

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/42

NAME OF APPLICANT: Avril Browne

ADDRESS FOR CORRESPONDENCE: Corville Road, Roscrea, Co. Tipperary.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether proposed renovation of the existing dwelling and addition to the existing extension to the rear of the dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Lettybrook, Kinnitty, Birr, Co. Offaly, R42 XY84.

WHEREAS a question has arisen as to whether the proposed renovation of the existing dwelling and addition to the existing extension to the rear of the dwelling is or is not development and is or is not exempted development at Lettybrook, Kinnitty, Birr, Co. Offaly, R42 XY84.

AS INDICATED on the particulars received by the Planning Authority on the 25th April 2024.

AND WHEREAS Avril Browne 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 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 of the Planning & Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed works 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 the proposed renovation of the existing dwelling and addition to the existing extension to the rear of the dwelling **is development and is exempted development** at Lettybrook, Kinnitty, Birr, Co. Offaly, R42 XY84.

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.

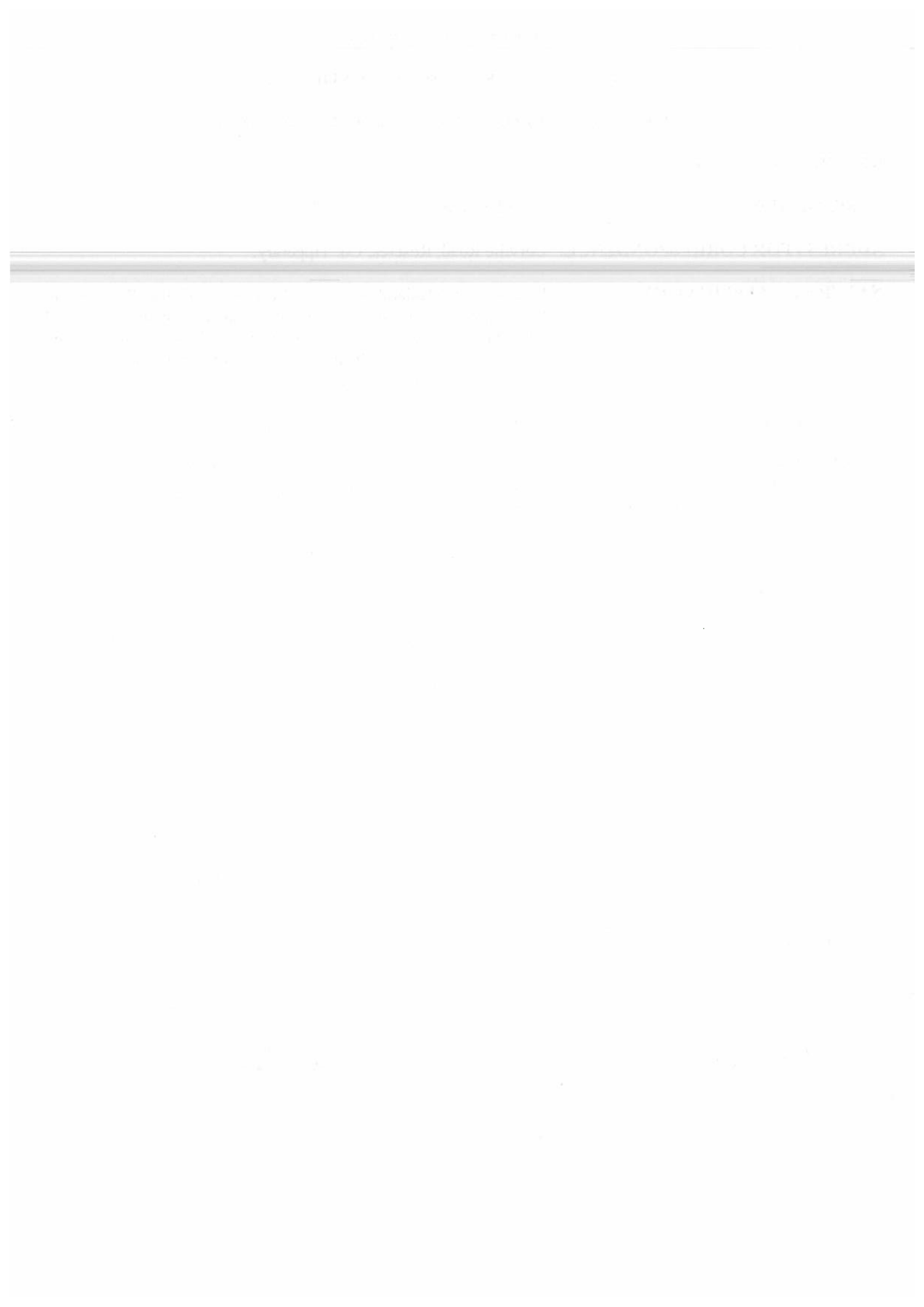


Administrative Officer

21/5/24

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

File Reference:	<i>Dec. 24/42</i>
Question:	<i>Whether the proposed renovation of the existing dwelling and addition to the existing extension to the rear of the dwelling is or is not development and if so, are they exempted development?</i>
Applicant:	<i>Avril Browne</i>
Correspondence Address:	<i>Corville Road, Roscrea, Co. Tipperary.</i>
Location:	<i>Lettybrook, Kinnitty, Birr, Co. Offaly, R42 XY84.</i>

1. Introduction

The question has arisen whether the proposed renovation of the existing dwelling and addition to the existing extension to the rear of the dwelling is or is not development and if so, are they exempted development.

2. Background

The site is located within the open countryside and is approximately 2.10km north east from Kinnitty Village.

3. Site History

