

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 23/39

NAME OF APPLICANT: MARY MCFADDEN

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 THE RECONSTRUCTION OF HOUSE AND SHOP TO FORM ONE SINGLE DWELLING IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT.

LOCATION OF DEVELOPMENT: MAIN STREET, KILCORMAC, CO. OFFALY

WHEREAS a question referred to Offaly County Council on 19/10/2023 has arisen as to whether the reconstruction of house and shop to form one single dwelling is or is not development and is or is not exempted development at Main Street, Kilcormac, Co. Offaly.

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

- (a) Sections 2, 3 and 4(1) h of the Planning & Development Act 2000, as amended; and,
- (b) Article 10 (6) the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the reconstruction of house and shop to form one single 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 reconstruction of house and shop to form one single dwelling is **development** and is **exempted development** at Main Street, Kilcormac, Co. Offaly.

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 15/11/2023

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.



## - Section 5 Declaration

<b>File Reference:</b>	<i>Dec. 23/39</i>
<b>Question:</b>	<i>Whether the reconstruction of house and shop to form one single dwelling is or is not development and is or is not exempted development.</i>
<b>Applicant:</b>	<i>Mary McFadden</i>
<b>Correspondence Address:</b>	<i>c/o Frank Murray Architectural Services</i>
<b>Location:</b>	<i>Main Street, Kilcormac, Co. Offaly</i>

### 1. Introduction

The question has arisen as to whether the reconstruction of house and shop to form one single dwelling is or is not development and is or is not exempted development.

### 2. Site Description

The subject site is located within Kilcormac Town Centre and is zoned as *Town Centre/Mixed Use* under the current Kilcormac Town Plan (Volume 2 of the Offaly County Development 2021 – 2027). The subject site is part of a terrace of dwellings and commercial properties along the Main Street of the town and is bordered to the south by the national road, N52.



*Photo 1: Subject Site (source: Google Maps – Sept. 2021).*

### 3. Site History

There is no recent planning history associated with the 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 items of legislation:

## **Statutory Provisions**

### **Section 2 (1) Planning and Development Act 2000, as amended, states as follows:**

*“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 - Planning and Development Regulations 2001 (as amended)**

### **Part 2 - Article 10 Changes of Use states:**

1. *Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—*
  - (a) involve the carrying out of any works other than works which are exempted development,*
  - (b) contravene a condition attached to a permission under the Act,*
  - (c) be inconsistent with any use specified or included in such a permission, or*
  - (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.*

*Note: Sub-article 10(6) was substituted by article 3 of S.I. No. 75/2022 Planning and Development Act (Exempted Development) Regulations 2022 which is indicated below:*

(6) (a) In this sub-article—

*“habitable room” means a room used for living or sleeping purposes but does not include a kitchen that has a floor area of less than 6.5 square metres;*

*‘relevant period’ means the period from 8 February 2018 until 31 December 2025.*

(b) *This sub-article relates to a proposed development, during the relevant period, that consists of a change of use to residential use from Class 1, 2, 3, 6 or 12 of Part 4 to Schedule 2*

(c) *Notwithstanding sub-article (1), where in respect of a proposed development referred to in paragraph (b)—*

*(i) the structure concerned was completed prior to the making of the Planning and Development (Amendment) (No. 2) Regulations 2018,*

*(ii) the structure concerned has at some time been used for the purpose of its current use class, being Class 1, 2, 3, 6 or 12, and*

*(iii) the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).*

*(iii) the structure concerned, or so much of it that is the subject of the proposed development, has been vacant for a period of 2 years or more immediately prior to the commencement of the proposed development,*

*then the proposed development for residential use, and any related works, shall be exempted development for the purposes of the Act, subject to the conditions and limitations set out in paragraph (d).*

(d) (i) *The development is commenced and completed during the relevant period.*

(ii) *Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall*

- (I) primarily affect the interior of the structure,*
- (II) retain 50 per cent or more of the existing external fabric of the building, and*
- (III) not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.*

(iii) *Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*

(iv) *No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.*

(v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.

(vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the "Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning Authorities" issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it.

(e) (i) Where a person proposes to undertake development to which sub-paragraph (b) relates, then he or she shall accordingly notify the planning authority in whose functional area that the change of use concerned will occur in writing at least 2 weeks prior to the commencement of the proposed change of use and any related works.

(ii) Details of each notification under subparagraph (i), which shall include information on—

(I) the location of the structure, and

(II) the number of residential units involved, including the unit sizes and number of bedrooms in each unit,

shall be entered in a record by the planning authority maintained for this purpose and the record shall be available for inspection at the offices of the planning authority during office hours and on the planning authority's website.

(iii) During the years 2019, 2020, 2021, 2022, 2023, 2024, 2025 and 2026 each planning authority shall provide information to the Minister on the number of notifications received by it under this paragraph during the preceding calendar year, including details of the information so received for the purposes of subparagraph (ii).

**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.

### 5. Proposal by Applicants

The Applicant seeks to amalgamate a vacant shop (previously a post office) and the attached residential property to the rear into one residential dwelling. Part of the proposed development includes works to the front elevation of the property.

