

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/3

NAME OF APPLICANT: Paul Kelly

ADDRESS FOR CORRESPONDENCE: Queen Street, Banagher, Co. Offaly

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the proposed refurbishment including re-roofing, new windows and doors, insulating floor/attic/walls to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Queen Street, Banagher, Co. Offaly

WHEREAS a question has arisen as to whether the proposed refurbishment including re-roofing, new windows and doors, insulating floors/attic/walls to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) is or is not development and is or is not exempted development at Queen Street, Banagher, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 9th January 2024 and 17th May 2024.

AND WHEREAS Paul 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 3(1) and 4(1)(a) of the Planning & Development Act 2000 (as amended).
- (b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- (c) Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 (of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed refurbishment including re-roofing, new windows and doors, insulating floors/attic/walls to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) is development and is exempted development particularly having regard in article 4(1)(h) and Class 1, Part 1 of Schedule 2.

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 refurbishment including re-roofing, new windows and doors, insulating floors/attic/walls) to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) at Queen Street, Banagher, Co. Offaly **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.



A/Administrative Officer

6<sup>th</sup> June 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

<b>File Reference:</b>	<i>Dec. 24/03</i>
<b>Question:</b>	<i>Whether the proposed refurbishment including re-roofing, new windows and doors, insulating floors/attic/walls) to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) is or is not development and if so, are they exempted development.</i>
<b>Applicant:</b>	<i>Paul Kelly</i>
<b>Correspondence Address:</b>	<i>Queen Street, Banagher, Co. Offaly</i>
<b>Location:</b>	<i>As above</i>

### 2<sup>nd</sup> Report

This report should be read in conjunction with the previous planner's report dated 1<sup>st</sup> February 2024.

#### 1. Introduction

The question has arisen as whether the proposed refurbishment works to an existing dwelling house is or is not development and if so, are they exempted development.

Please note that it is the view of the Planning Authority that the existing dwelling is vacant rather than derelict and the residential use has not been abandoned.

#### 2. Review of Further Information

Further information (FI) was sought by the Planning Authority on the 2<sup>nd</sup> February 2024 and a response was subsequently received by the Planning Authority on the 17<sup>th</sup> May 2024.

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

1. *Having regard to the conditions and limitations of Class 1 (Development within the curtilage of a house) of Schedule 2 – Exempted Development, Part 1 of the Planning and Development Regulations 2001 (as amended), the Planning Authority confirm that additional structural details of the proposed extension to the rear of the existing dwelling are required. The Applicant is required to submit the following:*
  - (a) *A revised suitably scaled site layout plan that reflects the location of the existing dwelling and the proposed extension on the subject site. This plan shall detail the setbacks from existing site boundaries. Please also submit revised floor plan drawings at 1:100 scale as the dimensions on the submitted floor plans are not easily legible.*
  - (b) *Suitably scaled elevations of the existing dwelling and proposed extension. This shall include elevations of the south west (side) and rear elevations and provide the maximum heights of the existing and proposed structures.*

The Applicant has provided a revised site layout plan with setbacks from boundaries provided; a floor plan for the existing and proposed extension; and, elevations with existing and proposed heights provided.

#### 3. Evaluation

Having considered the FI response and had regard to *Schedule 2 – Exempted Development, Part 1 - Development Within the Curtilage of a House, Class 1*, Planning and Development Regulations 2001 (as amended), the Planner notes the following:

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.*

The Planning Authority are satisfied that the proposed ground floor extension is less than 40m<sup>2</sup>.

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 obtained, shall not exceed 20 square metres.*

The Planning Authority are satisfied that the dwelling has not been extended previously.

3.

*Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.*

The proposed extension is ground level only.

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.*

The rear wall of the dwelling does not include a gable and the height of the proposed extension does not exceed the height of the existing 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.*

There will be sufficient private open space (i.e. greater than 25m<sup>2</sup>) available to the rear of the dwelling once the extension is in place.

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.*

All windows facing the common boundary are more than 1m from the boundary.

7.

*The roof of any extension shall not be used as a balcony or roof garden.*

This is not applicable, in this instance.

Having considered the FI response and had regard to *Section 4(1)(h) - Exempted Development of the Planning and Development Act 2000 (as amended)*, it is the view of the Planner that the proposed works are exempted development and do not require planning permission.

It is considered that the proposed development does not constitute a development listed in Schedule 5 of the Planning and Development Regulations 2001 as amended. Furthermore, it is not a sub-threshold development. Accordingly, an EIAR is not required.

## **7. Conclusion**

Having assessed the Further Information received and the previous planning report on file, it is considered that the proposed extension and associated works at the subject site 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 including re-roofing, new windows and doors, insulating floors/attic/walls) to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) is or is not development and if so, are they exempted development at Queen Street, Banagher, Co. Offaly.