On Site – Section 5 Dec. 23/64 – On the 28th February 2024, the Planning Authority issued a refusal confirming that the proposed works (extension to the rear of the dwelling and renovations to existing dwelling) as detailed on the submitted plans and particulars is development and is not exempted development.

Below is an extract from the planner's second report and includes a review of the submitted Further Information response:

F.I. request: Please submit a site layout plan at 1:500 scale and elevation drawings at 1:100 scale of the existing structures on site and the proposed works in order to determine if the proposed works complies with Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Applicants Response: The applicant has provided drawings which provides dimensions of the existing and proposed extension. The existing extension has a total floor area of 18m². The proposed extension has a total floor area of 32m².

Planners Appraisal: The further information received in relation to item 1 was assessed by the Planning Authority, who subsequently have determined the proposed works are not exempt development. The proposed removal and replacement of the extension does not comply with Class 1 of Schedule 2 – Exempted Development, Part I of the Planning and Development Regulations 2001 (as amended).

'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.'

As the existing extension's total floor area is 18m² and the proposed extension total floor area is 32m², totalling 50m², the existing and proposed extension works exceeds limitations set out in 2(a), Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Enforcement – No recent history associated with the subject site.

Adjoining Lands - No recent planning history associated with the adjoining lands.

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.

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.

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”.

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

“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 and assessed below.

5. Proposal by Applicants

The Applicant has advised that the proposed works will comprise of the renovation of the existing dwelling and addition to the existing extension which is located to the rear of the dwelling.

The following floor plans have been provided as part of the planning application:

