

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 23/34

NAME OF APPLICANT: ROSALIE EVANS

ADDRESS

ADDRESS FOR CORRESPONDENCE: C/O FRANK MURRAY ARCHITECTURAL SERVICES LTD, 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 INTERNAL WORKS, NEW FULL SLATE ROOF, NEW FRONT DOOR AND PAINTING EXTERIOR OF HOUSE TO RENOVATE AN EXISTING DWELLING HOUSE, IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT.

LOCATION OF DEVELOPMENT: BALLYNASRAH, TULLAMORE, CO. OFFALY, R35 C960.

**WHEREAS** a question referred to Offaly County Council on 19/10/2023 as to a question has arisen as to whether internal works, new full slate roof, new front door and painting exterior of house to renovate an existing dwelling house is or is not development and is or is not exempted development at Ballynasrah, Tullamore, Co. Offaly, R35 C960.

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

- a) Section 2, 3(1) and 4(1)(h), 4(2)(a)(i) 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 12 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.

**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 internal works, new full slate roof, new front door and painting exterior of house to renovate an existing dwelling house **is development and is exempted development** at Ballynasrah, Tullamore, Co. Offaly R35 C960.

**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 15/11/23

**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>	<i>Dec. 23/34</i>
<b>Question:</b>	<i>Whether  internal works, new full slate roof, new front door and painting exterior of house so as to renovate an existing dwelling house  is or is not development and if so, are they exempted development.</i>
<b>Applicant:</b>	<i>Rosalie Evans</i>
<b>Correspondence Address:</b>	<i>Frank Murray Architectural Services Ltd, Pallas Park, Blueball, Tullamore, Co. Offaly.</i>
<b>Location:</b>	<i>Ballynasrah, Tullamore, Co Offaly R35 C960.</i>

#### 1. Introduction

The question has arisen as to whether the proposed internal and external works (as detailed) to renovate an existing dwelling house is or is not development and if so, are they exempted development.

#### 2. Background

The existing detached, one story dwelling house is located across from Ballinamere GAA Grounds, approximately 470m from Ballinamere National School.



*Photo 1: Subject Site.*

#### 3. Site History

*Ref 83109* – Oliver P. Molloy was granted permission conditionally for a septic tank and front boundary wall.

#### **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”.*

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.'*

## 5. Proposal by Applicants

The Applicant has advised of proposed renovation works including internal and external works comprising of new doors, new plumbing, reroofing, insulation, paint & floor finishes, painting, removal of waste and rewiring.

### Description

#### Works including;

- Stripping out house
- Disposal of waste
- Reroofing flat roof at back with 100mm Kingspan insulation and fiberglass finish
- New gutters and PVC on flat roof section
- levelling floor of extension internally and pouring floor in 2 front bedrooms
- Replumbing for pellet stove including new rads and cylinder
- 1st and 2nd fix plumbing in Kitchen and Bathroom
- metal stud to external walls with breather membrane and 100mm metac. Std slab to finish (Vario System)
- Ceilings in original house to be reinstated to original height with 300mm earthwool insulation
- house to be rewired from fuse board (std spec)
- house to be skimmed internally
- 2nd fix carpentry including new doors skirting architrave and laying laminate floors
- bathroom and kitchen to be tiled
- interior to be painted- walls ceilings and timberwork
- waste to be removed

Full roof Slate with fibre cement slates

Painting Exterior

Wood Effect Front Door

Kitchen Including appliances

Upgrade for Internal Doors

Laminate Wood Floor throughout

New Fireplace and Pellet Stove

Supply bathroom tiles toilet and shower

## 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 refurbishments and alterations 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. It is the opinion of the planning authority that these works meet the criteria of exempt development under regulatory provisions.

An appropriate assessment screening has been carried out see attached.

**7. 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 internal works, new full slate roof, new front door and painting exterior of house to renovate an existing dwelling house is or is not development and if so, are they exempted development at Ballynasrah, Tullamore, Co Offaly R35 C960.

**AS INDICATED** on the particulars received by the Planning Authority on the 19<sup>th</sup> October 2023,

**AND WHEREAS** Rosalie Evans 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, 3(1) and 4(1)(h), 4(2)(a)(i) 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 12 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.

**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 internal works, new full slate roof, new front door and painting exterior of house so as to renovate an existing dwelling house **is development and is exempted development** at Ballynasrah, Tullamore, Co Offaly R35 C960.

*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 Dolan**  
Graduate Planner

13<sup>th</sup> November 2023



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Ed Kelly

(A/Senior Executive Planner)

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Date 14/11/2023



**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 23/34**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed internal and external works to renovate an existing dwelling house is or is not development and if so, are they exempted development.		
Site location:	Ballynasrah, Tullamore, Co Offaly R35 C960		
Site size:	0.46ha	Floor Area of Proposed Development:	n/a
Identification of nearby European Site(s):	Charleville Wood SAC – 2.65km Clara Bog SAC – 3.28km		
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?			No: X
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
<p><b>Charleville Wood SAC – Features of interest include:</b></p> <ul style="list-style-type: none"> <li>• [91E0] Alluvial Forests*</li> <li>• [1016] Desmoulin's Whorl Snail (Vertigo moulinsiana)</li> </ul> <p><b>Clara Bog SAC - Features of interest include:</b></p> <ul style="list-style-type: none"> <li>• [6210] Orchid-rich Calcareous Grassland*</li> <li>• [7110] Raised Bog (Active)*</li> <li>• [7120] Degraded Raised Bog</li> <li>• [7150] Rhynchosporion Vegetation</li> <li>• [91D0] Bog Woodland*</li> </ul>			
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> ) (ATTACH INFO.)			
<p>Site Name: Charleville Wood SAC, Site Code: 000571  <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000571.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000571.pdf</a>                      Site Name: Clara Bog SAC, Site Code: 000572  <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></p>			
(C) NPWS ADVICE:			

Advice received from NPWS over phone:	None Received
Summary of advice received from NPWS in written form (ATTACH SAME):	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 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>	
<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 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.
<b>(E) SCREENING CONCLUSION:</b>	
<b>Screening can result in:</b>	
1.	AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.
2.	No potential for significant effects / AA is not required.
3.	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.
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:	Enda Dolan 
Position:	Graduate Planner
Date:	13 <sup>th</sup> November 2023