

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

REFERENCE: DEC 23/19

NAME OF APPLICANT: Gerard Briscoe

ADDRESS:

ADDRESS FOR CORRESPONDENCE:

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as whether or not a 39m² residential extension to the rear of an existing dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ard, Geashill, Co. Offaly, R35 XD57.

WHEREAS A question referred to Offaly County Council 01/08/2023 as to whether or not a 39m² residential extension to the rear of an existing dwelling at Ard, Geashill, Co. Offaly is or is not development, and is or is not exempted development under the Planning and Development Act 2000, (as amended).

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Section 2 & 3 of the Planning & Development Act 2000, as amended.
- (b) Conditions/Limitations of Class 1, in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).
- (c) Article 6(1) of the Planning and Development Regulations 2001 (as amended), and
- (d) Article 9(1) of the Planning and Development Regulations 2001 (as amended).

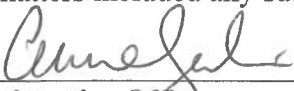
AND WHEREAS Offaly County Council has concluded that –

- The works are **considered development and is exempted development.**

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

- A 39m² residential extension to the rear of an existing dwelling at Ard, Geashill, Co. Offaly **is development and is exempted development.**

^N **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

24/8/2023

Date

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

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

File Reference:	Dec 23/19
Question:	Whether or not a 39m ² residential extension to the rear of an existing dwelling is or is not development, and is or is not exempted development.
Applicant:	Gerard Briscoe
Location:	Ard, Geashill, Co. Offaly.
Date received:	1 st August 2023

1. Proposal

The question has arisen as to whether or not a 39m² residential extension to the rear of an existing dwelling is or is not development, and is or is not exempted development at Ard, Geashill, Co. Offaly is or is not development, and is or is not exempted development.

2. Background

Currently location on the site is an existing habitable cottage with direct access onto the L-5033-2 Local Primary road.

3. Relevant Planning History:

81/523: Gerard Briscoe was **Refused** permission for the erection of a dwelling house

82/118: Gerard Briscoe was **Refused** permission for the erection of a dwelling house.

It is noted both refusal applications are located in the side garden of the dwelling which the subject section 5 relates to.

4. Legislative Context

Section 2(1) of the Planning and Development Act 2000 (as amended) provides a definition of "works" in the Act:

"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) of the Planning and Development Act 2000 (as amended) defines development:

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.

In this regard, the proposed development comprises works and also therefore is considered ‘development’.

Exempted Development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) and further prescribed under Article 6 (1) which is stated as follows:

“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.”

The provisions of Article 9 were reviewed in the context of this application, and it is considered that Article 9 does not apply in this case.

Assessment

The declaration is being sought under the provisions of Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Class 1 is noted as follows:

Development within the curtilage of a house

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.

There are a number of conditions and limitations attached to Class 1, which are assessed below:

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

The house has not been extended previously. From the submitted drawings submitted it appears the gross floor area proposed is approximately 39m².

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 house is detached, therefore 1(b) 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 subject extension is single storey therefore 1(c) 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 house has not been extended previously, therefore 2(a) is not applicable.

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.

2(b) is not applicable as the house has not been extended previously.

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 house has not been extended previously, therefore 2(c) is not applicable.

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

Part 3 is not applicable as the proposed extension is ground floor only.

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.

The rear wall of the house does not include a gable and the proposed extension does not exceed the height of the house.

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.

Part 4(b) does not apply 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 has a pitched roof, which would not exceed the height of the highest part of the roof of the existing house.

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.

The proposed extension would not reduce the area of private open space at the rear of the house to less than 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.

Following a site inspection, I can confirm that any window proposed at ground level is greater than 1m from the boundary it faces.

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, 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, 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.

5. Appropriate Assessment

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

6. Conclusion

The extension is deemed development and is deemed exempted development as it complies with each of the conditions/limitations of Class 1, Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended).

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 or not a 39m² residential extension to the rear of an existing dwelling is or is not development, and is or is not exempted development at Ard, Geashill, Co. Offaly is or is not development, and is or is not exempted development.

AND WHEREAS Gerald Briscoe 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 of the Planning & Development Act 2000, as amended.
- (b) (Conditions/Limitations of Class 1, in Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- (c) Article 6(1) of the Planning and Development Regulations 2001 (as amended), and
- (d) Article 9(1) of the Planning and Development Regulations 2001 (as amended)

AND WHEREAS Offaly County Council has concluded that –

- The works are considered development and is exempted development.

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

- A 39m² residential extension to the rear of an existing dwelling at Ard, Geashill, Co. Offaly **is development and is exempted development.**

Michael Duffy

Michael Duffy

Executive Planner

23rd August 2023

Ed Kelly

Ed Kelly

Acting Senior Executive Planner

24/8/2023

ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS

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

- If the plan / project is directly connected with / necessary to the management of the *European site*.
- If the effects will be significant on a *European site* in view of its conservation objectives, either alone / in combination with other plans / projects.

Planning Authority:

Offaly County Council

Planning Application Ref. No.:

DEC 23/19

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	39m ² residential extension		
Site location:	Ard, Geashill, Co. Offaly.		
Site size:	n/a	Floor Area of Proposed Development:	39m ²
Identification of nearby <i>European Site(s)</i> :	Barrow and river Nore SAC		
Distance to <i>European Site(s)</i> :	4.93km		
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 <i>European site</i> :	None		
Is the application accompanied by an EIAR?	No		
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the <i>European site</i> :	The site is a SAC selected for alluvial wet woodlands and petrifying springs, priority habitats on Annex I of the E.U. Habitats Directive. The site is also selected as a candidate SAC for old oak woodlands, floating river vegetation, estuary, tidal mudflats, <i>Salicornia</i> mudflats, Atlantic salt meadows, Mediterranean salt meadows, dry heath and eutrophic tall herbs, all habitats listed on Annex I of the E.U. Habitats Directive. The site is also selected for the following species listed on Annex II of the same directive - Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Nore Freshwater Pearl Mussel, Crayfish, Twaite Shad, Atlantic Salmon, Otter, Desmoulin's Whorl Snail <i>Vertigo moulinsiana</i> and the Killarney Fern. 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 <i>European site</i> synopses and, if applicable, a		

Conservation Management Plan; all available on www.npws.ie (ATTACH INFO.)

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

(C) NPWS ADVICE:

Advice received from NPWS over phone:	None received.
Summary of advice received from NPWS in written form (ATTACH SAME):	None received.

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

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

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

Would there be... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... a reduction in habitat area on a <i>European</i> site?	There will be no reduction in the habitat area.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the <i>European</i> site?	Not likely due to the location and type of development. The site is sufficient distance from the European site.

... serious / ongoing disturbance to species / habitats for which the <i>European</i> site is selected (e.g. because of increased noise, illumination and human activity)?	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> site?	Not likely to have an adverse impact due to its location, scale and characteristics.
Would the project interfere with mitigation measures put in place for other plans / projects. [Look at <i>in-combination effects</i> with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to <i>European</i> sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.
(E) SCREENING CONCLUSION:	
Screening can result in:	
1	<i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i>
2	<i>No potential for significant effects / AA is not required.</i>
3	<i>Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i>
	<i>Conclusion:2</i>
	<i>Justify why it falls into relevant category above:</i> <i>Given the location and the nature and size of the development applied for and the characteristics of European sites in the vicinity and the appropriate assessment guidelines it is considered that the development will be unlikely to have significant effects on any European sites.</i>
Signed:	Date:
Michael Duffy	16 th August 2023

