

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 23/66

NAME OF APPLICANT: JORDAN DUNNE

ADDRESS FOR CORRESPONDENCE: 7 ACRES, SHANDRA LANE, PORTARLINGTON, CO. OFFALY,
R32 P9K8.

NATURE OF APPLICATION: DECLARATION UNDER SECTION 5 OF THE PLANNING &
DEVELOPMENT ACT, 2000 AS AMENDED IN RELATION TO
WHETHER THE PROPOSED WORKS TO RENOVATE AN
EXISTING DWELLING HOUSE IS OR IS NOT DEVELOPMENT
AND IS OR IS NOT EXEMPTED DEVELOPMENT.

LOCATION OF DEVELOPMENT: PATRICK STREET, PORTARLINGTON, CO. LAOIS, R32 PF67

WHEREAS a question has arisen as to whether the proposed works to renovate an existing dwelling house is or is not development and is or is not exempted development at Patrick Street, Portarlinton, Co. Laois, R32 PF67.

AS INDICATED on the particulars received by the Planning Authority on the 07/12/2023.

AND WHEREAS Jordan Dunne 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 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 12

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 to renovate an existing dwelling house is development and is exempted development* at Patrick Street, Portarlinton, Co. Laois, R32 PF67

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 12/1/2024.

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. 23/66</i>
Question:	<i>Whether the proposed works to renovate an existing dwelling house is or is not development and if so, are they exempted development.</i>
Applicant:	<i>Jordan Dunne</i>
Correspondence Address:	<i>7 Acres, Shandra Lane, Portarlinton, Co. Offaly, R32 P9K8</i>
Location:	<i>Patrick Street, Portarlinton, Co. Laois, R32 PF67</i>

1. Introduction

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

2. Background

The existing, one storey townhouse is located in an area zoned Existing Residential within the Portarlinton Joint Local Area Plan 2018-2024.

