

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

REFERENCE: DEC 24/70

NAME OF APPLICANT: Mary McIntyre

ADDRESS FOR CORRESPONDENCE: Blacklion Church, Mountpleasant, Blueball, Co. Offaly, R35 R156.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the restoration of the property to habitable standards, retrofitting, demolition of derelict extension to rear and construction of new single storey extension to the rear is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 56 St. Cormac's Park, Kilcormac, Co. Offaly, R42 DW08.

WHEREAS a question has arisen as to whether the restoration of the property to habitable standards, retrofitting, demolition of derelict extension to rear and construction of new single storey extension to the rear is or is not development and is or is not exempted development at 56 St Cormac's Park, Kilcormac, Co. Offaly, R42 DW08.

AS INDICATED on the particulars received by the Planning Authority on the 20th June 2024.

AND WHEREAS Mary McIntyre of Blacklion Church, Mountpleasant, Blueball, Co. Offaly, R35 R156 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 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 (of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development particularly having regard to Schedule 2, Part 1, Class 1.

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 restoration of the property to habitable standards, retrofitting, demolition of derelict extension to rear and construction of new single storey extension to the rear **is development and is exempted development** at 56 St Cormac's Park, Kilcormac, Co. Offaly, R42 DW08.

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: 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:	Dec. 24/70
Question:	Whether the restoration of the property to habitable standards , retrofitting, demolition of derelict extension to rear and construction of new single storey extension to the rear is or is not development and is or is not exempted development
Applicant:	Mary Mc Intyre
Correspondence Address:	Blacklion Church, Mountpleasant, Blueball, Co. Offaly. R35 R156
Location:	56 St Cormac's Park, Kilcormac, Co. Offaly. R42 DW08

1. Introduction

The question has arisen as whether the restoration of the property to habitable standards, retrofitting, demolition of derelict extension to rear and construction of new single storey extension to the rear is or is not development and is or is not exempted development at 56 St Cormac's Park, Kilcormac, Co. Offaly

2. Background

The subject site is located within an established residential development in Kilcormac Town. Under the current Kilcormac Town Plan (Volume 2 of the Offaly County Development 2021 – 2027), the subject site is zoned as *Existing Residential*. The subject site is the end terrace dwelling with an existing outbuilding which forms the rear boundary. Access to the rear of the property is possible via this outbuilding.



Figure 1: Subject Site Location.



Photo 1 - Subject Site.

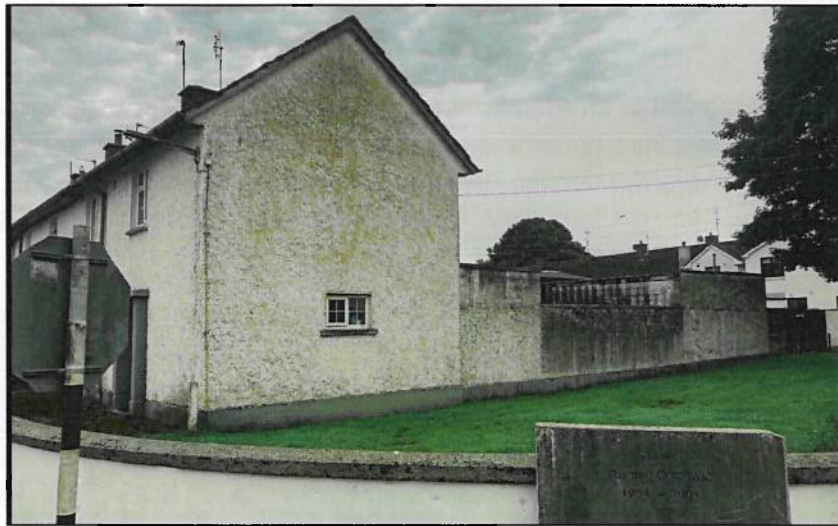


Photo 2 - Subject Site.



Photo 3 - Subject Site.



Photo 4 - Subject Site.

