

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/124

NAME OF APPLICANT: Eoin Bracken

ADDRESS FOR CORRESPONDENCE: C/O Sinead Bourke, Newmark Architects, 40 Dame Street, D02 VA44.

NATURE OF APPLICATION: request for declaration under Section 5 of the Planning & Development Act 2000, as amended as whether or not the refurbishment works to protected structure RPS 34-18 is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Main Street, Killeigh, Co. Offaly.

WHEREAS a question has arisen as to whether the proposed refurbishment works to protected structure RPS 34-18 is or is not development and is or is not exempted development at Main Street, Killeigh, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 26th November 2024

AND WHEREAS Eoin Bracken C/O Sinead Bourke, Newmark Architects, 40 Dame Street, D02 VA44 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(1)(h) & 57(1) of the Planning & Development Act 2000, as amended.
- (b) The submitted Architectural Heritage Impact Assessment

AND WHEREAS Offaly County Council has concluded that the proposed refurbishment works to protected structure RPS 34-18 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 that the proposed refurbishment works to protected structure RPS 34-18 is development and is exempted development at Main Street, Killeigh, 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

18/12/2024

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

File Reference:	Dec. 24/124
Question:	Whether or not the refurbishment works to protected structure RPS 34-18 is or is not development and is or is not exempted development?
Applicant:	Eoin Bracken
Correspondence Address:	C/O Sinead Bourke, Newmark Architects, 40 Dame Street, D02 VA44
Location:	Main Street, Killeigh, Co.Offaly



Main Street, Killeigh, Tullamore, Co. Offaly.

1. Introduction

The question has arisen as to whether or not refurbishment works to protected structure RPS 34-18 is or is not development and is or is not exempted development?

The proposed refurbishment works will consist of:

- Repairs to roof slates
- Repairs to roof timbers
- Repairs to external render
- Removal of on-original sand and cement render from rear elevation
- Repairs to gutters and downpipes
- External painting in breathable paint
- Repairs to lime plaster on walls internally
- Repairs to lime plaster on ceilings internally
- Repairs to timber floors
- New bathroom fittings and tiling fitted

- New kitchen fixtures and fitting fitted
- Plumbing upgrade
- Upgrading of electrics
- Insulation of attic floor internal painting in breathable paint.

2. Background

The site is situated on 'Village Centre/ Mixed Use' zoned land with direct access onto the N-80 National Road. Currently located on site is an existing 5 Bay 2 Two Storey Dwelling. According to the County Development Plan, the structure in question is registered as a protected structure (Ref RPS 34-18). Additionally according to the www.archaeology.ie , the subject structure is located within a Special Monuments Record Zone.



Fig 1: Site Location (Discovery Series)



Fig 2: Site Location Map which indicates the entire structure is located within an Special Monuments Record Zone

Fig 3: Aerial image of location of site



3. Referrals

<p>Senior Architect:</p>	<p>Executive</p>	<p>Makes the following comments:</p> <ul style="list-style-type: none">• Note the applicant is not the owner as of yet but is interested in buying the property and is at sale agreed.• Examples of some of the fine detail that can be seen at the former Barracks. <div data-bbox="715 1339 943 1684"></div> <div data-bbox="1002 1339 1326 1608"></div>
--------------------------	------------------	---



- **Repair of existing lime render:** Only problem areas where plaster is loose and defective need to be redone in accordance with best practice. The retention of sound work is important because of authenticity and historical value. Render should match existing mix and must not be stronger or thicker than the background to which it is applied.

Reason: To protect the architectural heritage in the interests of the common good and the proper planning and sustainable development of the area.

- **Roof:** Minor repairs shall only be carried out to the roof in accordance with details submitted with the planning application unless the written consent of the planning authority has first been obtained. Slates shall be carefully removed and stored during building works. Existing slates shall be used to the front of the building with Blue Bangor or similar closely matching slate used to the rear. Ridge tiles shall be retained and similar replacement terracotta ridge tiles sourced where required. Parging (a lime mortar coating applied to the underside of slates) shall be retained unless the written consent of the planning authority has been obtained. Existing cast iron gutters and downpipes are to be repaired and retained in accordance with details submitted with the planning application unless the written consent of the planning authority has first been obtained. If new sections are required they shall match the existing. Refer to the Department Advice Series: Roofs <https://www.buildingsofireland.ie/resources/>
- **Paint:** The use of cement based or other waterproof and hard gloss paints shall not be permitted on surfaces covered with traditional

