

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 25/34

NAME OF APPLICANT: Gareth Mann

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 dwelling and extension to rear is or is not development and is or is not exempted development.

The proposed works consists of:

- Not more than 20m2 extension to rear of dwelling, to include re-use of existing conservatory extension and re-use of existing bathrooms to accommodate, one bathroom and one bedroom on ground floor
- Inclusion of shower in first floor en-suite bathroom.

**LOCATION OF DEVELOPMENT:** 3 Store St., Tullamore, Co. Offaly R35 WT20

**WHEREAS** a question has arisen as to whether works including the renovation of existing dwelling and extension to the rear which consist of

- Not more than 20m2 extension to rear of dwelling, to include re-use of existing conservatory extension and re-use of existing bathrooms to accommodate, one bathroom and one bedroom on ground floor
- Inclusion of shower in first floor en-suite bathroom

is or is not development and is or is not exempted development at 3 Store St., Tullamore, Co. Offaly R35 WT20

**AS INDICATED** on the particulars received by the Planning Authority on the 19th February 2025.

**AND WHEREAS** Gareth Mann of [REDACTED] 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) Sections 3(1); 4(1)(h); and 57 of the Planning & Development Act 2000 (as amended).

**AND WHEREAS** Offaly County Council has concluded that the works is development and is not exempted development.

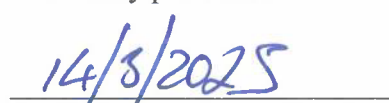
**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that:

- The proposed works including the renovation of existing dwelling and extension to the rear which consists of
  - Not more than 20m2 extension to rear of dwelling, to include re-use of existing conservatory extension and re-use of existing bathrooms to accommodate, one bathroom and one bedroom on ground floor and
  - Inclusion of a shower in first floor en-suite bathroom

**is development** and is **not exempted development** at 3 Store St., Tullamore, Co. Offaly R35 WT20 as the dwelling which is subject to this Section 5 Declaration is registered in the Offaly County Development Plan 2021-2027 as protected structure (RPS Ref: 23-399)

