

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

**REFERENCE:** DEC 25/36

**NAME OF APPLICANT:** MEL GALLAGHER

**ADDRESS FOR CORRESPONDENCE:** [REDACTED]

**NATURE OF APPLICATION:** request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the following works to a dwelling:

- A) Demolish flat roof utility extension at rear remove porch at front of dwelling
- B) Construct living room extension with floor area 40sqm to rear of dwelling
- C) Internal alterations to existing including relocation of chimney to south facing gable
- D) External insulation to existing houses
- E) Ancillary site works

Is/ is not development and is /is not exempted development.

**LOCATION OF DEVELOPMENT:** BALLINASCRAUGH, LUSMAGH, BANAGHER, CO. OFFALY, R42 NA09.

**WHEREAS** a question has arisen as to: Works to an existing dwelling consisting of

- Demolish flat roof utility extension at rear remove porch at front of dwelling.
- Construct living room extension with floor area 40sqm to rear of dwelling.
- Internal alterations to existing including relocation of chimney to south facing gable.
- External insulation to existing house
- Ancillary site works

At Ballinascragh, Lusmagh, Banagher, Co Offaly R42 NA09.

**AND WHEREAS** Mel Gallagher 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 of the Planning & Development Act 2000, as amended.
- B) Section 3(1) of the Planning & Development Act 2000, as amended.
- C) Section 4(1)(h) of the Planning & Development Act 2000, as amended
- D) Section 4(2) of the Planning & Development Act 2000, as amended.
- E) Article 6(1) of the Planning and Development Regulations 2001, as amended.
- F) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended.
- G) Schedule 2, Part 1, Class 50 of the Planning and Development Regulations 2001, as amended

**AND WHEREAS** Offaly County Council has concluded that the work is considered development and is exempted development.

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5(2) hereby decides that, The following works to a dwelling:

- A) Demolish flat roof utility extension at rear remove porch at front of dwelling
- B) Construct living room extension with floor area 40sqm to rear of dwelling
- C) Internal alterations to existing including relocation of chimney to south facing gable
- D) External insulation to existing house
- E) Ancillary site works

**Is development and is exempted development**

**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.

## OFFALY COUNTY COUNCIL

### Planning Report

#### Section 5 Declaration

<b>File Reference:</b>	<b>Dec 25/36</b>
<b>Question:</b>	Whether the following works to a dwelling: A) Demolish flat roof utility extension at rear remove porch at front of dwelling B) Construct living room extension with floor area 40sqm to rear of dwelling C) Internal alterations to existing including relocation of chimney to south facing gable D) External insulation to existing houses E) Ancillary site works  <b>Is/ is not development and is /is not exempted development</b>
<b>Applicant:</b>	Mel Gallagher
<b>Location:</b>	Ballinascragh, Lusmagh, Banagher, Co. Offaly R42 NA09
<b>Date received:</b>	19/2/2025
<b>Date due:</b>	18/3/2025

#### 1. Proposal

The question has arisen as to whether the following works to a dwelling:

- A) Demolish flat roof utility extension at rear remove porch at front of dwelling
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Is/ is not development and is /is not exempted development

#### Location

The site is located at Ballinascragh, Lusmagh, Banagher, Co Offaly.

#### 2. Relevant Planning History:

None

### 3. Legislative Context:

Section 2 (1) Planning and Development Act 2000, as amended:

In this Act, except where the context otherwise requires—  
“development” has the meaning assigned to it by section 3, and “develop”  
shall be construed accordingly;

Section 3 (1) Planning and Development Act 2000, as amended:

“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 Planning and Development Act 2000, as amended:

4.—(1) The following shall be exempted developments for the purposes of this Act—

(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 or 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 of neighbouring structure

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

(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, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

(b) Regulations under *paragraph (a)* may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of *paragraph (a)*, provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

Article 6(1) of the Planning and Development Regulations 2001, as amended:

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, PART 1, CLASS 1 Development within the curtilage of a house

<p>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.</p>	<p><b>Conditions and limitations:</b></p> <ol style="list-style-type: none"><li data-bbox="895 1025 1343 1592"><p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres</p><p>(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.</p><p>(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.</p></li><li data-bbox="895 1637 1343 2018"><p>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.</p></li></ol>
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	<p>(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. (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.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary</p> <p>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. (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. (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</p>
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	<p>height of the highest part of the roof of the dwelling.</p> <p>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.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces. (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.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>

**SCHEDULE 2, PART 1, CLASS 50**

<p>(a) The demolition of a building, or buildings, within the curtilage of— (i) a house, (ii) an industrial building, (iii) a business premises, or (iv) a farmyard complex.</p> <p>(b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.</p>	<p><b>Conditions and limitations:</b></p> <p>1. No such building or buildings shall abut on another building in separate ownership.</p> <p>2. The cumulative floor area of any such building, or buildings, shall not exceed: (a) in the case of a building, or buildings within the curtilage of a house, 40 square metres, and (b) in all other cases, 100 square metres.</p> <p>3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.</p>
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#### 4. Screening

Having regard to nature of the development, domestic extensions its location in Ballinascragh, Lusmagh, Banagher, Co. Offaly 290 metres from all Saints Bog SPA and 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.

Please see EIA Screening attached which concludes EIA is not required

#### 5. Evaluation

Question: Is the following works considered as Development?

Yes

Question: Is the following works proposal considered as Exempted Development?

Yes, the proposed works are exempt under sections 4 (1)(h) and 4(2) of the planning and development act 2000, as amended and article 6 and Schedule 2, Part 1, Class 1 and Class 50 of the Planning and Development Regulations 2001, as amended. The proposed works but the conditions and limitations of Class 1 and Class 50.

#### 6. 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:

Works to an existing dwelling consisting of

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- The work is considered development and is exempted development.

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**Is development and is exempted development.**



*Signature*

A handwritten signature in cursive script, appearing to read 'Ed Kelly', written in black ink.

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*Ed Kelly ASEP*

18/3/2025

*Date*



**Comhairle Chontae Uíbh Fhailí**  
Offaly County Council

## EIA Screening Form

Establishing if the proposal is a ' <i>sub-threshold development</i> ':	
Planning Register Reference:	Dec 24/36
Development Summary:	Domestic extensions
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)? (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? (Tick as appropriate)	
No, the development is not a project listed in Schedule 5, Part 2	<b>No Screening required</b>