

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 25/50

NAME OF APPLICANT:

COLIN MITCHELL AND EMMA COREY

ADDRESS FOR CORRESPONDENCE:

NATURE OF APPLICATION:

DECLARATION UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT, 2000 AS AMENDED IN RELATION TO WHETHER OR NOT THE RENOVATION OF DWELLING INCLUDING SMALL EXTENSION (20.7M<sup>2</sup>) TO REAR IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT.

LOCATION OF DEVELOPMENT:

BALLYMORAN, EDENDERRY, CO. OFFALY, R45 YR67.

**WHEREAS** a question has arisen as to whether or not the renovation of dwelling including small extension (20.7m<sup>2</sup>) to rear is or is not development and is or is not exempted development at Ballymorán, Edenderry, Co. Offaly, R45 YR67.

**AS INDICATED** on the particulars received by the Planning Authority on the 19<sup>th</sup> March 2025.

**AND WHEREAS** Colin Mitchell and Emma Corey have 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(1), 3(1), 4(1)(h) and 4(2)(a) of the *Planning and Development Act 2000 (as amended)*.
- (b) Article 6 of the *Planning and Development Regulations 2001 (as amended)*.
- (c) *Class 1 (Development within the curtilage of a house) of Schedule 2 – Exempted Development, Part I of the Planning and Development Regulations 2001 (as amended)*.

**AND WHEREAS** Offaly County Council has concluded that the renovation of dwelling including a small extension (20.7m<sup>2</sup>) to the rear 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 of dwelling including a small extension (20.7m<sup>2</sup>) to the rear at Ballymorán, Edenderry, Co. Offaly, R45 YR67 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>	Dec 25/50
<b>Question:</b>	Whether or not the renovation of dwelling including small extension (20.7m <sup>2</sup> ) to rear is or is not development and is or is not exempted development at Ballymorán, Edenderry, Co. Offaly, R45 YR67.
<b>Applicant:</b>	Colin Mitchell and Emma Corey
<b>Correspondence address:</b>	[REDACTED]
<b>Location:</b>	Ballymorán, Edenderry, Co. Offaly R45 YR67.
<b>Date received:</b>	15 <sup>th</sup> April 2025

#### 1. Proposal

The question has arisen as to, whether or not, renovation of dwelling including small extension (20.7m<sup>2</sup>) to rear is or is not development and is or is not exempted development at Ballymorán, Edenderry, Co. Offaly, R45 YR67.

#### 2. Background

The subject dwelling is the townland of Lumville, a *Rural Area Under Strong Urban Influence*, which is about 6km west of Edenderry. The site located off Local Secondary Road L-5010-02.

