

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/46

NAME OF APPLICANT: Jim and Catherine Hamilton

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 internal renovations to an existing dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Clover Cottage, Geashill, Co. Offaly, R35 FF99.

WHEREAS a question has arisen as to whether the proposed works of internal renovations to an existing dwelling is or is not development and is or is not exempted development at Clover Cottage, Geashill, Co. Offaly, R35 FF99.

AS INDICATED on the particulars received by the Planning Authority on the 1st May 2024.

AND WHEREAS Jim and Catherine Hamilton requested a declaration on the said question from Offaly County Council.

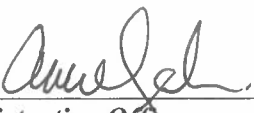
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- Section 2(1), 3(1) and 4(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 works of internal renovations to an existing dwelling **is development and is exempted development** at Clover Cottage, Geashill, R35 FF99.

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. 24/46
Question:	<i>Whether the proposed internal renovations to an existing dwelling is or is not development and is or is not exempted development.</i>
Applicant:	<i>Jim and Catherine Hamilton</i>
Correspondence Address:	
Location:	<i>Clover Cottage, Geashill, R35 FF99</i>

1. Introduction

The question has arisen as to whether the proposed internal renovations to an existing dwelling is or is not development and is or is not exempted development.

2. Background

The existing dwelling on site is a one storey house, located within the Geashill Architectural Conservation Area. The site is zoned under Village Centre/Mixed Use within the Offaly County Development Plan 2021-2027. The site is located off the regional road R-420-5, a key scenic route (R420 Tullamore to Portarlinton).





Images 1 and 2: Site location (red line boundary).

3. Site History

Adjoining sites:

Ref 981042: Thomas Foy was granted retention permission conditionally for a toilet extension & lounges.

Ref 98481: Gerry and Ann Briscoe were granted permission conditionally for renovations to existing cottage incorporating dormer development to attic & dormer extension to rear of cottage.

Ref 00144: Dympha Carruthers was granted retention permission conditionally for extension to licensed premises.

Ref 08144: Fergus Byrne was granted permission conditionally for the demolition of existing shop/filling-station and forecourt canopy, construction of a new two-storey building containing a shop/supermarket, off-licence and delicatessen/cafe at ground floor level and 4 no. two-bedroom apartments at first floor level, provision of new petrol pumps, forecourt canopy, free-standing external sign an additional car-parking, relocation of existing car-wash facility and carrying out external works associated with the above.

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 82- Development in architectural conservation areas.

(1) [Notwithstanding paragraph (a), (h), (i), (ia), (j), (k) or (l) of section 4(1), or any regulations made under section 4(2),] the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area.

(2) In considering an application for permission for development in relation to land situated in an architectural conservation area, a planning authority, or the Board on appeal, shall take into account the material effect (if any) that the proposed development would be likely to have on the character of the architectural conservation area.

5. Proposal by Applicants

The Applicant has advised of proposed renovation works to an existing dwelling to bring it up to a liveable standard. The applicant has stated the proposed renovations are internal and no external works are to be carried out. The proposed works will not have a material effect on the special character of the ACA.

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 renovations to the existing dwelling.

7.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 detrimental to the character of the site or architectural conservation area. It is the opinion of the planning authority that these works meet the criteria of exempt development under section 4(1)(h) of the act.

An appropriate assessment screening has been carried out see attached.

8.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 works of internal renovations to an existing dwelling is or is not development and is or is not exempted development at Clover Cottage, Geashill, R35 FF99.

AS INDICATED on the particulars received by the Planning Authority on the 1st May 2024.

AND WHEREAS Jim and Catherine Hamilton 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(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 works of internal renovations to an existing dwelling is **development** and is **exempted development** at Clover Cottage, Geashill, R35 FF99.

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.



Enda Dolan
Assistant Planner

15th May 2024



Ed Kelly A/Senior Executive Planner

23/5/2024.

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. No: DEC 24/46

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed internal renovations to an existing dwelling is or is not development and is or is not exempted development.		
Site location:	Clover Cottage, Geashill, R35 FF99		
Site size:	0.15 hectares	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	River Barrow And River Nore SAC – 8.5km		
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):			
River Barrow And River Nore SAC – Features of interest include: [1130] Estuaries [1140] Tidal Mudflats and Sandflats [1170] Reefs [1310] Salicornia Mud [1330] Atlantic Salt Meadows [1410] Mediterranean Salt Meadows [3260] Floating River Vegetation [4030] Dry Heath			

- [6430] Hydrophilous Tall Herb Communities
- [7220] Petrifying Springs*
- [91A0] Old Oak Woodlands
- Version date: 9.2.2016 2 of 7 002162_Rev16.Docx
- [91E0] Alluvial Forests*
- [1016] Desmoulin's Whorl Snail (*Vertigo moulinsiana*)
- [1029] Freshwater Pearl Mussel (*Margaritifera margaritifera*)
- [1092] White-clawed Crayfish (*Austropotamobius pallipes*)
- [1095] Sea Lamprey (*Petromyzon marinus*)
- [1096] Brook Lamprey (*Lampetra planeri*)
- [1099] River Lamprey (*Lampetra fluviatilis*)
- [1103] Twaite Shad (*Alosa fallax*)
- [1106] Atlantic Salmon (*Salmo salar*)
- [1355] Otter (*Lutra lutra*)
- [1421] Killarney Fern (*Trichomanes speciosum*)
- [1990] Nore Freshwater Pearl Mussel (*Margaritifera durrovensis*)

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: River Barrow And River Nore SAC Site Code: 002162
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002162.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:		Enda Dolan 	
Position:		Assistant Planner	Date: 15 th May 2024