

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

REFERENCE: DEC 23/61

NAME OF APPLICANT: Mark Shelly

ADDRESS: C/O Frank Murray Architectural Services Ltd, Pallas Park, Blueball, Tullamore, Co. Offaly.

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 refurbishment of existing dwelling consisting of internal works, replacement boiler, external wall insulation and wall repairs, new gate, new external front door and rear kitchen door and paving of rear garden is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 6, Chapel Street, Tullamore, Co. Offaly

WHEREAS a question has arisen as to whether the proposed refurbishment of existing dwelling consisting of internal works, replacement boiler, external wall insulation and wall repairs, new gate, new external front door and rear kitchen door and paving of rear garden is or is not development and is or is not exempted development at 6 Chapel Street, Tullamore, Co. Offaly

AND WHEREAS Mark Shelly 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:

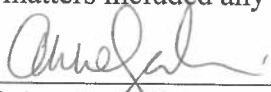
- (a) Section 2, 3(1) and 4(1)(h) of the Planning & Development Act 2000, as amended.
- (b) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2, Part 1, Class 6 of the Planning and Development Regulations 2001, as amended.
- (d) Schedule 2 – Part 1 Class 2 of the Planning and Development Regulations 2001, as amended
- (e) 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 refurbishment to an existing dwelling consisting of internal works, replacement boiler, external wall insulation and wall repairs, new gate, new external front door and rear kitchen door and paving of rear garden 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 refurbishment to an existing dwelling consisting of internal works, replacement boiler, external wall insulation and wall repairs, new gate, new external front door and rear kitchen door and paving of rear garden **is development and is exempted development** at 6 Chapel Street, 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.



Administrative Officer

20/12/2023

Date

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

File Reference:	<i>Dec. 23/61</i>
Question:	<i>Whether the proposed refurbishment of existing dwelling consisting of internal works, replacement boiler, external wall insulation and wall repairs, new gate, new external front door and rear kitchen door and paving of rear garden is or is not development and is or is not exempted development?</i>
Applicant:	<i>Mark Shelly</i>
Correspondence Address:	<i>Frank Murray Architectural Services Ltd, Pallas Park, Blueball, Tullamore</i>
Location:	<i>6, Chapel Street, Tullamore.</i>

1. Introduction

The question has arisen as to whether the proposed works to an existing dwelling is or is not development and is or is not exempted development.



2. Background

The existing mid-terrace dwelling is located on 'Existing Residential' zoned land within the boundary of Tullamore Town.

3. Site History

None

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".

Article 9 of the Planning and Development Regulations 2001 (as amended), identifies restrictions on exemption.

9 (1): Development to which article 6 relates shall not be exempted development for the purposes of the Act - (a) if the carrying out of such development would –

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.

Schedule 2 – Exempted Development, Part I CLASS 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.

Subject to:

The capacity of an oil storage tank shall not exceed 3,500 litres.

Schedule 2 – Exempted Development, Part I-CLASS 6

(b) Any works within the curtilage of a house for— (i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such,

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 indicated the following works will be carried out:

- Clear-Out:
 - All old furniture, fittings, floor coverings, wallpaper, to be disposed of off site in an appropriate manner.
 - All vegetation and debris including old oil boiler and boiler house to be cleared from back yard and disposed of appropriately off site.

- All wall coverings, wall paper to be removed from walls and walls to be left ready for repainting or bonding.
- All sanitary ware and fittings to be cleared out and disposed of off site.
- Wall between kitchen and hall to be removed and floors to be made good.
- Floors:
 - Timber floors in front room, Study, and Hall to be removed and replaced with insulated concrete floors comprising of 75mm screed on 150mm insulation on 1200-gauge damp proof membrane on 100 mm subfloor.
 - All other concrete floors on sitting room ,kitchen ,bathroom and utility to be replaced with insulated concrete floor to the same specification.
- Walls:
 - All wall coverings to be removed and walls to be left ready for refinishing.
 - External walls, front and back on two storey section of house to be insulated with 62mm insulated slab and skim finish.
 - External walls in shower room, utility room and kitchen to be insulated with 62mm insulated slab and skim finish.
 - All other walls to be cleaned down, thistle bonded and skimmed.
- Ceilings:
 - Ceilings on ground floor, in kitchen, hall, utility and shower room to be removed, ceilings to be insulated with Mi T2C insulation between the joists and ceilings to be slabbed with 62mm insulated slab and skimmed finish.
 - Ceilings in ground floor, hall, dining living room, in bedrooms 1 and 2 and Landing be reslabbed and skimmed.
 - Access to be provided into attic, providing insulated trap door and access
 - Attic to be insulated with 400mm quilt insulation.
 - Sloped ceiling over stairs to be removed
 - Window to be re-established to give light onto stairs and walls to be made good with thistle bonding and skimming.
- Plumbing and Heating
 - New Grant Vortex condenser boiler (External module unit) to be fitted to replace existing boiler, on concrete base.
 - Concrete base to be fitted and oil storage tank to be relocated as shown on drawing.
 - New 30-gallon factory insulated copper cylinder with dual immersion heater fitted in new hot press located in utility room.
 - Replace rads with low water content convector panel rads throughout.
- General Layout
 - Form new layout as shown on drawing with shower / toilet / utility room and Kitchen.

- Re-hang existing door to kitchen to open into kitchen from dining living room. Make good door.
- Break out ope and support and fit double regency panel door between study and dining living room.
- Fit perma vents in windows of bedrooms at first floor.
- External Doors:
- Provide new PVC front door with small glass panel and new PVC back door in Back Hall.
- Pave external rear yard.

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 alterations and repairs 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 dwelling appearance and the finished development would not be inconsistent with the character of the structure.

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)**

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- The proposed refurbishment of existing dwelling consisting of internal works, replacement boiler, external wall insulation and wall repairs, new gate, new external front door and rear kitchen door and paving of rear garden to an existing dwelling **is development and is exempted development** at 6 Chapel Street, Tullamore

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.

Michael Duffy

Michael Duffy

Executive Planner

19th December 2023

Ed Kelly

Ed Kelly

Acting Senior Executive Planner

19/12/2023

**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 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/23/61

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	REFURBISHMENT OF EXISTING DWELLING		
Site location:	6, Chapel Street, Tullamore.		
	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC		
Distance to European Site(s):	2km		
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) IDENTIFICATION OF THE RELEVANT European SITE(S):			
The reasons for the designation of the European site:			
The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (* = priority; numbers in brackets are Natura 2000 codes): [91E0] Alluvial Forests* [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 Natura 2000 site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)

Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Code Description 91E0 Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (Alno-Padion, Alnion *incanae*, *Salicion albae*)* * denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail *Vertigo moulinsiana*

(C) NPWS ADVICE:

Advice received from NPWS over phone:	None received

(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)

Would there be...

... 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.

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 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 NIS 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?	Category 2
Justify why it falls into relevant category above:	There would be no likely significant impact on European sites from the proposed development.
Name:	Michael Duffy
Position:	Exec. Planner
Date:	19 th December 2023