

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 20/02

NAME OF APPLICANT: Ken Casey & Siobhan Kenny

ADDRESS FOR CORRESPONDENCE:



NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the proposed works to an existing dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Lower Main Street, Gallen, Ferbane, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 10th January 2020 has arisen as to whether the proposed works to an existing dwelling at Lower Main Street, Gallen, Ferbane, Co. Offaly is or is not development and is or is not exempted development under the Planning and Development Act 2000, (as amended).

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Sections 2, 3 & 4 of the Planning and Development Act 2000, as amended
- (b) Article 6 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 powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended hereby decides that the proposed works to an existing dwelling at Lower Main Street, Gallen, Ferbane, Co. Offaly, Co. Offaly **IS DEVELOPMENT AND IS NOT 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

06/02/2020

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. 20/02
Question:	<i>Whether the proposed works (as listed) to the existing dwelling are development and if so, are they exempted development?</i>
Applicant:	<i>Ken Casey & Siobhan Kenny</i>
Correspondence Address:	
Location:	<i>Lower Main Street, Gallen, Ferbane, Co. Offaly.</i>

1. Introduction

The question has arisen as to whether the proposed works to an existing dwelling are exempted development under Schedule 2, Part 1 Class 14(f) of the Planning and Development Regulations 2001 (as amended).

2. Background

The existing two storey dwelling which has a red brick facade is located on lands which are zone as 'residential' under the Offaly County Council County Development Plan 2014 – 2020.

To the south of the subject site, there are 6 no. semi-detached dwellings which were constructed subsequent to the issuing of the grant of planning permission ref. no. 06/1292.

3. Site History

On Site

- 08/883: David Coffey sought permission for demolition of existing two storey dwelling house and domestic storage shed and construction of 4 no. three-bedroom semi-detached dwelling houses and associated site works – **Granted**.

Adjoining Lands to the South

- 06/1292: David Coffey sought permission for the construction of 2 no. three-bedroom semi-detached dwelling houses and associated site works to previously granted housing development (file ref. no. PL2/04/1786) – **Granted**.
- 04/1786: David Coffey sought permission for the construction of 6 no. three-bedroom semi-detached dwelling houses and associated site works – **Granted**.

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".

Article 9 of the Planning and Development Regulations 2001 (as amended), identifies restrictions on exemption.

9 (1): Development to which article 6 relates shall not be exempted development for the purposes of the Act - (a) if the carrying out of such development would -

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.*

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 if 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’.

With reference to boundary treatments, no works are listed by the Applicants and no plans/elevations have been submitted. However, it is noted that the submitted photomontages show an indicative roadside boundary wall. In this regard, it is noted that Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 5 specifies:

‘The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete’.

This exemption is subject to the following limitations set out in Column 2:

1. *The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.*
2. *Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.*
3. *No such structure shall be a metal palisade or other security fence.*

5. Proposal by Applicants

The applicants have provided detailed drawings which advise that the following works are proposed to the existing dwelling:

- (a) Application of external insulated render (white finish) to the external façade of the house in order to bring the house up to current Part L U-value requirements.
- (b) Replacement of the existing sloping roof on the south façade (over the front porch) with a flat paralon roof.
- (c) Replacement of existing external windows and doors throughout.
- (d) Installation of glazing to the west façade.
- (e) Installation of Velux windows to pitched roof at the rear of the house (north/rear façade).

The Applicants confirm that there will be no additional floor area as part of the proposed refurbishment however they note that *'due to the application of external render to the exterior of the façade, it was felt prudent to clarify if a planning permission application was required to carry out these works'*.

While not listed as proposed works by the applicants, the Planner notes that the submitted photomontages show changes to the roadside boundary wall which may require planning permission however these do not form part of this assessment.

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 notes the following:

(a) *Application of external insulated render (white finish) to the external façade of the house in order to bring the house up to current Part L U-value requirements.*

Considering this amendment in accordance with the provisions of Section 4 (1) (h) of the Act, the Planning Authority confirm that the application of external insulated render (white finish) to the external façade of the red brick house is not exempted development. The application of the render with a white finish to the existing red brick dwelling would materially alter the appearance of the dwelling so much so that its appearance would be inconsistent with the character of the structure. It is therefore, the opinion of the Planning Authority that these works are not exempted development.

(b) *Replacement of the existing sloping roof on the south façade (over the front porch) with a flat paralon roof.*

(c) *Replacement of existing external windows and doors throughout.*

(d) *Installation of glazing to the west façade.*

(e) *Installation of Velux windows to pitched roof at the rear of the house (north/rear façade).*

The above items are proposed works to the exterior of the existing dwelling. It is the view of the Planning Authority that if these works were carried out individually, they would not materially alter the appearance of the dwelling. However, it is concluded that the cumulative effect of the works being carried out would result in a material alteration to the dwelling appearance so that it would be inconsistent with the character of the structure. It is the opinion of the Planning Authority that cumulative these works are not exempted development and would require planning permission.

7. Conclusion

WHEREAS a question has arisen as to whether or not the proposed works to the existing dwelling are or are not development and, where it is development, whether or not it is or is not exempted development at Lower Main Street, Gallen, Ferbane, Co. Offaly.

AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to -

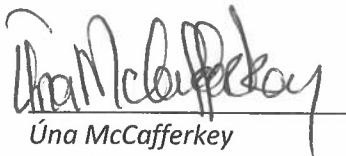
(a) Sections 2, 3 and 4 of the Planning & Development Act 2000 as amended.

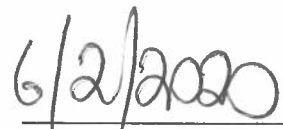
AND WHEREAS Offaly County Council has concluded that –

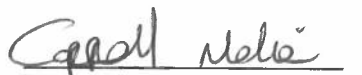
The undertaking of works to the existing dwelling (as listed by the Applicants and considered cumulatively) is development and is not exempted development.

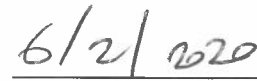
NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) of the Planning and Development Act, as amended, hereby decides;

That the undertaking of works at the existing dwelling at Lower Main Street, Gallen, Ferbane, Co. Offaly is development and is not exempted development.


Una McCafferkey
Assistant Planner


Date


Carroll Melia
(A/Senior Executive Planner)


Date



Photos taken May 2018

