

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

REFERENCE: DEC 22/15

NAME OF APPLICANT: KILCORMAC DEVELOPMENT ASSOCIATION

ADDRESS: ST. JOSEPH'S COMMUNITY CENTRE,
KILCORMAC,
CO. OFFALY

ADDRESS FOR CORRESPONDENCE: C/O DANIEL KEANE,
DANIEL KEANE ARCH. TECH.,
20 CHURCH STREET,
PORTLAOISE,
CO. LAOIS.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the subdivision of an existing office (2nd floor) and associated works, for use as a 'hotdesk space' is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: ST. JOSEPH'S COMMUNITY CENTRE, KILCORMAC, CO. OFFALY

WHEREAS a question referred to Offaly County Council on 15/07/2022 as to whether the subdivision of an existing office (2nd floor) and associated works, for use as a 'hotdesk space' at St. Joseph's Community Centre, Kilcormac, 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 the Planning and Development Regulations 2001 (as amended); and,
- (c) Article 10 the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that –

The works are development and are 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 subdivision of an existing office (2nd floor) and associated works, for use as a 'hotdesk space' at St. Joseph's Community Centre, Kilcormac, 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

Date 10/08/2022

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:	<i>Dec. 22/15</i>
Question:	<i>Whether the subdivision of an existing office (2nd floor) and associated works, for use as a 'hotdesk space' is or is not development and is or is not exempted development.</i>
Applicant:	<i>Kilcormac Development Association</i>
Correspondence Address:	<i>c/o Daniel Keane, Daniel Keane Arch. Tech., 20 Church Street, Portlaoise, Co. Laois.</i>
Location:	<i>St. Joseph's Community Centre, Kilcormac, Co. Offaly.</i>

1. Introduction

The question has arisen as to whether the subdivision of an existing office (2nd floor) and associated works, for use as a 'hotdesk space' is or is not development and is or is not exempted development.

2. Background / Site History

The subject site is located within Kilcormac Town Boundary and is zoned as Community Services/Facilities under the current Offaly County Development Plan 2021 – 2027 (OCDP). The subject site is located within an area, which has been identified as being prone to flooding (medium - high probability).

A national monument is located within the subject site boundary:

- Monument Identifier: OF01383, Classification; CHYD (churchyard)
- Web Notes: Modern churchyard enclosing RC church at Kilcormac on the site of a Carmelite friary founded by Odo, son of Nellan O' Molloy who died in 1454 (Flanagan 1927, 42-3). The above description is derived from the published 'Archaeological Inventory of County Offaly' (Dublin: Stationery Office, 1997).



Photo 1: Subject Site (community centre circled in red)

The following is planning applications associated with the subject site and adjoining grounds:

- 97/15: Margaret McIntyre sought permission for a new single storied lean-to general-purpose store – Granted.
- 09/527: Kilcormac Community Childcare Ltd. sought permission for the development which will consist of a single storey community childcare facility comprising an area approximately 227.0 square metres, revised parking layout within existing carpark, a foul water pumping station with new connection to the public foul sewer, and all associated siteworks – Granted.
- 99/1263: Kilcormac Development Association sought permission for an extension to existing community centre – Granted.
- 17/55: Kilcormac Development Association sought permission for the construction of a bicycle rental shop, store and compound, alterations to the existing carpark, and all associated site works – Granted.
- 22/358: Kilcormac Development Association sought permission for the construction of a bicycle rental shop, store and compound, café unit building with office, sanitary accommodation, alterations to the existing carpark and all associated site works – **Decision due date is 13/09/2022.**

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:

“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:

- (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.

Article 10 (1) - Changes of Use states:

(1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—

(a) involve the carrying out of any works other than works which are exempted development,

(b) contravene a condition attached to a permission under the Act,

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

4. Proposal by Applicants

The Applicant states that as a result of the Covid pandemic, there has been an increasing in the number of people looking for office workspace. They note that the existing community centre has a large second floor open plan office/meeting room space that 'is seldom used' and has not 'reached its full potential'. The Applicant wishes to subdivide this area with glass partitions to allow individuals to rent 'hot desk space' when required. It is advised that no structural work is to be carried out other than the provision of a fire ventilation window on the stairwell to comply with Buildings Regulations and 2 no. new Velux windows. The Planner notes that this would be in addition to the 5 no. Velux windows which are shown on the submitted plans as existing.

5. 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.

6. 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.

7. Evaluation

Question: Is the following works considered as Development?

Yes, works include the provision of additional rooflights and window on the north elevation are considered as development.

