

**OFFALY COUNTY COUNCIL  
DECLARATION UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED**

**REFERENCE:** DEC 24/54

**NAME OF APPLICANT:** Joseph Bermingham

**ADDRESS FOR CORRESPONDENCE:** Ballyfore, Edenderry, Co. Offaly, R45 EY76.

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

**LOCATION OF DEVELOPMENT:** Ballyfore, Edenderry, Co. Offaly, R45 EY76.

**WHEREAS** a question has arisen as to whether the proposed renovations to an existing dwelling is or is not development and is or is not exempted development at Ballyfore, Edenderry, Co. Offaly, R45 EY76.

**AS INDICATED** on the particulars received by the Planning Authority on the 17th May 2024.

**AND WHEREAS** Joseph Bermingham 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), 4(2)(a)(i) of the Planning & Development Act 2000, as amended.
- (b) Article 6 of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2, Part 1, Class 12 of the Planning and 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 renovations to an existing dwelling is development and is exempted development at Ballyfore, Edenderry, Co. Offaly, R45 EY76.

**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*

*11/6/24*  
\_\_\_\_\_  
*Date*

*Note: 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.*



## Planning Report - Section 5 Declaration

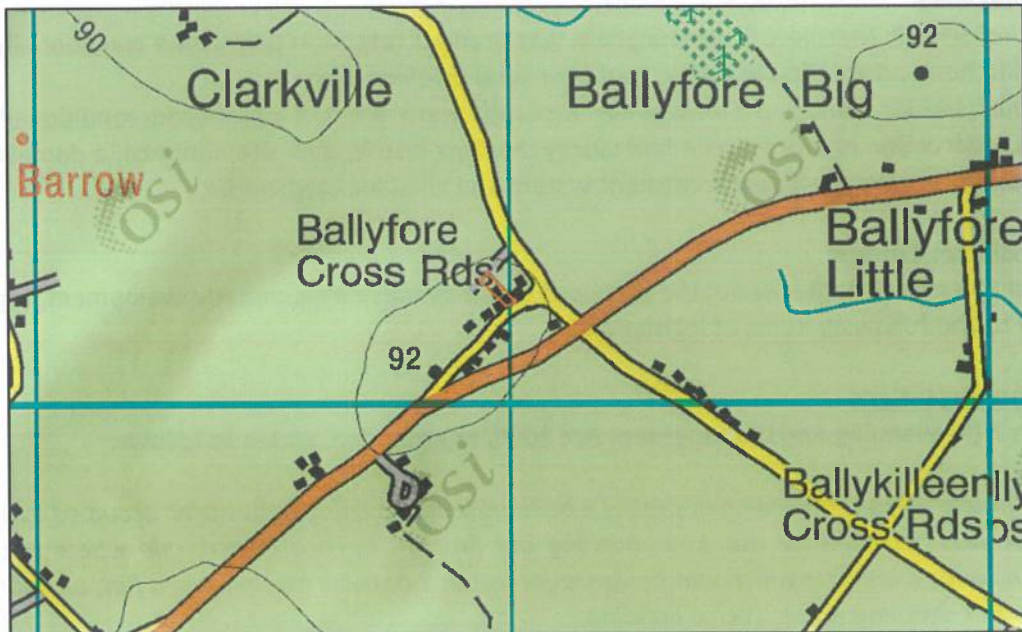
<b>File Reference:</b>	<i>Dec. 24/54</i>
<b>Question:</b>	<i>Whether the proposed renovations an existing dwelling is or is not development and is or is not exempted development.</i>
<b>Applicant:</b>	<i>Joseph Bermingham</i>
<b>Correspondence Address:</b>	<i>Ballyfore, Edenderry, Co. Offaly, R45 EY76</i>
<b>Location:</b>	<i>Ballyfore, Edenderry, Co. Offaly, R45 EY76</i>

