

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 24/41

NAME OF APPLICANT: Dermot Beacon and Sarah Fisher

ADDRESS FOR CORRESPONDENCE: Mullagharush, Rhode, Co. Offaly, R35 Y389

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the proposed works of alterations to a dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Mullagharush, Rhode, Co. Offaly, R35 Y389.

WHEREAS a question has arisen as to whether the proposed works of alterations to a dwelling is or is not development and is or is not exempted development at Mullagharush, Rhode, Co. Offaly, R35 Y389

AS INDICATED on the particulars received by the Planning Authority on the 18th April 2024.

AND WHEREAS Dermot Beacon and Sarah Fisher 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 -

- Sec 2(1) and 3(1) of Planning and Development Act 2000 (as amended).

AND WHEREAS Offaly County Council has concluded that the works of alterations to a dwelling is development and is not 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 the proposed works of alterations to a dwelling is development and is not exempted development at Mullagharush, Rhode, R35 Y389.

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

14/5/24  
\_\_\_\_\_  
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

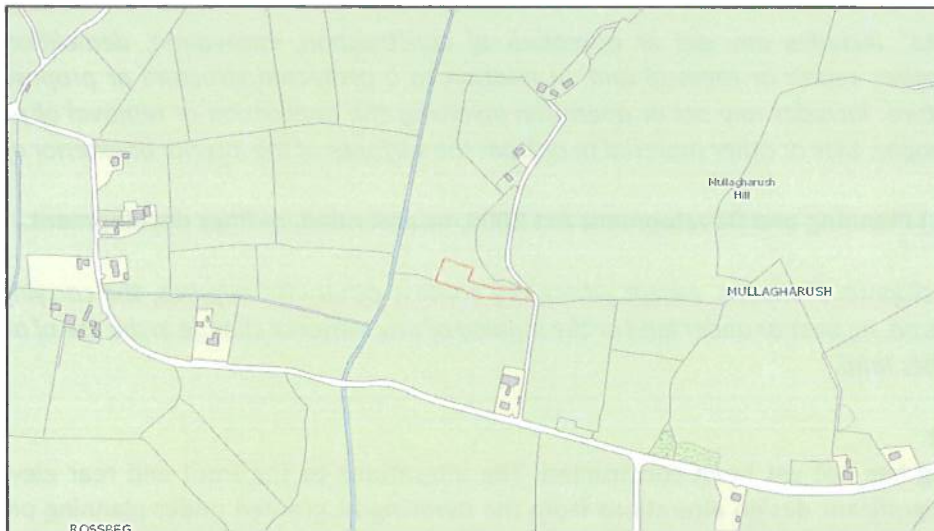
<b>File Reference:</b>	<i>Dec. 24/41</i>
<b>Question:</b>	<i>Whether the proposed alterations to a dwelling is or is not development and if so, are they exempted development.</i>
<b>Applicant:</b>	<i>Dermot Beacon and Sarah Fisher</i>
<b>Correspondence Address:</b>	<i>Mullagharush, Rhode, R35 Y389</i>
<b>Location:</b>	<i>Mullagharush, Rhode, R35 Y389</i>

#### 1. Introduction

Whether the proposed alterations to dwelling a is or is not development and if so, are they exempted development.

#### 2. Background

The site is located within a Rural Area Under Strong Urban Influence and has a low sensitivity classification. The site is located on a private laneway.



Photos 1 and 2: site location (red line boundary).

### **3. Site History**

*On site:*

*Ref 2210:* Dermot Beacon & Sarah Fisher were granted permission conditionally for (a) 1 no. new storey and half type dwelling, (b) 1 no. new domestic garage, (c) installation of a new waste water treatment system, (d) vehicular entrance, (e) new landscaping and all associated site development works.

### **4. 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.*

#### **Assessment**

The dwelling has not yet been constructed. The alterations to the front and rear elevation would constitute significant design alterations from the dwelling as granted under planning permission ref no 2210. The changes include an extension to the rear to provide additional room for a kitchen. I consider the works as development and I consider that works subject of this declaration are not covered by any relevant exemption.

### **5. Proposal by Applicants**

The Applicant is proposing alterations to a dwelling. Please see take page for drawings.

