

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

**REFERENCE:** DEC 23/29

**NAME OF APPLICANT:** Joseph and Carol Mullen

**ADDRESS:** Fairlawn, Main Street, Ballycumber.

**ADDRESS FOR CORRESPONDENCE:** Fairlawn, Main Street, Ballycumber.

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the construction of a single level extension opening up kitchen into back yard. Extension to consist of extending kitchen approx. 3 metres into yard with fully glazed back wall including new sliding door to yard. Finish with a lean too roof to match that of existing roof. Replace existing oil stove with new wood pellet stove, replacing old kitchen units with new kitchen appliances etc. Floor to be finished with tiles. Total size of extension 17sqm is/ is not development and is /is not exempted development.

**LOCATION OF DEVELOPMENT:** Fairlawn, Main Street, Ballycumber.

**WHEREAS** A question referred to Offaly County Council as to whether the construction of a single level extension opening up kitchen into back yard. Extension to consist of extending kitchen approx. 3 metres into yard with fully glazed back wall including new sliding door to yard. Finish with a lean too roof to match that of existing roof. Replace existing oil stove with new wood pellet stove, replacing old kitchen units with new kitchen appliances etc. Floor to be finished with tiles. Total size of extension 17sqm. At Fairlawn, Main Street, Ballycumber.

**AND WHEREAS** Joseph and Carol Mullen has requested a declaration on the said question from Offaly County Council;

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

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

**AND WHEREAS** Offaly County Council has concluded that --

- The work is considered 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 construction of a single level extension opening up kitchen into back yard. Extension to consist of extending kitchen approx. 3 metres into yard with fully glazed back wall including new sliding door to yard. Finish with a lean too roof to match that of existing roof. Replace existing oil stove with new wood pellet stove, replacing old kitchen units with new kitchen appliances etc. Floor to be finished with tiles. Total size of extension 17sqm. is **development** and is **exempted development** at Fairlawn, Main Street, Ballycumber.

**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

3<sup>rd</sup> November 2023

**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.

**OFFALY COUNTY COUNCIL**

**Planning Report**

**Section 5 Declaration**

<b>File Reference:</b>	<b>Dec 23/29</b>
<b>Question:</b>	Whether the construction of: A single level extension opening up kitchen into back yard. Extension to consist of extending kitchen approx. 3 metres into yard with fully glazed back wall including new sliding door to yard. Finish with a lean too roof to match that of existing roof. Replace existing oil stove with new wood pellet stove, replacing old kitchen units with new kitchen appliances etc. Floor to be finished with tiles. Total size of extension 17sqm.  <b>Is/ is not development and is /is not exempted development</b>
<b>Applicant:</b>	Joseph and Carol Mullen
<b>Location:</b>	Fairlawn, Main Street, Ballycumber
<b>Date received:</b>	9/10/2023
<b>Date due:</b>	5/11/2023

**1. Proposal**

The question has arisen as to whether the renovation refurbishment and extension to the rear of an unoccupied house Is/ is not development and is /is not exempted development

**Location**

There is an existing detached two storey dwelling house on site.

**2. Relevant Planning History:**

Noted that an extension granted under 82/612 does not appear to have been constructed and is therefore not relevant.

**3. Legislative Context:**

Section 2 (1) Planning and Development Act 2000, as amended:

In this Act, except where the context otherwise requires—  
“development” has the meaning assigned to it by [section 3](#), and “develop” shall be construed accordingly;

Section 3 (1) Planning and Development Act 2000, as amended:

“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 Planning and Development Act 2000, as amended:

4.—(1) The following shall be exempted developments for the purposes of this Act—

(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 or 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 of neighbouring structures;

(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, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

(b) Regulations under *paragraph (a)* may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of *paragraph (a)*, provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

Article 6(1) of the Planning and Development Regulations 2001, as amended:

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
PART 1
CLASS 1
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.
<p><b>Subject to 7 condition and limitations</b></p> <p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.  <b>(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.</b></p> <p>2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of</p>

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.

#### **4. Appropriate Assessment**

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

Other than the European sites addressed in the AA no other AA is potentially within the zone of influence of the project.

## 5. Evaluation

Question: Is the following works considered as Development?

YES

Question: Is the following works proposal considered as Exempted Development?

YEs

Question: Does the development require environmental impact assessment?