	<p>render, as they will cause damage to the historic fabric.</p> <p>Reason: To protect the architectural heritage in the interests of the common good and the proper planning and sustainable development of the area</p> <ul style="list-style-type: none">• The works shall retain the maximum amount of surviving historic fabric in situ, including structural elements, plasterwork and joinery and shall be designed to cause minimum interference to the building structure and/or fabric. Items that have to be removed for repair shall be recorded prior to removal, catalogued and numbered to allow for authentic reinstatement. All existing original features not part of the works shall be protected during the course of refurbishment. <p>Reason: To ensure that the integrity of the protected structure is maintained and protected from unnecessary damage or loss of fabric.</p> <ul style="list-style-type: none">• In general items of routine maintenance may be carried out using 'like-with-like' materials, for instance repairs slates on existing roof and if there are any damaged slates, matching slate repairs. Any new build or demolition will require planning permission. All of the structures within the curtilage (demesne grounds) are also included in the RPS protection (outbuildings, gate piers, gates etc.).• The Department has produced an excellent Advice Series along with 'Architectural Heritage Protection' all available to download at: https://www.buildingsofireland.ie/resources/ The Advice Series including one on General Maintenance, Roofs, Iron etc. While the 'Architectural Heritage Protection' is a detailed document which outlines issues such as planning permission etc.• Any other works not listed above on this Section 5 Declaration which would materially affect the character of the protected structure and, as a result will require planning permission.• No objections to the proposed works proceeding based on above comments and details submitted.
--	---

4. Site History

88/179: John and Mary O'Connor were Granted permission (subject to 4 conditions) for an extension to dwellinghouse.

07/327: John McElduff & Rory Phelan were Granted permission (subject to 19 conditions) for the construction of a new mixed use development comprising of 6 individual blocks consisting of 2 no. 3 bed dormer dwellings, 14 no. 3 bed two storey dwellings and 114 sq.m. of retail space with associated landscaping, site works and new site entrance. This application also includes the demolition of 57 sq.m. from an existing habitable house and existing out buildings. This application is within the curtilage of a protected structure.

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.*

Section 57 - Works affecting character of protected structures or proposed protected structures.

57.—(1) Notwithstanding section 4(1)(a),(h),(i), ia) (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—

- (a) the structure, or
- (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.

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 – Restrictions on Exemptions

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—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a

development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(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.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

(b) in an area to which a special amenity area order relates, if such development would be development:—

(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33
(c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or

(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or

(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

6 Proposal by Applicants

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

- Repairs to roof slates
- Repairs to roof timbers
- Repairs to external render
- Removal of on-original sand and cement render from rear elevation
- Repairs to gutters and downpipes
- External painting in breathable paint
- Repairs to lime plaster on walls internally
- Repairs to lime plaster on ceilings internally
- Repairs to timber floors
- New bathroom fittings and tiling fitted

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 refurbishment of a protected structure.

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 development includes refurbishment of a protected structure.

The Declaration was referred to the Senior Executive Architect for comment who subsequently has '*no objections to the proposed works proceeding based on above comments and details submitted*'. It is considered the comments made by the Senior Executive Architect have been dealt with within the submitted Architectural Heritage Impact Assessment

Additionally according to the www.archaeology.ie , the subject structure is located within a Special Monuments Record Zone, however given that the proposed development is for renovations to existing dwelling and it does not include any external groundworks, it is therefore considered that the proposal will have no archaeological impact on the Special Monuments Record Zone.

8. APPROPRIATE ASSESSMENT SCREENING:

The subject site is located 3.44km from SAC 002162–River Barrow And River Nore SAC Having regard to nature of the development which consists of refurbishment works to protected structure at Main Street, Killeigh, 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

Having assessed the information received, it is considered the refurbishment works to protected structure RPS 34-18 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 refurbishment works to protected structure RPS 34-18 is or is not development and is or is not exempted development at Main Street, Killeigh, Co.Offaly

AS INDICATED on the particulars received by the Planning Authority on the 26th November 2024

AND WHEREAS, Eoin Bracken C/O Sinead Bourke, Newmark Architects, 40 Dame Street, D02 VA44 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(1)(h) & 57(1) of the Planning & Development Act 2000, as amended.
- (b) The submitted Architectural Heritage Impact Assessment

AND WHEREAS Offaly County Council has concluded that the proposed refurbishment works to protected structure RPS 34-18 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 that the proposed refurbishment works to protected structure RPS 34-18 is **development** and is **exempted development** at Main Street, Killeigh, 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.

Michael Duffy

Michael Duffy

Executive Planner

16th December 2024



Ed Kelly

Acting Senior Executive Planner

17th December 2024

Appendix A

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	DEC 24-124
Development Summary:	Refurbishment works to protected structure RPS 34-18
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