

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/27

NAME OF APPLICANT: Damien Phelan

ADDRESS FOR CORRESPONDENCE:

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

LOCATION OF DEVELOPMENT: Fortal, Birr, Co. Offaly. R42 YW10

WHEREAS a question has arisen as to whether the refurbishment of an existing dwelling is or is not development and is or is not exempted development at Fortal, Birr, Co. Offaly, R42 YW10.

AS INDICATED on the particulars received by the Planning Authority on the 20th March 2024.

AND WHEREAS Damien Phelan has requested a declaration on the said question from Offaly County Council.

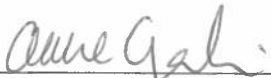
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to –

(a) Sections 2(1), 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the proposed refurbishment of an existing dwelling is **development** and is **exempted development** at Fortal, Birr, Co. Offaly, R42 YW10.

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

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:	<i>Dec. 24/27</i>
Question:	<i>Whether the refurbishment of an existing dwelling is or is or is not development and if so, are they exempted development?</i>
Applicant:	<i>Damien Phelan</i>
Correspondence Address:	
Location:	<i>Fortal, Birr, Co. Offaly. R42 YW10</i>

1. Introduction

The question has arisen as to whether the proposed refurbishment of an existing dwelling is or is or is not development and if so, are they exempted development.

2. Background

The existing property is single storey dwelling which is located within the open countryside. The Planner has visited the property.



Photo 1: Subject Site.

3. Site History

No relevant planning or enforcement history.

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.

5. Proposal by Applicant

The Applicant has advised proposed works of renovating an existing dwelling house. The application is in relation to the vacant property refurbishment grant. Details of the proposed works have been submitted as part of the application.

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 refurbishments 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 appearance of the dwelling and would not be inconsistent with the character of area.

The refurbishments proposed by the applicant are harmonious with Section 4 (1) (h) of the Planning and Development Act 2000 (as amended). It is the opinion of the Planning Authority that these works meet the criteria of exempt development under statutory provisions.

An appropriate assessment screening has been carried out see attached.

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 refurbishment of an existing dwelling is or is or is not development and if so, are they exempted development at Fortal, Birr, Co. Offaly, R42 YW10.

AS INDICATED on the particulars received by the Planning Authority on the 20th March 2024.

AND WHEREAS Damien Phelan has 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) Sections 2(1), 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

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

- The proposed refurbishment of an existing dwelling is **development** and is exempted development at Fortal, Birr, Co. Offaly, R42 YW10.

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 Pleanala within 4 weeks of the issuing of the decision.



Úna McCafferkey

Executive Planner

12th April 2024

Date



Ed Kelly

(A/Senior Executive Planner)

16th April 2024

Date

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



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

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

Planning Authority: OCC

Planning Application Ref. No: DEC 24/27

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the refurbishment of an existing dwelling is or is not development and if so, are they exempted development?		
Site location:	Fortal, Birr, Co. Offaly. R42 YW10		
Site size:	0.01 hectares	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Island Fen SAC – 2.82km Lisduff Fen SAC – 5.62km Slieve Bloom Mountains SPA – 5.76km Dovegrove Callows SPA – 7.96km		
Distance to European Site(s):	As above – all as crow flies		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIAR?			No: X
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Island Fen SAC – Features of Interest: <ul style="list-style-type: none"> Juniperus communis formations on heaths or calcareous grasslands [5130] Alkaline fens [7230] Lisduff Fen SAC – Features of Interest: <ul style="list-style-type: none"> Petrifying springs with tufa formation (Cratoneurion) [7220] Alkaline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013] Slieve Bloom Mountains SPA - Features of Interest: <ul style="list-style-type: none"> Hen Harrier (Circus cyaneus) [A082] Dovegrove Callows SPA– Features of Interest: <ul style="list-style-type: none"> Greenland White-fronted Goose (Anser albifrons flavirostris) [A395] 			
The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the European site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)			
Site Name: Island Fen SAC, Site Code: 002236 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002236.pdf			

Site Name: Lisduff Fen SAC, Site Code: 002147

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

SITE NAME: SLIEVE BLOOM MOUNTAINS SPA, SITE CODE: 004160

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.pdf>

SITE NAME: DOVEGROVE CALLOWS SPA, SITE CODE: 004137

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004137.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) in the European site?	Not likely due to the location and type of development The site is sufficient distance from the European site.
... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?	Not likely due to the location and type of development The site is sufficient distance from the European site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?	None likely due to the location and type of development. The site is sufficient distance from the European site.
Would the project interfere with mitigation measures put in place for other plans / projects. [Look at <i>in-combination effects</i> with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.

(E) SCREENING CONCLUSION:

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
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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:	12 th April 2024