NO

## 6. Conclusion

It is recommended that the applicant be advised that the proposed development **is/is not development** and **is/ 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 construction of:

A single level extension opening up kitchen into back yard. Extension to consist of extending kitchen approx. 3 metres into yard with fully glazed back wall including new sliding door to yard. Finish with a lean too roof to match that of existing roof. Replace existing oil stove with new wood pellet stove, replacing old kitchen units with new kitchen appliances etc. Floor to be finished with tiles. Total size of extension 17sqm.

At Fairlawn, Main Street, Ballycumber

**AND WHEREAS** Joseph and Carol Mullen

has 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 of the Planning & Development Act 2000, as amended.
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- (e) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended

**AND WHEREAS** Offaly County Council has concluded that –

- The work is ~~not~~ considered development and is exempted development.

EK

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5(2) hereby decides that;

- The construction of a single level extension opening up kitchen into back yard. Extension to consist of extending kitchen approx. 3 metres into yard with fully glazed back wall including new sliding door to yard. Finish with a lean too roof to match that of existing roof. Replace existing oil stove with new wood pellet stove, replacing old kitchen units with new kitchen appliances etc. Floor to be finished with tiles. Total size of extension 17sqm.

**Is development and is exempted development.**



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Ed Kelly

ASEP

3/11/2023



## 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 s 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

**23/29**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:	
Proposed development:	A single level extension opening up kitchen into back yard. Extension to consist of extending kitchen approx. 3 metres into yard with fully glazed back wall including new sliding door to yard. Finish with a lean too roof to match that of existing roof. Replace existing oil stove with new wood pellet stove, replacing old kitchen units with new kitchen appliances etc. Floor to be finished with tiles. Total size of extension 17sqm.
Site location:	Fairlawn, Main Street, Ballycumber
Site size:	<b>0.4ha.</b> Floor Area of Development <b>17sqm</b>
Identification of nearby <i>European</i> Site(s):	<b>2000 site(s): SAC 000572– Clara Bog SAC</b>
Distance to <i>European</i> Site(s):	<b>1 kms</b>
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 <i>European</i> site:	<b>None</b>
Is the application accompanied by an EIAR?	No: ✓
(B) IDENTIFICATION OF THE RELEVANT NATURA 2000 SITE(S):	
The reasons for the designation of the Natura 2000 site(s):	
Clara Bog has long been regarded as one of the most important lowland raised bogs in the country, being the largest remaining example of the true Midland sub-type. The ecology supports breeding Merlin (1-2 pairs), a scarce species in Ireland and one that is listed on Annex I of the EU Birds Directive	
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 <a href="http://www.npws.ie">www.npws.ie</a> ( <b>ATTACH INFO.</b> )	
PLEASE SEE <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000572.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000572.pdf</a> <a href="https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000572.pdf">https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000572.pdf</a>	
<b>(C) NPWS ADVICE:</b>	
Advice received from NPWS over phone:	None received
Summary of advice received from NPWS in written form <b>(ATTACH SAME):</b>	None received

<b>(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:</b>	
<i>(The purpose of this is to identify if the effect(s) identified could be significant – if <b>uncertain</b> 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>	
<b>Would there be...</b> ... 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 <i>European</i> site.
... a reduction in habitat area on a <i>European</i> site?	There will be no reduction in the habitat area.
	The site is sufficient distance from the <i>European</i> site.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the <i>European</i> site?	Not likely due to the location and type of development
	The site is sufficient distance from the <i>European</i> site.
... serious / ongoing disturbance to species / habitats for which the <i>European</i> 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 <i>European</i> site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> site?	None likely due to the location and type of development
	The site is sufficient distance from the <i>European</i> 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 <i>European</i> 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 <i>European</i> site.
<b>(E) SCREENING CONCLUSION:</b>	

Screening can result in:	
1.	<i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i>
2.	<i>No potential for significant effects / AA is not required.</i>
3.	<i>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.</i>
Therefore, does the project fall into category 1, 2 or 3 above?	
<b>Category 2</b>	
Justify why it falls into relevant category above:	<b>There would be no likely significant impact on the European site from the proposed development.</b>
<b>Name:</b>	<b>Ed Kelly</b>
<b>Position:</b>	<b>ASEP</b>
<b>Date:</b>	<b>3/11/2023</b>