

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

REFERENCE: DEC 24/120

NAME OF APPLICANT: FABRICE LÉBOURHIS,

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 WHETHER OR NOT THE RENOVATIONS AND RECONSTRUCTION OF THE REAR SECTION OF THE EXISTING DWELLING IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT AT NO. 1 KILBRIDE STREET TULLAMORE, CO. OFFALY.

LOCATION OF DEVELOPMENT: NO. 1 KILBRIDE STREET TULLAMORE, CO. OFFALY

WHEREAS a question has arisen as to whether the renovations and reconstruction of the rear section of an existing dwelling is or is or is not development and if so, are they exempted development at No. 1 Kilbridge Street, Tullamore, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 20th November 2024.

AND WHEREAS Fabrice Lebouris 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:

- Section 2 of the Planning & Development Act 2000, as amended.
- Section 3(1) of the Planning & Development Act 2000, as amended.
- Article 6(1) of the Planning and Development Regulations 2001, as amended
- Article 9 of the Planning and Development Regulations 2001, as amended
- Schedule 2 Part 1, Class 1
- The location of the proposed works adjoining the Grand Canal pNHA.

AND WHEREAS Offaly County Council has concluded that –

- The work is considered development and is not exempted development.

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

- The renovations and reconstruction of the rear section of the existing dwelling **is development and is not exempted development** as it is considered that the proposed works may adversely affect the Grand Canal a proposed Natural Heritage Area.

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

17/12/24

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:	Dec. 24/120
Question:	Whether or not the renovations and reconstruction of the rear section of the existing dwelling is or is not development and is or is not exempted development?
Applicant:	Fabrice Lebourhis
Correspondence Address:	C/O Frank Murray, Architectural Services Ltd, Pallas Park, Blueball, Tullamore, Co. OFFALY, R35V044
Location:	No. 1 Kilbride Street Tullamore, Co. Offaly.



No. 1 Kilbride Street Tullamore, Co. Offaly.

1. Introduction

The question has arisen as to whether or not the renovations and reconstruction of the rear section of the existing dwelling is or is not development and is or is not exempted development

2. Background

The site is situated on 'existing residential' zoned land with direct access onto the R-420 Regional Road (Kilbride Street). Currently located on site is an existing end-terrence single storey dwelling house.

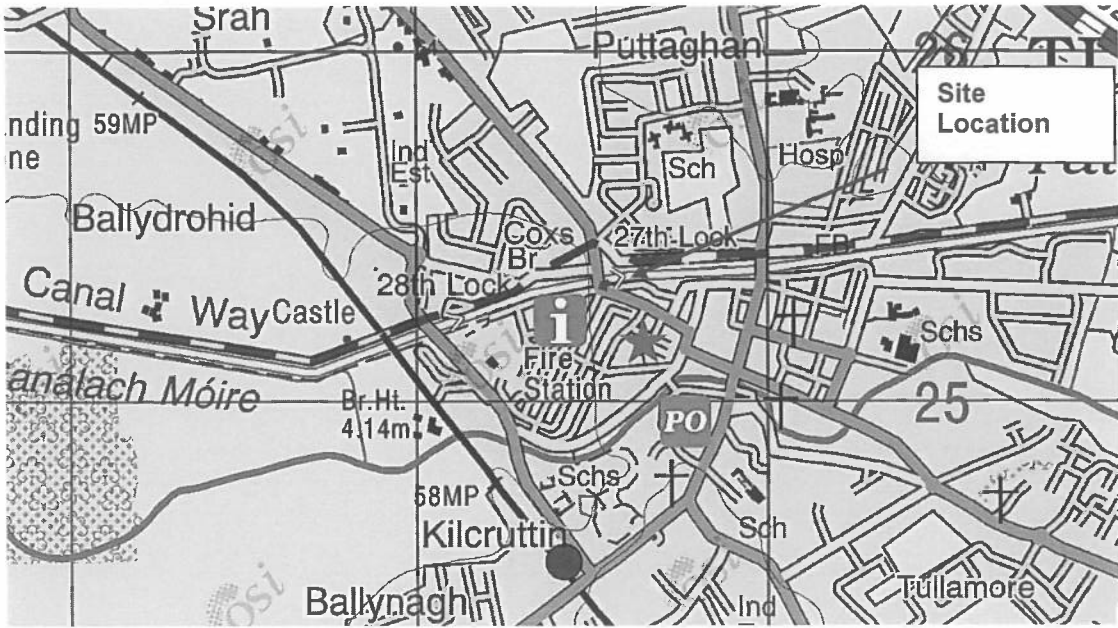


Fig 1: Site Location (Discovery Series)



Fig 2: Site Location which indicates the rear element of the site is located within the Grand Canal Pnha. (site code 002104).

