

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

REFERENCE: DEC 24/7

NAME OF APPLICANT: Declan McAree

ADDRESS:

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 maintenance and upgrade works to the existing dwelling including internal works and external works comprising of removal of existing chimney and replacement of windows and doors, is or is not development and if so, are they exempted development.

**LOCATION OF DEVELOPMENT:** Aughaboy, Ferbane, Co. Offaly.

**WHEREAS** a question has arisen as to whether the proposed maintenance and upgrade works to the existing dwelling including internal works and external works comprising of removal of existing chimney and replacement of windows and doors, is or is not development and if so, are they exempted development at Aughaboy, Ferbane, Co. Offaly.

**AS INDICATED** on the particulars received by the Planning Authority on the 19<sup>th</sup> January 2024.

**AND WHEREAS** Declan McAree 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 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 maintenance and upgrade works to the existing dwelling including internal works and external works comprising of removal of existing chimney and replacement of windows and doors **is development and is exempted development** at Aughaboy, Ferbane, Co. Offaly.

**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* 15/02/24

**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

<b>File Reference:</b>	<i>Dec. 24/7</i>
<b>Question:</b>	<i>Whether the proposed maintenance and upgrade works to the existing dwelling including internal works and external works comprising of removal of existing chimney and replacement of windows and doors, is or is not development and if so, are they exempted development.</i>
<b>Applicant:</b>	<i>Declan McAree</i>
<b>Correspondence Address:</b>	
<b>Location:</b>	<i>Aughaboy, Fermbane, Co. Offaly.</i>

#### 1. Introduction

The question has arisen as whether the proposed refurbishment works to an existing dwelling house is or is not development and if so, are they exempted development.

#### 2. Background

The dwelling is located within an established residential development and is zoned Existing Residential within the Fermbane Town Plan as contained in the Offaly County Development Plan 2021 – 2027. The Area Planner visited the site in February 2024 and is satisfied with the description of the proposed works.

#### 3. Site History

*On Site – 06/1526:* Declan McAree sought outline permission for the demolition of existing uninhabited house and construction of a dwelling house, garage and connection to public sewer – Granted (but not developed).

*Enforcement –* No recent history associated with the subject site.

*Adjoining Lands -* No recent planning history associated with the adjoining lands.



*Photo 1 - Subject Site*



Photo 2 - Subject Site.

#### 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 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.*

### **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".*

### **5. Proposal by Applicants**

The Applicant has advised that the proposed works will include maintenance and upgrade works to the existing dwelling including internal works and external works comprising of removal of existing chimney and replacement of windows and doors.

### **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 refurbishments 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 appearance of the dwelling and would not be inconsistent with the character of area.

The refurbishments proposed by the applicant are harmonious with Section 4 1 (h) of the Planning and Development Act 2000 (as amended). It is the opinion of the Planning Authority that these works meet the criteria of exempt development under statutory provisions.

An appropriate assessment screening has been carried out see attached.

### **7. 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 maintenance and upgrade works to the existing dwelling including internal works and external works comprising of removal of existing chimney and replacement of windows and doors, is or is not development and if so, are they exempted development at Aughaboy, Ferbane, Co. Offaly.

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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 Pleanála within 4 weeks of the issuing of the decision.*



Una McCafferkey

Executive Planner

14<sup>th</sup> February 2024



Ed Kelly

(A/Senior Executive Planner)

15/2/2024

Date

## 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 24/7

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed maintenance and upgrade works to the existing dwelling including internal works and external works comprising of removal of existing chimney and replacement of windows and doors, is or is not development and if so, are they exempted development.		
Site location:	Aughaboy, Ferbane, Co. Offaly.		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Ferbane Bog SAC – 1.13km Moyclare Bog SAC – 4.13km Pilgrim's Road Esker SAC – 9.59km Fin Lough (Offaly) SAC – 9.66km Mongan Bog SPA – 10km Clara Bog SAC – 10.65km River Shannon Callows SAC – 10.67km Middle Shannon Callows SPA – 10.67km		
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):			
<b>Ferbane Bog SAC – Features of interest include:</b> <ul style="list-style-type: none"> <li>Active raised bogs</li> <li>Degraded raised bogs still capable of natural regeneration</li> <li>Depressions on peat substrates of the Rhynchosporion</li> </ul>			
<b>Moyclare Bog – Features of interest include:</b> <ul style="list-style-type: none"> <li>Active raised bogs [7110]</li> <li>Degraded raised bogs still capable of natural regeneration [7120]</li> <li>Depressions on peat substrates of the Rhynchosporion [7150]</li> </ul>			
<b>Pilgrim's Road Esker SAC – Features of interest include:</b> <ul style="list-style-type: none"> <li>Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]</li> </ul>			
<b>Fin Lough (Offaly) SAC – Features of interest include:</b> <ul style="list-style-type: none"> <li>Alkaline fens [7230]</li> <li>Vertigo geyeri (Geyer's Whorl Snail) [1013]</li> </ul>			
<b>Monagan Bog SPA - Features of interest include:</b>			

- Greenland White-fronted Goose (*Anser albifrons flavirostris*)

**Moyclare Bog – Features of interest include:**

- Active raised bogs [7110]
- Degraded raised bogs still capable of natural regeneration [7120]
- Depressions on peat substrates of the Rhynchosporion [7150]

**Clara Bog SAC – Features of interest include:**

- 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]

**Middle Shannon Callows SPA – Features of interest include:**

- Whooper Swan (*Cygnus cygnus*) [A038]
- Wigeon (*Anas penelope*) [A050]
- Corncrake (*Crex crex*) [A122]
- Golden Plover (*Pluvialis apricaria*) [A140]
- Lapwing (*Vanellus vanellus*) [A142]
- Black-tailed Godwit (*Limosa limosa*) [A156]
- Black-headed Gull (*Chroicocephalus ridibundus*) [A179]
- Wetland and Waterbirds [A999]

**River Shannon Callows SAC– Features of interest include:**

- Molinia meadows on calcareous, peaty or clayey-silt-laden soils (*Molinion caeruleae*) [6410]
- Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) [6510]
- Limestone pavements [8240]
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*) [91E0]
- Lutra lutra (Otter) [1355]

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](http://www.npws.ie)) (ATTACH INFO.)

Site Name: Ferbane Bog SAC, Site Code: 000575

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000575.pdf>

Site Name: Moyclare Bog SAC, Site Code: 000581

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000581.pdf>

Site Name: Pilgrim's Road Esker SAC, Site Code: 001776

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY001776.pdf>

Site Name: Fin Lough (Offaly) SAC, Site Code: 000576

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000576.pdf>

SITE NAME: MONGAN BOG SPA, SITE CODE: 004017

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004017.pdf>

Site Name: Moyclare Bog SAC, Site Code: 000581

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000581.pdf>

Site Name: Clara Bog SAC, Site Code: 000572

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000572.pdf>

SITE NAME: MIDDLE SHANNON CALLOWS SPA, SITE CODE: 004096

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004096.pdf>

Site Name: River Shannon Callows SAC, Site Code: 000216

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000216.pdf>

XL error

Subsystem: KERNEL

Error: IllegalOperatorSequence

Operator: 0x1b

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