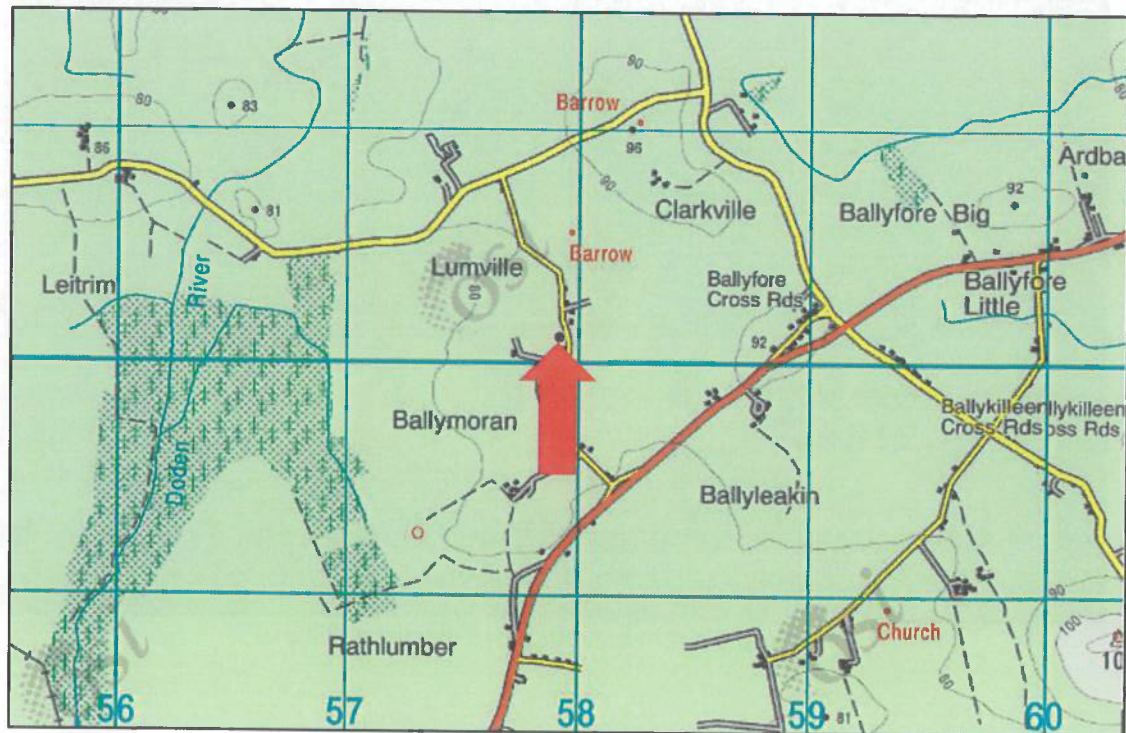
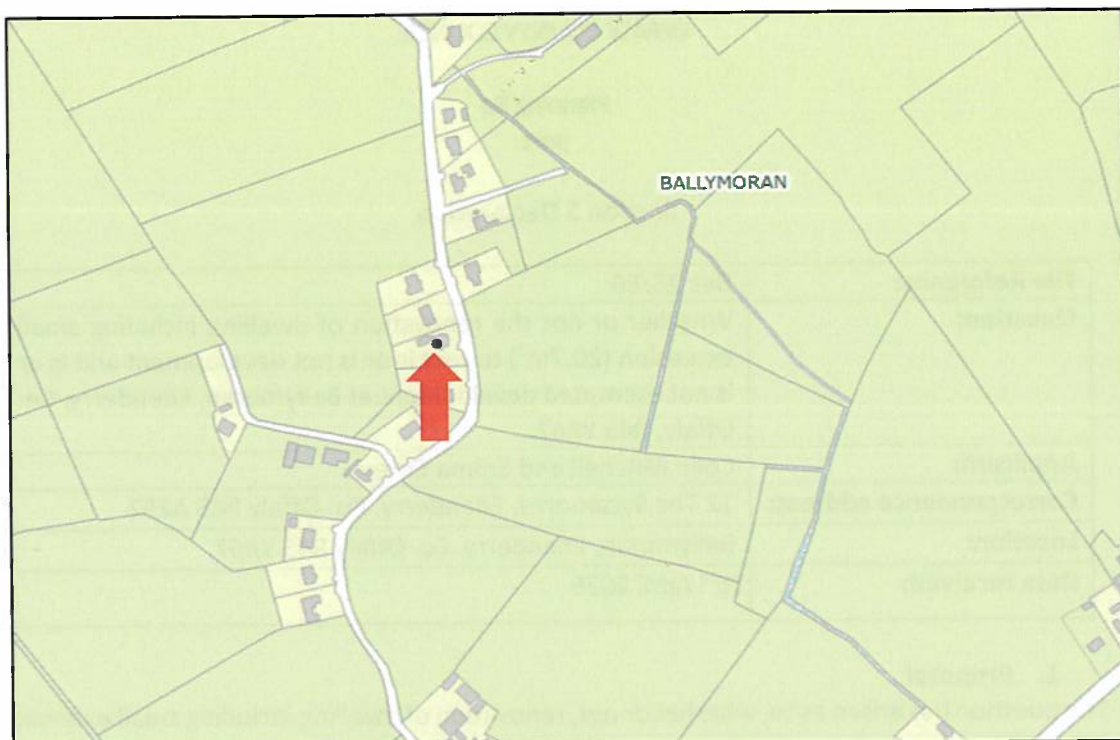


Figure 1: Site Location (red arrow)



**Figure 2: Site Location (red arrow)**



**Photo 1: Front elevation of existing dwelling**





**Photo 2:** Rear elevation of existing dwelling.

### **3. Relevant Planning History:**

*On site* - No recent planning history associated with the site.

