

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 25/55

NAME OF APPLICANT: Liam Langton

ADDRESS FOR CORRESPONDENCE: C/O Frank Casey, Rathmore, Stradbally, Co. Laois

**NATURE OF APPLICATION:** request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the demolition of rear porch/back hall, new rear extension 39sqm, internal modifications and changes to fenestration is or is not development and is or is not exempted development.

**LOCATION OF DEVELOPMENT:** Ballinvalley, Killeigh, Co. Offaly

**WHEREAS** a question has arisen as to whether the proposed demolition of rear porch/back hall, new rear extension 39sqm, internal modifications and changes to fenestration at Ballinvalley, Killeigh, Co. Offaly is or is not development and is or is not exempted development

**AND WHEREAS** Liam Langton C/O Frank Casey, Rathmore, Stradbally, Co. Laois requested a declaration on the said question from Offaly County Council;

**AS INDICATED** on the particulars received by the Planning Authority on the 3<sup>rd</sup> April 2025.

**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),
- (c) Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- (d) Class 50, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),

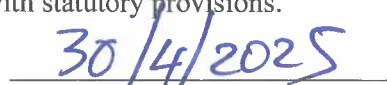
**AND WHEREAS** Offaly County Council has concluded that the proposed works is development and is exempted development.

**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 proposed demolition of rear porch/back hall, new rear extension 39sqm, internal modifications and changes to fenestration is **development** and is **exempted development** at Ballinvalley, Killeigh, Co. Offaly

**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. 25/55
<b>Question:</b>	Whether or not the demolition of rear porch/back hall, new rear extension 39sqm, internal modifications and changes to fenestration is or is not development and is or is not exempted development
<b>Applicant:</b>	Liam Langton
<b>Correspondence Address:</b>	Frank Casey, Rathmore, Stradbally, Co. Laois
<b>Location:</b>	Ballinvalley, Killeigh, Co. Offaly



**Fig 1:** Front of dwelling



**Fig 2:** Rear of dwelling showing porch to be demolished

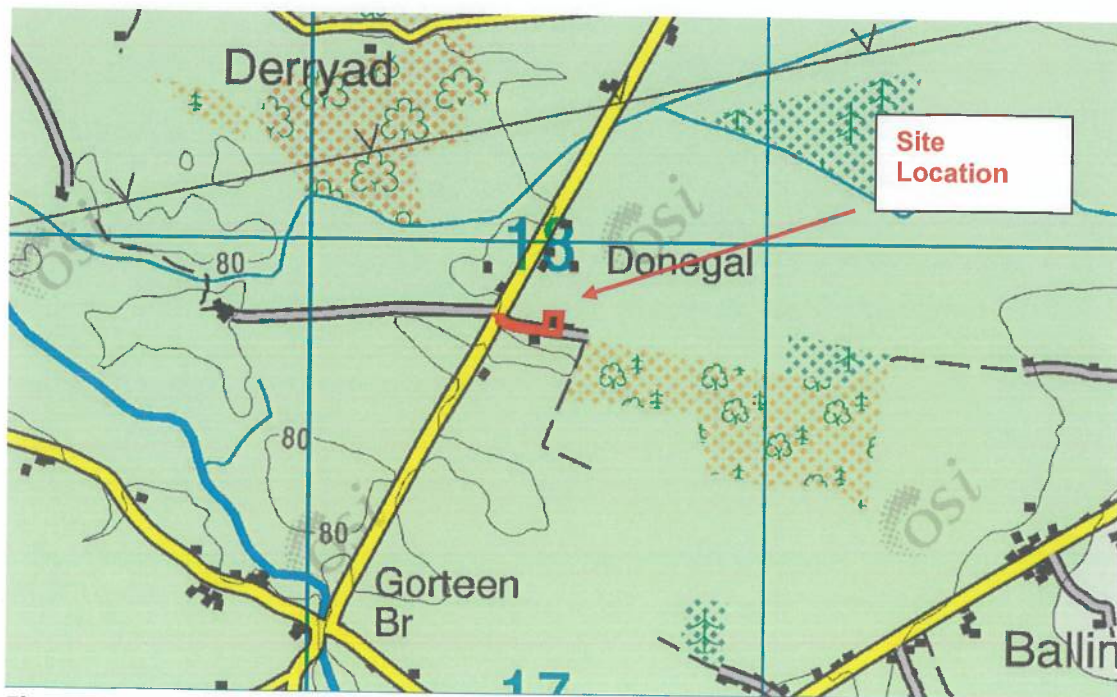


## 1. Introduction

The question has arisen as to whether the demolition of rear porch/back hall, new rear extension 39sqm, internal modifications and changes to fenestration is or is not development and is or is not exempted development

## 2. Background

The existing dwelling is located in the rural townland of Ballinvalley with direct access onto the L-2004-1 local primary road via a 100m drive way



Figs 3: Site Location (Discovery Series)



Figs 4: Site Location



**Figs 5:** Aerial image of location of site

### **3. Site History**

None

### **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.*

## **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: *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.*

There are a number of conditions and limitations attached to Class 1, which are listed below

1.

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



- (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.

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.

- (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

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

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 height of the highest part of the roof of the dwelling.

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.

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.

7. The roof of any extension shall not be used as a balcony or roof garden.

#### Schedule 2 – Exempted Development, Part I CLASS 50

- (a) The demolition of a building, or buildings, within the curtilage of— (i) a house,
- (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.

There are a number of conditions and limitations attached to Class 1, which are listed below

- 1. No such building or buildings shall abut on another building in separate ownership.
- 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.
- 3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.

#### 6 Proposal by Applicants

The Applicant has indicated that they intend to demolish the rear porch/back hall, construct a new rear extension 39sqm long with internal modifications and changes to fenestration.

#### 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 alterations and repairs to the existing dwelling as well as a proposed extension.

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

With regard to the proposed works which are described in the submitted documents, the Planning Authority are of the opinion that the proposed extension complies with Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). It is further noted that the demolition of rear porch/back hall, internal modifications and changes to fenestration does 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.

**8. APPROPRIATE ASSESSMENT (AA)**

The subject site is located 0.58km from SAC 000572-Clara Bog Having regard to nature of the proposed development which comprises of the renovation of an existing dwelling at Woodfield, Clara, Co. Offaly. R35 PR80 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.

**9. EIA SCREENING:**

No EIA required, see appendix A attached.

**10. OTHER SCREENING:**

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

**11. CONCLUSION:**

Having assessed the information received, it is considered the proposed renovation of existing dwelling which consists of the demolition of rear porch/back hall, new rear extension 39sqm, internal modifications and changes to fenestration 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 whether the proposed demolition of rear porch/back hall, new rear extension 39sqm, internal modifications and changes to fenestration at Ballinvalley, Killeigh, Co. Offaly is or is not development and is or is not exempted development

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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*

*Michael Duffy*

*Executive Planner*

*30<sup>th</sup> April 2025.*

*Ed Kelly*

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*Ed Kelly*

*ASEP*

*30<sup>th</sup> April 2025.*

## Appendix A

Establishing if the proposal is a ' <i>sub-threshold development</i> ':	
Planning Register Reference:	Dec 25/55
Development Summary:	Renovations and extension to dwelling
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>