

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 23/71

NAME OF APPLICANT: Conor Guinan

ADDRESS FOR CORRESPONDENCE: C/O Kenneth Rice, Bridgeview, Newbridge St, Birr, Co. Offaly.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the demolition of existing extension and construction of new extension is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Clonbrone, Birr, Co. Offaly

WHEREAS a question has arisen as to whether the demolition of existing extension and construction of new extension is or is not development and is or is not exempted development at Clonbrone, Birr, Co. Offaly.

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

AND WHEREAS Conor Guinan 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:

- Section 2 of the Planning & Development Act 2000, as amended.
- Section 3(1) of the Planning & Development Act 2000, as amended.
- Section 4(2) of the Planning & Development Act 2000, as amended.
- Article 6(1) of the Planning and Development Regulations 2001, as amended.
- Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended.
- Schedule 2, Part 1, Class 50 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 demolition of existing extension and construction of new extension is **development and is exempted development** at Clonbrone, Birr, 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

23/01/2024  
\_\_\_\_\_  
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

<b>File Reference:</b>	<i>Dec. 23/71</i>
<b>Question:</b>	<i>Whether the demolition of existing extension and construction of new extension is or is not development and if so, are they exempted development.</i>
<b>Applicant:</b>	<i>Conor Guinan</i>
<b>Correspondence Address:</b>	<i>Kenneth Rice, Bridgeview, Newbridge St, Birr, Co. Offaly</i>
<b>Location:</b>	<i>Clonbrone, Birr, Co. Offaly, R42 EH72</i>

#### 1. Introduction

The question has arisen whether the demolition of existing extension and construction of new extension is or is not development and if so, are they exempted development.

#### 2. Background

The site is located within a Stronger Rural Area has a low sensitivity classification. There are multiple farm buildings within the site boundary and the curtilage is surrounded by agricultural land.

#### 3. Site History

*Ref 3175:* John Guinan was granted permission conditionally for the extension of farmhouse.

#### 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 1 specifies:

*“The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.”*

*There are a number of conditions and limitations attached to Class 1, which are listed and assessed below.*

Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 50(b):

*“CLASS 50 (b) The demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act.”*

#### **Assessment**

The declaration is being sought under the provisions of Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Class 1 limitations to be complied with are as follows:

- 1.(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.*

The house has been extended previously. Not applicable.

*(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.*

Not applicable.

*(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.*

One storey extension. Not applicable.

*2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.*

Pervious extension to be demolished total floor area 6.22m<sup>2</sup>. Proposed extension total floor area 30m<sup>2</sup>. Combined total floor are 36.22m<sup>2</sup>. Proposed works comply.

*(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.*

Not applicable.

*(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.*

Not applicable.

*3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.*

Not applicable.

*4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.*

Proposed works comply.

*(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.*

Not applicable.

*(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.*

Not applicable.

*5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.*

Proposed works comply.

*6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.*

Proposed works comply.

*(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.*

Not applicable.

*(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.*

Not applicable.

*7. The roof of any extension shall not be used as a balcony or roof garden.*

Proposed works comply.

## **5. Proposal by Applicants**

The Applicant has queried whether the demolition of existing extension and construction of new extension is or is not development and if so, are they exempted development.

## **6. Evaluation**

**Question: Whether the proposed works (as listed) to the existing dwelling are 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 demolition, replacements and alterations 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 appearance of the dwelling and would not be inconsistent with the character of area.

The Planning Authority are also satisfied that the proposed extension to the rear of the dwelling complies with the limitations set out in Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended). It is the opinion of the planning authority that these works meet the criteria of exempt development under 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 demolition of existing extension and construction of new extension*

*At Clonbrone, Birr, Co. Offaly, R42 EH72*

**AND WHEREAS** Conor Guinan 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) Section 2 of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4(2) of the Planning & Development Act 2000, as amended.
- (d) Article 6(1) of the Planning and Development Regulations 2001, as amended.
- (e) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended
- (f) Schedule 2, Part 1, Class 50 of the Planning and Development Regulations 2001, as amended

**AND WHEREAS** Offaly County Council has concluded that –

- The work is considered development and is exempted development.

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5(2) hereby decides that;

- *The demolition of existing extension and construction of new extension*  
**Is development and is not exempted development.**



*Enda Dolan*  
Enda Dolan  
Graduate Planner

19<sup>th</sup> January 2024

Date



Ed Kelly  
ASEP

23<sup>th</sup> January 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 23/71**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the demolition of existing extension and construction of new extension is or is not development and if so, are they exempted development.		
Site location:	Kenneth Rice, Bridgeview, Newbridge St, Birr, Co. Offaly		
Site size:	0.5ha	Floor Area of Proposed Development:	30m <sup>2</sup>
Identification of nearby European Site(s):	Dovegrove Callows SPA Island Fen SAC – 3.52km Lisduff Fen SAC – 4km		
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><b>Dovegrove Callows SPA– Features of interest include:</b></p> <ul style="list-style-type: none"> <li>Greenland White-fronted Goose (<i>Anser albifrons flavirostris</i>) [A395]</li> </ul> <p><b>Island Fen SAC – Features of interest include:</b></p> <ul style="list-style-type: none"> <li><i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130]</li> <li>Alkaline fens [7230]</li> </ul> <p><b>Lisduff Fen SAC – Features of interest include:</b></p> <ul style="list-style-type: none"> <li>Petrifying springs with tufa formation (<i>Cratoneurion</i>) [7220]</li> <li>Alkaline fens [7230]</li> <li><i>Vertigo geyeri</i> (Geyer's Whorl Snail) [1013]</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> ) <b>(ATTACH INFO.)</b>			
Site Name: Dovegrove Callows SPA, Site Code: 004137 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004137.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004137.pdf</a>			

Site Name: Island Fen SAC, Site Code: 002236 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002236.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002236.pdf</a>	
Site Name: Lisduff Fen SAC, Site Code: 002147 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002147.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002147.pdf</a>	
<b>(C) NPWS ADVICE:</b>	
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:**

**19<sup>th</sup> January 2024**