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

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

### **4. Legislative Context**

To assess whether or not the proposed works constitute exempted development, regard must be had to the following items of legislation:

Section 2(1) of the *Planning and Development Act 2000 (as amended)* provides a definition of 'house' and 'works' in the Act, this section states that:

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

*"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 (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) of the *Planning and Development Act 2000 (as amended)* sets out the following exemption:

*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, 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.*

## **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".*

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

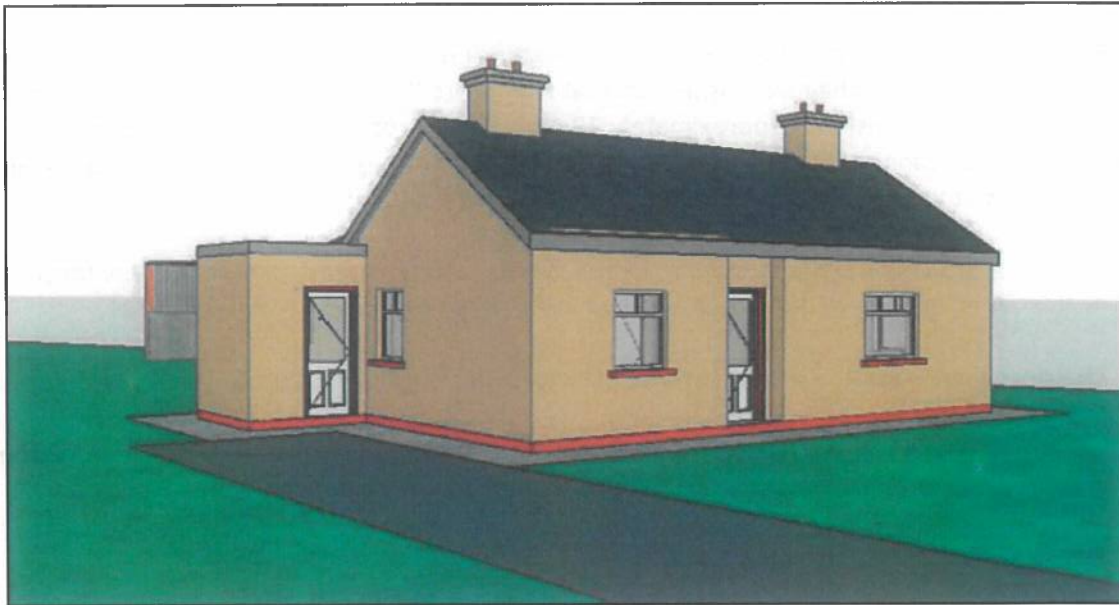
*"The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house."*

There are several conditions and limitations attached to Class 1, and Class 7 which are listed and assessed below.

