



COMHAIRLE CONTAE
CHEATHARLACH

CARLOW COUNTY COUNCIL

3rd March 2022

Registered Post

An Bord Pleanála,
64 Marlborough Street,
Dublin 1
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AN BORD PLEANÁLA	
LDG-	049807-22
ABP-	
04 MAR 2022	
Fee: €	110
Type:	CHEQUE
Time:	
By:	REG POST

Oifigí an Chontae,
Bóthar Átha Í,
Ceatharlach, R93E7R7

County Buildings,
Athy Road,
Carlow, R93E7R7

T: 059 9170300

E: See carlow.ie/contact-us

W: carlow.ie

Ref: S5/22/02

RE: Section 5(4) of Planning and Development Act 2000 (as amended)
Referral by Carlow County Council for development at Pollerton Little, Carlow.

A Chara,

In accordance with Section 5(4) of the Planning Development Act 2000 (as amended), planning Authority wishes to refer attached Section 5 application accompanied by Planners Report to An Bord Pleanála for your consideration of the following development:

- a) *The new, non-permanent wood-clad cabin on block pad foundation, measuring 25 sq.m., as per the prescribed and declared description of Carlow County Council, is in place for the purpose of acting as a place of worship. Given the historically long-standing ecclesiastical importance of the land as a spiritual locus and regular place of worship, a fact that pre-dates the 12th Century Anglo-Norman invasion of the land – this, in point of fact being the primary motive in our acquisition of the site – there is no material change of use of the site, thereby excluding it from being development within the meaning ascribed to same in Section 3 of Planning and Development 2000 and ergo rendering it exempt from planning permission.*
- b) *Furthermore, the new, non-permanent wood-clad cabin on block pad foundation, measuring 25 sq.m., is in place with the intended purpose of acting as place of worship as worship as per Class 15 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended), wherein it does refer to a “temporary structure for occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction”. In the interests of clarity we deem it prudent to point out that the legislation pertaining to same does not include words ‘existing’ ‘pre-existing’ and/or related synonyms.*
- c) *The improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres as per Class 13 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended). It should also be pointed out that said way was in existence and had been improved*


*upon prior to the cabin being in place, ergo it is not ancillary to the
aforementioned cabin, the latter being chronologically and materially
secondary to the gravel way.*

It should also be noted that this is the third Section 5 Declaration application made on this same site since August 2021 for similar declaration questions relating to the existing wood-clad cabin structure put in situ at the subject site in the townland of Pollerton Little, c. 3km northeast of Carlow Town Centre for which decision was made by the Planning Authority. (Previous applications references are S5/21/12 and S5/21/15 and attached are copies of the Planning Report, Chief Executive Order and Declaration with respect to these applications)

Given the above context, the Planning Authority are referring this application to An Bord Pleanala for determination as to whether the proposal is or is not development, or is or is not exempted development.

Please find enclosed the application fee to the value of €110 and should you have any further queries in relation to this matter, please contact the Planning Department at (059) 9170346 or email planningdevman@carlowcoco.ie.

Yours sincerely,


Alison Scanlon
Administrative Officer

**CARLOW COUNTY COUNCIL
PLANNING DEPARTMENT**

SECTION 5 DECLARATION



COMHAIRLE CONTAE
CHEATHARLACH
CARLOW COUNTY COUNCIL

Reg. Ref.	SEC5/22/02
Name of Applicant	Robert Mullins & John Gibbons
Address of Development	Dublin Road, Carlow
Development Description	See Section 8 for details

1)Site Location

The site in question is located in the townland of Pollerton Little, c. 3km northeast of Carlow Town Centre. It comprises a triangular parcel of land adjoining and accessed from the northern side of R448 Castledermot Road (former N9), and situated between the grounds of MSD to the northeast and a row of residential properties to the southwest.

2)Relevant Planning History

UD21/52: Enforcement Notice issued on 23/06/21 in relation to unauthorised mobile home on the site. A new Enforcement Notice was issued on 04/11/21.

To date the Enforcement Notice has not been complied with and the matter is subject to legal proceedings.

CW6881: Permission GRANTED in 1983 for commercial growing of shrubs and plants.

Section 5 Declaration S5.21/12 – Similar development proposal by the same applicants.

Section 5 Declaration S5.21/15 – Similar development proposal by the same applicants.

3)Relevant Legislative/Regulatory Provisions

Planning and Development Act 2000 (as amended) – (hereafter the Act)

- Section 2(1)

"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.*

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

the use of the land shall be taken as having materially changed.

Also, Section 4(2) of the Act, which makes a provision for ministerial regulations to set out further exemptions. The Planning and Development Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the Act.

Planning and Development Regulations 2001 (as amended) – (hereafter the Regulations)

Part 2 of the Regulations deals with exempted 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.

Article 9(1) as referred to in Article 6(1) sets out a list of restrictions on exempted development.

4)Environmental Impact Assessment

Having regard to the nature, size and location of the development as detailed in the plans and particulars received, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination would not be required.

5)Appropriate Assessment

At its closest point, the River Barrow and River Nore cSAC (Site Code 002162) is c.2.8km west of the site. From river catchment mapping for the area there is a watercourse along the northern boundary of the site which is tributary of the Burren River. The Burren River is hydrologically connected to the SAC, and flows into the River Barrow in Pembroke in Carlow Town.

The development has been assessed having regard to the requirements of the EU Habitats Directive. Given the proximity of the nearest European Site and the nature and extent of the referral in question and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available which is deemed adequate to inform a screening determination, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, Appropriate Assessment is not required.

6) Flood Risk

On the basis of CFRAM flood maps for the area the site comprises land at risk of flooding.

7) Built Heritage

Archaeology

No recorded features on or in the vicinity of the site.

Architectural Heritage (RPS, NIAH & ACA)

No recorded features on or in the vicinity of the site.