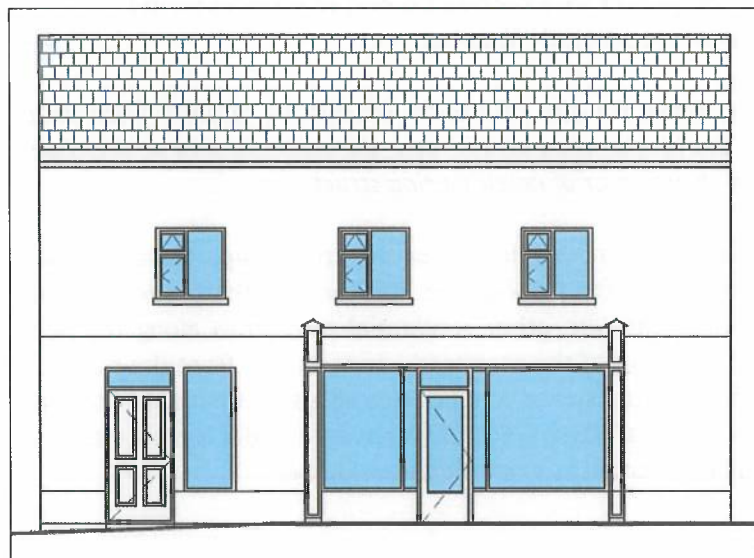


Figure 1: Existing Elevation.



Figure 2: Proposed Elevation.

## **6. Appropriate Assessment Screening**

A screening exercise for an appropriate assessment has been carried out and it is concluded the proposal will have no likely significant impact on the European site.

## **7. Environmental Impact Assessment Screening**

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001- 20 (as amended) and therefore is not subject to EIA requirements.

## **8. 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.

**Question: Is this proposal considered as Exempted Development?**

The provisions of article 10(6)(d)(iii) states:

*(iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.*

Having considered the proposed design for the streetscape elevation and having regard to the provision above, it is the view of the Planner that the proposed works will result in a façade that is consistent with other residential properties along this section of the Main Street. The style and form of the proposed windows and front door are in keeping with the residential character of the street. The Planner notes that a number of properties along this section of Main Street have been recently renovated and it is their view that this proposal is suitable and shall be deemed as exempted development.

## **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 reconstruction of house and shop to form one single dwelling is or is not development and is or is not exempted development at Main Street, Kilcormac, Co. Offaly.

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

**AND WHEREAS** Mary McFadden c/o Frank Murray Architectural Services 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) Sections 2, 3 and 4(1) h of the Planning & Development Act 2000, as amended; and,
- (b) Article 10 (6) the Planning and Development Regulations 2001 (as amended).

**AND WHEREAS** Offaly County Council has concluded that the reconstruction of house and shop to form one single 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 reconstruction of house and shop to form one single dwelling is **development** and is **exempted development** at Main Street, Kilcormac, Co. Offaly.

*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

14<sup>th</sup> November 2023

Date



Ed Kelly  
A/Senior Executive Planner

Date 15/11/2023

## 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 23-39

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the reconstruction of house and shop to form one single dwelling is or is not development and is or is not exempted development.		
Site location:	Main Street, Kilcormac, Co. Offaly		
Site size:	Not provided	Floor Area of Proposed Development:	Not provided.
Identification of nearby European Site(s):	Clonaslee Eskers and Derry Bog SAC – 6.88km Slieve Bloom Mountains SPA – 9.87km Slieve Bloom Mountains SAC – 7.49km		
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):	<p><b>Clonaslee Eskers and Derry Bog SAC - Features of interest include:</b></p> <ul style="list-style-type: none"> <li>Alkaline fens [7230]</li> <li>Vertigo geyeri (Geyer's Whorl Snail) [1013]</li> </ul> <p><b>Slieve Bloom Mountains SAC - Features of interest include:</b></p> <ul style="list-style-type: none"> <li>Northern Atlantic wet heaths with Erica tetralix [4010]</li> <li>Blanket bogs (* if active bog) [7130]</li> <li>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</li> </ul> <p><b>Slieve Bloom Mountains SPA - Features of interest include:</b></p> <ul style="list-style-type: none"> <li>Hen Harrier (Circus cyaneus) [A082]</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: SLIEVE BLOOM MOUNTAINS SPA, SITE CODE: 004160  <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.pdf</a>                      SITE NAME: CLONASLEE ESKERS AND DERRY BOG SAC, SITE CODE: 000859  <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000859.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000859.pdf</a>                      SITE NAME: SLIEVE BLOOM MOUNTAINS SAC, SITE CODE: 000412  <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000412.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000412.pdf</a></p>			
(C) NPWS ADVICE:			

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 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.	<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?	<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 due to the scale of the proposed development and the separation distance between the subject site and European Site</b>		
<b>Name:</b>	Úna McCafferty 		
<b>Position:</b>	Executive Planner	<b>Date:</b>	14 <sup>th</sup> November 2023

