

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

REFERENCE: DEC 23/58

NAME OF APPLICANT: Eamon Egan

ADDRESS:

ADDRESS FOR CORRESPONDENCE:

LOCATION OF DEVELOPMENT: Endrim Far, Ferbane, Co. Offaly, R42 KF86.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the proposed renovation comprising of internal and external works (including the replacement of facia, soffit and guttering, painting and removal and replacement of slates) to an existing dwelling is or is not development and is or is not exempted development.

WHEREAS a question has arisen as to whether the proposed renovation comprising of internal and external works (including the replacement of facia, soffit and guttering, painting and removal and replacement of slates) to an existing dwelling is or is not development and is or is not exempted development at Endrim Far, Ferbane, Co. Offaly, R42 KF86.

AS INDICATED on the particulars received by the Planning Authority on the 20th November 2023

AND WHEREAS Eamon Egan requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- (a) Section 2, 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.
- (b) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2, Part 1, Class 12 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed renovation comprising of internal and external works (including the replacement of facia, soffit and guttering, painting and removal and replacement of slates) to an existing dwelling is or is not development and if so, are they exempted development.

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

- The proposed renovation comprising of internal and external works (including the replacement of facia, soffit and guttering, painting and removal and replacement of slates) to an existing dwelling **is development and is exempted development** at Endrim Far, Ferbane, Co. Offaly, R42 KF86.

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.

R. Egan
Administrative Officer

Date

15/12/23

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

Planning Report

Section 5 Declaration

File Reference:	Dec. 23/58
Question:	Whether the refurbishment of existing dwelling is or is not development and is or is not exempted development?
Applicant:	Eamon Egan
Correspondence Address:	[REDACTED]
Location:	Endrim Far, Ferbane, Co. Offaly. R42 KF86.

1. Introduction

The question has arisen as to whether the proposed works to an existing dwelling is or is not development and is or is not exempted development.

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2. Background

The existing two storey dwelling is located within the open countryside and has an adjoining farmyard complex.



Photo 1: Subject Site (source: Google Maps – image August 2009).



Photo 2: Subject Site (source: Google Maps).

3. Site History

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

Enforcement – No recent history associated with the subject site.

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

4. Legislative Context

In order to assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

Statutory Provisions

Section 2 (1) Planning and Development Act 2000, as amended, states as follows:

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

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

Section 3 (1) Planning and Development Act 2000, as amended, defines development.

“development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.

Section 4 - Exempted Development

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

- (h) *development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.*

Section 4 (2) (a) - The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that -

- (i) *by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development.*

Regulatory Provisions

Article 6 of the Planning and Development Regulations 2001 (as amended) states, *inter alia*, that:

“Subject to Article 9, development of a class specified in Column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in Column 2 of the said Part 1 opposite the mention of that class in the said Column 1”.

Article 9 of the Planning and Development Regulations 2001 (as amended), identifies restrictions on exemption.

9 (1): Development to which article 6 relates shall not be exempted development for the purposes of the Act - (a) if the carrying out of such development would -

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 12 specifies:

The painting of any external part of any building or other structure.

This is considered to be exempted development if the following limitations are complied with:

‘such painting may not, except in the case of a hoarding or other temporary structure bounding land on which development consisting of works is being or will be carried out in pursuance of a permission granted under Part III of the Act or as exempted development, be for the purposes of creating a mural’.

5. Proposal by Applicants

The Applicant has provided the following details of the proposed works:

Eamon Egan		Eamon Egan	
Description	Amount	Description	Amount
Supply + fit 7 new Doors + frames	4,300	To Remove + Replace slates at front of House	
Supply + fit Skirting	2,500	Materials Slates etc.	2,400
Supply + fit fascia, soffits and guttering	2,500	To Gut House	2,500
Tiles supplied + fitted Bathroom + Kitchen	5,000	Foralls concrete ground floor	5,000
Painting all (labour + materials)	3,500	Remove + Replace walls upstairs Insulate + Slab all	
Plumbing (supply + fit all)	10,000	Remove new bathroom walls downstairs and Remove and Replace stairs	4,000
Electrical (supply + fit all)	8,000	Materials for the above (includes plastering)	15,000
Kitchen units + Appliances (supply + fitted)	8,000		

Eamon Egan	
Description	Amount
Sanitary Ware: Showers Sinks Toilet Bath etc	2,000
External Works including Scaffolding	2,500
Munster Joinery	9,000
Chimney Repairs	2,500
Total =	689,330

6. Evaluation

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

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

Question: Is this proposal considered as Exempted Development?

With regard to the proposed works which are described in the submitted documents and the information received from the Regeneration Section, the Planning Authority are satisfied that the proposed works would not result in a material alteration to the dwelling appearance and the finished development would not be inconsistent with the character of the structure.

7. Conclusion

It is recommended that the Applicant be advised that the proposed development is development and is exempted development.

Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to whether the proposed renovation comprising of internal and external works (including the replacement of fascia, soffit and guttering, painting and removal and replacement of slates) to an existing dwelling is or is not development and is or is not exempted development at Endrim Far, Ferbane, Co. Offaly, R42 KF86.

AS INDICATED on the particulars received by the Planning Authority on the 20th November 2023, is development and is ~~not~~ exempted development,

AND WHEREAS Eamon Egan 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:

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Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.



Úna McCafferkey
Executive Planner

14th December 2023

Date

A handwritten signature in blue ink, appearing to read "Ed Kelly". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ed Kelly
(A/Senior Executive Planner)

Date 14/12/2023

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



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

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

Planning Authority: OCC

Planning Application Ref. No: DEC 23-58

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the refurbishment of existing dwelling is or is not development and is or is not exempted development.		
Site location:	Endrim Far, Ferbane, Co. Offaly. R42 KF86.		
Site size:	Not provided	Floor Area of Proposed Development:	Not provided.
Identification of nearby European Site(s):	Ferbane Bog SAC – 2.3km Moyclare Bog SAC: 3.59km Pilgrim's Road Esker SAC: 4.89km Mongan Bog SPA – 5.77km Mongan Bog SAC – 5.48km Middle Shannon Callows SPA – 6.11km River Shannon Callows SAC – 6.16km		
Distance to European Site(s):	As above – all as crow flies		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIAR?	Yes: ☐	No: ☒	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Mongan Bog SAC- Features of interest include: - Active raised bogs [7110] - Degraded raised bogs still capable of natural regeneration [7120] - Depressions on peat substrates of the Rhynchosporion [7150] Ferbane Bog SAC – Features of interest include: - Active raised bogs [7110] - Degraded raised bogs still capable of natural regeneration [7120] - Depressions on peat substrates of the Rhynchosporion [7150] Moyclare Bog – Features of interest include: - Active raised bogs [7110] - Degraded raised bogs still capable of natural regeneration [7120] - Depressions on peat substrates of the Rhynchosporion [7150] Pilgrim's Road Esker SAC – Features of interest include: - Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] Mongan Bog SPA – Features of interest include:			

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

Middle Shannon Callows SPA - Features of interest include:

- Whooper Swan (*Cygnus cygnus*) [A038]
- Wigeon (*Anas penelope*) [A050]
- Corncrake (*Crex crex*) [A122]
- Golden Plover (*Pluvialis apricaria*) [A140]
- Lapwing (*Vanellus vanellus*) [A142]
- Black-tailed Godwit (*Limosa limosa*) [A156]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Wetland and Waterbirds [A999]

River Shannon Callows SAC – Features of interest include:

- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinia caerulea*) [6410]
- Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) [6510]
- Limestone pavements [8240]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
- Lutra lutra (Otter) [1355]

The conservation objectives / qualifying interests of the site and the factors that contribute to the conservation value of the site: (which are taken from the European site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)

Site Name: Ferbane Bog SAC, Site Code: 000575

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000575.pdf>

Site Name: Mongan Bog SAC, Site Code: 000580

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000580.pdf>

Site Name: Moyclare Bog SAC, Site Code: 000581

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000581.pdf>

Site Name: Pilgrim's Road Esker SAC, Site Code: 001776

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY001776.pdf>

Site Name: Fin Lough (Offaly) SAC, Site Code: 000576

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000576.pdf>

Site Name: Moyclare Bog SAC, Site Code: 000581

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000581.pdf>

Site Name: Clara Bog SAC, Site Code: 000572

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000572.pdf>

SITE NAME: MIDDLE SHANNON CALLOWS SPA, SITE CODE: 004096

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004096.pdf>

Site Name: River Shannon Callows SAC, Site Code: 000216

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000216.pdf>

(C) NPWS ADVICE:

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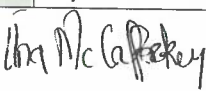
Summary of advice received from NPWS in written form (ATTACH SAME):	None Received
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(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

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

If the answer is 'yes' to any of the questions below, then the effect is significant. (Please justify your answer. 'Yes' / 'No' alone is insufficient)

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 European site?	There will be no reduction in the habitat area. The site is sufficient distance from the European site.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction)	Not likely due to the location and type of development The site is sufficient distance from the European site.

in the European site?			
... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?		Not likely due to the location and type of development The site is sufficient distance from the European site.	
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?		None likely due to the location and type of development The site is sufficient distance from the European site	
Would the project interfere with mitigation measures put in place for other plans / projects. [Look at <i>in-combination effects</i> with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.		No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.	
(E) SCREENING CONCLUSION:			
Screening can result in:			
1.	AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.		
2.	No potential for significant effects / AA is not required.		
3.	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.		
Therefore, does the project fall into category 1, 2 or 3 above?		Category 2	
Justify why it falls into relevant category above:		There would be no likely significant impact on the European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Site	
Name:		Úna McCafferkey 	
Position:		Executive Planner	Date: 14 th December 2023

