

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 25/25

NAME OF APPLICANT: Peter and Molly Leonard

ADDRESS FOR CORRESPONDENCE: C/O Paula Dermody, Grove House, Rath, Birr, Co.Offaly R42 HP08

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not a residential extension to the rear and a first floor extension to the side of the existing dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ballykeenaghan, Rahan, Tullamore, Co. Offaly, R35 R820.

WHEREAS a question has arisen as to whether or not a residential extension to the rear and an first floor extension to the side of existing dwelling is or is not development, if so, are they exempted development at Ballykeenaghan, Rahan, Tullamore, Co. Offaly. R35 R820

AS INDICATED on the particulars received by the Planning Authority on the 7th February 2025.

AND WHEREAS Paula Dermody, Architecture & Design, Grove House, Rath, Birr, Co. Offaly on behalf of Peter & Molly Leonard 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 -


- Sec 2(1), 3(1) and 4(2)(a) of Planning and Development Act 2000 (as amended).
- Article 6 of the Planning and Development Regulations 2001 (as amended).
- Class 1 of Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the works of a residential single storey extension to the rear and first floor extension to the side of existing dwelling is development and is not exempted development due to the first floor extension being located to the side of the existing dwelling.

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 works of an residential single storey extension to the rear and first floor extension to the side of existing dwelling is **development and is not exempted development** at Ballykeenaghan, Rahan, Tullamore, Co. Offaly. R35 R820

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.

OFFALY COUNTY COUNCIL

Planning Report

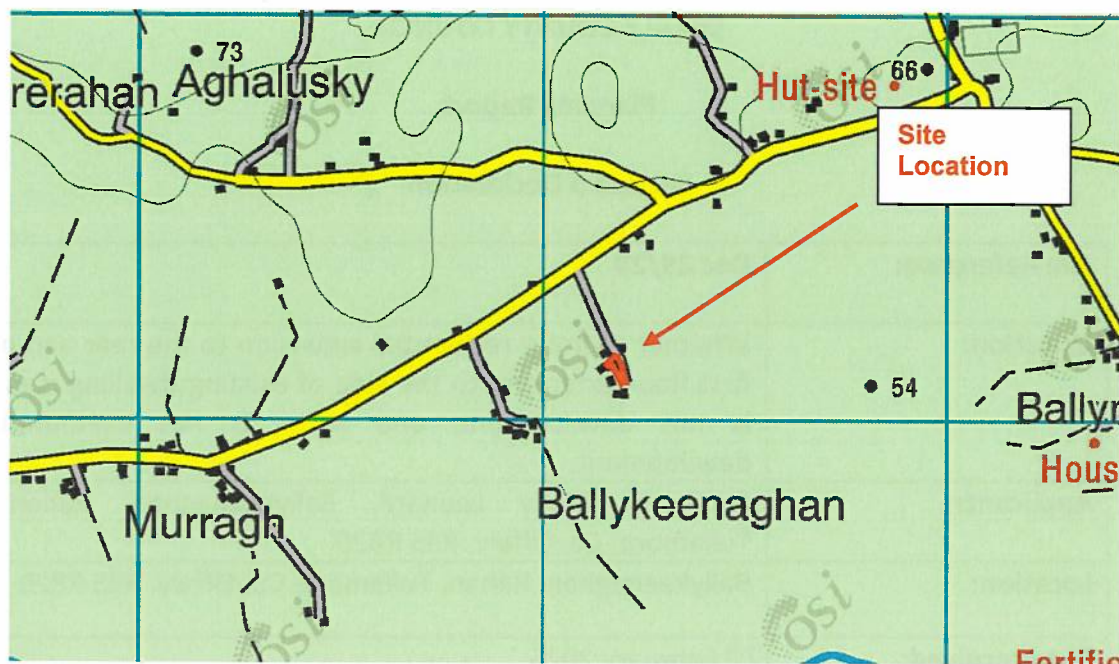
Section 5 Declaration

File Reference:	Dec 25/25
Question:	Whether or not a residential extension to the rear and a first floor extension to the side of existing dwelling is or is not development, and is or is not exempted development.
Applicants:	Peter & Molly Leonard, Ballykeenaghan, Rahan, Tullamore, Co. Offaly. R35 R820
Location:	Ballykeenaghan, Rahan, Tullamore, Co. Offaly. R35 R820
Date received:	7 th February 2025

1. Proposal

The question has arisen as to whether or not a residential extension to the rear and first floor extension to the side of an existing dwelling is or is not development, and is or is not exempted development at Ballykeenaghan, Rahan, Tullamore, Co. Offaly. R35 R820.