8) Assessment

The applicants have sought a Section 5 Declaration on the following subjects;

- a) *The new, non-permanent wood-clad cabin on block pad foundation, measuring 25 sq.m., as per the prescribed and declared description of Carlow County Council, is in place for the purpose of acting as a place of worship. Given the historically long-standing ecclesiastical importance of the land as a spiritual locus and regular place of worship, a fact that pre-dates the 12th Century Anglo-Norman invasion of the land – this, in point of fact being the primary motive in our acquisition of the site – there is no material change of use of the site, thereby excluding it from being development within the meaning ascribed to same in Section 3 of Planning and Development 2000 and ergo rendering it exempt from planning permission.*
- b) *Furthermore, the new, non-permanent wood-clad cabin on block pad foundation, measuring 25 sq.m., is in place with the intended purpose of acting as place of worship as worship as per Class 15 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended), wherein it does refer to a "temporary structure for occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction". In the interests of clarity we deem it prudent to point out that the legislation pertaining to same does not include words 'existing' 'pre-existing' and/or related synonyms.*
- c) *The improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres as per Class 13 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended). It should also be pointed out that said way was in existence and had been improved upon prior to the cabin being in place, ergo it is not ancillary to the aforementioned*

cabin, the latter being chronologically and materially secondary to the gravel way.

The Planning Authority notes that this is the third Section 5 Declaration application made on this same site since August 2021 for similar declaration questions relating to the existing wood-clad cabin structure put in situ at the subject site in the townland of Pollerton Little, c. 3km northeast of Carlow Town Centre. It comprises a triangular parcel of land adjoining and accessed from the northern side of R448 Dublin Road. A chronology of the Section 5 declarations on this site is listed below;

S5.21/12 was lodged with the Planning Authority on 31st August 2021.

S5.21/15 was lodged with the Planning Authority on 3rd December 2021.

S5.22/02 was lodged with the Planning Authority on 9th February 2022.

Under the most recent decision of the Planning Authority under S5.21/15 made on 5th January 2022, it was determined that;

1. *A new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship,*
2. *The new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship under the provisions of Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).*
3. *Repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres.*

is development and is not exempted development.

The current Section 5 Declaration application is substantially the same questions and wording as the previous declaration request made under S5.21/15, and is also similar to the request made under S5.21/12, to which the Planning Authority has previously made declaration determinations on.

No new information has been submitted with this current application, and the Planning Authority's view on the matters raised has not changed.

9)Recommendation

Given the above context, and the provisions under Section 5(4) of the Planning & Development Act 2000 (as amended) whereby it is stated;

(4) Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.

I recommend in this case that the matters raised in this repeat Section 5 Declaration application, being questions and content substantially similar to previous decisions made by the Planning Authority under Section 5 declaration applications S5.21-12

and S5.21-15 be referred to An Bord Pleanála for a determination as to whether the proposal is or is not development, or is or is not exempted development.



Padraig O'Shea
Senior Executive Planner

Date: 28/02/2022



Anita Sweeney
Senior Planner

Date: 28/2/22

COMHAIRLE CHONTAE CEATHARLOCHA
CARLOW COUNTY COUNCIL

CARLOW
COUNTY COUNCIL
2019-2023



COUNTY BUILDINGS, ATHY ROAD, CARLOW.

Tel: Phone: 059-9170300/ Fax: 059-9170836

Website: www.carlow.ie

Section 5 Declaration

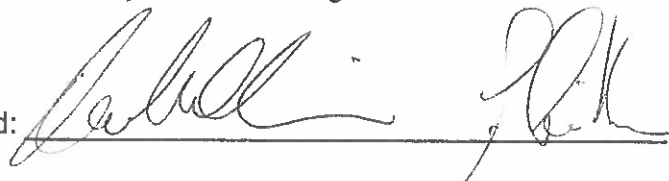


1. Name: Robert Mullins & John Gibbons
2. Address: c/o 43 Lerrview, Castledermot, Co. Kildare
3. Further contact details:
Tel. No: [REDACTED] E-mail: [REDACTED]
4. Location: Dublin Road, Carlow, beside MSD and Carlow Golf Club, in the townland of Baile Phollaird Beag.
5. Outline of reasons for Exemption:
 - a) The new, non-permanent wood-clad cabin on block pad foundation, measuring 25sq.m., as per the prescribed and Declared description of Carlow County Council, is in place for the purpose of acting as a place of worship. Given the historically long-standing ecclesiastical importance of the land as a spiritual locus and regular place of worship, a fact that pre-dates the 12th Century Anglo-Norman invasion of the land - this, in point of fact being the primary motive in our acquisition of the site – there is no material change of use of the site, thereby excluding it from being development within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 and ergo rendering it exempt from Planning Permission.
 - b) Furthermore, the new, non-permanent wood-clad cabin on block pad foundation, measuring 25sq.m., is in place with the intended purpose of acting as place of worship as per Class 15 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended), wherein it does refer to a "temporary structure for occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction". In the interests of clarity we deem it prudent to point out that the Legislation pertaining to same does not include the words 'existing', 'pre-existing' and/or related synonyms.

- c) The improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres is exempt as per Class 13 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended). It should also be pointed out that said way was in existence and had been improved upon prior to the cabin being in place, ergo it is not ancillary to the aforementioned cabin, the latter being chronologically and materially secondary to the gravel way.

In light of the above, we hereby require that a Declaration be issued to us, reflecting the demonstrable and demonstrated fact that our land is not development within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 and furthermore but notwithstanding the above, that stated activity would indeed be legally and lawfully exempt from Planning Permission.

