

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

REFERENCE: DEC 25/58

NAME OF APPLICANT: Anna & Bartlomiej Klisiewicz

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 to an existing dwelling including new porch extension and installation of a new window on the south elevation is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 5 Eden Road, Birr, Co. Offaly, R42 AK81

WHEREAS a question has arisen as to whether or not the renovation to an existing dwelling including a new porch extension and installation of a new window on the south elevation is or is not development and is or is not exempted development at 5 Eden Road, Birr, Co. Offaly R42 AK81.

AS INDICATED on the particulars received by the Planning Authority on the 10th April 2025.

AND WHEREAS Anna & Bartlomiej Klisiewicz of the same address 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, 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), and
- (c) Class 7, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended),


AND WHEREAS Offaly County Council has concluded that the side window proposed on the south (side) elevation of the existing dwelling is development and is not exempted development and the proposed front porch and remaining renovation works, as detailed in the submitted documentation, 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 side window proposed on the south (side) elevation of the existing dwelling **is development and is not exempted development** and the proposed front porch and remaining renovation works, as detailed in the submitted documentation, **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 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.

Planning Report

Section 5 Declaration

File Reference:	Dec. 25-58
Question:	Whether or not renovation to an existing dwelling including new porch extension and installation of a new window on the south elevation is or is not development and is or is not exempted development
Applicant:	Anna & Bartlomiej Klisiewicz
Correspondence Address:	
Location:	As above.

1. Introduction

The question has arisen as whether or not renovation to an existing dwelling including new porch extension and installation of a new window on the south elevation is or is not development and is or is not exempted development at 5 Eden Road, Birr, Co. Offaly R42 AK81.

2. Background

The subject site is located within Birr Town and is a two storey end of terrace dwelling. In accordance with the Birr Local Area Plan 2023 – 2029, the subject site is zoned as Existing Residential.

3. Site History

- *On Site* – No recent planning history associated with the subject site.
- *Enforcement* – No recent history associated with the subject site.
- *Adjoining Lands* - No recent planning history associated with the adjoining lands.



Figure 1 - Subject Site Location (as indicated).



Photo 1: Subject Site.



Photo 2: Subject Site.



Photo 3: Neighbouring property – opposite side of adjacent green area.

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.*

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 7** specifies:

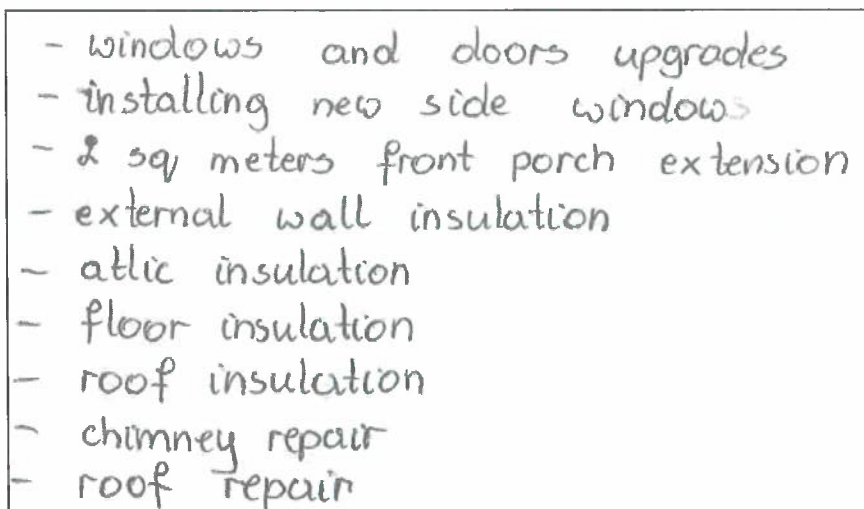
- *The construction or erection of a porch outside any external door of a house.*

This is considered to be exempted development if the following limitations are complied with:

1. *Any such structure shall be situated not less than 2 metres from any road.*
2. *The floor area of any such structure shall not exceed 2 square metres.*
3. *The height of any such structure shall not exceed, in the case of a structure with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.*

5. Proposal by Applicants

As detailed in the submitted planning documentation, the Applicants wish to carry out the following works:

- 
- windows and doors upgrades
 - installing new side windows
 - 2 sq meters front porch extension
 - external wall insulation
 - attic insulation
 - floor insulation
 - roof insulation
 - chimney repair
 - roof repair

The Applicants have also provided an elevation drawing of the proposed front porch and side window on the southern elevation of the existing dwelling.

The proposed porch would measure 2m wide, 1m deep and 3m high and have a floor area of 2m² and would be setback from the roadside boundary by c.4.5m.

The proposed window is located on the southern (side) elevation of the dwelling and overlooks a green space area that is not within the ownership of the Applicants.

