

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

REFERENCE: DEC 24/126
NAME OF APPLICANT: Mary Fanning
ADDRESS FOR CORRESPONDENCE: Andrew Driver
C/O DEC Engineering & Commercial Ltd
Corville Road, Roscrea, E53 AE67

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the renovation of existing dwelling including demolition and rebuilding a rear extension is or is not development and is or is not exempted development

LOCATION OF DEVELOPMENT: Clonohill Lower, Birr, Co. Offaly

WHEREAS a question has arisen as to whether the renovation of existing dwelling including demolition and rebuilding a rear extension is or is not development and is or is not exempted development at Clonohill Lower, Birr, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 2nd December 2024

AND WHEREAS Mary Fanning C/O Andrew Driver, DEC Engineering & Commercial Ltd, 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, 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.
- b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- c) Schedule 2, Part 1, Class 1 and Class 50 of the Planning and Development Regulations 2001 (as amended).

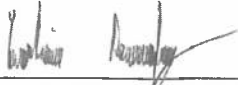
AND WHEREAS Offaly County Council has concluded that the proposed renovation of the existing dwelling including demolition and rebuilding a rear extension is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that:

- The proposed renovation of the existing dwelling including demolition and rebuilding a rear extension is development and is exempted development at Clonohill Lower, Birr, Co. Offaly.

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

6th January 2025

Date

Note: 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 Pleanála within 4 weeks of the issuing of the decision.

Planning Report

Section 5 Declaration

File Reference:	Dec. 24/126
Question:	Whether the renovation of existing dwelling including demolition and rebuilding a rear extension is or is not development and is or is not exempted development
Applicant:	Mary Fanning
Correspondence Address:	c/o Andrew Driver, DEC Engineering & Commercial Ltd, Corville Road, Roscrea, Co. Tipperary, E53 AE67
Location:	Clonohill Lower, Birr, Co. Offaly

1. Introduction

The question has arisen as whether the proposed renovation of existing dwelling including demolition and rebuilding a rear extension is or is not development and is or is not exempted development.

2. Background

The detached dwelling is located within the open countryside approximately 2km east of Birr Town.

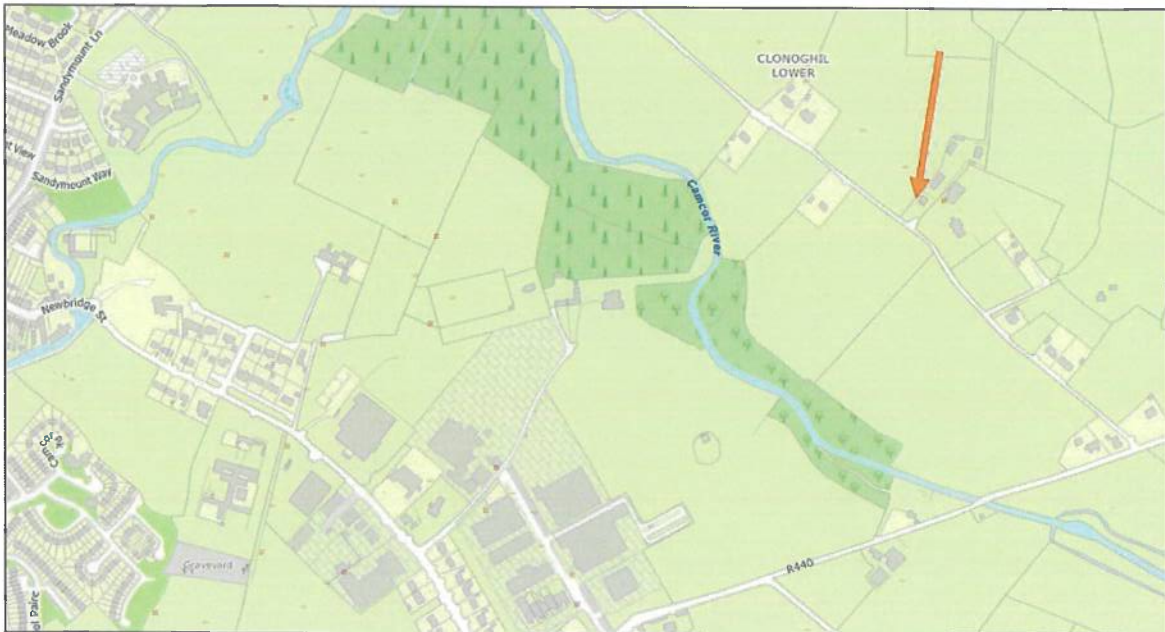


Figure 1 - Subject Site Location.

