

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

REFERENCE: DEC 24/69

NAME OF APPLICANT: Eoin Barrett and Martina Lynch

ADDRESS FOR CORRESPONDENCE: [REDACTED]

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the removal of chimney from kitchen and removal of previous flat roof and replace with pitched roof and internal renovations is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 134 Kilbride Street, Tullamore, Co. Offaly, R35 ED88.

WHEREAS a question has arisen as to whether or not the removal of chimney from kitchen and removal of previous flat roof and replace with pitched roof and internal renovations is or is not development and is or is not exempted development at 134 Kilbride Street, Tullamore, Co Offaly R35 ED88.

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

AND WHEREAS Eoin Barrett and Martina Lynch, [REDACTED] requested a declaration on the said question from Offaly County Council;

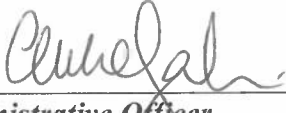
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- Section 2, 3(1) and 4(1)(h) of the Planning and Development Act 2000, as amended.

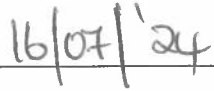
AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

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 the removal of chimney from kitchen and removal of previous flat roof and replace with pitched roof and internal renovations as detailed in the documentation received, **is development and is exempted development** at 134 Kilbride Street, Tullamore, Co Offaly R35 ED88.

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: 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.

Planning Report

Section 5 Declaration

File Reference:	Dec. 24/69
Question:	Whether or not the removal of chimney from kitchen and removal of previous flat roof and replace with pitched roof and internal renovations is or is not development and is or is not exempted development at 134 Kilbride Street, Tullamore, Co Offaly R35 ED88.
Applicant:	Eoin Barrett and Martina Lynch.
Correspondence Address:	
Location:	134 Kilbride Street, Tullamore, Co Offaly R35 ED88.

1. Introduction

The question has arisen as whether or not the removal of chimney from kitchen and removal of previous flat roof and replace with pitched roof and internal renovations is, or is not development and, is or is not, exempted development.

2. Background

The existing dwelling is located in Tullamore Urban District off the Regional Road R-420-12. In the *Offaly County Development Plan 2021-27* the area is zoned as *Existing Residential*.



Figure 1: Site location (red line boundary)



Photo 1: Rear flat-roofed kitchen extension with chimney to be removed



Photo 2: Existing dwelling with flat-roofed extension to the rear



Photo 3: Side view of rear flat-roofed extension

3. Site History

Ref: TU81875 Noel Connor was granted permission conditionally for the erection of a store.

Ref: TU102978 Noel O'Connor was granted permission conditionally for the erection of an extension to a dwellinghouse.

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 Applicant

The Applicant has indicated that the following works will be carried out internally and externally to an extension on an existing dwelling;

- removal of chimney from kitchen from kitchen,
- removal of previous flat roof and replace with pitched roof,
- internal renovations.

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.

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 works proposed by the applicant are congruent with Sections 4(1)(h) of the *Planning and Development Act 2000* (as amended see above). It is the opinion of the Planning Authority that these works meet the criteria of exempt development under these relevant statutory provisions.

An appropriate assessment screening has been carried out see attached. The proposal is not a class of development subject to EIA.

7. Conclusion

It is recommended that the Applicant be advised that the proposed development **is development and is exempted development.**

Development and Exempted Development

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

WHEREAS a question has arisen as to whether or not the removal of chimney from kitchen and removal of previous flat roof and replace with pitched roof and internal renovations is or is not development and is or is not exempted development at 134 Kilbride Street, Tullamore, Co Offaly R35 ED88.

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

AND WHEREAS Eoin Barrett and Martina Lynch, [REDACTED] 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 and 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 the removal of chimney from kitchen and removal of previous flat roof and replace with pitched roof and internal renovations as detailed in the documentation received, **is development** and **is exempted development** at 134 Kilbride Street, Tullamore, Co Offaly R35 ED88.

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 Finlay
Graduate Planner

10th July 2024



Ed Kelly

16th July 2024

(A/Senior Executive Planner)

APPENDIX 1
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: Offaly County Council

Planning Application Ref. No.: DEC24/69

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	whether or not the removal of chimney from kitchen and removal of previous flat roof and replace with pitched roof and internal renovations is or is not development and is or is not exempted development.		
Site location:	at 134 Kilbride Street, Tullamore, Co Offaly R35 ED88.		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Charleville Wood SAC approximately 1.17 km		
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):			
Charleville Wood SCA – Features of interest include: SCA – Features of interest include: 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] Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]			
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 SCA Site Code: 000571			

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000571.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.
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... 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.
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... 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.
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... 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.
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... 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.
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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/projects known of in the vicinity of the site. The site is sufficient distance from the European site.
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(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 impacts on the nearest European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and the European Site.
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Name:



Position:

Graduate Planner

Date:

10 July 2024

Given the location, the nature, and size of the development applied for, and the characteristics of European site in the vicinity, it is considered that 500 metres should be used as a potential zone of impact of the project, in accordance with section (3.2.3) *Natura 2000 Sites* of the *Appropriate Assessment of Plans and Projects in Ireland: guidance for Planning Authorities*. The nearest European site is over 1.17 kilometres from the proposed development, and, due to the development's nature and scale, it is highly unlikely that there will be any significant effects on the nearest European site, either alone, or in combination with other plans and projects.