

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 25/14

NAME OF APPLICANT: Fiona and Joe Breen

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 a rear ground floor extension to dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Green Street, Birr, Co. Offaly, R42 VC56.

WHEREAS a question has arisen as to whether or not a rear ground floor extension to a dwelling is or is not development and is or is not exempted development at Green Street, Birr, Co. Offaly R42 VC56.

AS INDICATED on the particulars received by the Planning Authority on 4th February 2025.

AND WHEREAS Fiona & Joe Breen of the same address 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, 3(1) and 4(1)(h), 4(2)(a)(i) of the Planning & Development Act 2000, as amended.
- Article 6 of the Planning and Development Regulations 2001 (as amended), and
- Article 9 of the Planning and Development Regulations 2001 (as amended)
- Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended),

AND WHEREAS Offaly County Council has concluded that the works are development and are 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 rear ground floor extension to the dwelling (as detailed) **is development and is exempted development** at Green Street, Birr, Co. Offaly R42 VC56.

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:	Dec. 25-14
Question:	Whether or not a rear ground floor extension to dwelling is or is not development and is or is not exempted development at Green Street, Birr, Co. Offaly R42 VC56.
Applicant:	Fiona & Joe Breen
Correspondence Address:	
Location:	As above.

1. Introduction

The question has arisen as whether a rear ground floor extension to dwelling is or is not development and is or is not exempted development at Green Street, Birr, Co. Offaly R42 VC56.

2. Background

The dwelling is located within Birr Town and located on the corner of Green Street (R439) and Cornmarket Street. In accordance with the Birr Local Area Plan 2023 – 2029, the subject site is zoned as Town Centre/Mixed Use.

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.



Figure 1 - Subject Site Location (as indicated).

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”.

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

(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

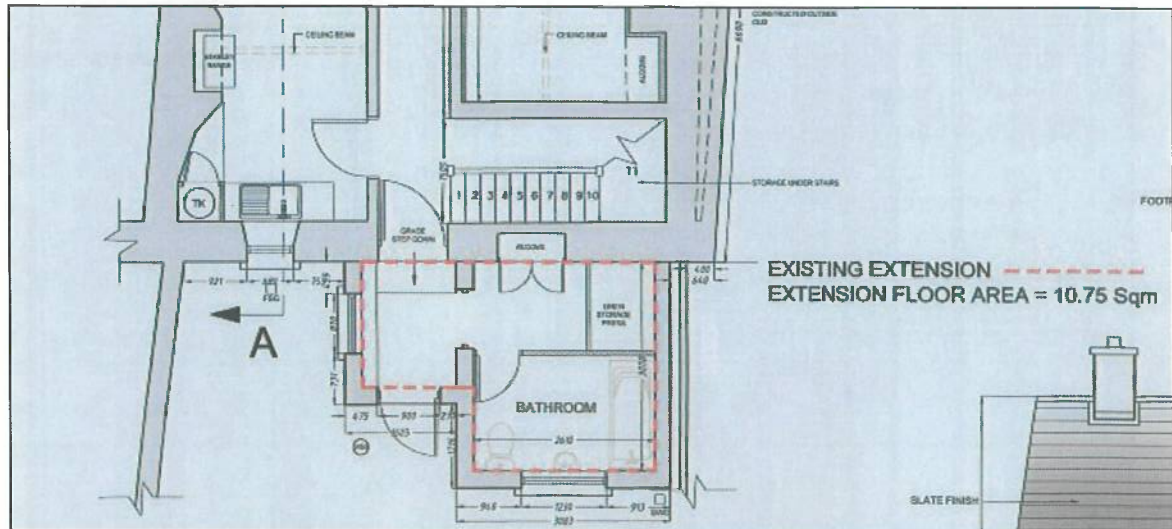


Figure 2: Existing floor plan (as submitted) – note ground floor extension of 10.75m².

