

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/37

NAME OF APPLICANT: Sinead Spain and Joseph Leonard

ADDRESS FOR CORRESPONDENCE:



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

LOCATION OF DEVELOPMENT: Lowertown More, Blueball, Co. Offaly, R35 TN30.

WHEREAS a question has arisen as to whether the renovation of an existing dwelling and replacing an existing garage door with a window is or is not development and is or is not exempted development at Lowertown More, Blueball, Co. Offaly R35 TN30

AS INDICATED on the particulars received by the Planning Authority on the 9th April 2024.

AND WHEREAS Sinead Spain & Joseph Leonard 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:

- Section 2 & 3 of the Planning & Development Act 2000, as amended.
- Article 6(1) of the Planning and Development Regulations 2001 (as amended),
- Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended)

AND WHEREAS Offaly County Council has concluded that the proposed development is development and 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 renovation of an existing dwelling and replacing an existing garage door with a window, **is development** and **is not exempted development** at Lowertown More, Blueball, Co. Offaly R35 TN30

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. L. O'Connell

Administrative Officer

3rd May 2024
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:	Dec. 24/37
Question:	<i>Whether the renovation of an existing dwelling and replacing an existing garage door with a window is or is not development and if so, is it exempted development?</i>
Applicant:	Sinead Spain & Joseph Leonard
Correspondence Address:	[REDACTED]
Location:	Lowertown More, Blueball, Co. Offaly R35 TN30

1. Introduction

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

2. Background

The site in question is located in the townland of Lowertown More, Blueball, Co. Offaly with direct access onto the L-6019-1 Local Secondary Road



Fig 1: Existing Dwelling

3. Site History

23/60090: Catherine Bracken applied for retention permission for the construction of a single storey dwelling house with an entrance onto the public road, an agricultural shed, and an effluent wastewater treatment system with percolation area. On the 25th October 2023 the Planning Authority requested further information. As the applicant did not respond to the further information request, the application was subsequently deemed **Withdrawn**.

23/60069: Catherine Bracken applied for retention permission for the construction of a single storey dwelling house with an entrance onto the public road, an

agricultural shed, and an effluent wastewater treatment system with percolation area. The application was deemed Invalid.

78/685: Mrs Ann Deevy was Granted permission for extension of dwelling house subject to 5 condition.

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.

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

Section 4 - Exempted Development

Section 4) sets out what is exempted development for the purposes of this Act including:

(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,

Planning & Development Regulations 2001 (as amended)

Article 6(1) of the Planning and Development Regulations 2001, as amended:

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.

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 conservatory) to the rear of the house or by 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.

Article 9 Restrictions on exemption.

Article 9 (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

9(1)(a)(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act

5. Proposal by Applicants

The Applicants have advised they are proposing to renovate an existing dwelling stated as “conversion of garage attached to house to residential dwelling” in a cover letter submitted with the application and replace an existing garage door with a window.

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 comprises of renovations to existing dwelling which includes replacing an existing garage door with a window.

Question: Is this proposal considered as Exempted Development?

It is noted under planning reference 78/685 permission was granted for extension of a dwelling house. The extensions built to the sides of the subject dwelling were not built according to the granted planning permission 78/685 (see Fig 2 & 3 below).



Fig 2: Extension granted under 78/685



Fig 3: Existing Dwelling

It is considered the existing extensions were not built in accordance with condition 1 of planning permission 78/685, therefore according to Article 9(1)(a)(i) of the Planning & Development Regulations 2001 (as amended) the proposed renovation of an existing dwelling and replacing an existing garage door with a window is not exempted development.

7. Appropriate Assessment and EIA screening

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. The proposed development is not a class of development requiring EIA.

8. Conclusion

It is recommended that the Applicants be advised that the proposed development is development and is not 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 renovation of an existing dwelling and replacing an existing garage door with a window is or is not development and if so, is it exempted development at Lowertown More, Blueball, Co. Offaly R35 TN30

AS INDICATED on the particulars received by the Planning Authority on the 9th April 2024.

AND WHEREAS Sinead Spain & Joseph Leonard 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) Article 6(1) of the Planning and Development Regulations 2001 (as amended),
- (c) Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended)

AND WHEREAS Offaly County Council has concluded that the proposed development is development and 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 renovation of an existing dwelling and replacing an existing garage door with a window, is **development and is not exempted development** at Lowertown More, Blueball, Co. Offaly R35 TN30

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
29th April 2024

Ed Kelly

Ed Kelly
Acting Senior Executive Planner
29th 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. Dec/24/37

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Renovation of an existing dwelling and replacing an existing garage door with a window		
Site location:	Lowerton More, Blueball, Tullamore, Co. Offaly. R35 TN30		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Clonaslee Eskers and Derry Bog SAC – 4.84km Slieve Bloom Mountains SPA – 7.27km		
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):			
Slieve Bloom Mountains SPA – Features of interest include: <ul style="list-style-type: none"> Hen Harrier (<i>Circus cyaneus</i>) [A082] Clonaslee Eskers and Derry Bog SAC – Features of interest include: <ul style="list-style-type: none"> Alkaline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013] 			
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: Clonaslee Eskers and Derry Bog SAC, Site Code: 000859 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000859.pdf Site Name: Slieve Bloom Mountains SPA, Site Code: 004160 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.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).

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

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 Ouffy

Position:

Executive Planner

Date:

29th April 2024

