

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/40

NAME OF APPLICANT: Kara McGowan

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 extension to the rear of the existing dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 2 Pearse Park, Tullamore, Co. Offaly, R35 YP66.

WHEREAS a question has arisen as to whether the proposed extension to the rear of the existing dwelling is or is not development and if so, are they exempted development at 2 Pearse Park Tullamore, Co. Offaly R35 YP66.

AS INDICATED on the particulars received by the Planning Authority on the 19th April 2024.

AND WHEREAS Kara McGowan has requested a declaration on the said question from Offaly County Council.

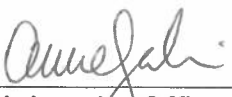
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to -

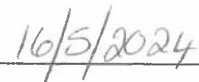
- Section 2(1), 3(1) and 4(2)(a) of Planning and Development Act 2000 (as amended).
- Article 6 of the Planning and Development Regulations 2001 (as amended).
- Class 1 of Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed extension to the rear of the existing dwelling 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 proposed extension to the rear of the existing dwelling is **development** and is **not exempted development** at 2 Pearse Park Tullamore, Co. Offaly R35 YP66

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

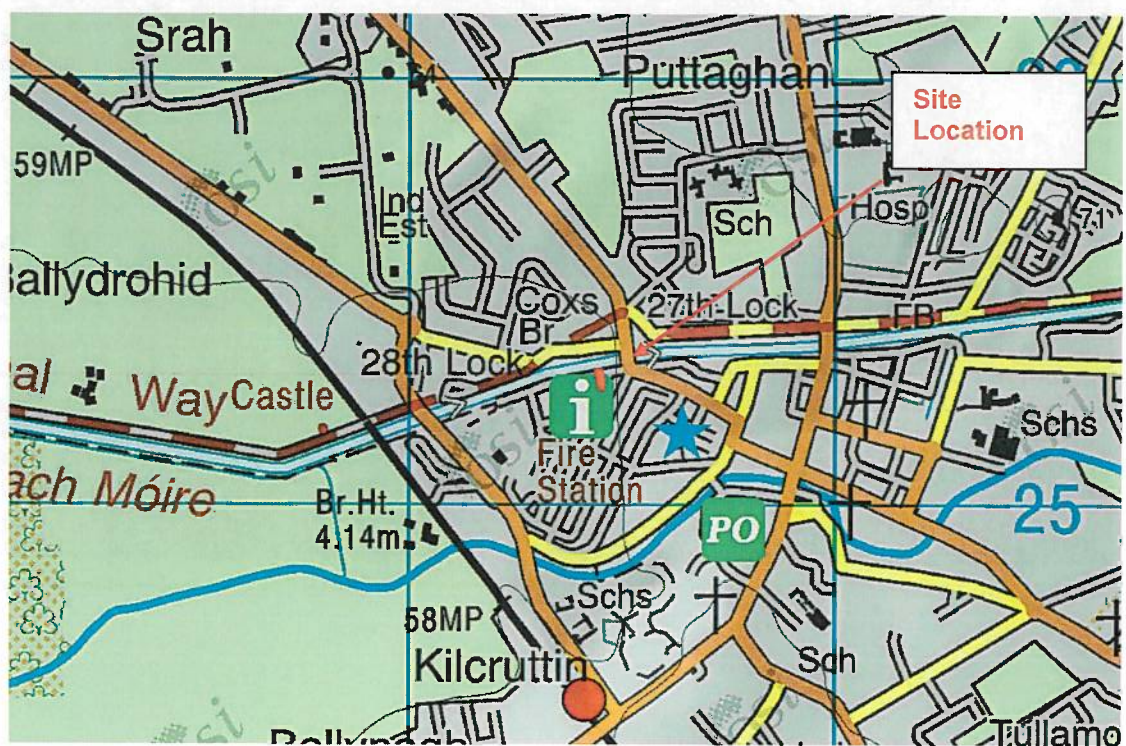
Section 5 Declaration

File Reference:	Dec. 24/40
Question:	WHETHER OR NOT THE PROPOSED EXTENSION TO THE REAR OF EXISTING DWELLING IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT
Applicant:	KARA MCGOWAN
Correspondence Address:	
Location:	2 PEARSE PARK TULLAMORE CO. OFFALY R35 YP66

