

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 23/47

NAME OF APPLICANT: SÉAN WATSON

ADDRESS: 82 SAINT JOSEPH'S TERRACE, PORTARLINGTON, CO. OFFALY,  
R32 KT52.

NATURE OF APPLICATION: REQUEST FOR DECLARATION UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED AS TO  
WHETHER THE PROPOSED WORKS OF INSTALLING HEATING  
SYSTEM, UPGRADING BATHROOM, FIREPLACE AND FLEXI  
FLUE, WINDOWS, DOORS AND PLUMBING TO AN EXISTING  
DWELLING HOUSE IS OR IS NOT DEVELOPMENT AND IS OR IS  
NOT EXEMPTED DEVELOPMENT

LOCATION OF DEVELOPMENT: 82 SAINT JOSEPH'S TERRACE, PORTARLINGTON, CO. OFFALY,  
R32 KT52.

WHEREAS A question referred to Offaly County Council on 27/10/2023 as to whether the proposed works of installing heating system, upgrading bathroom, fireplace and flexi flue, windows, doors and plumbing to an existing dwelling house is or is not development and is or is not exempted development at 82 Saint Joseph's Terrace, Portarlington, Co. Offaly, R32 KT52 under the Planning and Development Act 2000, (as amended).

AS INDICATED on the particulars received by the Planning Authority on the 27<sup>th</sup> October 2023,

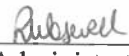
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- (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 works of installing heating system, upgrading bathroom, fireplace and flexi flue, windows, doors and plumbing is **development and is exempted development** at 82 Saint Joseph's Terrace, Portarlington, Co. Offaly, R32 KT52.

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 24.11.2023

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.

## Planning Report

### Section 5 Declaration

<b>File Reference:</b>	<i>Dec. 23/47</i>
<b>Question:</b>	<i>Whether the proposed works of installing heating system, upgrading bathroom, fireplace and flexi flue, windows, doors and plumbing to an existing dwelling house is or is not development and is or is not exempted development.</i>
<b>Applicant:</b>	<i>Séan Watson</i>
<b>Correspondence Address:</b>	<i>82 Saint Joseph's Terrace, Portarlinton, Co. Offaly, R32 KT52.</i>
<b>Location:</b>	<i>82 Saint Joseph's Terrace, Portarlinton, Co. Offaly, R32 KT52.</i>

#### 1. Introduction

The question has arisen as to whether the proposed works of installing heating system, upgrading bathroom, fireplace and flexi flue, windows and doors and plumbing to an existing dwelling house is or is not development and is or is not exempted development.

#### 2. Background

The existing terraced house is located in an urban residential estate. The dwelling is zoned under existing residential in the Portarlinton Joint Local Area Plan 2018-2024.



1. 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 Lands* - No recent planning history associated with the adjoining lands.

### 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 specifies: 2

*‘(a) The provision as part of a heating system of a house, of a chimney or flue, boiler house or fuel storage tank or structure’*

## **5. Proposal by Applicants**

The Applicant has advised of proposed works including installing heating system, upgrading bathroom, fireplace and flexi flue, windows, doors and plumbing to an existing dwelling house.

## **6. Evaluation**

**Question: Whether the proposed works (as listed) to the existing dwelling are development and is or is not 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 regards 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.

The refurbishments proposed by the applicant are harmonious with Section 4 (1) (a) (i) of the Planning and Development Act 2000 (as amended). It is the opinion of the planning authority that these works meet the criteria of exempt development under statutory and 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 the proposed works of installing heating system, upgrading bathroom, fireplace and flexi flue, windows, doors and plumbing to an existing dwelling house is or is not development and is or is not exempted development at 82 Saint Joseph's Terrace, Portarlinton, Co. Offaly, R32 KT52.

**AS INDICATED** on the particulars received by the Planning Authority on the 27<sup>th</sup> October 2023,

**AND WHEREAS** Séan Watson 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 works of installing heating system, upgrading bathroom, fireplace and flexi flue, windows, doors and plumbing **is development and is exempted development** at 82 Saint Joseph's Terrace, Portarlinton, Co. Offaly, R32 KT52.

*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

16<sup>th</sup> November 2023



Úna McCafferkey

23<sup>rd</sup> November 2023

Date

(A/Senior Executive Planner)

**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 23/47**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed works of installing heating system, upgrading bathroom, fireplace and flexi flue, windows and doors and plumbing to an existing dwelling house is or is not development and if so, are they exempted development.		
Site location:	82 Saint Joseph's Terrace, Portarlinton, Co. Offaly, R32 KT52.		
Site size:	0.2 hectares	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	River Barrow And River Nore SAC – 0.59km Mountmellick SAC – 7.25km		
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: <b>X</b>		
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):	<p><b>River Barrow and River Nore SAC – Features of interest include:</b></p> <ul style="list-style-type: none"> <li>• [1130] Estuaries</li> <li>• [1140] Tidal Mudflats and Sandflats</li> <li>• [1170] Reefs</li> <li>• [1310] Salicornia Mud</li> <li>• [1330] Atlantic Salt Meadows</li> <li>• [1410] Mediterranean Salt Meadows</li> <li>• [3260] Floating River Vegetation</li> <li>• [4030] Dry Heath</li> <li>• [6430] Hydrophilous Tall Herb Communities</li> <li>• [7220] Petrifying Springs*</li> <li>• [91A0] Old Oak Woodlands</li> <li>• Version date: 9.2.2016 2 of 7 002162_Rev16.Docx</li> <li>• [91E0] Alluvial Forests*</li> <li>• [1016] Desmoulin's Whorl Snail (Vertigo moulinsiana)</li> <li>• [1029] Freshwater Pearl Mussel (Margaritifera margaritifera)</li> <li>• [1092] White-clawed Crayfish (Austropotamobius pallipes)</li> </ul>		

- [1095] Sea Lamprey (*Petromyzon marinus*)
- [1096] Brook Lamprey (*Lampetra planeri*)
- [1099] River Lamprey (*Lampetra fluviatilis*)
- [1103] Twaite Shad (*Alosa fallax*)
- [1106] Atlantic Salmon (*Salmo salar*)
- [1355] Otter (*Lutra lutra*)
- [1421] Killarney Fern (*Trichomanes speciosum*)
- [1990] Nore Freshwater Pearl Mussel (*Margaritifera durrovensis*)

**Mountmellick SAC – Features of interest include:**

- [1016] Desmoulin's Whorl Snail (*Vertigo moulinsiana*)

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](http://www.npws.ie)) (ATTACH INFO.)

Site Name: River Barrow and River Nore SAC Site Code: 002162  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002162.pdf>

Site Name: Mountmellick SAC Site Code: 002141  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002141.pdf>

**(C) NPWS ADVICE:**

Advice received from NPWS over phone:	None Received
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Summary of advice received from NPWS in written form (ATTACH SAME):	None Received
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**(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:**


*(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).*

If the answer is 'yes' to any of the questions below, then the effect is significant.  
 (Please justify your answer. 'Yes' / 'No' alone is insufficient)

<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.

**(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:	Enda Dolan 		
Position:	Graduate Planner	Date:	16 <sup>th</sup> November 2023