3. Site History

On Site – No recent planning history associated with the subject site.

Enforcement – No recent history associated with the subject site.

Adjoining Property to the east: No recent planning history associated with the adjoining properties.

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”.

Part 1 of Schedule 2 of the P&D Regulations deals with ‘Exempted Development – General’. Column 1 sets out the classes of development that are exempted and Column 2 sets out the conditions and limitations on the exemption.

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.

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

1.

- (a) *Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.*
- (b) *Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.*
- (c) *Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.*

2.

- (a) *Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.*
- (b) *Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.*

- (c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.
3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.
- 4.
- (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.
- (b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.
- (c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.
5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.
- 6.
- (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.
- (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
- (c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.
7. The roof of any extension shall not be used as a balcony or roof garden.

6. Proposal by Applicants

As detailed on the submitted planning application form, the Applicant intends to:

'restore the dwelling to a habitable standard, modernising for economic and sustainable efficiency by upgrading mechanical work for energy efficiency and retrofitting where possible. Derelict extension to rear to be removed. New extension to be erected with the size and height restrictions set out by Council as outside the scope for planning permission requirements'.

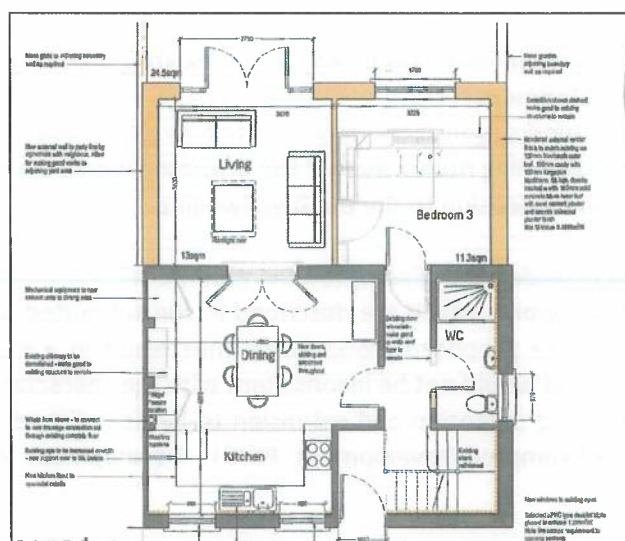


Figure 2: Proposed single storey extension to the rear of existing dwelling (as submitted).