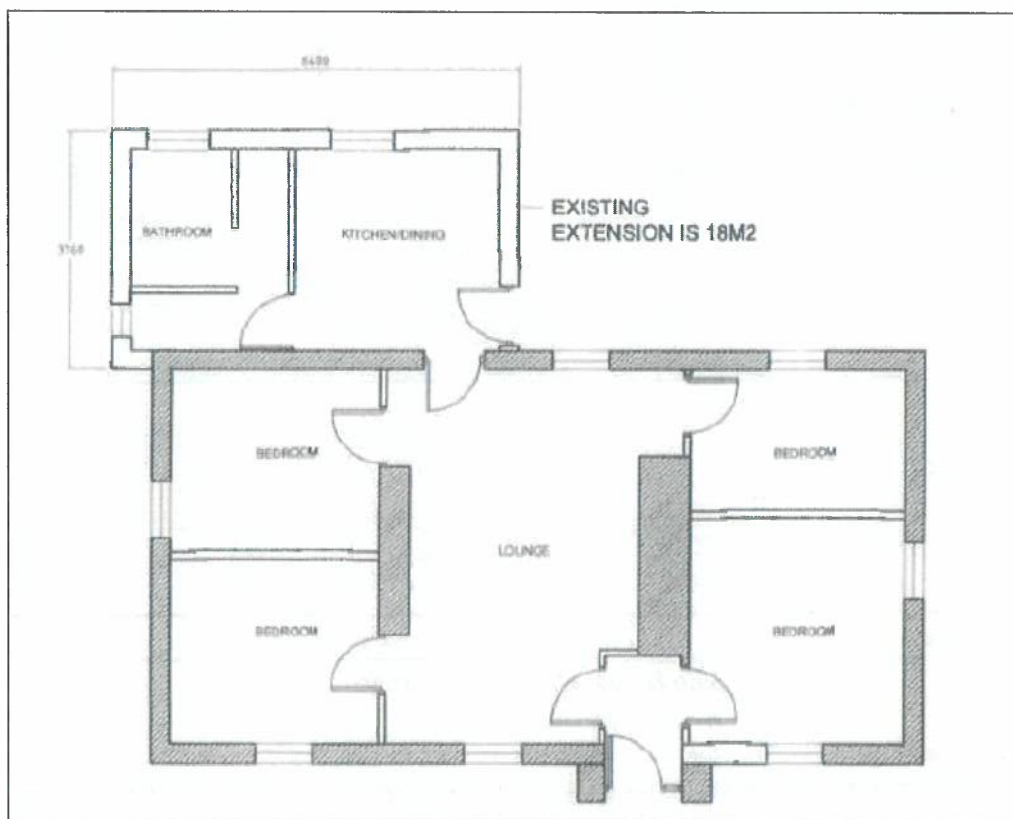


Figure 1: Existing Floor Plan.

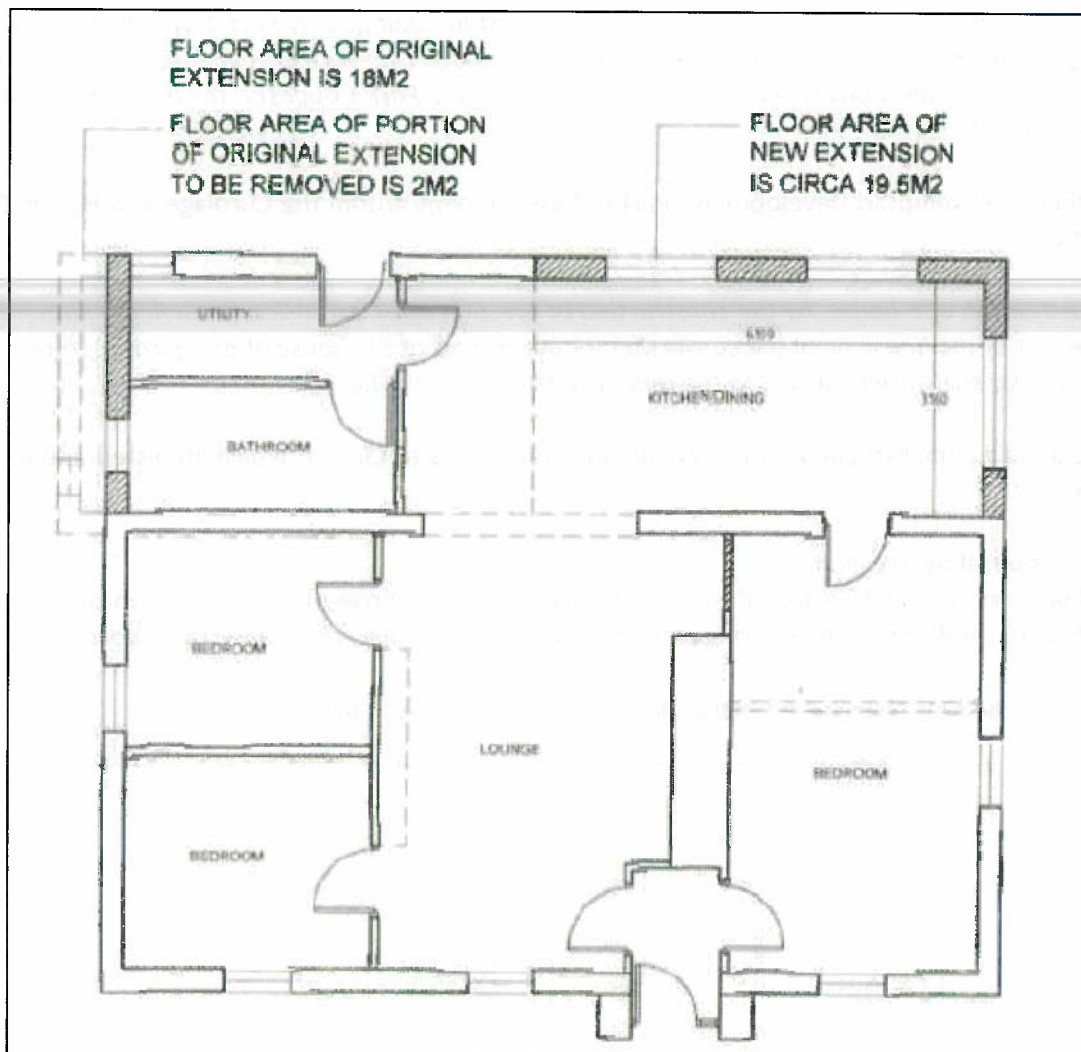


Figure 2: Proposed Floor Plan.

