

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/29

NAME OF APPLICANT: Brian Malone

ADDRESS FOR CORRESPONDENCE: Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the renovations of the domestic part of the premises is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781.

WHEREAS a question has arisen as to whether the renovations of the domestic part of the premises is or is development and is or is not exempt development at Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781.

AS INDICATED on the particulars received by the Planning Authority on the 19th March 2024 and 28th May 2024.

AND WHEREAS Brian Malone of Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781 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, 3(1) and 4(1)(h) of the Planning & Development Act 2000 (as amended).
- Schedule 2, Part 2, Article 6 'Exempted Development' and Article 9 'Exempted Development' of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed and completed works are development and are not exempted development as Applicant has not provided an Architectural Heritage Impact Assessment from a suitably qualified professional (as requested) and therefore, the submitted FI response does not provide sufficient information to allow the Planning Authority to determine whether the proposed and completed works would materially affect the character of the protected structure.

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 and completed renovations of the domestic part of the premises **are development and are not exempt development** at Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781.

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.

Note to Applicant: The Applicant may wish to consider a request to OCC for a declaration under Section 57 of the planning acts as amended. Please contact OCC planning for further details.



Administrative Officer

Date 14/06/24

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:	<i>Dec. 24/29</i>
Question:	<i>Whether the renovations of the domestic part of the premises is or is development and is or is not exempt development.</i>
Applicant:	<i>Brian Malone</i>
Correspondence Address:	<i>Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781</i>
Location:	<i>As above.</i>

1. Introduction

The question has arisen as to whether the renovations of the domestic part of the premises is or is not development and is or is not exempt development. The premises is the former Black Bull public house premises which is a protected structure (RPS ref. 57-01).

2. Background / Site History

The subject site is located at the junction of regional road, R462 and national road, N62 approximately 7km south of Birr Town. The subject site comprises of a former public house and adjoining residential premises. The structure is listed as a protected structure under the current Offaly County Development Plan 2021 – 2027 (OCDP)– RPS ref. 57/01.

3. Review of Further Information

Further information (FI) was sought by the Planning Authority on the 24th April 2024 and subsequently, a response from the Applicant was received by the Planning Authority on the 28th May 2024. This report should be read in conjunction with the previous planner's report dated 11th April 2024.

The following FI was sought and the response is as follows:

It is noted that the structure on site is designated as a protected structure in the Offaly County Development Plan 2021-2027 (RPS ref. 57-01). Please submit an Architectural Heritage Impact Assessment from a suitably qualified professional indicating whether the works subject of this declaration would materially affect the character of the structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Note to applicant: Alternatively the Applicant may wish to consider a request to OCC for a declaration under Section 57 of the planning acts as amended. Please contact OCC Planning for further details.

In response, the Applicant has submitted a 1 page letter which has been prepared by Kenneth Rice (BEng, MIEI) of KMR Consulting Engineers. This letter states the following:

I have visited the site prior to work starting and I also inspected the property on the 27th May 2024. With regard to the description of the property on the NIAH Register, the majority of the elements listed in the description remain untouched. There are 3 items which were not as described on the register. Firstly, the wrought-iron window guard is not currently on the property, it is being repaired at this time and it is the intention of Brian Malone to restore the piece and place the guard back as it was. Secondly, the majority of the cast-iron rainwater goods were not present prior to work starting, it is believed they were stolen some years ago, what did remain was rusted beyond repair. Thirdly, the terracotta ridge tiles were damaged to the point they were no longer protecting the roof, this is the primary reason for the roof failing and the property going into disrepair. Brian has replaced the ridge tiles with clay ridge tiles of the same colour.

The Planning Authority note that the Applicant has not provided an Architectural Heritage Impact Assessment from a suitably qualified professional, as requested. It is considered that the submitted FI response does not provide sufficient information to allow the Planning Authority to determine whether the proposed and completed works would materially affect the character of the structure, or any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

It is noted that the FI response advises that some works have been carried out; the Planner confirms this.

3. Evaluation

The Planning Authority note the following:

Planning and Development Regulations 2001 (as amended) - 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—

(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,

Having considered the FI response and having regard to Article 9, it is the view of the Planner that the works outlined by the Applicant are not exempted development and would require planning permission.