Signed:



Date: 7th February 2022

Lodgement:

The application is forwarded to:
Planning Department
Carlow County Council
Athy Road
Carlow

OFFICE USE ONLY

Date Received: _____

Date Decision Due: _____

Date of Decision: _____

Recommendation: _____

CHIEF EXECUTIVE'S ORDER

REF: S5.21.12

Order No: 33742

SUBJECT: Certificate of Exemption, Section 5 Application lodged by John Gibbons & Robert Mullins, C/o 43 Lerrview, Abbeylands, Barnhill, Castledermot, Co. Kildare, as to whether (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) repair and improvement of previously overgrown gravel way, and (3) use for initial afforestation, is or is not development and is or is not exempted development, at Pollerton Little, Carlow;

SUBMITTED: Report from Anita Sweeney, Senior Planner, dated 27th September 2021 advising that (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) repair and improvement of previously overgrown gravel way, and (3) use for initial afforestation, is development and is not exempted development.

ORDER: It is hereby ordered that a Certificate of Exemption under Section 5 of the Planning and Development Act, 2000 (as amended) should issue to John Gibbons & Robert Mullins, C/o 43 Lerrview, Abbeylands, Barnhill, Castledermot, Co. Kildare, stating that (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) repair and improvement of previously overgrown gravel way, and (3) use for initial afforestation, is development and is not exempted development.

Made this 27th September 2021


Delegated Officer



**COMHAIRLE CONTAE
CHEATHARLACH**

CARLOW COUNTY COUNCIL

**Declaration on Development & Exempted Development
Section 5 of the Planning and Development Act 2000 (as amended)**

Reg. Ref: SEC5/21/12

**Declaration on Development & Exempted Development
Section 5 of the
Planning and Development Act 2000 (as amended)**

WHEREAS questions have arisen as to whether (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) repair and improvement of previously overgrown gravel way, and (3) use for initial afforestation, is or is not development and is or is not exempted development, at Pollerton Little, Carlow;

AS INDICATED on the plans and particulars received by the Planning Authority on 31/08/21;

AND WHEREAS John Gibbons and Robert Mullins, c/o 43 Lerrview, Abbeylands, Barnhill, Castledermot, Co. Kildare, requested a declaration on the said question from Carlow County Council;

AND WHEREAS Carlow County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) The information included in the submitted plans and particulars;
- (b) The relevant planning history relating to the site, including CW6881 and enforcement file UD21/12;
- (c) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- (d) Articles 5, 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- (e) The Planning and Development Regulations 2001 (S.I. No. 600 of 2001);
- (f) The Planning and Development (Amendment) (No. 2) Regulations 2011 (S.I. No. 454/2011);
- (g) The European Communities (Amendment to Planning and Development Regulations) Regulations 2011 (S.I. No. 464/2011);

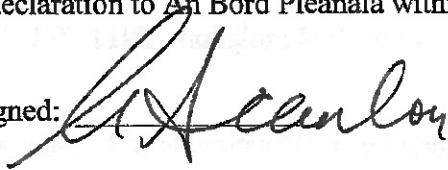
AND WHEREAS Carlow County Council has concluded that;

- (a) The new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., in place for the purpose of acting as place of worship constitutes a material change of use of the site and is therefore development within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 (as amended);
- (b) The new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship does not qualify for an exemption as it does not come within the scope Class 15 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended). Class 15 only applies to temporary uses for an existing school, hall, club, art gallery, museum, library, reading room, gymnasium or other building that would normally be used for public worship/religious instruction. As a new, non-permanent structure on the site, the wood-clad cabin does not come within the meaning of any of the existing buildings/structures referred to in Class 15.
- (c) No information has been provided to substantiate the existence of an overgrown gravel way on the site. Notwithstanding the aforesaid, the stated repair and improvement of a previously overgrown gravel way is ancillary to the placement and use of the wood-clad cabin on the site and therefore does not qualify for an exemption by reason that the restriction on exemptions in Article 9(1)(a)(viii) of the Planning and Development Regulations 2001 (as amended) applies as relating to unauthorised structures.
- (d) The use for initial afforestation does not qualify for an exemption as submitted under Class 11. Class 11 has been substituted with a new Class 11 that only applies to wetlands under S.I. No. 464/2011 – European Communities (Amendment to Planning and Development Regulations) Regulations 2011, and under Article 11 of S.I. No. 454/2011 – Planning and Development (Amendment) (No. 2) Regulations 2011.
- (e) The use for initial afforestation does not qualify for an exemption as submitted under Class 15. This Class 15 was deleted and removed by S.I. No. 454/2011 - Planning and Development (Amendment) (No. 2) Regulations 2011.

NOW THEREFORE Carlow 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 (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) repair and improvement of previously overgrown gravel way, and (3) use for initial afforestation, **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 Pleanála within 4 weeks of the issuing of the decision.

Signed:



CARLOW COUNTY COUNCIL PLANNING DEPARTMENT	
Section 5 declaration & referral on development & exempted development Planning & Development Act 2000 (as amended)	
Reference No. SEC5/21/12	
Name of Applicant:	John Gibbons & Robert Mullins
Site Address:	Pollerton Little, Carlow.
Referral:	See section 8 for details

1)Site Location

The site in question is located in the townland of Pollerton Little, c. 3km northeast of Carlow Town Centre. It comprises a triangular parcel of land adjoining and accessed from the northern side of R448 Castledermot Road (former N9), and situated between the grounds of MSD to the northeast and a row of residential properties to the southwest.

2)Relevant Planning History

UD21/52: Enforcement Notice issued on 23/06/21 in relation to unauthorised mobile home on the site.

CW6881: Permission GRANTED in 1983 for commercial growing of shrubs and plants.

3)Relevant Legislative/Regulatory Provisions

Planning and Development Act 2000 (as amended) – (hereafter the Act)

- Section 2(1)

“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.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

the use of the land shall be taken as having materially changed.

Also, Section 4(2) of the Act, which makes a provision for ministerial regulations to set out further exemptions. The Planning and Development Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the Act.

Planning and Development Regulations 2001 (as amended) – (hereafter the Regulations)

Part 2 of the Regulations deals with exempted 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.

Article 9(1) as referred to in Article 6(1) sets out a list of restrictions on exempted development.

4)Environmental Impact Assessment

Having regard to the nature, size and location of the development as detailed in the plans and particulars received, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination would not be required.