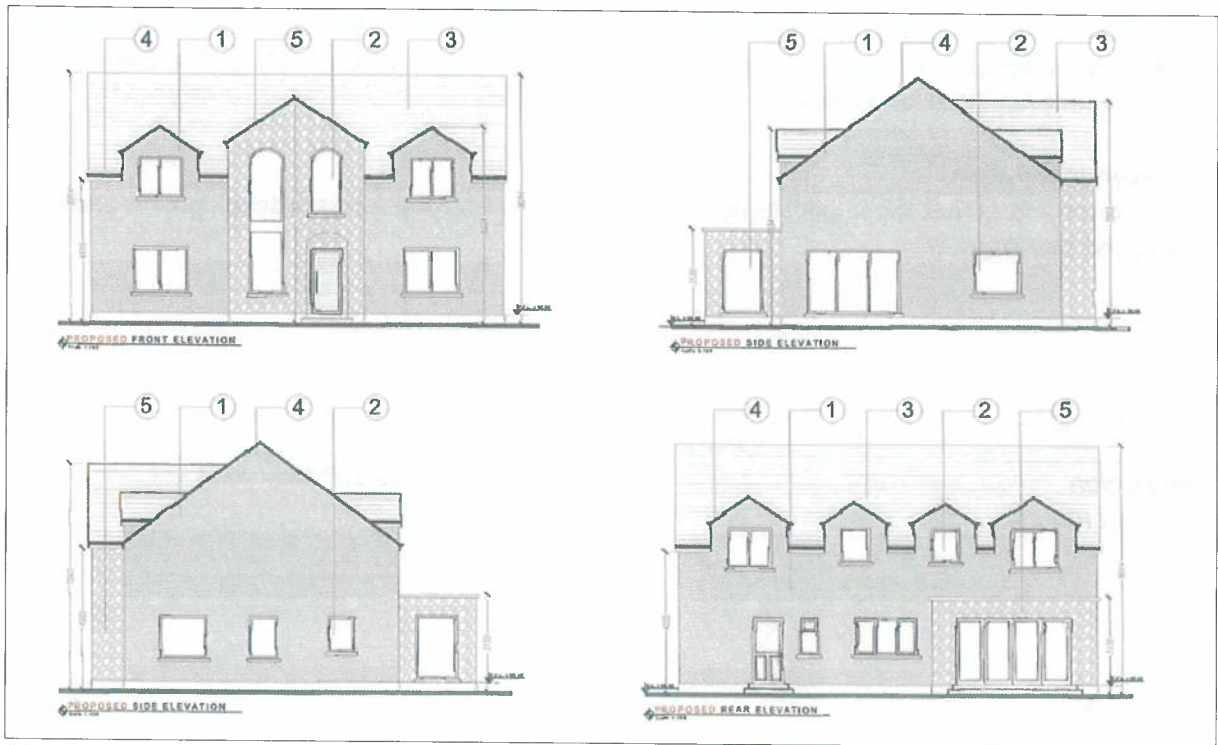


Fig 1 House as granted under 22/10



Fig 2 House with changes which are subject of this declaration.

## 6. Appropriate Assessment

A screening exercise for an appropriate assessment has been carried out and it is concluded that the development is unlikely to have significant effects on any European sites. Please see attached report under Appendix A.

## 7. Evaluation

**Question: Whether the proposed works 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 alterations to a dwelling.

**Question: Is this proposal considered as Exempted Development?**

I consider that the works are development and I consider that the works are not exempted development based on limitations set out in Section 2 (1) and Section 3(1) of the Planning and Development Act 2000 (as amended).

**8. Recommendation**

It is recommended that the Applicant be advised that the proposed works **is development and is not exempted development.**



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Enda Dolan  
Assistant Planner

Date 10<sup>th</sup> May 2024



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Ed Kelly A/Senior Executive Planner

Date: 14<sup>th</sup> May 2024

**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 works of alterations to a dwelling is or is not development and if so, are they exempted development at Mullagharush, Rhode, R35 Y389.

**AS INDICATED** on the particulars received by the Planning Authority on the 18<sup>th</sup> April 2024.

**AND WHEREAS** Dermot Beacon and Sarah Fisher 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 -

- Sec 2(1) and 3(1) of Planning and Development Act 2000 (as amended).

**AND WHEREAS** Offaly County Council has concluded that the works of alterations to a dwelling is **development and is not 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 the proposed works of alterations to a dwelling is **development and is not exempted development** at Mullagharush, Rhode, R35 Y389.

*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 Pleanala within 4 weeks of the issuing of the decision.*



\_\_\_\_\_  
Enda Dolan  
Assistant Planner

10<sup>th</sup> May 2024



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Ed Kelly A/Senior Executive Planner

14<sup>th</sup> May 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 24/41**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed alterations to a dwelling is or is not development and if so, are they exempted development.		
Site location:	Mullagharush, Rhode, R35 Y389		
Site size:	0.07ha	Floor Area of Proposed Development:	
Identification of nearby European Site(s):	Raheenmore Bog SAC – 0.79km Split Hills and Long Hill Esker SAC – 4.44km		
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?			No: X
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Raheenmore Bog SAC – Features of interest include:	<ul style="list-style-type: none"> <li>[7110] Raised Bog (Active)*</li> <li>[7120] Degraded Raised Bog</li> <li>[7150] Rhynchosporion Vegetation</li> </ul>		
Split Hills and Long Hill Esker SAC – Features of interest include:	<ul style="list-style-type: none"> <li>[6210] Orchid-rich Calcareous Grassland*</li> </ul>		
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 <a href="http://www.npws.ie">www.npws.ie</a> ) (ATTACH INFO.)			
Site Name: Raheenmore Bog SAC, Site Code: 000582 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000582.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000582.pdf</a> Site Name: Split Hills and Long Hill Esker SAC, Site Code: 001831 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY001831.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY001831.pdf</a>			



(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:	
<i>(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).</i>	
If the answer is 'yes' to any of the questions below, then the effect is significant. <i>(Please justify your answer. 'Yes' / 'No' alone is insufficient)</i>	
<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.
(E) SCREENING CONCLUSION:	
<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:	<b>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:	Enda Dolan 
Position:	Assistant Planner
Date:	10 <sup>th</sup> May 2024.

