

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 22/27

NAME OF APPLICANT: DAMIEN CLEAR

ADDRESS: C/O DCAN LIMITED,
TOWER HOUSE,
CLONMINCH,
TULLAMORE
CO. OFFALY

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not partial demolition of existing rear garden walls and the construction of new rear garden boundary walls to gardens 1 – 12 creating a private service corridor with a private secure gate to the eastern end at 1-12 Lock House View is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 1 -12 Lock House View, Tullamore, Co. Offaly

WHEREAS a question referred to Offaly County Council on 22nd December 2022 as to whether or not partial demolition of existing rear garden walls and the construction of new rear garden boundary walls to gardens 1 – 12 creating a private service corridor with a private secure gate to the eastern end at 1-12 Lock House View, Tullamore, 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 of the Planning & Development Act 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001, as amended.
- (d) Condition 3 of PD 4191.

AND WHEREAS Offaly County Council has concluded that:

The partial demolition of existing rear garden walls and the construction of new rear garden boundary walls to gardens 1 – 12 creating a private service corridor with a private secure gate to the eastern end at 1-12 Lock House View, Tullamore, Co. Offaly **is development and is NOT exempted development.**

NOW THEREFORE Offaly County Council has concluded that the partial demolition of existing rear garden walls and the construction of new rear garden boundary walls to gardens 1 – 12 creating a private service corridor with a private secure gate to the eastern end at 1-12 Lock House View, Tullamore, Co. Offaly **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.



Administrative Officer

27/1/2023

Date

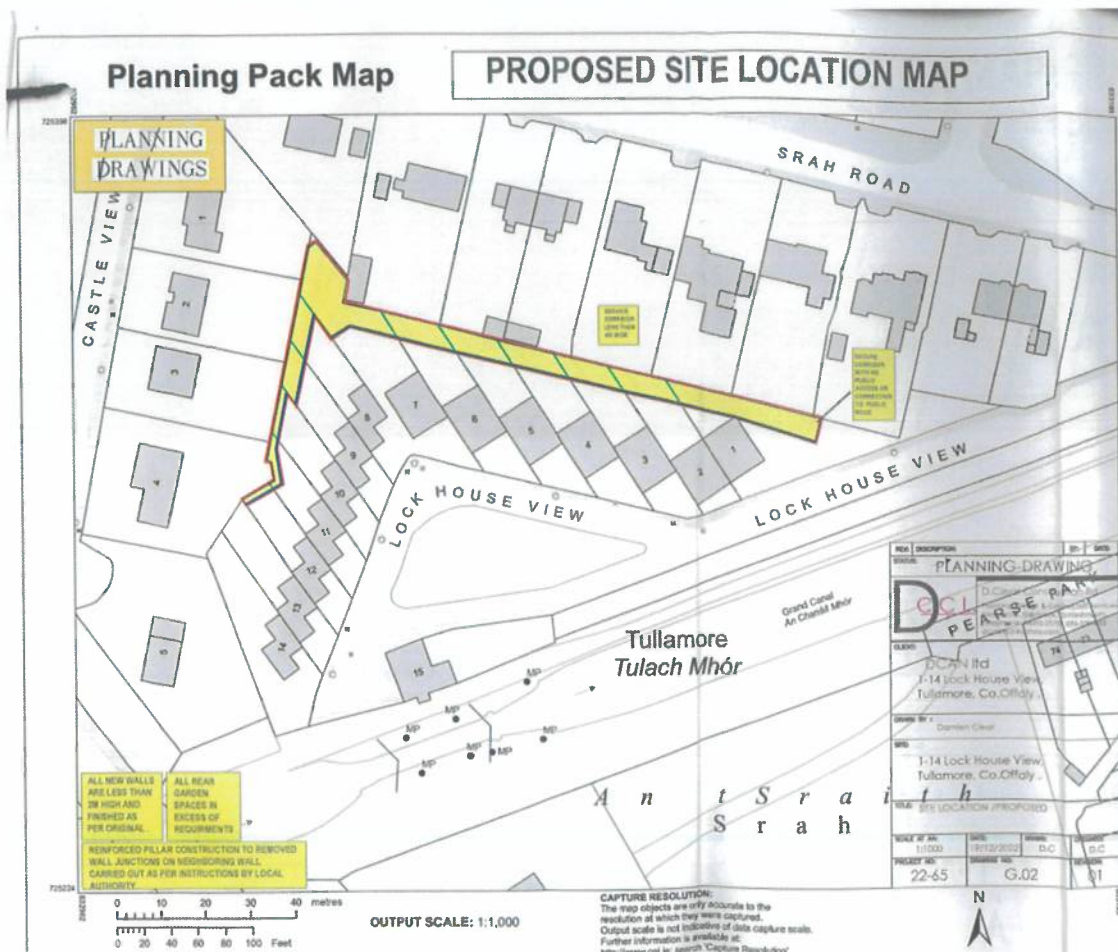
Note: Any person issued with a Declaration may on payment to An Bord Pleanála, 64 Marlborough Street Dublin 2 of such fees as may be described refer a declaration for review by the board within four weeks of the issuing of the Declaration.

