

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

REFERENCE: DEC 24/65

NAME OF APPLICANT: Connor Dupuits

ADDRESS FOR CORRESPONDENCE: Lisanskea, Clara, Co. Offaly, R35WE28.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the proposed works (including the following external works - replacement of external windows and doors, external plastering, external painting and replacement of gutters, soffits and facias) to an existing dwelling, is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 74 The Green, Clara, Co. Offaly, R35 PH00.

WHEREAS a question has arisen as to whether the proposed works (including the following external works - replacement of external windows and doors, external plastering, external painting and replacement of gutters, soffits and facias), to an existing dwelling is, or is not, development and, if so, is it exempted development at No. 74 The Green, Clara, Co. Offaly, R35 PH00.

AS INDICATED on the particulars received by the Planning Authority on the 13th June 2024.

AND WHEREAS Connor Dupuits of Lisanskea, Clara, Co. Offaly 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 4(1)(h) of the Planning & Development Act 2000, as amended.
- Article 6 of the Planning and Development Regulations 2001, as amended.
- Schedule 2, Part 1, Class 12 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works (including the following external works - replacement of external windows and doors, external plastering, external painting and replacement of gutters, soffits and facias) to an existing dwelling 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 works (including the following external works - replacement of external windows and doors, external plastering, external painting and replacement of gutters, soffits and facias) to an existing dwelling at No. 74 The Green, Clara, Co. Offaly, R35 PH00 **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

10/07/24

Date

Note: 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.

Planning Report

Section 5 Declaration

File Reference:	<i>Dec. 24/65</i>
Question:	Whether the proposed works (including the following external works - replacement of external windows and doors, external plastering, external painting and replacement of gutters, soffits and facias), to an existing dwelling is, or is not, development and, if so, is it exempted development.
Applicant:	Connor Dupuits.
Correspondence Address:	Lisaniskea, Clara, Co. Offaly, R35WE28.
Location:	74 The Green, Clara, Co. Offaly, R35 PH00.

1. Introduction

The question has arisen as to whether the proposed works (including the following external works - replacement of external windows and doors, external plastering, external painting and replacement of gutters, soffits and facias), to an existing dwelling is, or is not, development and, if so, is it exempted development.

2. Background

The existing dwelling is located within the townland of Curragh in Clara. It is located off Local Primary Road L60145-1. In the *Offaly County Development Plan 2021-27*, Clara is classified as a *Town* in the Core Strategy and the site is zoned as *Existing Residential* with a low sensitivity landscape classification.



Map 1 Location of site (red line boundary)

3. Site History

Ref: 24/60016: Michael Convey sought retention permission for an existing extension to existing house. The extension also included the conversion of existing garage into a habitable room, front porch, domestic garage to the rear, and minor alterations to the existing dwelling and all associated site works and drainage – **Granted**.



Photo 1: Front elevation of subject site.



Photo 2: Front porch of subject site.

4. Legislative Context

In order to assess whether, or not, the proposed works constitute exempted development, regard must be had to the following relevant 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 12 specifies:

'The painting of any external part of any building or other structure.'

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

'Such painting may not, except in the case of a hoarding or other temporary structure bounding land on which development consisting of works is being or will be carried out in pursuance of a permission granted under Part III of the Act or as exempted development, be for the purposes of creating a mural.'

5. Proposal by Applicant

The Applicant has indicated that the following works will be carried out internally and externally to an existing dwelling;

- Replacement of external windows and doors.
- Tiling kitchen.
- Replacement of wooden flooring and carpets.

- Internal and external plastering.
- Replacement of boiler and radiators.
- Internal and external painting.
- Replacement of gutters, soffits and fascias.

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 alterations and repairs to the existing dwelling.

Question: Is this proposal considered as Exempted Development?

With regard to the proposed works which are described in the submitted documents, the Planning Authority is satisfied that the proposed works would not result in a material alteration to the dwelling's appearance and the finished development would not be inconsistent with the character of the structure.

For these reasons, the proposed works are not deemed as exempted development.

7. Screening

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.

It is considered that the proposed development does not constitute a development listed in Schedule 5 of the Planning and Development Regulations 2001 as amended. Furthermore, it is not a sub-threshold development. Accordingly, an EIAR is not required.

8. Conclusion

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

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 works (including the following external works - replacement of external windows and doors, external plastering, external painting and replacement of gutters, soffits and fascias), to an existing dwelling is, or is not, development and, if so, is it exempted development at No. 74 The Green, Clara, Co. Offaly, R35 PH00.

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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:

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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.



Enda Finlay

Graduate Planner

28th June 2024



Úna McCafferkey

Acting Senior Executive Planner

8th July 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: Offaly County Council

Planning Application Ref. DEC24/65

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Proposed renovations to an existing dwelling.		
Site location:	74 The Green, Clara, Co. Offaly, R35 PH00.		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Clara Bog SAC 1.03km		
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?	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):			

Clara Bog SAC – Features of interest include:

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]

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>

(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 (Clara Bog SAC) from the proposed development due to the scale and nature of the proposed development and the separation distance between the subject site and the European Site.
Name:	 Enda Finlay
Position:	Graduate Planner
Date:	28 th June 2024

Given the location, the nature, and size of the development applied for and the characteristics of European sites in the vicinity it is considered that 500 metres should be used as a potential zone of impact of the project in accordance with section 3.2.3 of the appropriate assessment guidelines. There are no European sites within 500 metres of the development applied for.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal would not adversely affect the integrity of the nearest European Site (Clara Bog SAC) having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