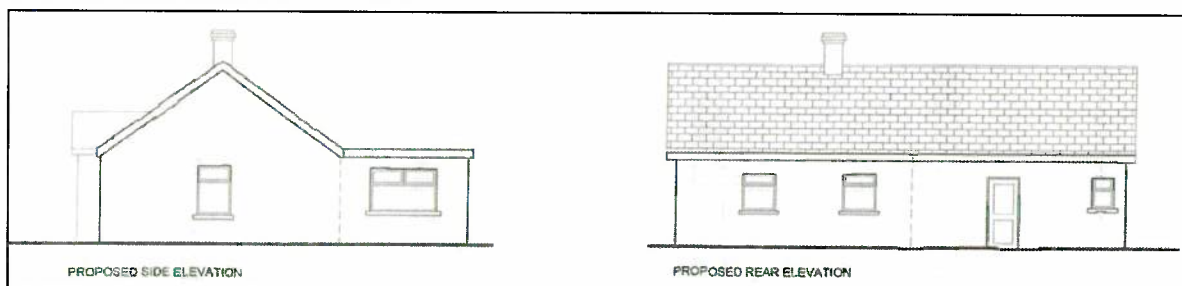


Figure 3: Side & Rear Elevation of Proposed Extension.

6. Assessment

The works subject of this declaration are subject to the provisions of Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Class 1 limitations to be complied with are as follows:

1.

(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

The Applicant advises that the house has been extended previously, to the extent of 18m².

(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.

Not applicable.

(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 existing and proposed extension will be ground level only.

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.

The submitted plans confirm that the existing extension extends to 18m² and the proposed extension will have an area of 19.5m² which would amount to 37.5m². It is also noted that approximately 2m² of the existing extension will be removed as part of the proposed development.

(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.

Not applicable as the dwelling is detached.

(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 existing and proposed extension will be ground level only.

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

The Applicant has submitted a site layout plan which confirms that the proposed ground floor extension is located more than 2m 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.

The existing and proposed dwelling extension to the rear of the dwelling is flat roofed and does not extend above the eaves.

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.

As demonstrated on the submitted site layout plan, the remaining private open space exceeds 25m².

6.

(a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

The proposed extension complies with this requirement.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

Not applicable.

(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.

Not applicable.

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

The proposed extension complies with this requirement.

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 repairs and alterations to the existing dwelling.

Question: Is this proposal considered as Exempted Development?

Based on the information received, the Planning Authority are satisfied that the proposed extension located to the rear of the existing dwelling complies with Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). In addition, the proposed works will not materially affect the external appearance of the structure.

8. Recommendation

It is recommended that the Applicant be advised that the proposed development 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 renovation of the existing dwelling and addition to the existing extension to the rear of the dwelling is or is not development and if so, is or is not exempted development at Lettybrook, Kinnitty, Birr, Co. Offaly, R42 XY84.

AS INDICATED on the particulars received by the Planning Authority on the 25th April 2024.

AND WHEREAS Avril Browne 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 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 of the Planning & Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed works 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:

- The proposed renovation of the existing dwelling and addition to the existing extension to the rear of the dwelling **is development and is exempted development** at Lettybrook, Kinnitty, Birr, Co. Offaly, R42 XY84.

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

21st May 2024

Date



Ed Kelly

A/Senior Executive Planner

21st May 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 24/42

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	<i>Whether the proposed renovation of the existing dwelling and addition to the existing extension to the rear of the dwelling is or is not development and if so, are they exempted development?</i>		
Site location:	Lettybrook, Kinnitty, Birr, Co. Offaly, R42 XY84.		
Site size:	0.33ha	Floor Area of Proposed Development:	19m ²
Identification of nearby European Site(s):	Slieve Bloom Mountains SPA – 1.03km		
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):			
Slieve Bloom SAC – Features of interest include: <ul style="list-style-type: none"> • Hen Harrier (<i>Circus cyaneus</i>) [A082] 			
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.)			
Site Name: Slieve Bloom SAC, Site Code: 004160 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.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)


<p>Would there be...</p> <p>... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	<p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>
<p>... a reduction in habitat area on a European site?</p>	<p>There will be no reduction in the habitat area. The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	<p>Not likely due to the location and type of development The site is sufficient distance from the European site.</p>
<p>... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?</p>	<p>Not likely due to the location and type of development The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	<p>None likely due to the location and type of development. The site is sufficient distance from the European site.</p>
<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>

(E) SCREENING CONCLUSION:

Screening can result in:

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.

Name:			
	Úna McCafferkey		
Position:	Executive Planner	Date:	21 st May 2024