5)Appropriate Assessment

At its closest point, the River Barrow and River Nore cSAC (Site Code 002162) is c.2.8km west of the site. From river catchment mapping for the area there is a watercourse along the northern boundary of the site which is tributary of the Burren River. The Burren River is hydrologically connected to the SAC, and flows into the River Barrow in Pembroke in Carlow Town.

The development has been assessed having regard to the requirements of the EU Habitats Directive. Given the proximity of the nearest European Site and the nature and extent of the referral in question and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available which is deemed adequate to inform a screening determination, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, Appropriate Assessment is not required.

6) Flood Risk

On the basis of CFRAM flood maps for the area the site comprises land at risk of flooding.

7) Built Heritage

Archaeology

No recorded features on or in the vicinity of the site.

Architectural Heritage (RPS, NIAH & ACA)

No recorded features on or in the vicinity of the site.

8) Assessment

A total of three questions are presented in the referral received, and each are dealt with in turn hereunder. On an inspection of the site on 27/09/21 the wood-clad cabin was observed to be in place but was closed. The structure is positioned on an area of the site that is loosely gravelled and includes a driveway from the entrance off the R448. There is also a second gravelled access road at the front end of the site, set back from the front boundary running parallel to same. There were two large truck trailers also parked on the site.

At the time of the site inspection it was not evident what the wood-clad cabin or overall site was being used for. On the basis of the details for the enforcement file UD21/52, the wood-clad cabin has been created from an existing mobile home that was already on the site.

Question 1

1. Isn't it the case that a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25 metres sq., in place for the purpose of acting as a place of worship, inter alia, as per Class 15 of the exemptions mentioned in S.I. No. 600/2001 – Planning and Development Regulations, 2001 wherein it states, “a temporary structure for occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction.”, qualifies for exemption?

The first matter to note for this question is that the new, non-permanent, wood-clad cabin on a block pad foundation constitutes ‘development’ within the meaning ascribed to same in section 3 of the Act. In accordance with section 3 of the Act the use of land shall be deemed to have materially changed when the use includes the placing or keeping of any vans or other objects, whether or not moveable and whether or not collapsible.

The second matter to note is that the question posed has misinterpreted the provisions of Class 15 which is contained in Part 1 of Schedule 2 of the Regulations. Class 15 is one of a number of Classes of exempted development that come under the heading of “*Temporary Structures and Uses*”. However, Class 15 only applies to temporary uses and specifically temporary uses for an existing school, hall, club, art gallery, museum, library, reading room, gymnasium or other building that would normally be used for public worship/religious instruction such as a church. In this regard, the exact wording of Class 15 is “*Occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction*”. As a new, non-

permanent structure on the site, the wood-clad cabin does not come within the meaning of any of the existing buildings/structures referred to in Class 15.

Lastly, from a review of the Act and Regulations, there are no relevant exempted development provisions applying to the placement of the wood-clad cabin on the site and the structure does not have the benefit of a planning permission. For these reasons the structure comprises unauthorised development.

Question 2

2. Isn't it the case that the repair and improvement of a previously overgrown gravel way, in accordance with Class 13 of the exemptions mentioned in S.I. No. 600/2001 – Planning and Development Regulations, 2001, wherein it states, inter alia, ***“that the repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or pavings”***, qualifies for exemption?

Exempted development Class 13 as referred to relates to ‘Sundry Works’, is contained in Part 1 of Schedule 2 of the Regulations and relates to *“The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving”*. The one condition/limitation attached to Class 13 states *“The width of any such private footpath or paving shall not exceed 3 metres”*.

It is considered that sufficient information has not be provided to enable a determination to be made on whether the stated repair and improvement of a previously overgrown gravel comes within the scope of Class 13. From a review of Google Streetview imagery for the years 2009, 2011, 2014 and 2018, the entirety of the site area appears as greenfield under grass, and the existence of an overgrown gravel way cannot be discerned. In addition, apart from a covering letter, no other details, plans or other particulars are provided regarding the stated overgrown gravel way, or regarding the current gravelled driveway and access road.

Irrespective of whether the gravelled driveway and access road come within the scope of Class 13, it is considered the unauthorised development status of the wood-clad cabin triggers the restrictions on exemptions in Article 9 of the Regulations. Article 9(1)(a)(viii) provides that development to which the Classes of exempted development in Schedule 2 of the Regulations apply (i.e. Class 13), shall not be exempted where the development would *“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”*. It is apparent that the stated repair and improvement of a previously overgrown gravel way is connected with and ancillary to the placement and use of the wood-clad cabin on the site. For this reason, it is considered that the restrictions on exemptions in Article 9(1)(a)(viii) would apply.

Question 3

3. Isn't it the case that use for initial afforestation under Class 15 of Land Reclamation and Class 11 (a),(b),(c) and (d), qualifies for exemption?

Exempted development Class 11 as referred to was contained in the Planning and Development Regulations 2001 (S.I. No. 600 of 2001). It related to land reclamation as follows:

Development consisting of the carrying out, on land which is used only for the purpose of agriculture or forestry, of any of the following works—

(a) field drainage, (b) land reclamation, (c) the removal of fences, (d) the improvement of existing fences, (e) the improvement of hill grazing, or (f) the reclamation of estuarine marsh land or of callows, where the preservation of such land or callows is not an objective of a development plan for the area.

Under S.I. No. 464/2011 – European Communities (Amendment to Planning and Development Regulations) Regulations 2011, and under Article 11 of S.I. No. 454/2011 – Planning and Development (Amendment) (No. 2) Regulations 2011, Class 11 above for land reclamation has been substituted with:

Development consisting of the carrying out of drainage and/or reclamation of wetlands

Conditions/Limitations

1. The area to be affected shall not exceed 0.1 hectares.

2. Where development has been carried out within a farm holding under this class, the total area of any such development taken together with the area of any previous such development within the farm holding shall not exceed the limits set out in 1. above.