Planning Report - Section 5 Declaration

File Reference:	Dec. 22/27
Question:	<i>Whether the demolition of existing rear garden walls and the construction of new rear garden walls to gardens 1-12 creating a private service corridor with a private service gate to the Eastern end is or is not development and is or is not exempted development.</i>
Applicant:	<i>Damien Clear – Dcan Limited</i>
Correspondence Address:	<i>DCan Limited, Tower House, Clonminch, Tullamore, Co Ofaly</i>
Location:	<i>1-12 Lock House View, Tullamore, Co. Offaly</i>

1. Introduction

The question has arisen as to *whether the demolition of existing rear garden walls and the construction of new rear garden walls to gardens 1-12 creating a private service corridor with a private service gate to the Eastern end is or is not development and is or is not exempted development.*



2. Background / Site History

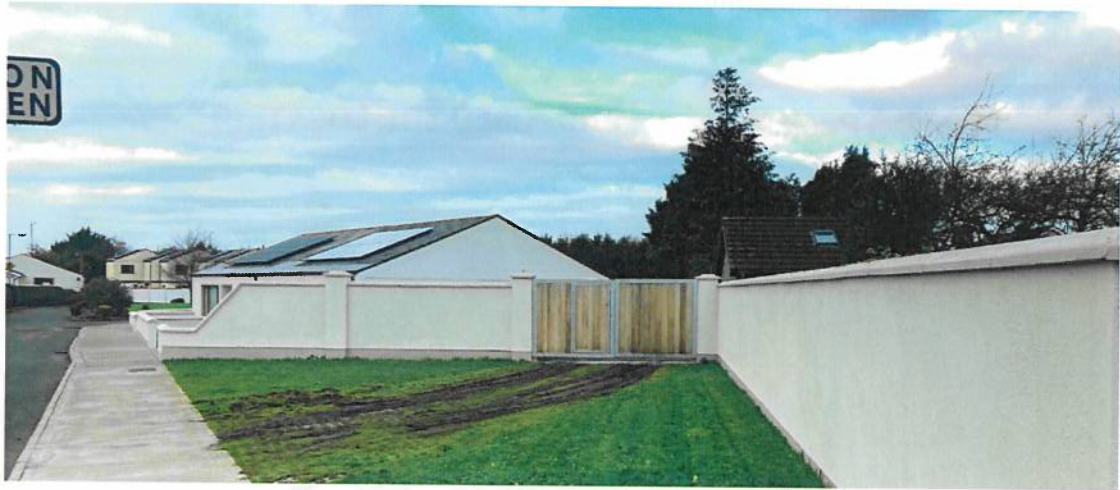
The development in question has already largely been constructed. The works are located to the rear of two terraces of housing in an existing house estate, Lock House View, in Tullamore.

The works in question involve the use of what was rear garden space.

The service road subject of this request for a declaration borders existing housing to the North on Srah Road and to the West on Castle View.

The service road subject of this request for a declaration has, at its South Eastern extremity, a gateway onto an existing lawn.

