

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 23/54

NAME OF APPLICANT: Gillian Moran

ADDRESS: Killina, Rahan, Tullamore Co. Offaly.

ADDRESS FOR CORRESPONDENCE: Killina, Rahan, Tullamore, Co. Offaly

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the proposed works of restoring a cottage and addition of small extension is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Killina, Rahan, Tullamore, Co. Offaly.

WHEREAS a question has arisen as to whether the proposed works of restoring a cottage and addition of small extension is or is not development and if so, are they exempted development at Killina, Rahan, Tullamore, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 8th November 2023 and 28th March 2024.

AND WHEREAS Gillian Moran 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 -

- Sec 2(1), 3(1) and 4(2)(a) of Planning and Development Act 2000 (as amended).
- Article 6 of the Planning and Development Regulations 2001 (as amended).
- Article 9 (1) (vii) of the Planning and Development Regulations 2001 (as amended).
- Article 9 (1) (viiA) of the Planning and Development Regulations 2001 (as amended).
- Class 1, Class 7, Class 50(b) of Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the works of restoring a cottage and addition of small extension is development and is not 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 restoring a cottage and addition of small extension is **development and is not exempted development** at Killina, Rahan, Tullamore, 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.

  
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Administrative Officer

Date 17/4/24

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. 23/54</i>
<b>Question:</b>	<i>Whether the proposed works of restoring a cottage and addition of small extension is or is not development and if so, are they exempted development?</i>
<b>Applicant:</b>	<i>Gillian Moran</i>
<b>Correspondence Address:</b>	<i>Killina, Rahan, Tullamore, Co. Offaly.</i>
<b>Location:</b>	<i>Killina, Rahan, Tullamore, Co. Offaly.</i>

### *Second Report on Application*

#### **1. Proposal**

The question has arisen whether the proposed works of an extension to the rear of the dwelling and renovations to existing dwelling is or is not development and if so, are they exempted development.

#### **Review of Further Information**

Further information was sought by the Planning Authority on 5<sup>th</sup> December 2023 and subsequently received by the Planning Authority on 28<sup>th</sup> March 2024. This report should be read in conjunction with the previous planner's report dated 22<sup>nd</sup> November 2023. The following Further Information was sought and the response is as follows:

- 1. According to National Monuments Services ([www.archaeology.ie](http://www.archaeology.ie)) the site in question contains 3 National Monuments. In order for the Planning Authority to determine the Section 5 Declaration, the Applicant is required to submit written confirmation from the National Monuments service that the development will not impact on protected archaeological heritage.*

The National Monuments Service has clarified that supervision of groundworks by an archaeologist are necessary to determine if the development would impact on archaeology. Conditions cannot form part of a part five declaration. As such the Planning Authority cannot deem this development on a site of archaeological importance exempt development as per Article 9 (1) (vii) and (viiA) of the Planning and Development Regulations 2001 (as amended).

Relevant provisions in Article 9 are as follows:

*(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan.*

*development plan or the local area plan or the draft development plan or draft local area plan*

*(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended*

Regarding Article 9(1)(vii) I note the following provisions in the Offaly County Development Plan 2021-2027.

**BHP-33** *It is Council policy to support and promote the protection and appropriate management and sympathetic enhancement of the county's archaeological heritage within the Plan area, in particular by implementing the Planning and Development Act 2000 (as amended) and the National Monuments Act 1930 (as amended).*

and

**BHO-05** *It is an objective of the Council to protect archaeological sites and monuments, and archaeological objects, which are listed in the Record of Monuments and Places, and to seek their preservation in situ (or at a minimum, preservation by record) through the planning process.*

*2. The applicant is required to submit elevation drawings in order to determine if the height of the extension complies with Column 2, Part 4(c) of Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).*

The height of the extension as received within the FI response complies with Column 2, Part 4(c) of Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

## **2. Appropriate Assessment**

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.

## **Evaluation**

**Question: Whether the proposed works of an extension to the rear of the dwelling and building a new extension and renovations to existing dwelling is or is not 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 alterations to the existing dwelling.

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

I consider that the works are development and I consider that the works are not exempted development based on limitations set out in Article 9 (1) (vii) and (viiA) of the Planning and Development Regulations 2001 (as amended).

## **Conclusion**

It is recommended that the Applicant be advised that the proposed works is **development** and is **not exempted development**.

**Declaration on Development and Exempted Development**

**Section 5 of the Planning and Development Act 2000 (as amended)**

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*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 Pleanala within 4 weeks of the issuing of the decision.*



Enda Dolan  
Acting Assistant Planner

4<sup>th</sup> April 2024



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Ed Kelly A/Senior Executive Planner

*Date: 16/4/2024*

**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 23/54**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed works of restoring a cottage and addition of small extension is or is not development and if so, are they exempted development.		
Site location:	Killina, Rahan, Tullamore, Co. Offaly.		
Site size:	0.27ha	Floor Area of Proposed Development:	39.97m <sup>2</sup>
Identification of nearby European Site(s):	Charleville Wood SAC – 3.24km Clara Bog SAC – 5.11km		
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):			
<b>Charleville Wood SAC – Features of interest include:</b> <ul style="list-style-type: none"> <li>• [91E0] Alluvial Forests*</li> <li>• [1016] Desmoulin's Whorl Snail (Vertigo moulinsiana)</li> </ul> <b>Clara Bog SAC - Features of interest include:</b> <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.)			
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>			
(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:	4 <sup>th</sup> April 2024