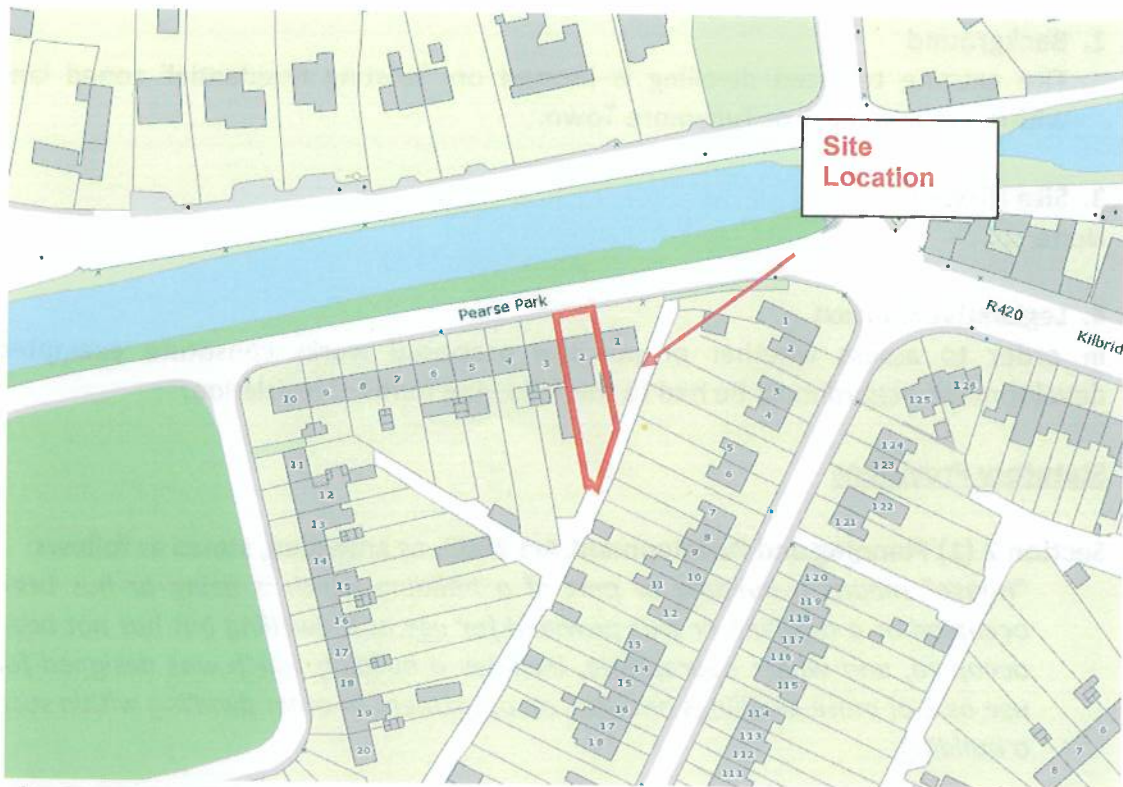




Fig 1: Photograph showing the rear of the dwelling which indicates an existing extension.



Figs 2: Site Location (Discovery Series)



Figs 3: Site Location



Figs 4: Aerial image of location of site

1. Introduction

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

2. Background

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

3. Site History

None

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 (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.*

5 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”.

Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 specifies:

Development within the curtilage of a house

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.

There are a number of conditions and limitations attached to Class 1, which are listed below

1.

- (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.
- (b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.
- (c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

2.

- (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.
- (b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.
- (c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4.

(a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6.

(a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

6 Proposal by Applicants

The Applicant has indicated that an 35m² single storey extension will be constructed to the rear of the dwelling.

7. 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 a rear residential extension.

Question: Is this proposal considered as Exempted Development?

With regard to the proposed works which are described in the submitted documents, the Planning Authority note that the applicant has submitted a full set of drawings (3 number elevations and a floor plan) indicating the proposed residential extension.

Following a site inspection, it is noted that a substantial extension already exists to the rear of the existing dwelling, the area of the existing extension has not been provided.

The eastern elevation of the proposed extension contains a ground floor window which is 0.879m from the boundary it faces (see Fig. 5 & 6 below). It is therefore considered that given the window proposed on the eastern elevation of the development is less than 1m from the boundary it faces, it is considered the proposed works are not exempted development based on limitations set out in 6(a), Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