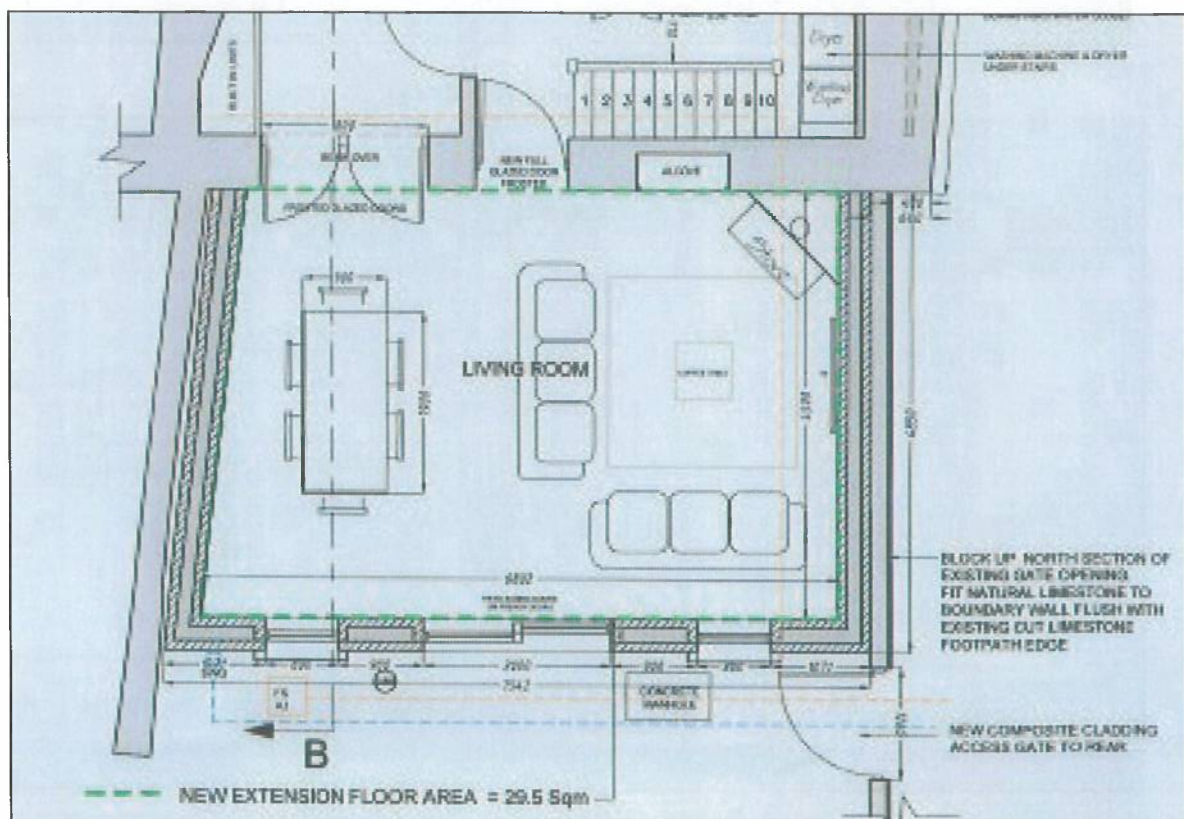


Figure 3: Proposed floor plan (as submitted) – note proposed ground floor extension of 29.5m².

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 and extension to the existing dwelling.

Question: Is this proposal considered as Exempted Development?

Based on the information submitted and the provisions of Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1, the following is considered:

1.

(a) *Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.*

N/A.

(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.*

No first floor extensions proposed.

(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.*

The dwelling is not detached.

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.*

With an extension ground floor extension of c.10.75m² and proposed extension of c. 29.5m² this amounts to a total area of c.40.25m². The Planning Authority are satisfied that the total floor area will not exceed 40m².

(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.*

There is no existing or proposed above ground extension.

(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.*

The dwelling is not detached.

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

No above ground floor extension is proposed.

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.*

There is no gable within the rear wall and the height of the proposed extension does not exceed the height of the rear wall of the house.

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 or not a rear ground floor extension to a dwelling is or is not development and is or is not exempted development at Green Street, Birr, Co. Offaly R42 VC56.

AS INDICATED on the particulars received by the Planning Authority on 4th February 2025.

AND WHEREAS Fiona & Joe Breen of the same address 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 –

- (a) Section 2, 3(1) and 4(1)(h), 4(2)(a)(i) of the Planning & Development Act 2000, as amended.
- (b) Article 6 of the Planning and Development Regulations 2001 (as amended), and
- (c) Article 9 of the Planning and Development Regulations 2001 (as amended)
- (d) Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended),

AND WHEREAS Offaly County Council has concluded that the works are development and are 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 rear ground floor extension to the dwelling (as detailed) is **development** and is **exempted development** at Green Street, Birr, Co. Offaly R42 VC56.

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.



Úna McCafferkey

Executive Planner

26th February 2025

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 25/14

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not a rear ground floor extension to dwelling is or is not development and is or is not exempted development		
Site location:	Green Street, Birr, Co. Offaly R42 VC56.		
Site size:	N/A	Floor Area of Proposed Development:	29.5m ²
Identification of nearby European Site(s):	Dovegrove Callows SPA – 2.1km Lisduff Fen SAC – 4.76km Ballyduff/Clonfinane Bog SAC – 4.65km River Little Brosna Callows SPA – 5.307m All Saints Bog SPA – 6.48km		
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):			
Dovegrove Callows SPA – Features of interest include: <ul style="list-style-type: none"> Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395] Lisduff Fen SAC– Features of interest include: <ul style="list-style-type: none"> Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220] Alkaline fens [7230] <i>Vertigo geyeri</i> (Geyer's Whorl Snail) [1013] River Little Brosna SPA – Features of Interest: <ul style="list-style-type: none"> Whooper Swan (<i>Cygnus cygnus</i>) [A038] Wigeon (<i>Anas penelope</i>) [A050] Teal (<i>Anas crecca</i>) [A052] Pintail (<i>Anas acuta</i>) [A054] Shoveler (<i>Anas clypeata</i>) [A056] Golden Plover (<i>Pluvialis apricaria</i>) [A140] Lapwing (<i>Vanellus vanellus</i>) [A142] Black-tailed Godwit (<i>Limosa limosa</i>) [A156] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395] Wetland and Waterbirds [A999] All Saints Bog SPA - Features of interest include:			

<p>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.</p>		<p>No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.</p>	
<p>(E) SCREENING CONCLUSION:</p>			
<p>Screening can result in:</p>			
1.	<p><i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.</p>		
2.	<p><i>No potential for significant effects / AA is not required.</i></p>		
3.	<p><i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</p>		
<p>Therefore, does the project fall into category 1, 2 or 3 above?</p>		<p>Category 2</p>	
<p>Justify why it falls into relevant category above:</p>		<p>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.</p>	
<p>Name:</p>		<p>Úna McCafferkey </p>	
<p>Position:</p>		<p>Executive Planner</p>	<p>Date: 26th February 2025</p>