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

Having regard to the proposed works and Article 4(1)(h), the provision of additional rooflights, window on the north elevation and internal alterations are considered to be required for improvements to the building. It is the view of the Planning Authority that these works will 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 and therefore deemed as exempted development.

With regard to the provision of a hot desk spaces, the Planning Authority note that the existing building is and has been in use as a community centre for a number of years. The floor plans submitted as part of the planning application in 1999 for an extension to the community centre include the following first floor plan:

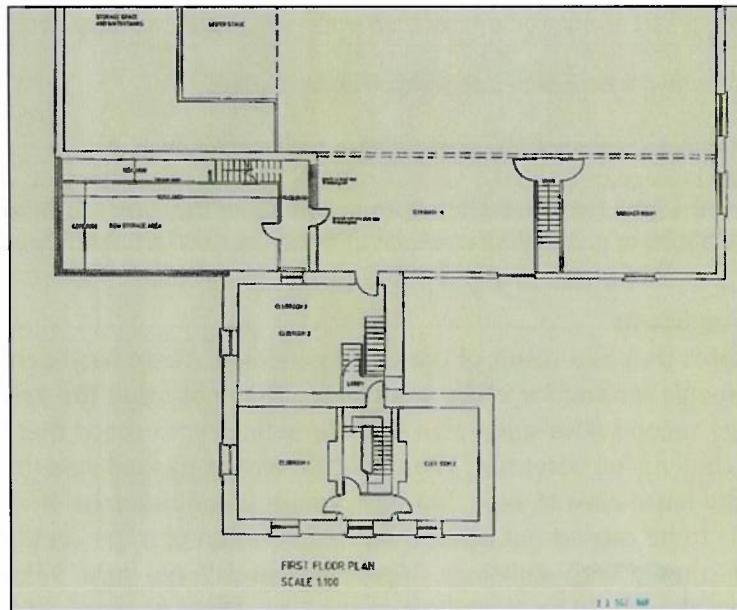


Figure 1: First Floor Plan (planning ref. 99/1263).

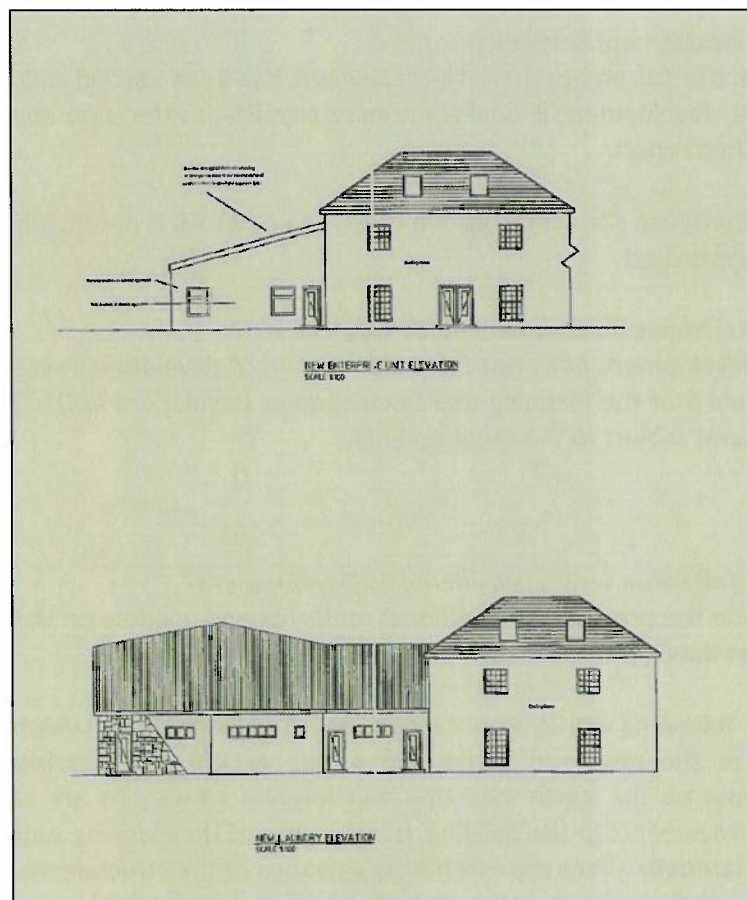


Figure 2: Proposed Elevations (planning ref. 99/1263).