Please see photos of the development below:





Site History:

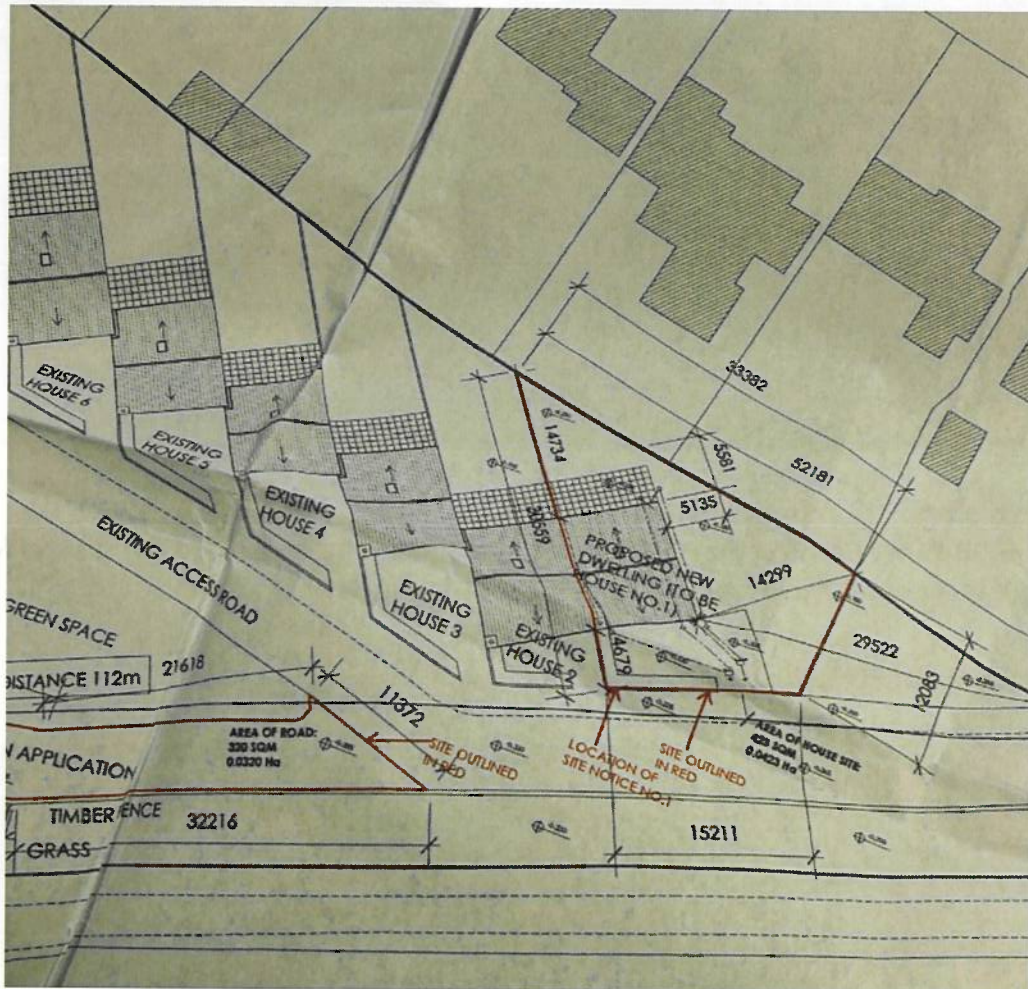
PD 3610 Fener Construction Ltd granted demolition of a house and permission for 7 single storey and 7 two storey houses.

Site layout of PD 3610 below:



PD 4191 For the erection of one two bedroom (83sqm) single storey fully serviced dwelling house and associated siteworks and the retention of the access road to the South of the shared green space.

Site layout of PD 4191 below:



Condition 3 of PD 4191 is of particular relevance to the current declaration:

A garden wall, 1.8m high, shall be provided along the rear garden boundary of the dwelling (northern boundary of stated dimension 33.382m) and along the side boundaries extending from the rear boundary to the front building line.

Front boundary wall (not exceeding 0.8m) shall be provided from the front building line and between the footpath and front garden of the site. The rear garden boundary wall and side boundary walls shall be capped and the finish of front boundary walls, the side walls and piers of proposed entrance shall be consistent with the external finishes of the dwellinghouse. Details of the side (eastern) boundary wall of dimension of 12m shall be submitted to the Planning Authority in the form of an elevation, for agreement and approval, prior to commencement of development.