Figs 1: Site Location (Discovery Series)



Figs 2: Site Location



Figs 3: Aerial image of location of site

2. Background

Currently located on the site is an existing two storey dwelling with direct access onto the Local Tertiary road.

3. Relevant Planning History:

None

4. Legislative Context

Section 2(1) of the Planning and Development Act 2000 (as amended) provides a definition of “works” in the Act:

“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) of the Planning and Development Act 2000 (as amended) defines development:

In this Act, “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.

In this regard, the proposed development comprises works and also therefore is considered ‘development’.

Exempted Development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) and further prescribed under Article 6 (1) which is stated as follows:

“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.”

The provisions of Article 9 were reviewed in the context of this application, and it is considered that Article 9 does not apply in this case.

Assessment

The declaration is being sought under the provisions of Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Class 1 is noted as follows:

Development within the curtilage of a house

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

As the proposed first floor extension is to the side of the dwelling it is considered that the proposed developments requires planning permission.

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

According to the submitted documentation, the applicant has indicated that the dwellings has been extended previously.

1(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.

The house is detached, therefore 1(b) is not applicable.

1(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 Applicant has indicated that the first-storey extension is 20m² in area

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.

It is not clear if the existing extension was constructed or erected after 1 October 1964

2(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.

2(b) is not applicable as the house is a detached dwelling

2(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.

All existing extensions are single-storey, therefore 2(c) is not applicable.

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

The proposed first floor extension is more than 2 metres from the boundary it faces

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.

The rear wall of the house does not include a gable and the proposed extension does not exceed the height of the house.

4(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

Part 4(b) does not apply as the rear wall of the house does not include a gable.

4(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or

parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

The proposed extension has a pitched roof, which would not exceed the height of the highest part of the roof of the existing house.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

The proposed extension would not reduce the area of private open space at the rear of the house to less than 25m².

6(a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

Following a site inspection, I can confirm that any window proposed at ground level is greater than 1m from the boundary it faces.

6(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

It is unclear if the proposed first floor windows shall be less than 11 metres from any boundaries they face.

6(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.

It is unclear if the proposed first floor windows would 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.

The proposed extension does not include a balcony, and therefore part 7 is not applicable.

Evaluation

5. **Question: Whether the proposed works of an residential extension to the rear and first floor extension to the side of an existing dwelling is or is not 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 is deemed as development as it includes renovations and alterations to the existing dwelling.

6. Question: Is this proposal considered as Exempted Development?

I consider that the developments subject of this declaration should be considered as a totality particularly given that part of the ground floor extension is integrated into the first floor extension. The works subject of this declaration includes a first floor extension to the side of the existing dwelling, I consider that the works are development and I consider that the works are not exempted development based on limitations set out in Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

7. APPROPRIATE ASSESSMENT (AA)

The subject site is located 2.7km from SAC 000571- Charleville Wood SAC.

Having regard to nature of the development which comprises of a residential extension to the rear and first floor extension to the side of existing dwelling at Ballykeenaghan, Rahan, Tullamore, Co. Offaly. R35 R820 and due to a lack of any pathway to a European site it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

8. EIA SCREENING:

No Screening required, see appendix A attached.

9. OTHER SCREENING:

The proposed development is not contrary to the RSES and so it was not referred to the Eastern and Midland Regional Assembly.

10. Conclusion

Given that part of the development consists of a first floor extension to the side of the existing dwelling and based on limitations set out in Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended), it is recommended that the Applicants be advised that the proposed works is **development and is not 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 or not a residential extension to the rear and an first floor extension to the side of existing dwelling is or is not development, if so, are they exempted development at Ballykeenaghan, Rahan, Tullamore, Co. Offaly. R35 R820

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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 Pleanala within 4 weeks of the issuing of the decision.

Michael Duffy

Michael Duffy

Executive Planner

4th March 2025

Ed Kelly

Ed Kelly

ASEP

5th March 2025

Appendix A

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	DEC 25/25
Development Summary:	Residential extensions
Was a Screening Determination carried out under Section 176A-C?	No, Proceed to Part A
A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1 , of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
No	Proceed to Part B
B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2 , of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)	
No, the development is not a project listed in Schedule 5, Part 2	No Screening required