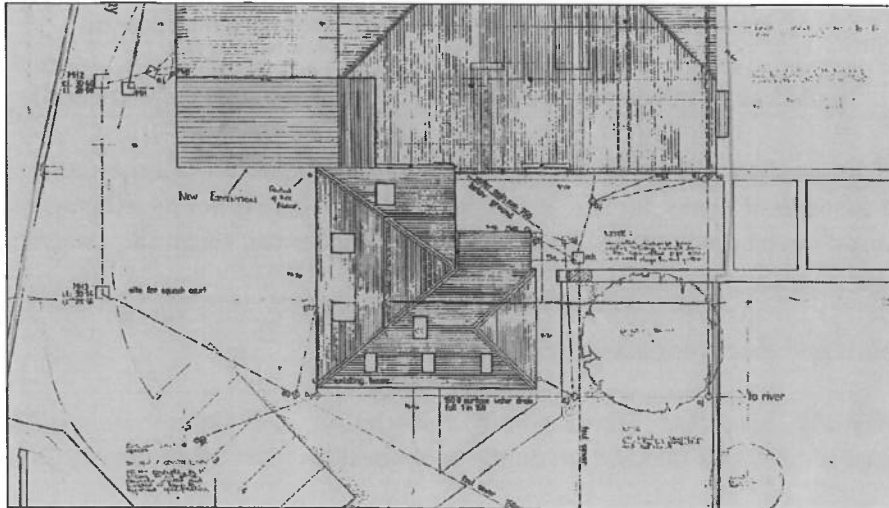


Figure 3: Site Layout Plan (planning ref. 99/1263).

No floor plan for the 2nd floor was submitted as part of this planning application however, based on the above drawings (Figures 1 – 3), the Planning Authority are satisfied that the 2nd floor formed part of the existing community centre in 1999.

Considering the proposed use of the 2nd floor offices as a working hub/hot desk location against *Article 9 – Restrictions on Exemptions* and *Article 10 (1) - Changes of Use* of the Planning Regs, the Planning Authority are satisfied that this is an extension of the community centre and its provision of services to local people. It is therefore deemed as an appropriate use of the existing office space and deemed as exempted development.

8. Conclusion

It is recommended 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 the subdivision of an existing office (2nd floor) and associated works, for use as a 'hotdesk space' is or is not development and is or is not exempted development at St. Joseph's Community Centre, Kilcormac, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on 15th July 2022, is development and is or is not exempted development,

AND WHEREAS Kilcormac Development Association c/o Daniel Keane Architectural Technologist 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 the Planning and Development Regulations 2001 (as amended); and,
- (c) Article 10 the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the subdivision of an existing office (2nd floor) and associated works, for use as a 'hotdesk space' is development and is or 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 subdivision of an existing office (2nd floor) and associated works, for use as a 'hotdesk space' at St. Joseph's Community Centre, Kilcormac, 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 Pleanala within 4 weeks of the issuing of the decision.



Una McCafferkey
Executive Planner

9th August 2022

Date



Ed Kelly
(A/Senior Executive Planner)

Date 10/8/2022

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



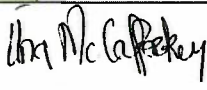
Screening is used to determine if an AA is necessary by examining:

- 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 22-15

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:			
Site location:	St. Joseph's Community Centre, Kilcormac, Co. Offaly.		
Site size:	Not provided	Floor Area of Proposed Development:	Not provided.
Identification of nearby European Site(s):	Clonaslee Eskers and Derry Bog SAC – 6.88km Slieve Bloom Mountains SPA – 9.87km Slieve Bloom Mountains SAC – 7.49km		
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):			
Clonaslee Eskers and Derry Bog SAC - Features of interest include: <ul style="list-style-type: none"> Alkaline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013] 			
Slieve Bloom Mountains SAC - Features of interest include: <ul style="list-style-type: none"> Northern Atlantic wet heaths with Erica tetralix [4010] Blanket bogs (* if active bog) [7130] Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] 			
Slieve Bloom Mountains SPA - Features of interest include: <ul style="list-style-type: none"> Hen Harrier (Circus cyaneus) [A082] 			
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: SLIEVE BLOOM MOUNTAINS SPA, SITE CODE: 004160 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.pdf SITE NAME: CLONASLEE ESKERS AND DERRY BOG SAC, SITE CODE: 000859 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000859.pdf SITE NAME: SLIEVE BLOOM MOUNTAINS SAC, SITE CODE: 000412 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000412.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:	
<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. (Please justify your answer. 'Yes' / 'No' alone is insufficient)	
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?	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:	Executive Planner
Date:	9 th August 2022