

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 23/63

NAME OF APPLICANT:

Carol-Ann Doheny.

ADDRESS:

ADDRESS FOR CORRESPONDENCE:

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the proposed restoration of existing dwelling which comprises of replacement of existing windows and external doors including, replacing garage door to glazed unit, removal of 2 chimneys, internal alternations, upgrading insulation, upgrading of heating system including rewiring and plumbing, removal of front porch, roof repair, is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Lakevale, Barony Way, Tullamore, Co. Offaly

WHEREAS a question has arisen as to whether the proposed restoration of existing dwelling which comprises of Replacement of existing windows and external doors including, replacing garage door to glazed unit, removal of 2 chimneys, internal alternations, upgrading insulation, upgrading of heating system including rewiring and plumbing, removal of front porch, roof repair, is or is not development and is or is not exempted development at at Lakevale, Barony Way, Tullamore, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 4th December 2023, is development and is or is exempted development,

AND WHEREAS Sandra Dunne 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 1 of the Planning and Development Regulations 2001, as amended.
- (d) 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 restoration of existing dwelling which comprises of Replacement of existing windows and external doors including, replacing garage door to glazed unit, removal of 2 chimneys, internal alternations, upgrading insulation, upgrading of heating system including rewiring and plumbing, removal of front porch, roof repair, is or is not development and is or is not exempted development.

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

The proposed restoration of existing dwelling which Replacement of existing windows and external doors including, replacing garage door to glazed unit, removal of 2 chimneys, internal alternations, upgrading insulation, upgrading of heating system including rewiring and plumbing, removal of front porch, roof repair,

is development and is exempted development at development at Lakevale, Barony Way, Tullamore, Co. Offaly

MATTERS CONSIDERED In making its decision, the Planning Authority had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.


Administrative Officer

Date

21/12/23

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. 23/63
Question:	Whether the proposed restoration of existing dwelling which comprises of: • Replacement of existing windows and external doors including replacing garage door to glazed unit • Removal of 2 chimneys • Internal alternations • Upgrading insulation • Upgrading of heating system including rewiring and plumbing • Removal of front porch • Roof repair is or is not development and is or is not exempted development?
Applicant:	Carol-Ann Doheny
Correspondence Address:	
Location:	Lakevale, Barony Way, Tullamore, Co. Offaly

1. Introduction

The question has arisen as to whether the restoration of existing dwelling is or is not development and is or is not exempted development.

2. Background

The existing dwelling is located on 'Existing Residential' zoned land within the boundary of Tullamore Town.



3. Site History

- 88/125: Martin Manley was **Granted** retention permission for an extension subject to 1 condition.
- P2403: File missing from microfilming

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 1 specifies:

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.

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 indicated that the following works will be carried out:

- Replacement of existing windows and external doors including replacing garage door to glazed unit
- Removal of 2 chimneys
- Internal alternations
- Upgrading insulation
- Upgrading of heating system including rewiring and plumbing
- Removal of front porch

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, 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 restoration of existing dwelling which comprises of:

- Replacement of existing windows and external doors including replacing garage door to glazed unit
- Removal of 2 chimneys
- Internal alternations
- Upgrading insulation
- Upgrading of heating system including rewiring and plumbing
- Removal of front porch
- Roof repair

is or is not development and is or is not exempted development at Lakevale, Barony Way, Tullamore, Co. Offaly

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- Removal of front porch
- Roof repair

is development and is exempted development at development at Lakevale, Barony Way, Tullamore, Co. Offaly

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.

Michael Duffy

Michael Duffy

Executive Planner

19th December 2023

Ed Kelly

Ed Kelly

Acting Senior Executive Planner

20/12/2023

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



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

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

Planning Application Ref. No.:

DEC/23/63

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:

Proposed development:	Restoration of existing dwelling		
Site location:	Lakevale, Barony Way, Tullamore, Co. Offaly		
	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC		
Distance to European Site(s):	2.74km		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIAR?		No: ✓	

(B) IDENTIFICATION OF THE RELEVANT European SITE(S):

The reasons for the designation of the European site:	
The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes): [91E0] Alluvial Forests* [1016] Desmoulin's Whorl Snail (Vertigo moulinsiana)	
The conservation objectives / qualifying interests of the site and the factors that	

contributes to the conservation value of the site: (which are taken from the Natura 2000 site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)

Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Code Description 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae)* * denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail *Vertigo moulinsiana*

(C) NPWS ADVICE:

Advice received from NPWS over phone:	None received

(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:

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

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

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) in the European site?

Not likely due to the location and type of development

The site is sufficient distance from the European site.

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		
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.	The site is sufficient distance from the European site		
	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</i> because the project is directly connected with / necessary to the nature conservation management of the site.		
2.	<i>No potential for significant effects / AA is not required.</i>		
3.	<i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a NIS 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 European sites from the proposed development.	
Name:	Michael Duffy		
Position:	Exec. Planner	Date:	19th December 2023