

**OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED**

REFERENCE: DEC 24/28

NAME OF APPLICANT: Mary and Matthew Lamey

ADDRESS FOR CORRESPONDENCE: Ballinamere, Tullamore, Co. Offaly, R35 N2R3

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the replacement of windows and external doors; replacement of internal doors and skirting and the refurbishment of kitchen and bathroom in an existing dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ballinamere, Tullamore, Co. Offaly, R35 N2R3

WHEREAS a question has arisen as to whether the replacement of windows and external doors; replacement of internal doors and skirting & refurbishment of kitchen and bathroom in an existing dwelling is or is not development and if so is or is not exempted development at Ballinamere, Tullamore, Co. Offaly. R35 N2R3

AS INDICATED on the particulars received by the Planning Authority on the 13th March 2024.

AND WHEREAS Mary & Matthew Lamey 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.

AND WHEREAS Offaly County Council has concluded that the replacement of windows and external doors, replacement of internal doors and skirting & refurbishment of kitchen and bathroom in an existing dwelling 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 replacement of windows and external doors; replacement of internal doors and skirting & refurbishment of kitchen and bathroom in an existing dwelling **is development and is exempted development** at Ballinamere, Tullamore, Co. Offaly. R35 N2R3

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

9th April 2024

Date

Note: 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.

Planning Report

Section 5 Declaration

| | |
|--------------------------------|---|
| File Reference: | Dec. 24/28 |
| Question: | Whether the: <ul style="list-style-type: none">• Replacement of windows and external doors• Replacement of internal doors and skirting &• Refurbishment of kitchen and bathroom in an existing dwelling is or is not development and is or is not exempted development. |
| Applicant: | Mary & Matthew Lamey |
| Correspondence Address: | Ballinamere, Tullamore, Co. Offaly. R35 N2R3 |
| Location: | Ballinamere, Tullamore, Co. Offaly. R35 N2R3 |

1. Introduction

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

2. Background

The existing dwelling is located within the Sraid Boundary of Ballinamere with direct access onto the L-2013-2 Local Primary Road.



3. Site History

99/11: Brian Kelly was **Granted** permission for an Dwellinghouse, Garage & Septic Tank subject to 16 conditions

01/1131: Brian & Aine Kelly was **Granted** retention permission for completion of attic conversion subject to 3 conditions.

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.

5. Proposal by Applicants

The Applicants have indicated that the following works will be carried out within an existing dwelling:

- Replacement of windows and external doors
- Replacement of internal doors and skirting &
- Refurbishment of kitchen and bathroom.

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 Applicants 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:

- Replacement of windows and external doors
- Replacement of internal doors and skirting &
- Refurbishment of kitchen and bathroom

in an existing dwelling is or is not development and if so is or is not exempted development at Ballinamere, Tullamore, Co. Offaly. R35 N2R3

AS INDICATED on the particulars received by the Planning Authority on the 13th March 2024.

AND WHEREAS Mary & Matthew Lamey 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.

AND WHEREAS Offaly County Council has concluded that the

- Replacement of windows and external doors
- Replacement of internal doors and skirting &
- Refurbishment of kitchen and bathroom

in an existing dwelling 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:

- Replacement of windows and external doors
- Replacement of internal doors and skirting &
- Refurbishment of kitchen and bathroom

in an existing dwelling **is development and is exempted development** at development at Ballinamere, Tullamore, Co. Offaly. R35 N2R3

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

Ed Kelly

Michael Duffy

Ed Kelly

Executive Planner

Acting Senior Executive Planner

8th April 2024

9th April 2024

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. DEC24/28

| (A) DESCRIPTION OF PROJECT AND LOCAL SITE: | | | |
|--|--|---|-----|
| Proposed development: | PROPOSED RENOVATION OF EXISTING DWELLING | | |
| Site location: | Ballinamere, Tullamore, Co. Offaly. R35 N2R3 | | |
| Site size: | N/A | Floor Area of Proposed Development: | N/A |
| Identification of nearby European Site(s): | Charleville Wood SAC – 2.01km Clara Bog SAC – 3.9km | | |
| 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: <input type="checkbox"/> | No: <input checked="" type="checkbox"/> | |
| (B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S): | | | |
| The reasons for the designation of the European site(s): | | | |
| Charleville Wood SAC – Features of Interest: | | | |
| <ul style="list-style-type: none"> • Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] • <i>Vertigo moulinsiana</i> (<i>Desmoulin's Whorl Snail</i>) [1016] | | | |
| Clara Bog SAC – Features of Interest: | | | |
| <ul style="list-style-type: none"> • Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (* important orchid sites) [6210] • Active raised bogs [7110] • Degraded raised bogs still capable of natural regeneration [7120] • Depressions on peat substrates of the <i>Rhynchosporion</i> [7150] • Bog woodland [91D0] | | | |
| 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: Charleville Wood SAC, Site Code: 000571 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000571.pdf | | | |
| Site Name: Clara Bog SAC, Site Code: 000572 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000572.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: | |
| <i>(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).</i> | |
| If the answer is 'yes' to any of the questions below, then the effect is significant. <i>(Please justify your answer. 'Yes' / 'No' alone is insufficient)</i> | |
| 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. | <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.</i> (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: | Michael Duffy |
| Position: | Executive Planner |
| Date: | 8 th April 2024 |