**AS INDICATED** on the particulars received by the Planning Authority on the 9<sup>th</sup> January 2024 and 17<sup>th</sup> May 2024,

**AND WHEREAS** Paul 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 3(1) and 4(1)(a) of the Planning & Development Act 2000 (as amended).
- (b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- (c) Schedule 2 – Exempted Development, Part 1 - Development Within the Curtilage of a House, Class 1 (of the Planning and Development Regulations 2001 (as amended)).

**AND WHEREAS** Offaly County Council has concluded that the proposed refurbishment including re-roofing, new windows and doors, insulating floors/attic/walls) to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) is or is not development and if so, are they exempted development is development and is exempted development particularly having regard in article 4(1)(h) and Class 1, Part 1 of Schedule 2.

**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 refurbishment including re-roofing, new windows and doors, insulating floors/attic/walls) to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) at Queen Street, Banagher, Co. Offaly **is development and is exempted development.**

*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.*



Úna McCafferkey

Executive Planner

6<sup>th</sup> June 2024



---

Ed Kelly  
(A/Senior Executive Planner)

6<sup>th</sup> June 2024

## 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 24/3

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed refurbishment including re-roofing, new windows and doors, insulating floors/attic/walls) to make cottage structurally safe and construction of an extension to the rear (comprising of a new kitchen, bathroom and heating system) is or is not development and if so, are they exempted development.		
Site location:	Queen Street, Banagher. Co. Offaly		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Middle Shannon Callows SPA – 0.25km River Shannon Callows SAC – 0.25km All Saints Bog SPA – 3.04km All Saints Bog and Esker SAC – 3.08km River Little Brosna Callows SPA – 4km Redwood Bog SAC – 5.86km Dovegrove Callows SPA – 7.93km		
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 EIA?	No: X		
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):	<p><b>Middle Shannon Callows SPA - Features of interest include:</b></p> <ul style="list-style-type: none"> <li>Whooper Swan (<i>Cygnus cygnus</i>) [A038]</li> <li>Wigeon (<i>Anas penelope</i>) [A050]</li> <li>Corncrake (<i>Crex crex</i>) [A122]</li> <li>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</li> <li>Lapwing (<i>Vanellus vanellus</i>) [A142]</li> <li>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</li> <li>Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179]</li> <li>Wetland and Waterbirds [A999]</li> </ul> <p><b>River Shannon Callows SAC – Features of interest include:</b></p> <ul style="list-style-type: none"> <li>Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410]</li> <li>Lowland hay meadows (<i>Alopecurus pratensis</i>, <i>Sanguisorba officinalis</i>) [6510]</li> <li>Limestone pavements [8240]</li> <li>Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0]</li> <li><i>Lutra lutra</i> (Otter) [1355]</li> </ul> <p><b>All Saints Bog SPA - Features of interest include:</b></p>		



Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]  
 All Saints Bog and Esker SAC – Features of interest include:  
 Semi-natural dry grasslands and scrubland facies on calcareous substrates (*Festuco-Brometalia*) (\* important orchid sites) [6210]  
 Active raised bogs [7110]  
 Degraded raised bogs still capable of natural regeneration [7120]  
 Depressions on peat substrates of the *Rhynchosporion* [7150]  
 Bog woodland [91D0]  
**River Little Brosna Callows SPA– Features of interest include:**  
 Whooper Swan (*Cygnus cygnus*) [A038]  
 Wigeon (*Anas penelope*) [A050]  
 Teal (*Anas crecca*) [A052]  
 Pintail (*Anas acuta*) [A054]  
 Shoveler (*Anas clypeata*) [A056]  
 Golden Plover (*Pluvialis apricaria*) [A140]  
 Lapwing (*Vanellus vanellus*) [A142]  
 Black-tailed Godwit (*Limosa limosa*) [A156]  
 Black-headed Gull (*Chroicocephalus ridibundus*) [A179]  
 Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]  
 Wetland and Waterbirds [A999]  
**Dovegrove Callows SPA- Features of Interest include:**  
 Greenland White-fronted Goose (*Anser albifrons flavirostris*) [A395]

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](http://www.npws.ie)) (ATTACH INFO.)

**Site Name: Middle Shannon Callows SPA, Site Code: 004096**  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004096.pdf>  
**Site Name: River Shannon Callows SAC, Site Code: 000216**  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000216.pdf>  
**Site Name: Dovegrove Callows SPA, Site Code: 004137**  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004137.pdf>  
 Site Name: Sharavogue Bog, Site Code: 000585  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000585.pdf>  
**Site Name: River Little Brosna SPA, Site Code: 004086**  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004086.pdf>  
**Site Name: All Saints Bog SPA, Site Code: 004103**  
<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004103.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)

<b>Would there be...</b> ... 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.
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.	No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.
<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 Natura Impact Statement 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?	Category 2
Justify why it falls into relevant category above:	There would be no likely significant impact on the European site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Site.
<b>Name:</b>	Úna McCafferkey 
<b>Position:</b>	Executive Planner
<b>Date:</b>	6 <sup>th</sup> June 2024