3. Site Inspection

A site visit was carried out by the Area Planner in December 2024.

4. Site History

On Site – No recent planning history associated with the subject site.

Enforcement – No recent history associated with the subject site.

Adjoining Lands - No recent planning history associated with the adjoining lands.



Figure 2 - Subject Site Location (source: Google Maps).



Photo 1: Subject Site.



Photo 2: Subject Site.

5. 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:

“house” means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

“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, *inter alia* states that:

“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 – Exempted Development, Part I - Development Within the Curtilage of a House, **Class 1** specifies:

CLASS 1	
<i>Description of Development</i>	<i>Conditions and Limitations</i>
<p>The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres. (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres. (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.</p> <p>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres. (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been</p>

extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4.

(a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6.

(a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

	<p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.</p>
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Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, **Class 50** specifies:

CLASS 50	
<i>Description of Development</i>	<i>Conditions and Limitations</i>
<p>(a) The demolition of a building, or buildings, within the curtilage of</p> <ul style="list-style-type: none"> (i) a house, (ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex. <p>(b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.</p>	<ol style="list-style-type: none"> 1. No such building or buildings shall abut on another building in separate ownership. 2. The cumulative floor area of any such building, or buildings, shall not exceed: <ul style="list-style-type: none"> (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres. 3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

6. Proposal by Applicants

The Applicant has advised that renovations will include:

- Demolition of the rear extension of the existing dwelling.
- Construction of new single storey extension to the rear of the existing dwelling.
- New electrical, heating and plumbing installations throughout.

It is stated on the submitted plans that the foul drainage will be directed into the existing on-site septic tank and percolation area. The Planner notes that the application has been prepared by Andrew Driver of DEC Engineering & Commercial Ltd who is a qualified site suitability assessor (source: <https://decengcom.ie/about-us/>) and also a chartered engineer and surveyor.

7. Evaluation

Question: Whether the proposed works (as listed) to the existing dwelling are development and if so, are they exempted development?

In considering the proposed works against the definitions of 'development' and 'works' as provided in the Act, it is the view of the Planning Authority that the proposed works are deemed as development as it includes refurbishments to the existing dwelling.

Question: Is this proposal considered as Exempted Development?

With regard to the proposed works, the Planning Authority will consider the proposed works under:

- Section 4(1)(h) of the Planning and Development Act 2000 (as amended).
- Classes 1 and 50, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Class 1

1(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

The floor area of the proposed extension is 36m² – this is acceptable.

1(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

The existing dwelling is detached therefore this limitation is not applicable.

1(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

The proposed extension is single storey therefore this limitation is not applicable.

2(a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

The proposed works include the demolition of an existing extension to the rear of the dwelling. While only the external dimensions have been provided, the Planning Authority that the internal floor area of this extension is c.4m². The floor area of the proposed extension is 36m² – this is acceptable.

2(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

The existing dwelling is detached therefore this limitation is not applicable.

2(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

The proposed extension is single storey therefore this limitation is not applicable.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

The proposed extension is single storey therefore this limitation is not applicable.

4(a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

As detailed in the submitted plans, the height of the proposed extension does not exceed the height of the existing rear wall of the dwelling.

4(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

Limitation 4(b) is not applicable as the rear wall of the house does not include a gable.

4(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

The proposed extension is single storey with a flat roof does not exceed the height of the eaves of the existing dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

Having considered the submitted plans, the Planning Authority are satisfied that the private open space to the rear of the house will exceed 25m².

6(a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

Having considered the submitted plans, the Planning Authority are satisfied that the proposed development satisfies this requirement.

6(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

As the proposed extension is single storey, Limitation Part 6(b) does not apply.

6(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

As the proposed extension is single storey, Limitation Part 6(c) does not apply.

7. The roof of any extension shall not be used as a balcony or roof garden.

The proposed extension does not include a balcony, and therefore part 7 above is not applicable.

Class 50

The Planning Authority are satisfied that the proposed works meet the requirements of this exemption.