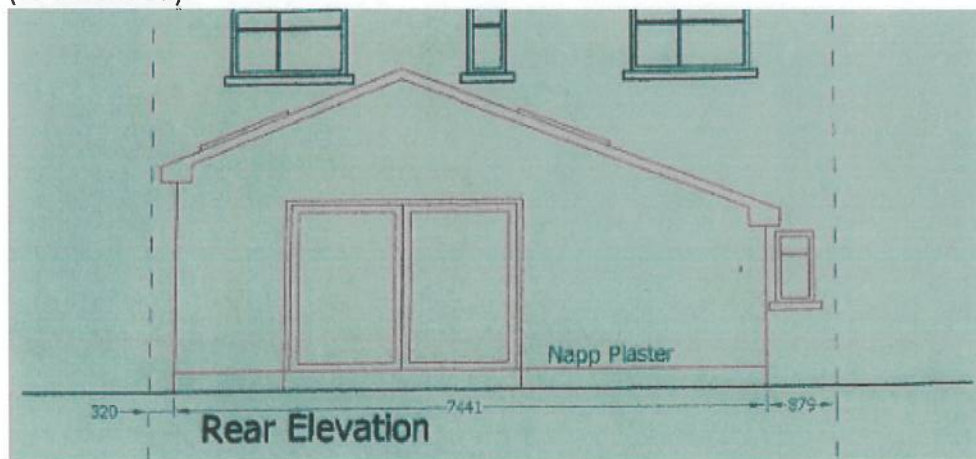


Fig. 5: Rear elevation indicating the proposed extension is 0.879m from the boundary it faces.

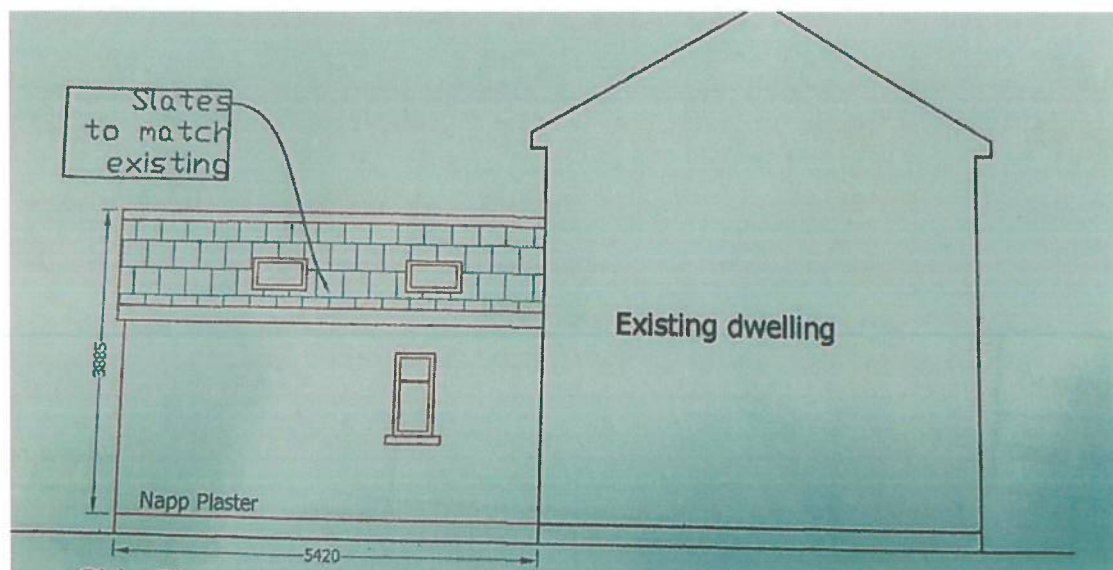


Fig. 6: Eastern elevation of subject extension which indicates a proposed window.

Conclusion

It is recommended that the Applicant be advised that the proposed works is **development and is not exempted development.**

Declaration on Development and Exempted Development

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

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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 Pleanala within 4 weeks of the issuing of the decision.

Michael Duffy

Michael Duffy

Executive Planner

13th May 2024

Ed Kelly

Ed Kelly

Acting Senior Executive Planner

15th May 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. DEC24/40

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	EXTENSION TO THE REAR OF EXISTING DWELLING		
Site location:	2 PEARSE PARK, TULLAMORE, CO. OFFALY R35 YP66		
Site size:	N/A	Floor Area of Proposed Development:	35m ²
Identification of nearby European Site(s):	Charleville Wood SAC – 1.06km Clara Bog SAC – 7.56km		
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):			
Charleville Wood SAC – Features of Interest: • Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0] • <i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016] Clara Bog SAC – Features of Interest: • Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] • Active raised bogs [7110] • Degraded raised bogs still capable of natural regeneration [7120] • Depressions on peat substrates of the Rhynchosporion [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. (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 Duffy
Position:	Executive Planner
Date:	13 th May 2024