4. Recommendation

Having assessed the further information received by the Planning Authority on the 28th May 2024 and the previous planning report on file, it is considered the renovations of the domestic part of the premises at the subject site **is development and is not exempt development.**

Note to applicant: The Applicant may wish to consider a request to OCC for a declaration under Section 57 of the planning acts as amended. Please contact OCC planning for further details.

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 of the domestic part of the premises is or is development and is or is not exempt development at Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781;

AS INDICATED on the particulars received by the Planning Authority on the 19th March 2024 and 28th May 2024.;

AND WHEREAS Brian Malone of Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781 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, 3(1) and 4(1)(h) of the Planning & Development Act 2000 (as amended).
- (b) Schedule 2, Part 2, Article 6 'Exempted Development' and Article 9 'Exempted Development' of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed and completed works are development and are not exempted development as Applicant has not provided an Architectural Heritage Impact Assessment from a suitably qualified professional (as requested) and therefore, the submitted FI response does not provide sufficient information to allow the Planning Authority to determine whether the proposed and completed works would materially affect the character of the protected structure.

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 and completed renovations of the domestic part of the premises are **development** and **are not exempt development** at Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781.

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.

Note to Applicant: *The Applicant may wish to consider a request to OCC for a declaration under Section 57 of the planning acts as amended. Please contact OCC planning for further details.*



Úna McCafferkey
A/Senior Executive Planner

13th June 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 24/29

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the renovations of the domestic part of the premises is or is development and is or is not exempt development.		
Site location:	Rathbeg, Sharavogue, Birr, Co. Offaly, R42 E781		
Site size:	Not provided	Floor Area of Proposed Development:	Not provided.
Identification of nearby European Site(s):	Sharavogue Bog SAC– 1.48 km Lisduff Fen SAC - 1.75 km Island Fen SAC– 5.82km Ballyduff/Clonfinane Bog SAC – 7.44km		
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?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):	Sharavogue Bog SAC – Features of interest include: <ul style="list-style-type: none"> [7110] Raised Bog (Active)* [7120] Degraded Raised Bog [7150] Rhynchosporion Vegetation Lisduff Fen SAC – Features of interest include: <ul style="list-style-type: none"> [7220] Petrifying Springs* [7230] Alkaline Fens [1013] Geyer's Whorl Snail (Vertigo geyeri) Island Fen SAC - Features of interest include: <ul style="list-style-type: none"> [5130] Juniper Scrub [7230] Alkaline Fens Ballyduff/Clonfinane Bog SAC - Features of interest include:		

- [7110] Raised Bog (Active)*
- [7120] Degraded Raised Bog
- [7150] Rhynchosporion Vegetation
- [91D0] Bog Woodland*

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 www.npws.ie) **(ATTACH INFO.)**

Sharavogue Bog SAC

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000585.pdf>

Lisduff Fen SAC

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002147.pdf>

Island Fen SAC

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002236.pdf>

Ballyduff/Clonfinane Bog SAC

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000641.pdf>

(C) NPWS ADVICE:

Advice received from NPWS over phone:

None Received

Summary of advice received from NPWS in written form **(ATTACH SAME):**

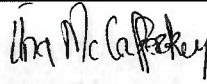
None Received

(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)*

Would there be... ... 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.

<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 and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.</p>	<p>No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.</p>
<p>(E) SCREENING CONCLUSION:</p>	
<p>Screening can result in:</p>	
<p>1.</p>	<p><i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.</p>
<p>2.</p>	<p><i>No potential for significant effects / AA is not required.</i></p>
<p>3.</p>	<p><i>Significant effects are certain, likely or uncertain.</i> (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</p>
<p>Therefore, does the project fall into category 1, 2 or 3 above?</p>	<p>Category 2</p>
<p>Justify why it falls into relevant category above:</p>	<p>There would be no likely significant impact on European sites from the proposed development.</p>
<p>Name:</p>	<p>Úna McCafferkey </p>
<p>Position:</p>	<p>A/Senior Executive Planner Date: 13th June 2024</p>