

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/35

NAME OF APPLICANT: Ciaran Brennan

ADDRESS FOR CORRESPONDENCE: c/o Consult Engineering Design Limited, Cormac Street, Tullamore, Co. Offaly, R35 AK72.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the demolition of an extension which has not been constructed in accordance with building regulations is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Derries, Rahan, Tullamore, Co. Offaly, R35 CK46.

WHEREAS a question has arisen as to whether the demolition of an extension which has not been constructed in accordance with building regulations is or is not development and is or is not exempt development at Derries, Rahan, Tullamore, Co. Offaly, R35 CK46.

AS INDICATED on the particulars received by the Planning Authority on the 3rd April 2024.

AND WHEREAS Ciaran Brennan 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:

- Section 2, 3(1) and Section 4(2)(a) of the Planning & Development Act 2000, as amended.
- Article 6 of the Planning and Development Regulations 2001 (as amended).
- Class 50 of 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 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 the proposed demolition of an extension which has not been constructed in accordance with building regulations is **development** and is **not exempted development** at Derries, Rahan, Tullamore, Co. Offaly, R35 CK46.

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:	<i>Dec. 24/35</i>
Question:	<i>Whether the demolition of an extension which has not been constructed in accordance with building regulations is or is not development and is or is not exempt development.</i>
Applicant:	<i>Ciaran Brennan</i>
Correspondence Address:	<i>Consult Engineering Design Limited, Cormac Street, Tullamore, Co. Offaly, R35 AK72.</i>
Location:	<i>Derries, Rahan, Tullamore, Co. Offaly, R35 CK46.</i>

1. Introduction

The question has arisen as to whether the demolition of an extension which has not been constructed in accordance with building regulations is or is not development and is or is not exempt development.

2. Background

The dwelling is located in a Rural Area Under Strong Urban Influence and has a low sensitivity landscape classification. The site is located alongside a row of dwellinghouses, on a local tertiary road.

3. Site History

On site

Ref 95583: John Gaffey was granted permission for the extension to existing dwellinghouse.

Ref 80315: John Gaffey was granted permission conditionally for the erection of a dwellinghouse.

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 (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 – Class 50 specifies:

(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.*

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. *3. No such demolition shall be carried out to facilitate development of any class prescribed for the purposes of section 176 of the Act.*

The proposed demolition works are for a total floor area of 72m², exceeding the acceptable 40m² under Class 50 (a)

5. Proposal by Applicants

The Applicant has advised of the proposed demolition of an extension which has not been constructed in accordance with building regulations.

Due to the proposed demolition exceeding 40m², the demolition works do not comply with exempt development under Schedule 2 – Exempted Development, Part I – Class 50

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 demolition works.

Question: Is this proposal considered as Exempted Development?

I consider that the works are development and I consider that the works are not exempted development based on limitations set out in Class 50, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

7. Appropriate Assessment

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

8. Recommendation

It is recommended that the Applicant be advised that the proposed works is development and **is not 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 demolition of an extension which has not been constructed in accordance with building regulations is or is not development and is or is not exempt development at Derries, Rahan, Tullamore, Co. Offaly, R35 CK46.

AS INDICATED on the particulars received by the Planning Authority on the 3rd April 2024.

AND WHEREAS Ciaran Brennan 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 Section 4(2)(a) of the Planning & Development Act 2000, as amended.
- (b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- (c) Class 50 of 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 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:

- *The proposed demolition of an extension which has not been constructed in accordance with building regulations **is development and is not exempted development** at Derries, Rahan, Tullamore, Co. Offaly, R35 CK46.*

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 Dolan
Assistant Planner

Date: 24th April 2024



Ed Kelly A/Senior Executive Planner

Date: 29th 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. No: DEC 24/35

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the demolition of an extension which has not been constructed in accordance with building regulations is or is not development and is or is not exempt development.		
Site location:	Derries, Rahan, Tullamore, Co. Offaly, R35 CK46.		
Site size:	0.039ha	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	Clara Bog SAC – 0.37km Charleville Wood SAC – 5.71km		
Distance to European Site(s):	As above – all as crow flies		
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?	No: <input checked="" type="checkbox"/>		
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
<p>Clara Bog SAC – Features of interest include:</p> <ul style="list-style-type: none"> Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150] Bog woodland [91D0] <p>Charleville Wood SAC– Features of interest include:</p> <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> (<i>Desmoulin's Whorl Snail</i>) [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: Clara Bog SAC Site Code: 000572 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000572.pdf 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:	
<i>(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).</i>	
If the answer is 'yes' to any of the questions below, then the effect is significant. <i>(Please justify your answer. 'Yes' / 'No' alone is insufficient)</i>	
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.	AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.
2.	No potential for significant effects / AA is not required.
3.	Significant effects are certain, likely or uncertain. (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:	Enda Dolan 		
Position:	Assistant Planner	Date:	24 th April 2024

