OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 24/108

NAME OF APPLICANT: SHANE CALAHAN

ADDRESS FOR CORRESPONDENCE: C/O ANDREW DRIVER, DEC ENGINEERING & COMMERCIAL LTD, CORVILLE ROAD, ROSCREA, CO. TIPPERARY, E53AE67.

NATURE OF APPLICATION: request for declaration under section 5 of the planning & development act 2000, as amended as to whether new roof to match existing new windows and doors, new electrical heating and plumbing, new internal floors and dry lining, new 36sqm extension on an existing structure is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Broughal, Kilcormac, Birr, Co. Offaly

WHEREAS a question has arisen as to whether renovation and extension works to a derelict house at Broughal , Kilcormac, Birr, Co Offaly is or is not development and is or is not exempted development

AS INDICATED on the particulars received by the Planning Authority on the 29/10/2024.

AND WHEREAS Shane Calahan 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(1), 3(1), 4 of the Planning & Development Act 2000, as amended.
- Class 1, Part 1, Schedule 2 of the Planning & Development regulations 2001 as amended.

AND WHEREAS Offaly County Council has concluded that the proposed renovation works to a derelict house **is development** and **is not exempted development** because the use of the structure on site as a house is deemed to have been abandoned.

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 renovation and extension works to a derelict house **is development** and **is not exempted development** at Broughal, Kilcormac, 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.

Anne Galvin

Administrative Officer

25/11/2024

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.

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

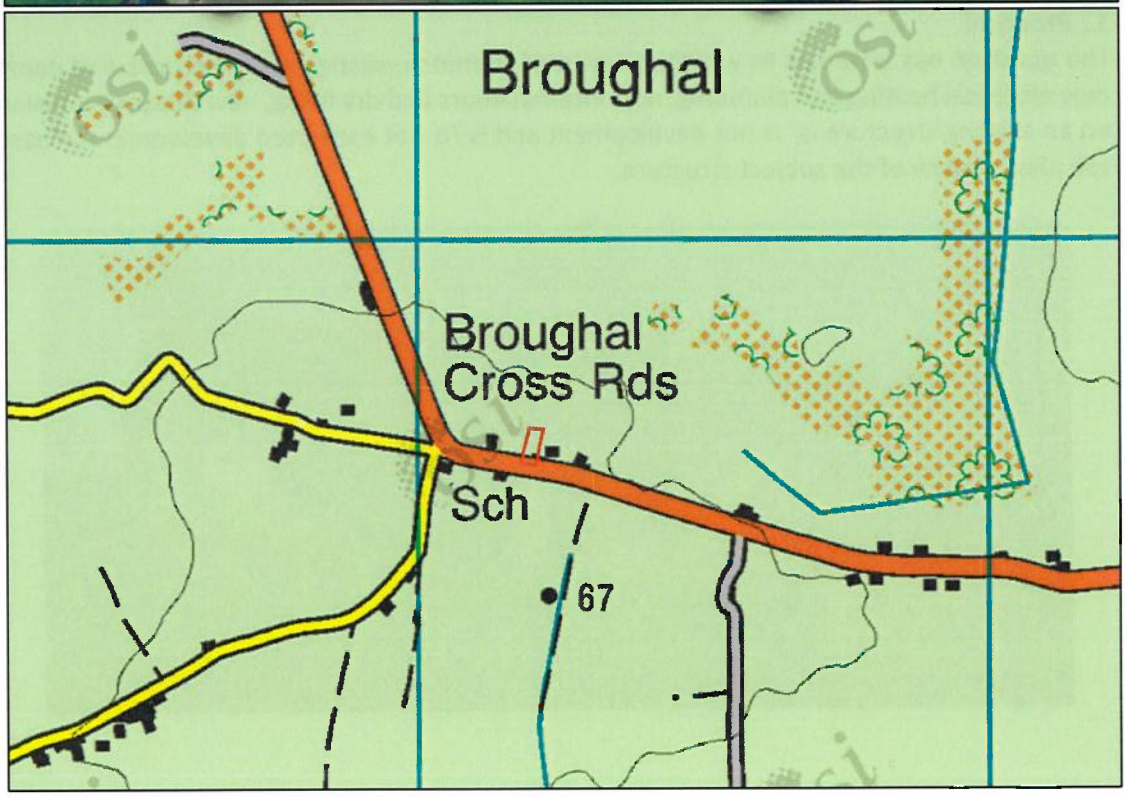
File Reference:	**DEC 24/108**
Question:	Whether new roof to match existing new windows and doors new electrical heating and plumbing, new internal floors and dry lining, new 36sqm extension on an existing structure **Is/ is not development** and **is /is not exempted development**
Applicant:	Mr Shane Cahalan
Location:	Broughal, Kilcormac, Birr Co Offaly
Date due:	25/11/2024

