

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 23/09

NAME OF APPLICANT: DOMINIC & THERESA KELLY

ADDRESS: BALLINVALLEY, KILLEIGH, CO. OFFALY R35 PC79

NATURE OF APPLICATION: REQUEST FOR DECLARATION UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000, AS AMENDED AS TO WHETHER OR NOT THE CONVERSION TO LIVING SPACE OF A GARAGE ATTACHED TO A SEMI DETACHED HOUSE IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT.

LOCATION OF DEVELOPMENT: 54 HOPHILL GROVE, TULLAMORE. R35 CP02

WHEREAS A question referred to Offaly County Council on 26/04/2023 as to whether or not the conversion to living space of a garage attached to a semi detached house is or is not development and is or is not exempted development at 54 Hophill Grove, Tullamore. R35 CP02 under the Planning and Development Act 2000, (as amended).

AND WHEREAS the Planning Authority, 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

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) of the Planning and Development Act 2000, as amended, hereby decides the conversion to living space of a garage attached to a semi detached house at 54 Hophill Grove, Tullamore, Co. Offaly R35 CP02 **is development and is exempted development**.

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.

  
Senior Executive Officer

23/5/2023  
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.

**OFFALY COUNTY COUNCIL**

**Planning Report**

**Section 5 Declaration**

<b>File Reference:</b>	<b>Dec 23/9</b>
<b>Question:</b>	The conversion to living space of a garage attached to a semi detached house
<b>Applicant:</b>	Dominic and Theresa Kelly
<b>Location:</b>	54 Hophill Grove, Tullamore, R35PC79
<b>Date received:</b>	26/4/2023
<b>Date due:</b>	23/5/2023

**1. Proposal**

The question has arisen as to whether the conversion of an attached garage to an additional room is/is not development and is or is not exempted development.

**Location**

The site is located at 54 Hophill Grove, Tullamore.

**2. Relevant Planning History:**

None



### 3. Legislative Context:

Relevant Sections/Articles to be outlined...

Section 3 (1) Planning and Development Act 2000, as amended:

“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 Planning and Development Act 2000, as amended:

4.—(2) The following shall be exempted developments for the purposes of this Act—

(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, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

(b) Regulations under *paragraph (a)* may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of *paragraph (a)*, provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

Article 6(1) of the Planning and Development Regulations 2001, as amended:

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  
PART 1

Exempted Development - General	
Column 1 Description of Development	Column 2 Conditions and Limitations
<p>Class 1 Development within the curtilage of a house 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.</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres. (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. (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.</p> <p>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. (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</p>

	<p>erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres. (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.</p> <ol style="list-style-type: none"> <li>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</li> <li>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. (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. (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.</li> <li>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.</li> <li>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces. (b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces. (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.</li> <li>7. The roof of any extension shall not be used as a balcony or roof garden.</li> </ol>
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**4. Works subject of this declaration.**

The conversion to living space of a garage attached to a semi detached house.

## 5. Appropriate Assessment

A screening exercise for an appropriate assessment has been carried out and it has been deemed that the development is unlikely to have significant effects on any European sites. Please see attached report.

## 6. Evaluation

Question: Are the subject works considered as Development?

YES

Question: Are the subject works considered as Exempted Development?

YES under SCHEDULE 2, PART 1, Class 1

Question: Does the development require environmental impact assessment or an appropriate assessment of the development?

NO

## 7. Conclusion

It is recommended that the applicant be advised that the subject works 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 conversion to living space of a garage attached to a semi detached house  
**is or is not development and is or is not exempted development.**

LOCATION: At 54 Hophill Grove, Tullamore

**AND WHEREAS** . Dominic and Theresa Kelly 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

**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 conversion to living space of a garage attached to a semi detached house 54 Hophill Grove, Tullamore

**Is development and is exempted development.**



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Ed Kelly Exec Planner

22/5/2023

Date

Carroll Melia

Carroll Melia (A/Senior Executive Planner)

23<sup>rd</sup> May 2023

Date





Photo of site above

**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 23/9**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Conversion of garage attached to semi detached house to additional room		
Site location:	54 Hophill Grove, Tullamore, R35PC79		
	0.04 ha.s.	Floor Area of Proposed Development:	<b>19 sq.m</b>
Identification of nearby European Site(s):	<b>2000 site(s): SAC 000571– Charleville Wood SAC</b>		
Distance to European Site(s):	<b>2.12 km</b>		
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:	<b>None</b>		
Is the application accompanied by an EIAR?			No: <input checked="" type="checkbox"/>
(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 <a href="http://www.npws.ie">www.npws.ie</a> ) <b>(ATTACH INFO.)</b>			
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)

<p><b>Would there be...</b>            ... any impact on an Annex 1 habitat?            (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	Not likely due to the location and type of development.
	The site is sufficient distance from the European site.
<p>... a reduction in habitat area on a European site?</p>	There will be no reduction in the habitat area.
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
<p>... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?</p>	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	None likely due to the location and type of development
	The site is sufficient distance from the European site
<p>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</p>	No other plans known of in the vicinity of the site.
	The site is sufficient distance from the European site.

and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.			
<b>(E) SCREENING CONCLUSION:</b>			
<b>Screening can result in:</b>			
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 NIS 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?		<b>Category 2</b>	
Justify why it falls into relevant category above:		<b>There would be no likely significant impact on European sites from the proposed development.</b>	
<b>Name:</b>	<b>Ed Kelly</b>		
<b>Position:</b>	<b>Exec. Planner</b>	<b>Date:</b>	<b>22/5/2023</b>

Given the location the nature and size of the development applied for and the characteristics of European sites in the vicinity it is considered that 500 metres should be used as a potential zone of impact of the project in accordance with section 3.2.3 of the appropriate assessment guidelines. There are no European sites within 500 metres of the development applied for and therefore no significant effects on any European sites either alone or in combination with other plans and projects.

<https://www.npws.ie/protected-sites/sac/000571>