Reason: In the interest of residential amenity and privacy

I also note the following correspondence on PD 4191

DE BLACAM AND MEAGHER

Tullamore Town Council,
Town Hall,
Cormac Street,
Tullamore,
Co. Offaly

Re : Planning Application at Sragh, Tullamore, Co. Offaly. Ref: PD 4191

Dear Sir / Madam

Please find enclosed drawing PP.06 in response to condition 3 of the final grant of permission for the above development.

The condition states : *A garden wall, 1.8m high, shall be provided along the rear garden boundary of the dwelling (northern boundary of stated dimension 33.382m) and along the side boundaries extending from the rear boundary to the front building line. Front boundary wall (not exceeding 0.8m) shall be provided from the front building line and between the footpath and front garden of the site. The rear garden boundary wall and side boundary walls shall be capped and the finish of front boundary walls, the side walls and piers of proposed entrance shall be consistent with the external finishes of the dwellinghouse. Details of the side (eastern) boundary wall of dimension 12m shall be submitted to the Planning Authority in the form of an elevation, for agreement and approval, prior to commencement of development.*

Should you have any queries, please do not hesitate to contact me.

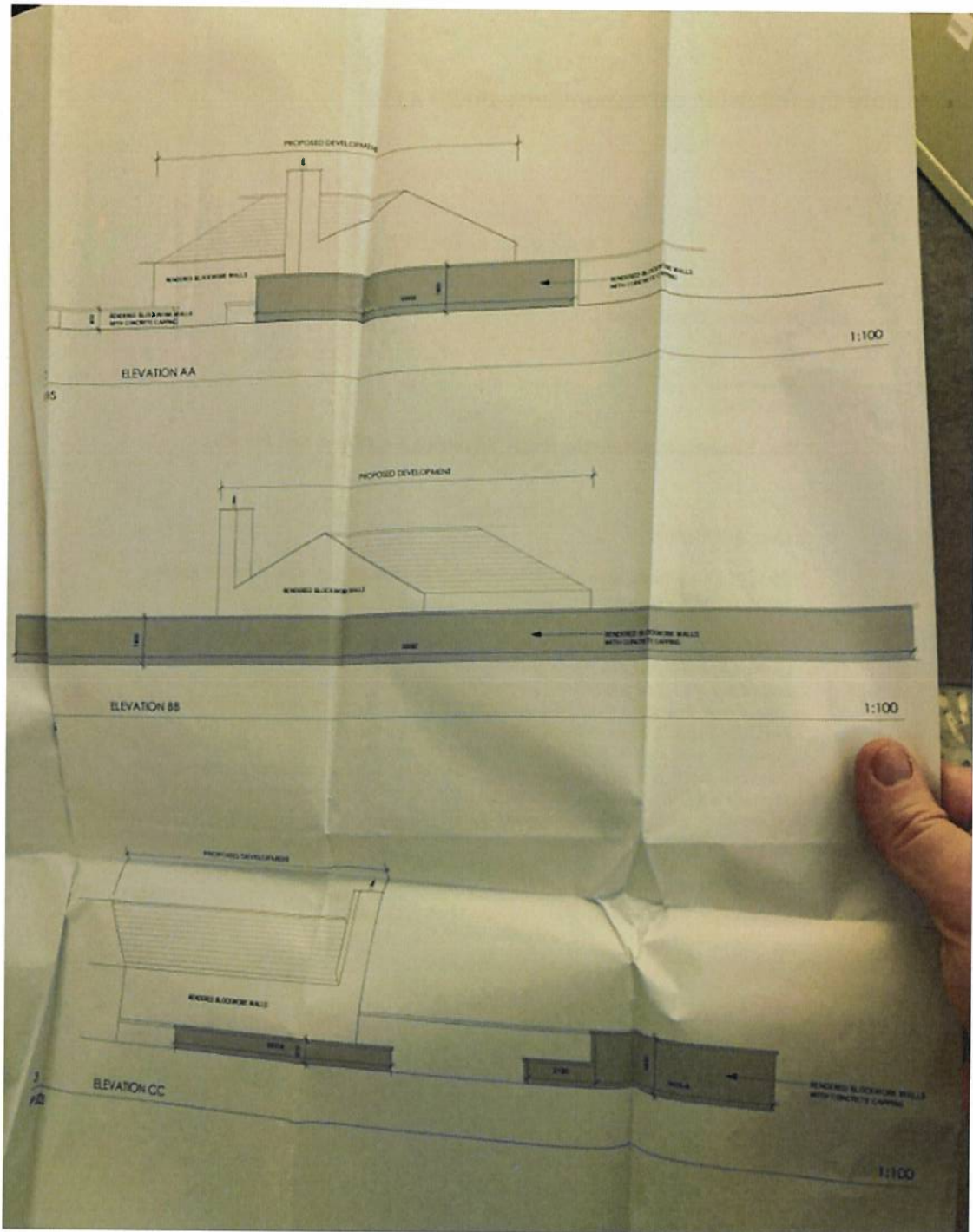
Yours Sincerely

Ainead Murphy

*Submission complete with
C3
C11 & C12 not completed
BWS
#1/sep
13/10/05*



Drawings in this regard are on planning permission PD 4191, see next page.



UD 22/36 Enforcement file related to removal of boundary walls and construction of a service lane to the rear of existing dwelling houses.

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.

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.

(2) (a) Subject to article 9, development consisting of the use of a structure or other land for the exhibition of advertisements of a class specified in column 1 of Part 2 of Schedule 2 shall be exempted development for the purposes of the Act, provided that— (i) such development complies with

the conditions and limitations specified in column 2 of the said Part 2 opposite the mention of that class in the said column 1,

Article 9 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,

SCHEDULE 2 PART 1	
CLASS 5 The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.	<p>1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.</p> <p>2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>
CLASS 9 The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.	The height of any such structure shall not exceed 2 metres.

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.

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.

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

I consider that the works are not exempt. The alteration of domestic site boundaries to create a service lane and the provision of a gate could come within the exempted development provisions of Schedule 2, Part 1, Class 5 however I note the following restriction on the use of this exemption under article 9 which states that an exemption can not **“contravene a condition attached to a permission”** under the Act”.

I note that the entrance gate at the South Eastern extremity of the service land is a vehicular entrance gate and contravenes condition 3 of PD 4191 which requires solid walls along this gable site boundary.

Picture of gate which contravenes condition 3 of PD 4191, below.



The works are therefore not exempt.

7. Conclusion

