

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/6

NAME OF APPLICANT: Teresa Doherty  
ADDRESS: C/o Ferbane Nursing Home, Co. Offaly  
ADDRESS FOR CORRESPONDENCE: C/o Frank Murray, Murray Architectural Services, Pallas Park,  
Blueball, Tullamore, Co. Offaly.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether alternations which were carried out to a dwelling house consisting of the conversation of attached garage to living area is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Meelaghans, Tullamore, Co. Offaly. R35 YD34.

WHEREAS a question has arisen as to whether the alternations which were carried out to a dwelling house consisting of the conversation of attached garage to living area is or is not development and is or is not exempted development at Meelaghans, Tullamore, Co. Offaly. R35 YD34.

AS INDICATED on the particulars received by the Planning Authority on the 19<sup>th</sup> January 2024.

AND WHEREAS Teresa Doherty 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:

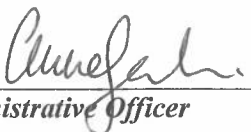
- (a) Section 2(1), 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.
- (b) Article 6 of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the alternations which were carried out to a dwelling house consisting of the conversation of attached garage to living area is or is not development and is or 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 alternations which were carried out to a dwelling house consisting of the conversation of attached garage to living area **IS DEVELOPMENT** and **IS EXEMPTED DEVELOPMENT** at Meelaghans, Tullamore, Co. Offaly. R35 YD34

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 15/02/24

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

<b>File Reference:</b>	<b>Dec. 24/6</b>
<b>Question:</b>	Whether alternations which were carried out to an dwelling house consisting of the conversation of attached garage to living area is or is not development and is or is not exempted development?
<b>Applicant:</b>	Teresa Doherty
<b>Correspondence Address:</b>	C/O Frank Murray, Pallas Park, Blueball, Tullamore, Co. Offaly
<b>Location:</b>	Meelaghans, Tullamore, Co. Offaly. R35 YD34

#### 1. Introduction

The question has arisen as to alternations which were carried out to a dwelling house as well as the conversation of attached garage to living area is or is not development and is or is not exempted development?

#### 2. Background

The existing dwelling is located in the townland of the Meelaghans, Tullamore, Co. Offaly with direct access onto the R420 Regional road.



#### 3. Site History

**85/218:** Permission **Granted** to Ann Cloonan for the construction of a dwelling house subject to 13 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.*

**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.*

**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.*

Conditions and limitations are listed in the relevant regulations.

## 5. Proposal by Applicants

The Applicant has indicated that the following works has been carried out - alternations to dwelling house and conversation of existing attached garage to living area.

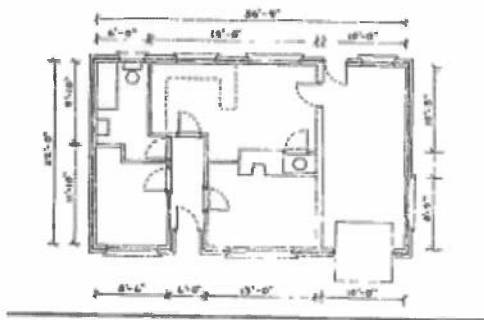
## 6. Evaluation

**Question: Whether the proposed works (as listed) to the existing dwelling are development and if so, are they exempted development?**

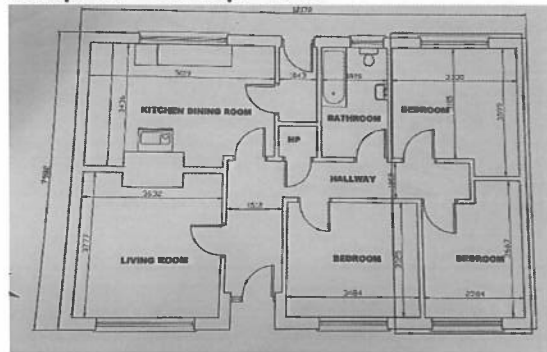
In considering the works carried out against the definitions of 'development' and 'works' as provided in the Act.

It is the view of the Planning Authority that the works that was carried out are deemed development which includes alternations to dwelling house and conversation of attached garage to living area.