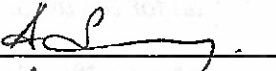
While the applicants refer to initial forestation in their question 3, it is not clear as to how this applies to the site on the basis of the information submitted and lack thereof, and on the basis of observations from the site inspection. Notwithstanding this, Class 11 as submitted has been substituted in the legislation as noted above, and the substituted Class 11 only relates to wetlands. The site in question does not comprise a wetland by reference to the definition of same in Article 5 of the Regulations i.e. “*natural or artificial areas where biogeochemical functions depend notably on constant or periodic shallow inundation, or saturation, by standing or flowing fresh, brackish or saline water.*”

Class 15 as referred to was contained in the Regulations S.I. No. 600 of 2001 and related to initial forestation. This exempted development class was deleted by S.I. No. 454/2011 - Planning and Development (Amendment) (No. 2) Regulations 2011. As above, it is not clear how this applies to the site on the basis of the information submitted and lack thereof, and on the basis of observations from the site inspection.

Notwithstanding the foregoing in relation to question 3, it is considered that the unauthorised development status of the wood-clad cabin triggers the restriction on exemptions in Article 9(1)(a)(viii).

9)Recommendation

It is recommended that a declaration is issued to the applicant as per the draft provided on the following pages.

Signed: 
J. Plarad
23/9/21

**Declaration on Development & Exempted Development
Section 5 of the
Planning and Development Act 2000 (as amended)**

WHEREAS questions have arisen as to whether (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) repair and improvement of previously overgrown gravel way, and (3) use for initial forestation, is or is not development and is or is not exempted development, at Pollerton Little, Carlow;

AS INDICATED on the plans and particulars received by the Planning Authority on 31/08/21;

AND WHEREAS John Gibbons and Robert Mullins, c/o 43 Lerrview, Abbeylands, Barnhill, Castledermot, Co. Kildare, requested a declaration on the said question from Carlow County Council;

AND WHEREAS Carlow County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) The information included in the submitted plans and particulars;
- (b) The relevant planning history relating to the site, including CW6881 and enforcement file UD21/12;
- (c) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- (d) Articles 5, 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- (e) The Planning and Development Regulations 2001 (S.I. No. 600 of 2001);
- (f) The Planning and Development (Amendment) (No. 2) Regulations 2011 (S.I. No. 454/2011);
- (g) The European Communities (Amendment to Planning and Development Regulations) Regulations 2011 (S.I. No. 464/2011);

AND WHEREAS Carlow County Council has concluded that;

- (a) The new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., in place for the purpose of acting as place of worship constitutes a material change of use of the site and is therefore development within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 (as amended);

- (b) The new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship does not qualify for an exemption as it does not come within the scope Class 15 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended). Class 15 only applies to temporary uses for an existing school, hall, club, art gallery, museum, library, reading room, gymnasium or other building that would normally be used for public worship/religious instruction. As a new, non-permanent structure on the site, the wood-clad cabin does not come within the meaning of any of the existing buildings/structures referred to in Class 15.
- (c) No information has been provided to substantiate the existence of an overgrown gravel way on the site. Notwithstanding the aforesaid, the stated repair and improvement of a previously overgrown gravel way is ancillary to the placement and use of the wood-clad cabin on the site and therefore does not qualify for an exemption by reason that the restriction on exemptions in Article 9(1)(a)(viii) of the Planning and Development Regulations 2001 (as amended) applies as relating to unauthorised structures.
- (d) The use for initial forestation does not qualify for an exemption as submitted under Class 11. Class 11 has been substituted with a new Class 11 that only applies to wetlands under S.I. No. 464/2011 – European Communities (Amendment to Planning and Development Regulations) Regulations 2011, and under Article 11 of S.I. No. 454/2011 – Planning and Development (Amendment) (No. 2) Regulations 2011.
- (e) The use for initial afforestation does not qualify for an exemption as submitted under Class 15. This Class 15 was deleted and removed by S.I. No. 454/2011 - Planning and Development (Amendment) (No. 2) Regulations 2011.

NOW THEREFORE Carlow 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 (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) repair and improvement of previously overgrown gravel way, and (3) use for initial forestation, **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 Pleanála within 4 weeks of the issuing of the decision.

Signed: _____

APPENDIX 1
APPROPRIATE ASSESSMENT SCREENING REPORT

DESCRIPTION OF PROJECT AND LOCAL SITE

Reg. ref. SEC5-21/12 – Questions have arisen as to whether (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) repair and improvement of previously overgrown gravel way, and (3) use for initial forestation, is or is not development and is or is not exempted development

Site Location:

Pollerton Little, Carlow.

Total Site Area:

Floor area of proposed development:

25sq.m. wood-clad cabin.

Identification of nearby Natura 2000 site(s):

At its closest point, the River Barrow and River Nore cSAC (Site Code 002162) is c.2.8km west of the site. From river catchment mapping for the area there is a watercourse along the northern boundary of the site which is tributary of the Burren River. The Burren River is hydrologically connected to the SAC, and flows into the River Barrow in Pembroke in Carlow Town.

Is the application accompanied by an EIS?

No.

B. IDENTIFICATION OF THE RELEVANT NATURA 2000 SITE(S)

The reasons for the designation of the Natura 2000 site:

(A site synopsis can be obtained from www.npws.ie)

The conservation objectives/qualifying interests of the site and the factors that contributes to the conservation value of the site:

(A site synopsis can be obtained from www.npws.ie)

C. NPWS ADVICE

Advice received from NPWS over phone:

None

Summary of advice received from NPWS in written form:

None

D. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

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

If answer yes to any of the questions, below then the effect is significant.

Would there be any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance)

No.

Would there be a reduction in habitat area on a Natura 2000 site?

No.

Would there be direct/indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site?

No.

Would there be serious/ongoing disturbance to species/habitats for which the Natura 2000 site is selected (e.g. because of increased noise, illumination and human activity)?

No.

Would there be direct/indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site?

No.