**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

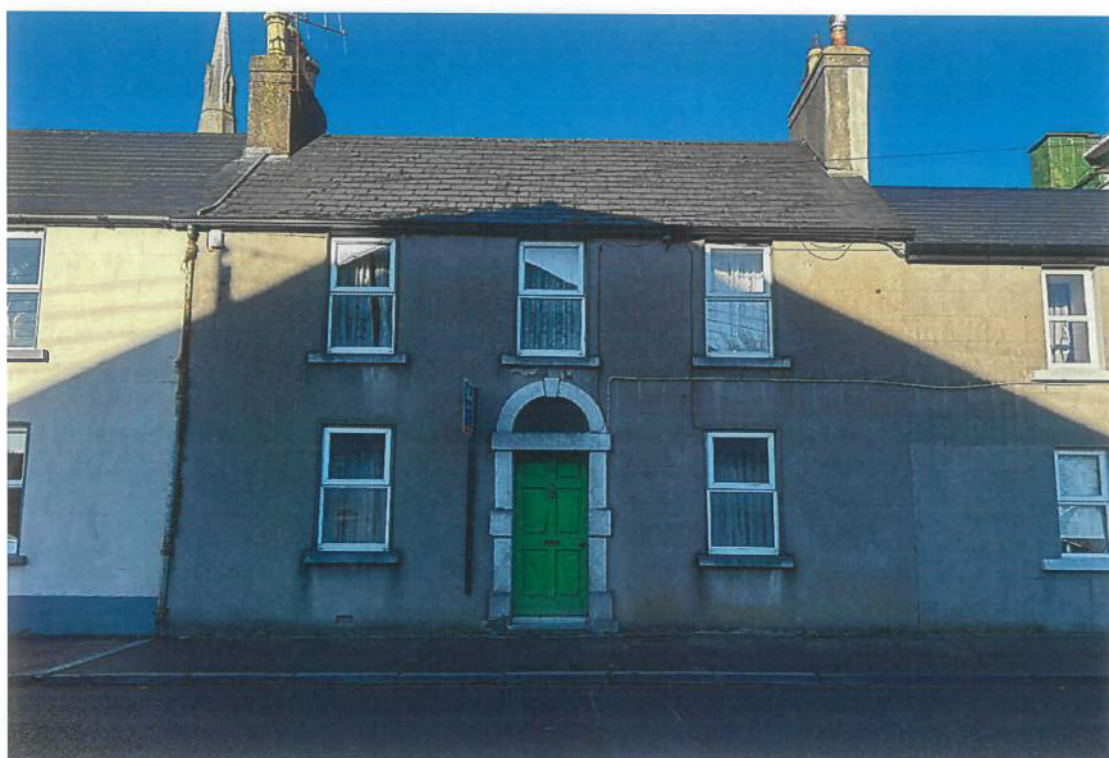
  
Date

**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

|                                |   |
|--------------------------------|---|
| <b>File Reference:</b>         | Dec. 25/34  |
| <b>Question:</b>               | <p>Whether or not the renovation of existing dwelling and extension to rear is or is not development and is or is not exempted development.</p> <p>The proposed works consists of:</p> <ul style="list-style-type: none"><li>• Not more than 20m<sup>2</sup> extension to rear of dwelling, to include re-use of existing conservatory extension and re-use of existing bathrooms to accommodate, one bathroom and one bedroom on ground floor</li><li>• Inclusion of shower in first floor en-suite bathroom</li></ul> |
| <b>Applicant:</b>              | Gareth Mann   |
| <b>Correspondence Address:</b> | [REDACTED]  |
| <b>Location:</b>               | 3 Store St., Tullamore, Co. Offaly R35 WT20   |



3 Store St., Tullamore, Co. Offaly R35 WT20

#### 1. Introduction

The question has arisen as to the renovation of existing dwelling and extension to rear is or is not development and is or is not exempted development. It is noted that according to the OCC GIS Planning Register, the dwelling which is subject to this section 5 Declaration is a protected structure.

## 2. Background

The site is situated on 'existing residential' zoned land with direct access onto Store Street. Currently located on site is an existing mid-terrence two-storey dwelling house. The Area Planner confirms that according to the Offaly County Development Plan 2021-2027 the subject dwelling is a protected structure.

**RPS Ref:** 23-399

Store Street, Tullamore, Co. Offaly

**Description:** 3 bay 2 storey early nineteenth century house with simple round headed bock and start doorcase with fanlight over.



Fig 1: Site Location (Discovery Series)



