

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 22/16

NAME OF APPLICANT: ODHRAN FITZPATRICK

ADDRESS: BISHOPSWOOD
PORTARLINGTON
CO. OFFALY

ADDRESS FOR CORRESPONDENCE: C/O RUAIRI WHELAN,
CONSULTING ENGINEERS,
CANAL ROAD
PORTARLINGTON,
CO. LAOIS.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the creation of a new entrance onto a public road where the carriage width is less than 4m is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Bishopswood, Portarlington, Co. Offaly

WHEREAS a question referred to Offaly County Council on 03/08/2022 as to whether the creation of a new entrance onto a public road where the carriage width is less than 4m at Bishopswood, Portarlington, 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 6 and 9 in the Planning and Development Regulations 2001 (as amended);
- (c) Class 9 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);

AND WHEREAS Offaly County Council has concluded that –

The works are considered 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 creation of a new entrance onto a public road where the carriage width is less than 4m at Bishopswood, Portarlington, 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 30/8/22

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 22/16
Question:	Whether or not the creation of a new entrance onto a public road where the carriage width is less than 4m is or is not development and is or is not exempted development.
Applicant:	Odhran Fitzpatrick
Location:	Bishopswood, Portarlinton, Co. Offaly
Date received:	3 rd August 2022
Date due:	30 th August 2022

1. Proposal

The question has arisen as to whether or not the retention of a new entrance onto a public road where the carriage width is less than 4m is or is not development and is or is not exempted development.

2. Location

The site is located in the open countryside of County Offaly in the townland of Bishopswood, Portarlinton, Co. Offaly.

3. Relevant Planning History:

PL2/19/511: Richard Porter was **Refused** permission for the construction of a new bungalow, installation of a proprietary treatment system with percolation area and all associated works due to the following reason:

1. The subject site is located in open countryside within an area of the County that is designated as a pressure area in the Offaly County Development Plan 2014-2020. In such pressure areas it is Development Plan policy that certain categories of applicants which are defined in policy SSP-18 of the County Development Plan will be given a positive presumption for the development of a permanent rural home. The Council considers that the applicant does not comply with the above policy as the applicant is not from the "Local Rural Area", and accordingly the proposed development would materially contravene the Offaly County Development Plan 2014-2020, and would be contrary to the proper planning and sustainable development of the area.

PL2/19/437: Richard Porter applied for permission for the construction of a new bungalow, installation of a proprietary treatment system with percolation area and all associated works. The file was subsequently made **Invalid**.

4. Referrals

Area Engineer	confirms 'that the road width is less than 4m and the new entrance is not a traffic hazard.'
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5. Legislative Context

Planning and Development Act 2000 (as amended)

- Section 2
"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 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 1, Class 9

CLASS 9 The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

Conditions and Limitations:

The height of any such structure shall not exceed 2 metres.

- Article 9(1) - Restrictions on exemption.
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,*
- VIII. *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:—

- 1. 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.

6. Proposal by Applicant

The applicant wishes to ascertain to whether or not the creation of a new entrance onto a public road where the carriage width is less than 4m is or is not development and is or is not exempted development.

7. 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.

8. Evaluation

Question: Is the following works considered as 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?

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,

As no permission has been granted on the same site, the proposed development would not contravene a planning condition

(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 Area Engineer Office for comment in respect of the above limitations who has clarified via email that ‘that the road width is less than 4m and the new entrance is not a traffic hazard.’

(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.

9. Conclusion

It is recommended that the applicant be advised 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:

EF

- Whether or not the ~~retention of~~ a new entrance onto a public road where the carriage width is less than 4m is or is not development and is or is not exempted development.

At Bishopswood, Portarlinton, Co. Offaly

AND WHEREAS Odhran Fitzpatrick 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 and 3 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 in the Planning and Development Regulations 2001 (as amended);
- (c) Class 9 in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);

AND WHEREAS Offaly County Council has concluded that –

- The works are considered development and is exempted development.

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

- The creation of a new entrance onto a public road where the carriage width is less than 4m is **development** and is **exempted development**.

Michael Duffy

Ed Kelly

Michael Duffy

Ed Kelly

Assistant Planner

Acting Senior Executive Planner

24th August 2022

29/8/2022

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: Offaly County Council

Planning Application Ref. No.: DEC/22/16

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not the creation of a new entrance onto a public road where the carriage width is less than 4m is or is not development and is or is not exempted development.		
Site location:	BISHOPSWOOD, PORTARLINGTON, CO OFFALY		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Barrow and river Nore SAC		
Distance to European Site(s):	660m		
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?	No		
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site:	<p>The site is a SAC selected for alluvial wet woodlands and petrifying springs, priority habitats on Annex I of the E.U. Habitats Directive. The site is also selected as a SAC for old oak woodlands, floating river vegetation, estuary, tidal mudflats, <i>Salicornia</i> mudflats, Atlantic salt meadows, Mediterranean salt meadows, dry heath and eutrophic tall herbs, all habitats listed on Annex I of the E.U. Habitats Directive. The site is also selected for the following species listed on Annex II of the same directive - Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Nore Freshwater Pearl Mussel, Crayfish, Twaite Shad, Atlantic Salmon, Otter, Desmoulin's Whorl Snail <i>Vertigo moulinsiana</i> and the Killarney Fern.</p>		

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.)**

1016 Desmoulin's whorl snail *Vertigo moulinsiana*
 1029 Freshwater pearl mussel *Margaritifera margaritifera*
 1092 White-clawed crayfish *Austropotamobius pallipes*
 1095 Sea lamprey *Petromyzon marinus*
 1096 Brook lamprey *Lampetra planeri*
 1099 River lamprey *Lampetra fluviatilis*
 1103 Twaite shad *Alosa fallax*
 1106 Atlantic salmon (*Salmo salar*) (only in fresh water) 1130 Estuaries
 1140 Mudflats and sandflats not covered by seawater at low tide
 1310 Salicornia and other annuals colonizing mud and sand
 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
 1355 Otter *Lutra lutra* 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
 1421 Killarney fern *Trichomanes speciosum*
 1990 Nore freshwater pearl mussel *Margaritifera durrovensis*
 3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
 4030 European dry heaths
 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
 7220 * Petrifying springs with tufa formation (*Cratoneurion*)
 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
 91E0 * Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.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:

*(The purpose of this is to identify if the effect(s) identified could be significant – if **uncertain** assume the effect(s) are significant).*

Given the location the limited nature and size of the development applied for and the characteristics of *European* sites in the vicinity it is considered that 100 metres should be used as a potential zone of impact of the project in accordance with section 3.2.3 of the appropriate assessment guidelines. There are no *European* sites within 100 metres of the development applied for and therefore no significant effects on any *European* sites either alone or in combination with other plans and projects.

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 <i>European</i> site.
... a reduction in habitat area on a <i>European</i> site?	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 <i>European</i> site?	Not likely due to the location and type of development. The site is sufficient distance from the <i>European</i> site.
... serious / ongoing disturbance to species / habitats for which the <i>European</i> 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 <i>European</i> site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> 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 <i>European</i> 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. (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i>
	<i>Conclusion:2</i>
	<i>Justify why it falls into relevant category above:</i> <i>Given the location and the nature and size of the development applied for and the characteristics of European sites in the vicinity and the appropriate assessment guidelines it is considered that the development will be unlikely to have significant effects on any European sites.</i>
Signed:	Michael Duffy
Date:	24 th August 2022