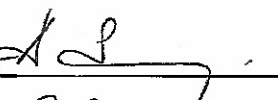
Would the project interfere with mitigation measures put in place for other plans/projects. (Look at in-combination effects with completed, approved but not completed, and proposed plans/projects. Look at projects/plans within and adjacent to Natura 2000 sites and identify them).

No.

E. SCREENING CONCLUSION

The development has been assessed having regard to the requirements of the EU Habitats Directive.

Given the proximity of the nearest European Site and the nature and extent of the referral in question and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available which is deemed adequate to inform a screening determination, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, Appropriate Assessment is not required.

Signed: 
S. Plana
23/5/21

CHIEF EXECUTIVE'S ORDER

REF: S5.21.15

Order No: 33907-

SUBJECT: Certificate of Exemption, Section 5 Application lodged by Robert Mullins & John Gibbons, C/o 43 Lerrview, Abbeylands, Barnhill, Castledermot, Co. Kildare, as to whether (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) the new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship as per Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) (3) repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres is or is not development and is or is not exempted development, at Pollerton Little, Carlow.

SUBMITTED: Report from Padraig O'Shea, Senior Executive Planner, dated 21/12/2021, and endorsed by Anita Sweeney, Senior Planner, dated 05/01/2022 advising that (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) the new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship as per Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) (3) repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres at Pollerton Little, Carlow; is development and is not exempted development.

ORDER: It is hereby ordered that a Certificate of Exemption under Section 5 of the Planning and Development Act, 2000 (as amended) should issue to Robert Mullins & John Gibbons, C/o 43 Lerrview, Abbeylands, Barnhill, Castledermot, Co. Kildare, stating that (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) the new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship as per Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) (3) repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres at Pollerton Little, Carlow; is development and is not exempted development.

Made this 5th January 2022


Delegated Officer



**COMHAIRLE CONTAE
CHEATHARLACH**
CARLOW COUNTY COUNCIL

**Declaration on Development & Exempted Development
Section 5 of the Planning and Development Act 2000 (as amended)**

Reg. Ref: SEC5/21/15

**Declaration on Development & Exempted Development
Section 5 of the
Planning and Development Act 2000 (as amended)**

WHEREAS questions have arisen as to whether (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) the new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship as per Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) (3) repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres is or is not development and is or is not exempted development, at Pollerton Little, Carlow;

AS INDICATED on the plans and particulars received by the Planning Authority on 03/12/2021;

AND WHEREAS Robert Mullins and John Gibbons, c/o 43 Lerrview, Abbeylands, Barnhill, Castledermot, Co. Kildare, requested a declaration on the said question from Carlow County Council;

AND WHEREAS Carlow County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) The information included in the submitted plans and particulars;
- (b) The relevant planning history relating to the site, including CW6881, Section 5 Declaration Ref. S5.21.12 and Enforcement file UD21/12;
- (c) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- (d) Articles 5, 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- (e) The Planning and Development Regulations 2001 (S.I. No. 600 of 2001);
- (f) The Planning and Development (Amendment) (No. 2) Regulations 2011 (S.I. No. 454/2011);
- (g) The European Communities (Amendment to Planning and Development Regulations) Regulations 2011 (S.I. No. 464/2011);

AND WHEREAS Carlow County Council has concluded that;

(a) The new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., in place for the purpose of acting as place of worship constitutes a material change of use of the site and is therefore development within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 (as amended);

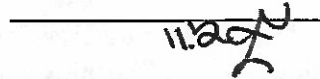
(b) The new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship does not qualify for an exemption as it does not come within the scope Class 15 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended). Class 15 only applies to temporary uses for an existing school, hall, club, art gallery, museum, library, reading room, gymnasium or other building that would normally be used for public worship/religious instruction. As a new, non-permanent structure on the site, the wood-clad cabin does not come within the meaning of any of the existing buildings/structures referred to in Class 15.

(c) No information has been provided to substantiate the existence of an overgrown gravel way on the site. Notwithstanding the aforesaid, the stated repair and improvement of a pre-existing gravel way and construction of a footpath is ancillary to the placement and use of the wood-clad cabin on the site and therefore does not qualify for an exemption by reason that the restriction on exemptions in Article 9(1)(a)(viii) of the Planning and Development Regulations 2001 (as amended) applies as relating to unauthorised structures.

NOW THEREFORE Carlow 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 (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) the new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship under the provisions of Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) (3) repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres, 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 Pleanála within 4 weeks of the issuing of the decision.

Signed:



Date:

5th January, 2022

CARLOW COUNTY COUNCIL PLANNING DEPARTMENT	
Section 5 declaration & referral on development & exempted development Planning & Development Act 2000 (as amended)	
Reference No. SEC5/21/15	
Name of Applicant:	Robert Mullins & John Gibbons
Site Address:	Dublin Road, Carlow.
Referral:	See section 8 for details

1) Site Location

The site in question is located in the townland of Pollerton Little, c. 3km northeast of Carlow Town Centre. It comprises a triangular parcel of land adjoining and accessed from the northern side of R448 Castledermot Road (former N9), and situated between the grounds of MSD to the northeast and a row of residential properties to the southwest.

2) Relevant Planning History

UD21/52: Enforcement Notice issued on 23/06/21 in relation to unauthorised mobile home on the site. A new Enforcement Notice was issued on 04/11/21.

CW6881: Permission GRANTED in 1983 for commercial growing of shrubs and plants.

Section 5 Declaration S5.21/12 – Similar development proposal by the same applicants.

3) Relevant Legislative/Regulatory Provisions

Planning and Development Act 2000 (as amended) – (hereafter the Act)

- Section 2(1)

“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.

(2) For the purposes of subsection (1) and without prejudice to the generality of that subsection—

(b) where land becomes used for any of the following purposes—

(i) the placing or keeping of any vans, tents or other objects, whether or not moveable and whether or not collapsible, for the purpose of caravanning or camping or habitation or the sale of goods,

the use of the land shall be taken as having materially changed.