I consider that the development as described in the application for a declaration is development and is **NOT** exempted development and recommend that the order on the next page be issued.

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 *demolition of existing rear garden walls and the construction of new rear garden walls to gardens 1-12 Lock House View creating a private service corridor with a private service gate to the Eastern end* is or is not development and is or is not exempted development.

AND WHEREAS *DCan Limited* has 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 of the Planning & Development Act 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2, Part 1, Class 5 of the Planning and Development Regulations 2001, as amended.
- (d) Condition 3 of PD 4191.

AND WHEREAS Offaly County Council has concluded that the works are development and is **NOT** 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 *demolition of existing rear garden walls and the construction of new rear garden walls to gardens 1-12 Lock House View creating a private service corridor with a private service gate to the Eastern end* at 1-12 Lock House View Tullamore, Co. Offaly is development and is **NOT** 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.



Ed Kelly
Executive Planner

26/1/2023
Date

Carroll Melia

Carroll Melia (A/Senior Executive Planner)

27th January 2023

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 Application Ref. No.: DEC 22/27

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:	
Proposed development:	Service Road and entrance
Site location:	Lock House View Tullamore
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC
Distance to European Site(s):	2.1 km
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:	The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes): [91E0] Alluvial Forests* [1016] Desmoulin's Whorl Snail (Vertigo moulinsiana)
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.)	Objective: 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 91E0 Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae)* * denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail Vertigo moulinsiana
(C) NPWS ADVICE:	
Advice received from NPWS over phone:	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)

<p>Would there be... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	Not likely due to the location and type of development.
	The site is sufficient distance from the European site.
<p>... a reduction in habitat area on a European site?</p>	There will be no reduction in the habitat area.
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
<p>... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?</p>	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	None likely due to the location and type of development
	The site is sufficient distance from the European site
<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</p>	No other plans known of in the vicinity of the site.
	The site is sufficient distance from the European site.

and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.		
(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 NIS from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i>	
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 European sites from the proposed development.
Name:	Ed Kelly	
Position:	Exec. Planner	Date: 26/1/2023

Given the location the nature and size of the development applied for and the characteristics of European sites in the vicinity it is considered that 500 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 500 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.

<https://www.npws.ie/protected-sites/sac/000571>