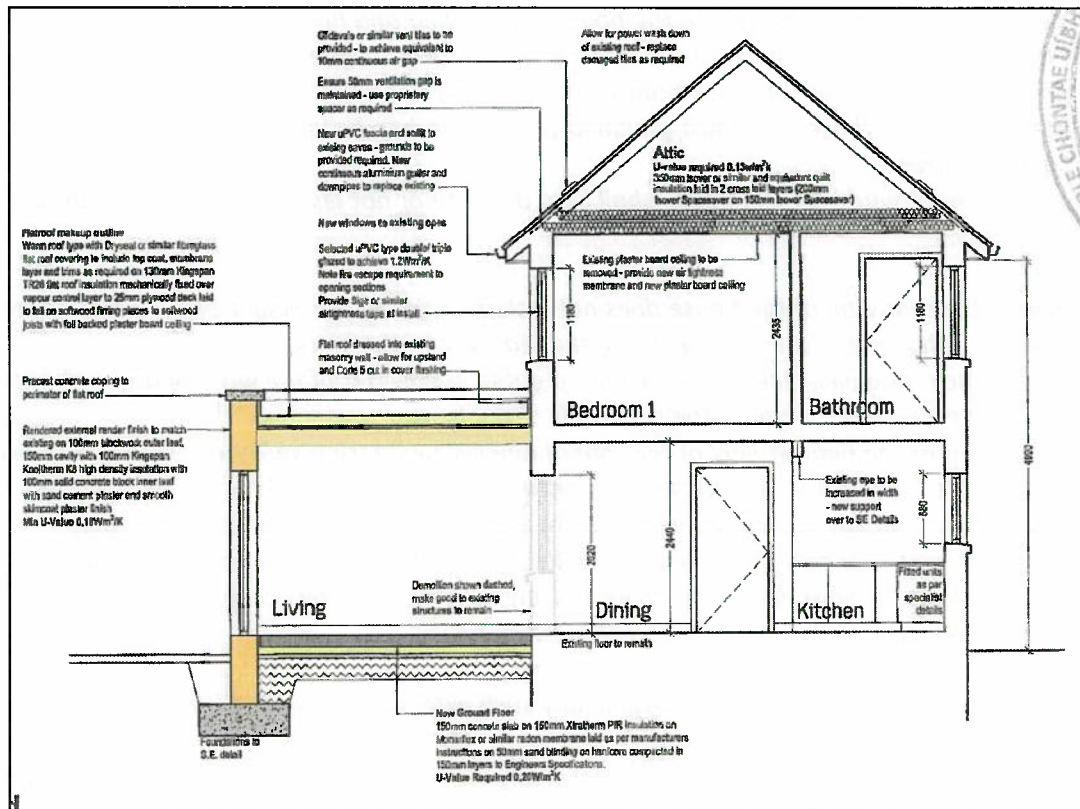


Figure 3: Proposed single storey extension to the rear of existing dwelling (as submitted).

Having reviewed the submitted documentation, the Area Planner notes the following:

- The proposed extension is single storey in form.
- The extensions (existing and proposed) do not exceed 40m².
- With the proposed extension in place, the private open space will exceed 25m².
- The height of the proposed extension @ c.3m is acceptable.
- Proposed windows location on the rear elevation of the proposed extension are acceptable and will overlook the private open space.
- The roof of the proposed extension will not be used as a balcony or roof garden.

7. 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 renovations and extension 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 are satisfied that the proposed works would not result in a material alteration to the appearance of the dwelling and would not be inconsistent with the character of area. In addition, the scale and form of the proposed extension and extension to be demolished is within conditions and limitations of Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1.

It is the opinion of the Planning Authority that these works meet the criteria of exempt development under statutory provisions.

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.**

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 restoration of the property to habitable standards, retrofitting, demolition of derelict extension to rear and construction of new single storey extension to the rear is or is not development and is or is not exempted development at 56 St Cormac's Park, Kilcormac, Co. Offaly, R42 DW08.

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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:

- The proposed restoration of the property to habitable standards, retrofitting, demolition of derelict extension to rear and construction of new single storey extension to the rear is **development** and is **exempted development** at 56 St Cormac's Park, Kilcormac, Co. Offaly, R42 DW08.

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.



Úna McCafferkey

Executive Planner

15th July 2024

Date

Ed Kelly

Ed Kelly

(A/Senior Executive Planner)

16th July 2024

Date

APPENDIX A

**APPROPRIATE ASSESSMENT SCREENING
REPORT FOR PLANNING APPLICATIONS**



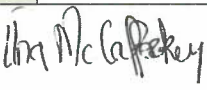
Screening is used to determine if an AA is necessary by examining:

- 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 24/70

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the restoration of the property to habitable standards, modernising for economic & sustainable efficiency, retrofitting, demolition of derelict extension to rear and construction of new single storey extension to the rear is or is not development and is or is not exempted development.		
Site location:	56 St Cormac's Park, Kilcormac, Co. Offaly. R42 DW08		
Site size:	Not provided	Floor Area of Proposed Development:	24.5m ²
Identification of nearby European Site(s):	Slieve Bloom Mountains SPA – 7.19km		
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):	Slieve Bloom Mountains SPA - Features of interest include: Hen Harrier (Circus cyaneus) [A082]		
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.)	SITENAME: SLIEVE BLOOM MOUNTAINS SPA, SITE CODE: 004160 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.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.	<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:	Úna McCafferkey 
Position:	Executive Planner
Date:	15 th July 2024