Also, Section 4(2) of the Act, which makes a provision for ministerial regulations to set out further exemptions. The Planning and Development Regulations as amended derive from this section and designate further works as being exempted development for the purposes of the Act.

Planning and Development Regulations 2001 (as amended) – (hereafter the Regulations)

Part 2 of the Regulations deals with exempted 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.

Article 9(1) as referred to in Article 6(1) sets out a list of restrictions on exempted development.

4)Environmental Impact Assessment

Having regard to the nature, size and location of the development as detailed in the plans and particulars received, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination would not be required.

5)Appropriate Assessment

At its closest point, the River Barrow and River Nore cSAC (Site Code 002162) is c.2.8km west of the site. From river catchment mapping for the area there is a watercourse along the northern boundary of the site which is tributary of the Burren River. The Burren River is hydrologically connected to the SAC, and flows into the River Barrow in Pembroke in Carlow Town.

The development has been assessed having regard to the requirements of the EU Habitats Directive. Given the proximity of the nearest European Site and the nature and extent of the referral in question and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available which is deemed adequate to inform a screening determination, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, Appropriate Assessment is not required.

6)Flood Risk

On the basis of CFRAM flood maps for the area the site comprises land at risk of flooding.

7)Built Heritage

Archaeology

No recorded features on or in the vicinity of the site.

Architectural Heritage (RPS, NIAH & ACA)

No recorded features on or in the vicinity of the site.

8)Assessment

A total of three questions are presented in the referral received, and each are dealt with in turn hereunder. On an inspection of the site on 21/12/2021 the wood-clad cabin was observed to be in place but was closed. The structure is positioned on an area of the site that is loosely gravelled and includes a driveway from the entrance off the R448. There is also a second gravelled access road at the front end of the site, set back from the front boundary running parallel to same. There were two large truck trailers also parked on the site.

At the time of the site inspection it was not evident what the wood-clad cabin or overall site was being used for. On the basis of the details for the enforcement file UD21/52, the wood-clad cabin has been created from an existing mobile home that was already on the site.

Question 1 & 2

a) The new, non-permanent wood-clad cabin on block pad foundation, measuring 25sq.m., as per the prescribed description of the structure in Carlow County Council's previous Declaration/s, is in place for the purpose of acting as place of worship. Any alleged issue regarding material change of use of the site is negated by the fact that the primary motive in our acquisition of the site is the historically long-standing ecclesiastical importance of the land as a spiritual focus and regular place of worship, a fact that pre-dates the 12th Century Anglo-Norman invasion of the land and is therefore not development within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 and ergo is exempt from Planning Permission.

b) Furthermore, the new, non-permanent wood-clad cabin on block pad foundation, measuring 25sq.m., is in place with the intended purpose of acting as place of worship as per Class 15 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended), wherein it does refer to a "temporary structure for occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction". In the interests of

clarity we deem it prudent to point out that the Legislation pertaining to same does not include the words 'existing', 'pre-existing' and/or related synonyms.

As per the Planning Report on for Section 5 Declaration S521/12, the Planning Authority notes that the existing structure on site is a new, non-permanent, wood-clad cabin on a block pad foundation that constitutes 'development' within the meaning ascribed to same in Section 3 of the Act. In accordance with Section 3 of the Act the use of land shall be deemed to have materially changed when the use includes the placing or

keeping of any vans or other objects, whether or not moveable and whether or not collapsible.

The second matter to note is that the question posed has misinterpreted the provisions of Class 15 which is contained in Part 1 of Schedule 2 of the Regulations. Class 15 is one of a number of Classes of exempted development that come under the heading of *"Temporary Structures and Uses"*. However, Class 15 only applies to temporary uses and specifically temporary uses for an existing school, hall, club, art gallery, museum, library, reading room, gymnasium or other building that would normally be used for public worship/religious instruction such as a church. In this regard, the exact wording of Class 15 is *"Occasional use for social or recreational purposes of any school, hall, club, art gallery, museum, library, reading room, gymnasium or any structure normally used for public worship or religious instruction"*. As a new, non-permanent structure on the site, the wood-clad cabin does not come within the meaning of any of the existing buildings/structures referred to in Class 15, notwithstanding the alleged use of the land stated by the applicants as a *'spiritual locus and regular place of worship that pre-dates the 12th Century Anglo-Norman Invasion'*.

From a review of the Act and Regulations, there are no relevant exempted development provisions applying to the placement of the wood-clad cabin on the site and the structure does not have the benefit of a planning permission. For these reasons the structure is considered to comprise unauthorised development.

Question 3

- c) The improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres is exempt as per Class 13 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended). It should also be pointed out that said way was in existence and had been improved upon prior to the cabin being in place, ergo it is not ancillary to the aforementioned cabin, the latter being chronologically and materially secondary to the gravel way.

Exempted development Class 13 as referred to relates to 'Sundry Works', is contained in Part 1 of Schedule 2 of the Regulations and relates to *"The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving"*. The one condition/limitation attached to Class 13 states *"The width of any such private footpath or paving shall not exceed 3 metres"*.

It is considered that sufficient information has not been provided to enable a determination to be made on whether the stated improvement to a pre-existing gravel way and construction of a private footpath not exceeding 3 metres comes within the scope of Class 13. From a review of Google Streetview imagery for the years 2009, 2011, 2014 and 2018, the entirety of the site area appears as greenfield under grass, and the existence of an overgrown gravel way or footpath cannot be discerned. In addition, apart from a covering letter, no other details, plans or other particulars are provided regarding the stated overgrown gravel way, footpath or regarding the current gravelled driveway and access road.

Irrespective of whether the gravelled driveway and access road come within the scope of Class 13, it is considered the unauthorised development status of the wood-clad cabin triggers the restrictions on exemptions in Article 9 of the Regulations. Article 9(1)(a)(viii) provides that development to which the Classes of exempted development in Schedule 2 of the Regulations apply (i.e. Class 13), shall not be exempted where the development would "*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*". It is apparent that the stated repair and improvement of a previously overgrown gravel way is connected with and ancillary to the placement and use of the wood-clad cabin on the site. For this reason, it is considered that the restrictions on exemptions in Article 9(1)(a)(viii) would apply.