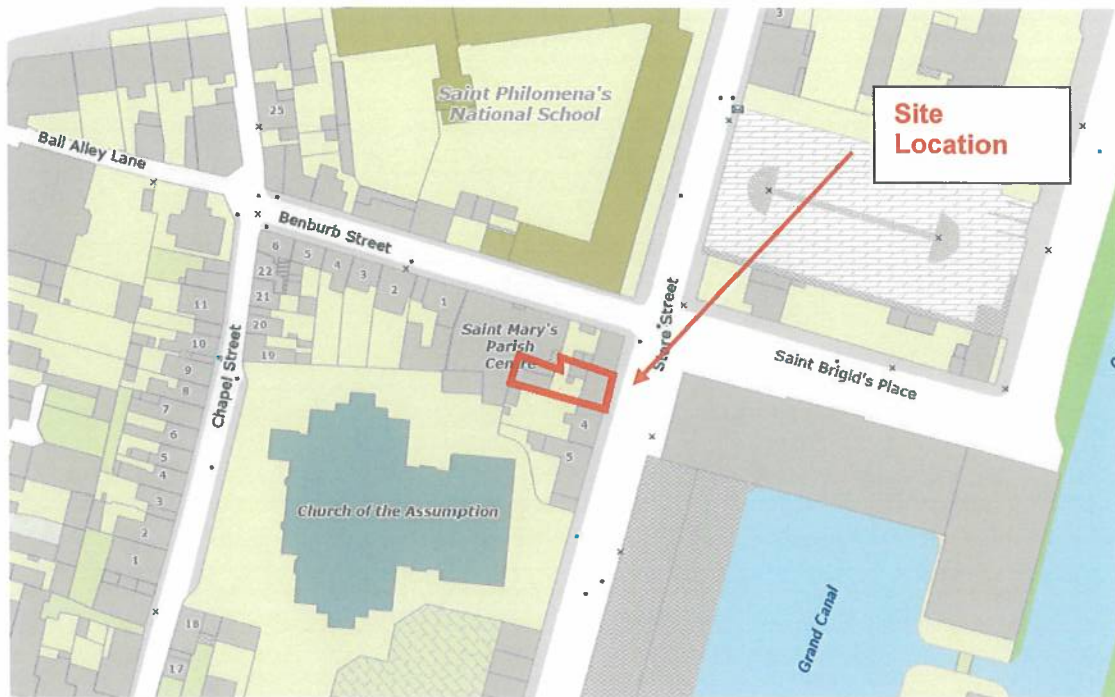


Fig 2: Site Location.

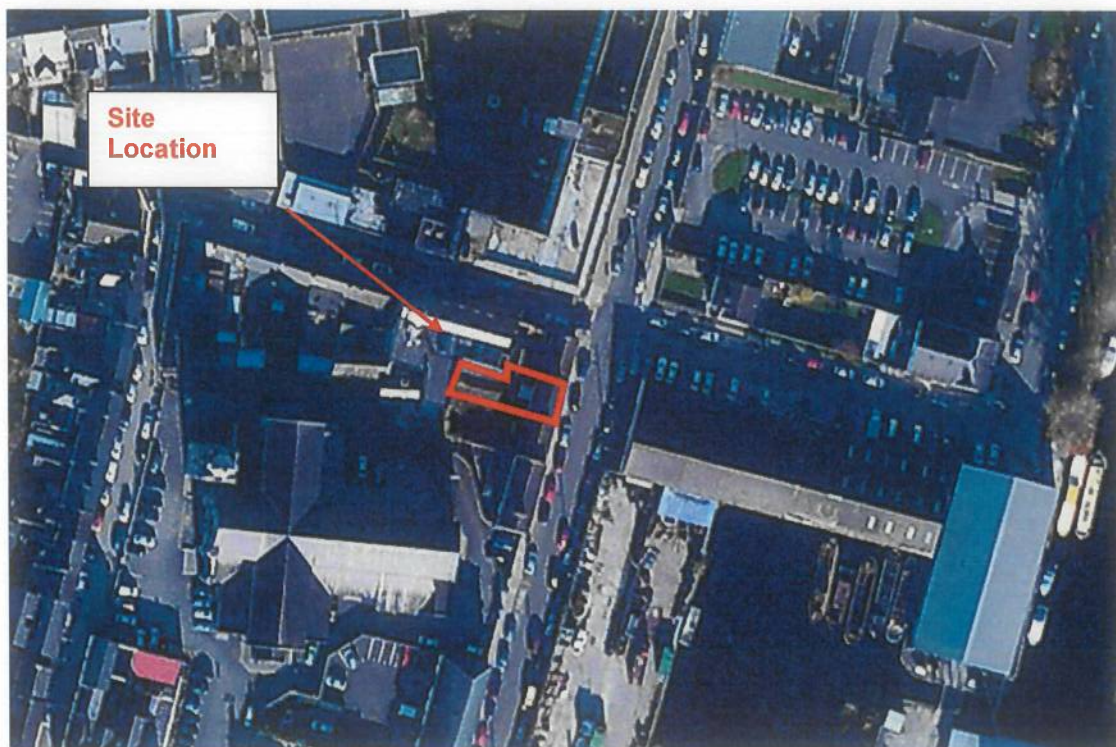


Fig 3: Aerial image of location of site

### 3. Referrals

|                             |  |
|-----------------------------|--|
| Senior Executive Architect: | States the following:<br><i>'it is a protected building (RPS no. 23-399) so because of this he will require planning permission for any extension. If he was to carry out minor repair works he could apply for a section 57.'</i> |
|-----------------------------|--|