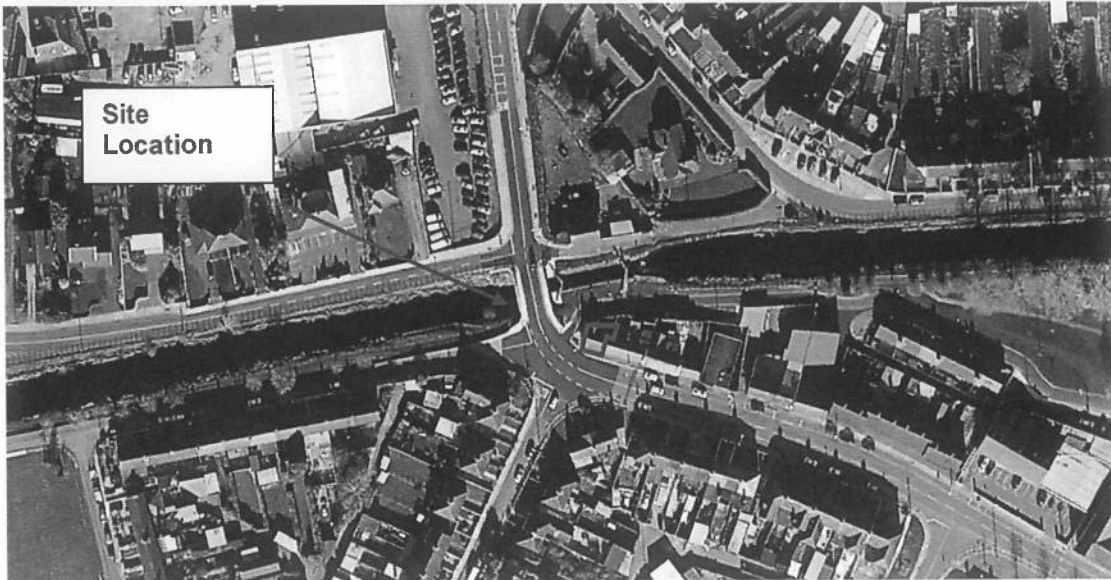


Fig 3: Aerial image of location of site

3. Site History

TU33170 Permission **Granted** to Christopher McGowan for the reconstruction of premises

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.*
- (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.

5 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 –

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 specifies: 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.

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

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 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.
- (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

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.
4. 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.
5.
 - (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.
6. The roof of any extension shall not be used as a balcony or roof garden.

6 Proposal by Applicants

The Applicant has indicated the following works will be carried out:

- Renovations and reconstruction of the rear section of the existing dwelling

7. 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 an extension and renovation of an 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 note that the proposed extension is within a The Grand Canal pNHA. It is considered that the proposed works could adversely affect the proposed Natural Heritage Area. It is therefore considered that the proposal is not exempted development.

8. APPROPRIATE ASSESSMENT SCREENING:

The subject site is located 1.15km from SAC 000571– Charleville Wood SAC
Having regard to nature of the development which consists of renovations and reconstruction of the rear section of an existing dwelling at No. 1 Kilbride Street, Tullamore, Co. Offaly and due to lack of any pathway to a European site given that the proposal connects to a public sewer 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.

9. EIA SCREENING:

No screening required, see appendix A

10. CONCLUSION

It is recommended that the applicant be advised that the proposed development 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 the renovations and reconstruction of the rear section of an existing dwelling is or is or is not development and if so, are they exempted development at No. 1 Kilbridge Street, Tullamore, Co. Offaly.

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Michael Duffy

Michael Duffy

Executive Planner

9th December 2024

Ed Kelly

Ed Kelly

ASEP

12th December 2024

Appendix A

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	DEC 24-120
Development Summary:	Residential Extension & Renovations
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