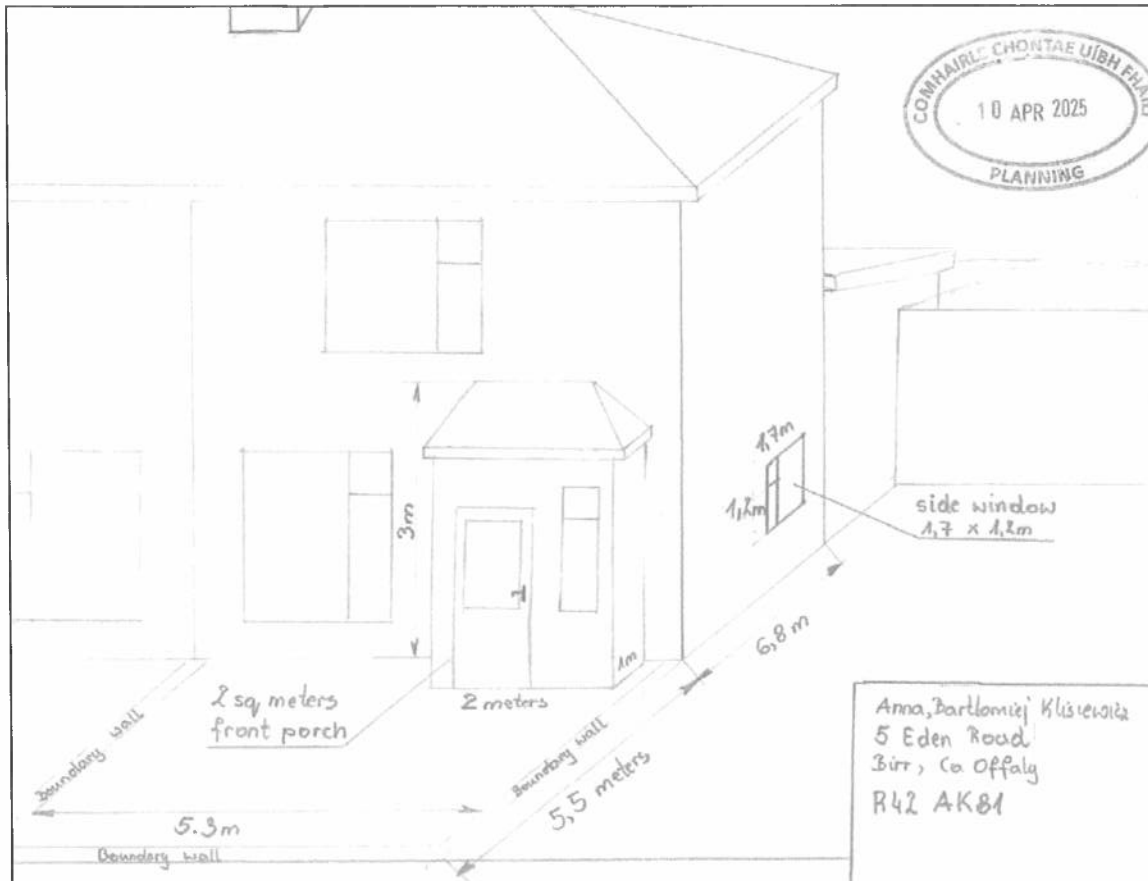


Figure 1: Proposed works.

6. 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 refurbishments and extension to the existing dwelling.

Question: Is this proposal considered as Exempted Development?

- **Side Window:** The Planner notes that the window on the south (side) elevation of the existing dwelling would overlook a public green space area and there is no exemption in place for the provision of such windows. Therefore, the installation of a side window on the south elevation of the dwelling is not deemed as exempted development.

- *Porch and renovations works:* With regard to the proposed works which are described in the submitted documents, the Planning Authority are satisfied that the proposed works would not result in a material alteration to the appearance of the dwelling and would not be inconsistent with the character of area. The refurbishments proposed by the applicant are harmonious with Section 4 (1) (h) of the Planning and Development Act 2000 (as amended). It is therefore the opinion of the Planning Authority that these works meet the criteria of exempt development under statutory provisions.

7. Appropriate Assessment

Having regard to nature of the development which comprises of the renovation of an existing dwelling at Birr, distance of c.1.6km from the Dovegrove Callows SPA and the 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. Environmental Impact Assessment Screening

Please refer to Appendix A.

9. Conclusion & Recommendation

It is recommended that the Applicant be advised that the proposed development is **development** and is **exempted development**.

10. Conclusion

Having assessed the information received, it is considered that the side window proposed on the south (side) elevation of the existing dwelling is **development** and is **not exempted development**.

Having assessed the information received, it is considered that the proposed front porch and remaining renovation works, as detailed in the submitted documentation, 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 or not the renovation to an existing dwelling including a new porch extension and installation of a new window on the south elevation is or is not development and is or is not exempted development at 5 Eden Road, Birr, Co. Offaly R42 AK81.

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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.



Úna McCafferkey

Executive Planner

1st May 2025

Date



Ed Kelly

A/Senior Executive Planner

6th May 2025

Date

Appendix A

EIA Screening

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	Dec 25-58
Development Summary:	Whether or not renovation to an existing dwelling including new porch extension and installation of a new window on the south elevation 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 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