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



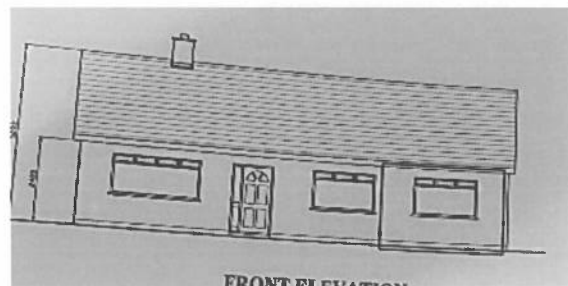
Dwelling Layout granted under planning reference 85/218



Existing Layout



Front Elevation granted under planning reference 85/218



Existing Front Elevation

With regard to the works that was carried out which are described in the submitted documents as well as the permission granted under planning reference 85/218, the Planning Authority are satisfied that the works carried out does not result in a material alteration to the dwellings appearance. While it is acknowledged that the garage door was blocked up and replaced with a window, it is the Planning Authority's opinion that these works did not significantly alter the existing external appearance of the dwelling and I note that the proposal is not inconsistent with the character of neighbouring structures. The development complies with exemption

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Schedule 2 – Exempted Development, Part I, Class 1 and the relevant Conditions and limitations of this class.

**7. Conclusion**

It is recommended that the Applicant be advised that the development carried out 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 alternations which were carried out to an dwelling house consisting of the conversation of attached garage to living area is or is not development and is or is not exempted development at Meelaghans, Tullamore, Co. Offaly. R35 YD34

**AS INDICATED** on the particulars received by the Planning Authority on the 19<sup>th</sup> January 2024,

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**is development and is exempted development** at Meelaghans, Tullamore, Co. Offaly. R35 YD34

*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

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*Michael Duffy*

*Executive Planner*

*14<sup>th</sup> February 2024*

Ed Kelly

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*Ed Kelly*

*Acting Senior Executive Planner*

*14<sup>th</sup> February 2024*



**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 Application Ref. No.:**

**DEC/24/6**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether alternations which were carried out to an dwelling house and conversation of attached garage to living area is or is not development and is or is not exempted development		
Site location:	Meelaghans, Tullamore, Co. Offaly. R35 YD34		
	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC		
Distance to European Site(s):	2.74km		
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: ✓
(B) IDENTIFICATION OF THE RELEVANT European SITE(S):			
The reasons for the designation of the European site:			
The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes): [91E0] Alluvial Forests* [1016] Desmoulin's Whorl Snail (Vertigo moulinsiana)			

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 Natura 2000 site synopses and, if applicable, a Conservation Management Plan; all available on [www.npws.ie](http://www.npws.ie)) **(ATTACH INFO.)**

Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Code Description 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion incanae, Salicion albae)\* \* denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail *Vertigo moulinsiana*

**(C) NPWS ADVICE:**

Advice received from NPWS over phone:	None received
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**(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)*

<p><b>Would there be...</b> ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	Not likely due to the location and type of development.
	The site is sufficient distance from the European site.
<p>... a reduction in habitat area on a European site?</p>	There will be no reduction in the habitat area.
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
	Not likely due to the location and type of development
	The site is sufficient distance from the European site.

<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	<p>None likely due to the location and type of development</p>
<p>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.</p>	<p>The site is sufficient distance from the European site</p> <p>No other plans known of in the vicinity of the site.</p> <p>The site is sufficient distance from the European site.</p> <p></p> <p></p> <p></p> <p></p> <p></p>
<p><b>(E) SCREENING CONCLUSION:</b></p>	
<p><b>Screening can result in:</b></p>	
<p>1.</p>	<p><i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.</p>
<p>2.</p>	<p><i>No potential for significant effects / AA is not required.</i></p>
<p>3.</p>	<p><i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a NIS from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</p>
<p>Therefore, does the project fall into category 1, 2 or 3 above?</p>	<p>Category 2</p>
<p>Justify why it falls into relevant category above:</p>	<p>There would be no likely significant impact on European sites from the proposed development.</p>
<p><b>Name:</b></p>	<p>Michael Duffy</p>
<p><b>Position:</b></p>	<p>Exec. Planner</p>
<p><b>Date:</b></p>	<p>14/2/2024</p>

