

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/30

NAME OF APPLICANT: Tracey Kealey & Petar Zulj,
ADDRESS: Derryad, Killeigh, Tullamore, Co. Offaly.
ADDRESS FOR CORRESPONDENCE: Derryad, Killeigh, Tullamore, Co. Offaly.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether increasing the floor area of a 20m² residential extension to 33m² is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Derryad, Killeigh, Tullamore, Co. Offaly

WHEREAS a question has arisen as to whether increasing the floor area of a 20m² residential extension to 33m² is or is not development and is or is not exempted development at Derryad, Killeigh, Tullamore, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 22nd March 2024.

AND WHEREAS Tracey Kealey & Petar Zulj 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 of the Planning & Development Act 2000, as amended.
- (b) Class 1, Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- (c) Article 6(1) of the Planning and Development Regulations 2001 (as amended),
- (d) Article 9(1)(viii) of the Planning and Development Regulations 2001 (as amended)

AND WHEREAS Offaly County Council has concluded that the proposed development 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 increasing the floor area of a 20m² residential extension to 33m², is development and is not exempted development at Derryad, Killeigh, Tullamore, 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 included any submissions and observations received by it in accordance with statutory provisions.



Administrative Officer

Date 18/4/24

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. 24/30
Question:	Whether increasing the floor area of a 20m ² residential extension to 33m ² is or is not development and is or is not exempted development.
Applicant:	Tracey Kealey & Petar Zulj
Location:	Derryad, Killeigh, Tullamore, Co. Offaly



1. Introduction

The question has arisen as to whether increasing the floor area of a 20m² residential extension, located to the side of a dwelling built without permission in 2015, to 33m² is or is not development and is or is not exempted development.

2. Background

The existing dwelling is located within the rural townland of Derryad with direct access onto the L-6006-1 Local Secondary Road.

3. Site History

01/831: Brendan & Margaret McCann were **Granted** permission for the construction of a dwelling house & septic tank subject to 14 conditions.

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.

In this regard, the proposed development comprises works and also therefore is considered ‘development’.

Exempted Development is legislated for under Section 4 of the Planning and Development Act 2000 (as amended) and further prescribed under Article 6 (1) which is stated as follows:

“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.”

Planning & Development Regulations 2001 (as amended)

Article 9 Restrictions on exemption.

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

9(1)(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.

5. Proposal by Applicants

The Applicants have indicated that they are proposing to increase the floor area of the current residential extension of 20m² which was built to the side of a dwelling without permission, to 33m².

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 increasing the floor area of existing extension.

Question: Is this proposal considered as Exempted Development?

The original extension was built to the side of the dwelling. The applicants have indicated it does not have planning permission. It is considered the original side extension does not comply with Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001, therefore according to Article 9(1)(viii) Planning & Development Regulations 2001 (as amended) the proposed increase in floor area of the residential extension to the side of the dwelling requires planning permission.

7. Conclusion

It is recommended that the Applicants be advised that the proposed development is **development and is not exempted development.**

**Declaration on Development and Exempted Development
Section 5 of the Planning and Development Act 2000 (as amended)**

Whether is or is not development and is or is not exempted development.

WHEREAS a question has arisen as to whether increasing the floor area of a 20m² residential extension to 33m² is or is not development and is or is not exempted development at Derryad, Killeigh, Tullamore, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 22nd March 2024.

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AND WHEREAS Offaly County Council has concluded that the proposed development 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 increasing the floor area of a 20m² residential extension to 33m², is **development and is not exempted development** at Derryad, Killeigh, Tullamore, Co. Offaly.

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

16th April 2024

Ed Kelly

Ed Kelly

Acting Senior Executive Planner

17th April 2024

APPENDIX A
APPROPRIATE ASSESSMENT SCREENING
REPORT FOR PLANNING APPLICATIONS



Screening is used to determine if an AA is necessary by examining:

- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.

Planning Authority: OCC

Planning Application Ref. DEC24/30

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Residential extension		
Site location:	Derryad, Killeigh, Tullamore, Co. Offaly		
Site size:	N/A	Floor Area of Proposed Development:	33m ²
Identification of nearby European Site(s):	Charleville Wood SAC		
Distance to European Site(s):	3.63km		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIAR?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Charleville Wood SAC – Features of Interest:	<ul style="list-style-type: none"> Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] <i>Vertigo moulinsiana</i> (Desmoulin's Whorl Snail) [1016] 		
The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the European site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)			
Site Name: Charleville Wood SAC, Site Code: 000571	https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000571.pdf		
(C) NPWS ADVICE:			
Advice received from NPWS over phone:	None Received		
Summary of advice received from NPWS in written form (ATTACH SAME):	None Received		
(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:			

(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).	
If the answer is 'yes' to any of the questions below, then the effect is significant. (Please justify your answer. 'Yes' / 'No' alone is insufficient)	
Would there be...	
... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... a reduction in habitat area on a European site?	There will be no reduction in the habitat area. The site is sufficient distance from the European site.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?	Not likely due to the location and type of development. The site is sufficient distance from the European site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?	None likely due to the location and type of development. The site is sufficient distance from the European site.
Would the project interfere with mitigation measures put in place for other plans / projects. [Look at <i>in-combination effects</i> with completed, approved but not completed, and proposed plans / projects. Look at projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.
(E) SCREENING CONCLUSION:	
Screening can result in:	
1.	<i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.
2.	<i>No potential for significant effects / AA is not required.</i>
3.	<i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.
Therefore, does the project fall into category 1, 2 or 3 above?	
	Category 2
Justify why it falls into relevant category above:	There would be no likely significant impact on the European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Site.
Name:	Michael Ouffy
Position:	Executive Planner
Date:	16 th April 2024