1. Proposal

The question has arisen as to whether new roof to match existing new windows and doors new electrical heating and plumbing, new internal floors and dry lining, new 36sqm extension on an existing structure is/ is not development and is /is not exempted development. Please see photo below of the subject structure.

Location

The site is located at Broughal, Kilcormac, Birr Co Offaly. Please see maps below.



2. Relevant Planning History:
No record of any planning history on site.

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 Planning and Development Act 2000, as amended:

> 4.—(1) The following shall be exempted developments for the purposes of this Act—
>
> (*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 or 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 of neighbouring structure
>
> (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
CLASS 1
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.
Conditions and Limitations 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. 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 constructed or 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. 3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary. 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. 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. 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. 7. The roof of any extension shall not be used as a balcony or roof garden.

3. Proposal

The Applicant has proposed renovations works to a derelict dwelling.

4. 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 to a derelict dwelling.

Question: Is this proposal considered as Exempted Development?
The use of the structure on site as a house is deemed to have been abandoned. I note the following from OPR practice note 5:

Abandonment: Abandonment can occur in relation to either development consisting of works or the operation of a use. Abandonment may occur where the development has ceased for a considerable period of time with no intention of resuming it. Unless it is exempt from the requirement to obtain planning permission for other reasons, the resumption of an abandoned development is likely to represent a material change of use.

I consider that the works are not exempted development as the structure is in a derelict, dilapidated condition that would require extensive material works in order to restore the dwelling to a liveable standard. The house does not appear to have been in a habitable state for a considerable period.

7. Screening
Please see EIA screening attached. No EIA required.

Appropriate Assessment Screening

The subject site is located km from Slieve Bloom Mountains SPA

Having regard to nature of the development residential development of a dwelling its location at Broughal and lack of any pathway to a European site it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required

8. Recommendation
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)

WHEREAS a question has arisen as to whether renovation and extension works to a derelict house at Broughal, Kilcormac, Birr, Co Offaly is or is not development and is or is not exempted development

AS INDICATED on the particulars received by the Planning Authority on the 29/10/2024.

AND WHEREAS Shane Calahan 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(1), 3(1), 4 of the Planning & Development Act 2000, as amended.
(b) Class 1, Part 1, Schedule 2 of the Planning & Development regulations 2001 as amended.

AND WHEREAS Offaly County Council has concluded that the proposed renovation works to a derelict house **is development** and **is not exempted development** because the use of the structure on site as a house is deemed to have been abandoned.

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 renovation and extension works to a derelict house **is development** and **is not exempted development** at Broughal, Kilcormac, Birr, Co Offaly

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.

Ed Kelly

Ed Kelly A/Senior Executive Planner

Date: 22/11/2024

Comhairle Chontae Uíbh Fhailí
Offaly County Council

EIA Screening Form

Establishing if the proposal is a *'sub-threshold development'*:	
Planning Register Reference:	Dec 24/108
Development Summary:	Dwelling
Was a Screening Determination carried out under Section 176A-C?	No, Proceed to **Part A**

A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, **Part 1**, of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
No	Proceed to **Part B**

B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, **Part 2**, of the Planning and Development Regulations 2001 (as amended) **and** does it meet/exceed the thresholds? (Tick as appropriate)	
No, the development is not a project listed in Schedule 5, Part 2	**No Screening required**