#### 4. Site History

None

#### 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.*

**Section 57- Works affecting character of protected structures or proposed protected structures.**

*57.—(1) Notwithstanding section 4(1)(a), (h), (i),(ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*

*(a) the structure, or*

*(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.*

*(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.*

**5 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”.*

Article 9 of the Planning and Development Regulations 2001 (as amended), identifies restrictions on exemption.

*9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—*

*(a) if the carrying out of such development would—*

*(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*

*(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users,*

*(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan*



*or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,*

*(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,*

*(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,*

*(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,*

*(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.*

*(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,*

*(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,*

*(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*

*(xi) obstruct any public right of way,*

*(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,*

*(b) in an area to which a special amenity area order relates, if such development would be development:—*

*(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof ), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or*

*(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or*

*(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or*

*(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,*

*(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,*

*(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.*

## **6 Proposal by Applicants**

The Applicant has indicated the following works will be carried out:

- Not more than 20m<sup>2</sup> extension to rear of dwelling, to include re-use of existing conservatory extension and re-use of existing bathrooms to accommodate, one bathroom and one bedroom on ground floor and
- Inclusion of shower in first floor en-suite bathroom



## 7. 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 an extension and renovation of an 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 note that according to the Offaly County Development Plan 2021-2027, the dwelling which is subject to this Section 5 Declaration, is a protected structure. Subsequently the declaration was referred to the Architect's section of Offaly County Council who state the subject dwelling is a protected structure and because of this planning permission is required for any extension.

It is therefore considered that the proposal is not exempted development.

## 8. APPROPRIATE ASSESSMENT SCREENING:

The subject site is located 1.68km from SAC 000571– Charleville Wood SAC

Having regard to nature of the development which consists of renovations and reconstruction to an existing dwelling (protected structure) at 3 Store St., Tullamore, Co. Offaly R35 WT20 and due to lack of any pathway to a European site given that the proposal connects to a public sewer 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.

## 9. EIA SCREENING:

No screening required, see appendix A

## 10. CONCLUSION

It is recommended that the applicant be advised that the proposed development is **development** and is **not exempted development** as the dwelling which is subject to this Section 5 Declaration is registered in the Offaly County Development Plan 2021-2027 as protected structure (RPS Ref: 23-399)

**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 works including the renovation of existing dwelling and extension to the rear which consist of

- Not more than 20m<sup>2</sup> extension to rear of dwelling, to include re-use of existing conservatory extension and re-use of existing bathrooms to accommodate, one bathroom and one bedroom on ground floor
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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.*

Michael Duffy

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*Michael Duffy*

*Executive Planner*

*14<sup>th</sup> March 2025*

Ed Kelly

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*Ed Kelly*

*ASEP*

*14<sup>th</sup> March 2025*



## Appendix A

| Establishing if the proposal is a ' <i>sub-threshold development</i> ':  |   |
|--|---|
| Planning Register Reference:   | DEC 25-34   |
| Development Summary:   | Residential Extension & Renovations (Protected Structure) |
| Was a Screening Determination carried out under Section 176A-C?  | No, Proceed to <b>Part A</b>                              |
| <b>A. Schedule 5 Part 1</b> - Does the development comprise a project listed in Schedule 5, <b>Part 1</b> , of the Planning and Development Regulations 2001 (as amended)?<br>(Tick as appropriate)  |   |
| No   | Proceed to <b>Part B</b>                                  |
| <b>B. Schedule 5 Part 2</b> - Does the development comprise a project listed in Schedule 5, <b>Part 2</b> , of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds?<br>(Tick as appropriate) |   |
| No, the development is not a project listed in Schedule 5, Part 2  | No Screening required                                     |