p> |
| <p>Signed:</p> | <p>Date:</p> |
| <p>Michael Duffy- Assistant Planner</p> | <p>24th January 2022</p> |