

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 25/10

NAME OF APPLICANT: Michael Hogan

ADDRESS FOR CORRESPONDENCE:

NATURE OF APPLICATION: request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the renovation of existing vacant dwelling to habitable condition is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Emmel West, Cloughjordan, Roscrea, Co. Tipperary. E53 VE44.

(Note: address as per [www.eircode.ie](http://www.eircode.ie) is Emmel West, Cloughjordan, Co. Offaly. E53 VE44)

WHEREAS a question has arisen as to whether the renovation of existing vacant dwelling to habitable condition is or is not development and is or is not exempted development at Emmel West, Cloughjordan, Roscrea, Co. Tipperary E53 VE44.

AS INDICATED on the particulars received by the Planning Authority on the 23rd January 2025.

AND WHEREAS Michael Hogan of [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 & Development Act 2000, as amended.

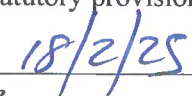
AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

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 renovation (as detailed) of existing vacant dwelling to habitable condition is **development and is exempted development** at Emmel West, Cloughjordan, Roscrea, Co. Tipperary E53 VE44.

(Note: address as per [www.eircode.ie](http://www.eircode.ie) is Emmel West, Cloughjordan, Co. Offaly, E53 VE44)

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 include 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:	<b>Dec. 25/10</b>
Question:	<i>Whether or not renovation of existing vacant dwelling to habitable condition is or is not development and is or is not exempted development at Emmel West, Cloughjordan, Roscrea, Co. Tipperary E53 VE44.</i>
Applicant:	Michael Hogan
Correspondence Address:	[REDACTED]
Location:	Emmel West, Cloughjordan, Roscrea, Co. Tipperary. E53 VE44.  <i>Note: address as per <a href="http://www.eircode.ie">www.eircode.ie</a> is Emmel West, Cloughjordan, Co. Offaly. E53 VE44</i>

### 1. Introduction

The question has arisen whether or not renovation of existing vacant dwelling to habitable condition is or is not development and is or is not exempted development at Emmel West, Cloughjordan, Roscrea, Co. Tipperary E53 VE44.

### 2. Background

The dwelling is located within the open countryside approximately 2.76km <sup>South east</sup> north west of Cloughjordan Town. L.M.

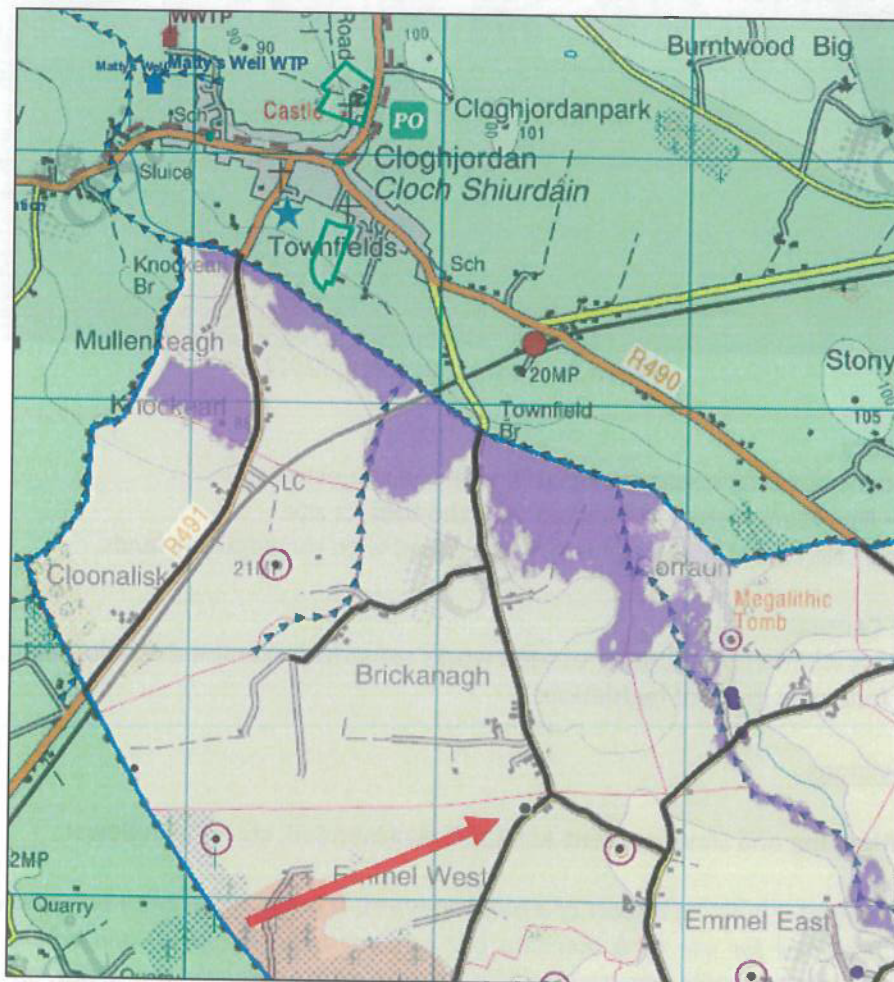


Figure 1 - Subject Site Location (as indicated).





*Photo 1 – Existing Dwelling (2009).*



*Photo 2 – Existing Dwelling (2011).*

### **3. Site History**

*On Site:* No recent planning history associated with the subject site.

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

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

### **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 Applicants**

The Applicant has advised that the proposed works are intended to bring an old house up to living standard. There will be no structural works, and they intend to install a new kitchen, floors/tiles, stove and oil central heating system. They also advise that they intend to paint and decorate the dwelling.

#### **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. external

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 renovation of existing vacant dwelling to habitable condition is or is not development and is or is not exempted development at Emmel West, Cloughjordan, Roscrea, Co. Tipperary E53 VE44.

**AS INDICATED** on the particulars received by the Planning Authority on the 23<sup>rd</sup> January 2024.

**AND WHEREAS** Michael Hogan of [REDACTED] RY27 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 renovation (as detailed) of existing vacant dwelling to habitable condition **is development** and **is exempted development** at Emmel West, Cloughjordan, Roscrea, Co. Tipperary E53 VE44.

**Note:** address as per [www.eircode.ie](http://www.eircode.ie) is Emmel West, Cloughjordan, Co. Offaly, E53 VE44

*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

17<sup>th</sup> February 2024

Date



Ed Kelly

(A/Senior Executive Planner)

18<sup>th</sup> February 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 25/10

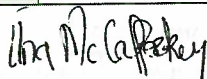
(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not renovation of existing vacant dwelling to habitable condition is or is not development and is or is not exempted development		
Site location:	Emmel West, Cloughjordan, Roscrea, Co. Tipperary. E53 VE44. Note: address as per <a href="http://www.eircode.ie">www.eircode.ie</a> is Emmel West, Cloughjordan, Co. Offaly. E53 VE44		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Schoaboy (Sopwell) Bog SAC – 6.56km		
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?		No: <input checked="" type="checkbox"/> X	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
<b>Schoaboy (Sopwell) Bog SAC - Features of interest include:</b> <ul style="list-style-type: none"> <li>Degraded raised bogs still capable of natural regeneration [7120]</li> </ul>			
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 <a href="http://www.npws.ie">www.npws.ie</a> ) (ATTACH INFO.)			
<b>Site Name: Schoaboy (Sopwell) Bog SAC, Site Code: 002206</b> <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002206.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002206.pdf</a>			
(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 <i>uncertain</i> 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)

<b>Would there be...</b> ... 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:	Úna McCafferkey 
Position:	Executive Planner
Date:	17 <sup>th</sup> February 2024