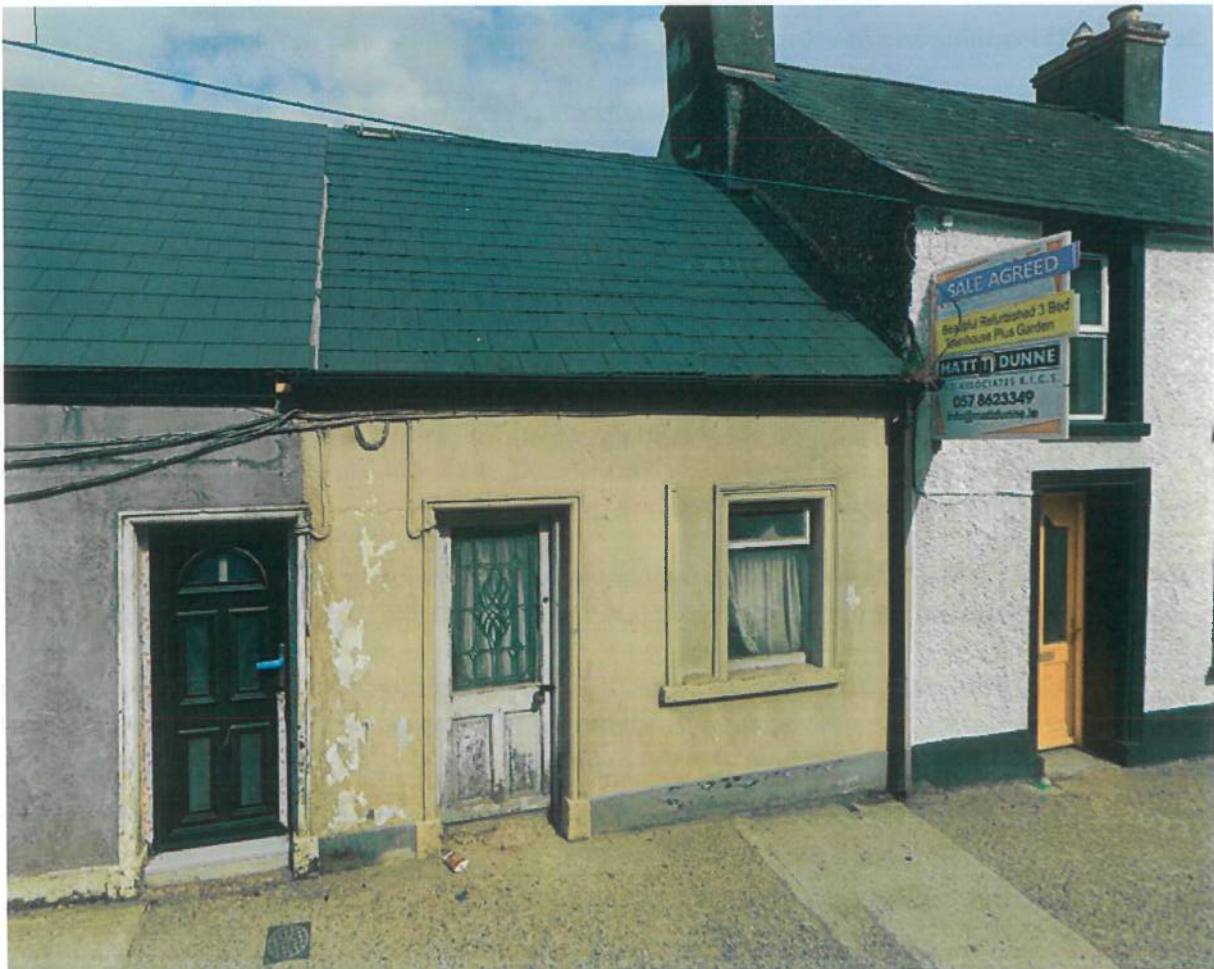


Photo 1: Subject Site

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 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 they intend to renovate the existing dwelling house. The applicant has stated there is no extension planned.

DESCRIPTION
SKIPS
Foundations & underpinning
Blockwork & Floors
Roof To include PVC & Gutters
New PVC Windows & Doors
1st Fix Plumbing
1st Fix electrical
Slabbing & insulating
Plastering inside & outside
2nd Fix Plumbing
2nd Fix electrical
2nd Fix Carpentry
Painting interior + exterior
Tiling in Bathroom
Kitchen floor & splashback
Fitted Kitchen
Footpath sand laying & Gullies at Rear

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 renovations and alterations to the existing dwelling.

Question: Is this proposal considered as Exempted Development?

The declaration will be assessed under Section 4 (1)(h) of the Planning and Development Act 2000 (as amended). In that regard it is considered that the proposed works are exempt.

7. 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.

8. Recommendation

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 to renovate an existing dwelling house is or is not development and if so, are they exempted development at Patrick Street, Portarlington, Co. Laois, R32 PF67.

AS INDICATED on the particulars received by the Planning Authority on the 07/12/2023

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

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AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development.

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- *The proposed works to renovate an existing dwelling house is development and is exempted development at Patrick Street, Portarlington, Co. Laois, R32 PF67.*

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

11th December 2023



Ed Kelly

(A/Senior Executive Planner)

11/1/2024

Date

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 23/66

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed works to renovate an existing dwelling house is or is not development and if so, are they exempted development.		
Site location:	Patrick Street, Portarlinton, Co. Laois, R32 PF67.		
Site size:	0.01ha	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	River Barrow And River Nore SAC – 0.1km Mountmellick SAC – 5.65km		
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>River Barrow And River Nore SAC – Features of interest include:</p> <ul style="list-style-type: none"> Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Reefs [1170] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330] Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation [3260] European dry heaths [4030] Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430] Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220] Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] <i>Vertigo moulinsiana</i> (<i>Desmoulin's Whorl Snail</i>) [1016] 		

- Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]
- Austropotamobius pallipes (White-clawed Crayfish) [1092]
- Petromyzon marinus (Sea Lamprey) [1095]
- Lampetra planeri (Brook Lamprey) [1096]
- Lampetra fluviatilis (River Lamprey) [1099]
- Alosa fallax fallax (Twaite Shad) [1103]
- Salmo salar (Salmon) [1106]
- Lutra lutra (Otter) [1355]
- Trichomanes speciosum (Killarney Fern) [1421]
- Margaritifera durrovensis (Nore Pearl Mussel) [1990]

Mountmellick SAC -- Features of interest include:

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

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) (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)

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.
... 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:

Decision 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:	11 th December 2023