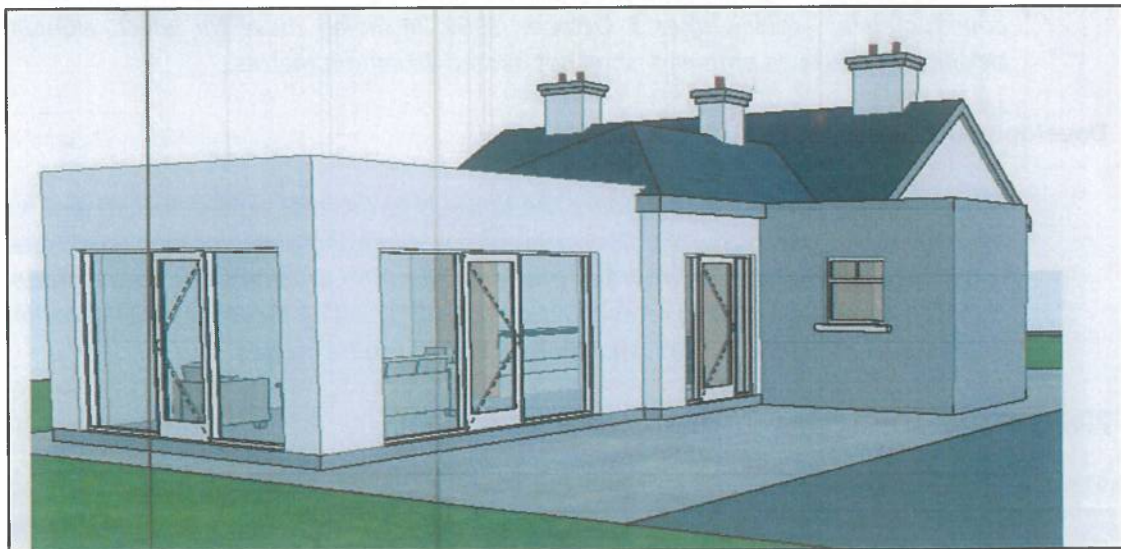
#### **6. Proposal by the applicant**

The Applicant has advised that the proposed works will include a rear extension and renovation of the existing dwelling.

The following elevations have been provided as part of the Section 5 application:



**Figure 2: Existing dwelling**



**Figure 3: Proposed rear extension**

#### **7. Assessment**

The declaration is being sought under the provisions of Class 1 *Development within the curtilage of a house*, in Part 1, of Schedule 2 of the *Planning and Development Regulations 2001 (as amended)*. The description of development in Class 1 is:



*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.*

There are several conditions and limitations attached to Class 1, which need to be complied with, and which are assessed below:

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

The Applicant has stated that the proposed extension to the rear will be 20.7m<sup>2</sup>. The Area Planner notes from their site inspection that it appears the house was previously extended, and that this extension is approximately 19.6m<sup>2</sup>. If the proposed extension is added to the existing extension, it would amount to 40.3m<sup>2</sup> which although exceeding the limitation set out in 1(a) it would be less than a 1% above the specified 40 m<sup>2</sup>.

*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 proposed extension is single-storey 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 subject extension is single storey therefore 1(c) is not applicable.

*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.*

Development complies.

*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 existing dwelling is detached.

*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.*

2(c) is not applicable as the proposed extension is single-story.



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

Part 3 is not applicable as the proposed extension is ground floor only.

*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 flat roof, which does 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 25m<sup>2</sup>.

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

No window proposed at ground level is less 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.*

As the proposed extension is single storey, Part 6(b) does not apply.

*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.*

As the proposed extension is single-storey, Part 6(c) does not apply.

*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 above is not applicable.

## **8. Evaluation**

**Question: Whether the renovation of dwelling including small extension (20.7m<sup>2</sup>) to rear is or is not development and is or is not exempted development is or is not development and is or is not 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.

**Question: Is this proposal considered as Exempted Development?**

It is the opinion of the Planning Authority that these works meet the criteria of exempt development under section 4(1)(h) and 4(2)(a)(i) of the *Planning and Development Act 2000 (as amended)*. Furthermore, the proposed extension is acceptable under the limitations set out in *Class 1 (Development within the curtilage of a house) of Schedule 2 – Exempted Development, Part I of the Planning and Development Regulations 2001 (as amended)*.

## **9. Appropriate Assessment**

A screening exercise for an appropriate assessment has been carried out and it has concluded that the development is unlikely to have significant effects on any European sites. Please see attached report under Appendix A.

## **10. Environmental Impact Assessment Screening**

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the *Planning and Development Regulations 2001(as amended)* and therefore is not subject to EIA requirements.

## **11. Summary**

Having assessed the information received, it is considered the proposed extension of the existing house is **development** and is **exempted development**.

**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 the renovation of dwelling including small extension (20.7m<sup>2</sup>) to rear is or is not development and is or is not exempted development at Ballymorán, Edenderry, Co. Offaly, R45 YR67.

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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.*



Enda Finlay  
Graduate Planner

3<sup>rd</sup> April 2025



Ed Kelly  
ASEP

9<sup>th</sup> April 2025



## Appendix A

Establishing if the proposal is a ' <i>sub-threshold development</i> ':	
Planning Register Reference:	Dec 25/50
Development Summary:	Declaration as to whether or not the renovation of dwelling including small extension (20.7m <sup>2</sup> ) to rear is or is not development and is or is not exempted development
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) <b>and</b> 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>