9)Recommendation

It is recommended that a declaration is issued to the applicant as per the draft provided on the following pages.


Padraig O'Shea
Senior Executive Planner

Date: 21/12/2021


Anita Sweeney
Senior Planner

Date: 5/01/2022.

**Declaration on Development & Exempted Development
Section 5 of the
Planning and Development Act 2000 (as amended)**

WHEREAS questions have arisen as to whether (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) the new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship as per Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) (3) repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres is or is not development and is or is not exempted development, at Pollerton Little, Carlow;

AS INDICATED on the plans and particulars received by the Planning Authority on 03/12/2021;

AND WHEREAS Robert Mullins and John Gibbons, c/o 43 Lerrview, Abbeylands, Barnhill, Castledermot, Co. Kildare, requested a declaration on the said question from Carlow County Council;

AND WHEREAS Carlow County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) The information included in the submitted plans and particulars;
- (b) The relevant planning history relating to the site, including CW6881, Section 5 Declaration Ref. S5.21.12 and Enforcement file UD21/12;
- (c) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- (d) Articles 5, 6 and 9 of the Planning and Development Regulations 2001 (as amended);
- (e) The Planning and Development Regulations 2001 (S.I. No. 600 of 2001);
- (f) The Planning and Development (Amendment) (No. 2) Regulations 2011 (S.I. No. 454/2011);
- (g) The European Communities (Amendment to Planning and Development Regulations) Regulations 2011 (S.I. No. 464/2011);

AND WHEREAS Carlow County Council has concluded that;

- (a) The new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., in place for the purpose of acting as place of worship constitutes a material change of use of the site and is therefore development within the meaning ascribed to same in Section 3 of the Planning and Development Act 2000 (as amended);

- (b) The new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship does not qualify for an exemption as it does not come within the scope Class 15 in Part 1 of Schedule 2 in the Planning and Development Regulations 2001 (as amended). Class 15 only applies to temporary uses for an existing school, hall, club, art gallery, museum, library, reading room, gymnasium or other building that would normally be used for public worship/religious instruction. As a new, non-permanent structure on the site, the wood-clad cabin does not come within the meaning of any of the existing buildings/structures referred to in Class 15.
- (c) No information has been provided to substantiate the existence of an overgrown gravel way on the site. Notwithstanding the aforesaid, the stated repair and improvement of a pre-existing gravel way and construction of a footpath is ancillary to the placement and use of the wood-clad cabin on the site and therefore does not qualify for an exemption by reason that the restriction on exemptions in Article 9(1)(a)(viii) of the Planning and Development Regulations 2001 (as amended) applies as relating to unauthorised structures.

NOW THEREFORE Carlow 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 (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) the new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship under the provisions of Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) (3) repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres, **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 Pleanála within 4 weeks of the issuing of the decision.

Signed: _____

APPENDIX 1
APPROPRIATE ASSESSMENT SCREENING REPORT

DESCRIPTION OF PROJECT AND LOCAL SITE

Reg. ref. SEC5-21/15 – Questions have arisen as to whether (1) a new, non-permanent, wood-clad cabin on block pad foundation, measuring 25sq.m., and in place for the purpose of acting as place of worship, (2) the new, non-permanent wood clad cabin on block pad foundations is in place with the intended purpose of acting as a place of worship under the provisions of Class 15 in Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended) (3) repair and improvement of the pre-existing gravel way and construction of a private footpath not exceeding 3 metres is or is not development and is or is not exempted development.

Site Location:

Dublin Road, Carlow.

Total Site Area:

Floor area of proposed development:

25sq.m. wood-clad cabin.

Identification of nearby Natura 2000 site(s):

At its closest point, the River Barrow and River Nore cSAC (Site Code 002162) is c.2.8km west of the site. From river catchment mapping for the area there is a watercourse along the northern boundary of the site which is tributary of the Burren River. The Burren River is hydrologically connected to the SAC, and flows into the River Barrow in Pembroke in Carlow Town.

Is the application accompanied by an EIS?

No.

B. IDENTIFICATION OF THE RELEVANT NATURA 2000 SITE(S)

The reasons for the designation of the Natura 2000 site:

(A site synopsis can be obtained from www.npws.ie)

The conservation objectives/qualifying interests of the site and the factors that contributes to the conservation value of the site:

(A site synopsis can be obtained from www.npws.ie)

C. NPWS ADVICE

Advice received from NPWS over phone:

None

Summary of advice received from NPWS in written form:

None

D. ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

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

If answer yes to any of the questions, below then the effect is significant.

Would there be any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance)

No.

Would there be a reduction in habitat area on a Natura 2000 site?

No.

Would there be direct/indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the Natura 2000 site?

No.

Would there be serious/ongoing disturbance to species/habitats for which the Natura 2000 site is selected (e.g. because of increased noise, illumination and human activity)?

No.

Would there be direct/indirect damage to the size, characteristics or reproductive ability of populations on the Natura 2000 site?

No.

Would the project interfere with mitigation measures put in place for other plans/projects. (Look at in-combination effects with completed, approved but not completed, and proposed plans/projects. Look at projects/plans within and adjacent to Natura 2000 sites and identify them).

No.

E. SCREENING CONCLUSION

The development has been assessed having regard to the requirements of the EU Habitats Directive.

Given the proximity of the nearest European Site and the nature and extent of the referral in question and intervening land uses located in the area, it is considered reasonable to conclude on the basis of the information available which is deemed adequate to inform a screening determination, that the development on its own or in combination with other plans or projects, would not be likely to result in any potential significant effects on the European Site. Therefore, Appropriate Assessment is not required.

Signed: P. O'Shea S.E.P

Site Inspection Photograph – 21st December 2021