Section 4(1)(h) of the Planning & Development Act (as amended)

Having considered the proposed works which include the construction of an extension to the rear of the existing dwelling, the Planning Authority are satisfied that the proposal 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.

Summary; It is the opinion of the Planning Authority that these works meet the criteria of exempt development under statutory provisions.

8. Appropriate Assessment

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

9. 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 (as amended)* and therefore is not subject to EIA requirements.

10. Conclusion & Recommendation

It is recommended that the Applicant be advised that the proposed development 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 renovation of existing dwelling including demolition and rebuilding a rear extension is or is not development and is or is not exempted development at Clonohill Lower, Birr, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 2nd December 2024.

AND WHEREAS Mary Fanning c/o Andrew Driver, DEC Engineering & Commercial Ltd, 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, 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.
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AND WHEREAS Offaly County Council has concluded that the proposed renovation of the existing dwelling including demolition and rebuilding a rear extension is development and is exempted development.

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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 Pleanála within 4 weeks of the issuing of the decision.



Úna McCafferkey

Executive Planner

18th December 2024

Date

Ed Kelly

Ed Kelly

3/1/2025

ASEP

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 24/126

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the renovation of existing dwelling including demolition and rebuilding a rear extension is or is not development and is or is not exempted development		
Site location:	Clonohill Lower, Birr, Co. Offaly		
Site size:	Not provided	Floor Area of Proposed Development:	36m ²
Identification of nearby European Site(s):	Dovegrove Callows SPA – 3.84km Lisduff Fen SAC – 3.99m Sharavogue Bog SAC – 5.95km Island Fen SAC – 4.96km Ballyduff/Clonfinane Bog SAC – 6.94km River Little Brosna Callows SPA – 7.29km All Saints Bog SPA – 8.37km		
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?	No: X		
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):	<p>Lisduff Fen SAC - Features of Interest include:</p> <ul style="list-style-type: none"> Petrifying springs with tufa formation (Cratoneurion) [7220] Alkaline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013] <p>Dovegrove Callows SPA- Features of Interest include:</p> <ul style="list-style-type: none"> Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] <p>Sharavogue Bog SAC - Features of Interest include:</p> <ul style="list-style-type: none"> Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150] <p>Ballyduff/Clonfinane Bog SAC - Features of Interest include:</p> <ul style="list-style-type: none"> Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150] Bog woodland [91D0] <p>Island Fen SAC - Features of Interest include:</p> <ul style="list-style-type: none"> Juniperus communis formations on heaths or calcareous grasslands [5130] Alkaline fens [7230] 		

River Little Brosna Callows SPA - Features of Interest include:

- Whooper Swan (*Cygnus cygnus*) [A038]
- Wigeon (*Anas penelope*) [A050]
- Teal (*Anas crecca*) [A052]
- Pintail (*Anas acuta*) [A054]
- Shoveler (*Anas clypeata*) [A056]
- Golden Plover (*Pluvialis apricaria*) [A140]
- Lapwing (*Vanellus vanellus*) [A142]
- Black-tailed Godwit (*Limosa limosa*) [A156]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]
- Wetland and Waterbirds [A999]

All Saints Bog SPA - Features of Interest include:

- Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]

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: LISDUFF FEN SAC, SITE CODE: 002147

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002147.pdf>

SITE NAME: DOVEGROVE CALLOWS SPA, SITE CODE: 004137

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004137.pdf>

SITE NAME: SHARAVOGUE BOG SAC, SITE CODE: 000585

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000585.pdf>

SITE NAME: RIVER LITTLE BROSNA CALLOWS SPA, SITE CODE: 004086

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004086.pdf>

SITE NAME: ISLAND FEN SAC, SITE CODE: 002236

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002236.pdf>

SITE NAME: BALLYDUFF/CLONFINANE BOG SAC, SITE CODE: 000641

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000641.pdf>

SITE NAME: ALL SAINTS BOG SPA, SITE CODE: 004103

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004103.pdf>

(C) NPWS ADVICE:

Advice received from NPWS over phone:	None Received
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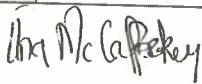
Summary of advice received from NPWS in written form (ATTACH SAME):	None Received
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(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

(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...</p> <p>... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	<p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>
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... 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:	
<i>Screening can result in:</i>	
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:	18 th December 2024