### 1. Introduction

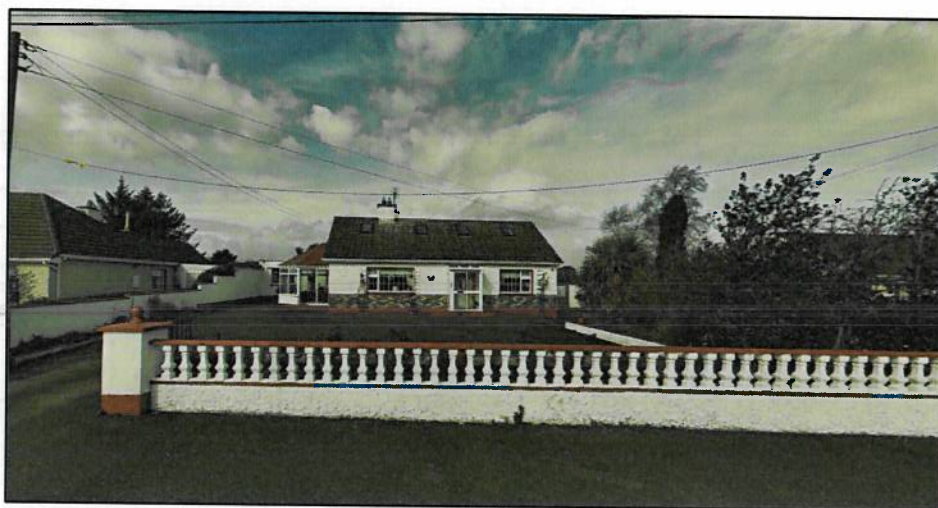
The question has arisen as to whether the proposed renovations to an existing dwelling is or is not development and is or is not exempted development.

### 2. Background

The subject site is located within Ballyfore Sraid. The existing dwelling on site is a bungalow. The site is located on a slip road off the regional road R-402. The site is surrounded by further residential properties.



Images 1-2: Site location



*Image 3: Subject site.*

### **3. Site History**

*On site:* No relevant on-site planning history.

*Adjoining sites:*

- *Ref 93152:* Matthew B. Bermingham was granted retention permission conditionally for back kitchen and erection of a-type roof over total dwelling area.
- *Ref 10235:* Liam and Emmanuelle McGrath were granted permission conditionally for the construction of a one and a half storey dwelling house, new site entrance, a domestic garage and proprietary effluent treatment system and all associated 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.*

#### **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 12 specifies:

*'The painting of any external part of any building or other structure.'*

This is considered to be exempted development if the following limitations are complied with:

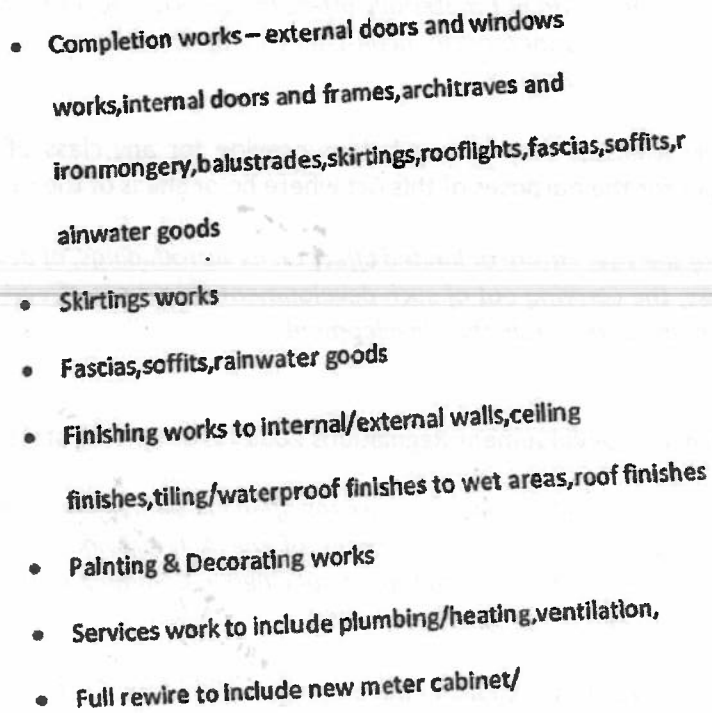
*'Such painting may not, except in the case of a hoarding or other temporary structure bounding land on which development consisting of works is being or will be carried out in pursuance of a permission granted under Part III of the Act or as exempted development, be for the purposes of creating a mural.'*

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

The Applicant has advised of the proposed renovations an existing dwelling. In the written application form, it is stated that the intention is to renovate the dwelling and bring it to a liveable condition and that no extension of the existing dwelling is proposed.

As part of the submitted documentation, the following list of proposed works has been provided:

- Demolitions/Strip Out/Site Clearance to include removal of hazardous materials
- Superstructure works – includes works to external/internal walls, chimneys, upper floors, stairs, roof structure, other structural timbers

- 
- Completion works – external doors and windows works, internal doors and frames, architraves and ironmongery, balustrades, skirtings, rooflights, fascias, soffits, rainwater goods
  - Skirtings works
  - Fascias, soffits, rainwater goods
  - Finishing works to internal/external walls, ceiling finishes, tiling/waterproof finishes to wet areas, roof finishes
  - Painting & Decorating works
  - Services work to include plumbing/heating, ventilation,
  - Full rewire to include new meter cabinet/

## 6. 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 renovations to an existing dwelling.

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

With regard to the proposed works which are described in the submitted documents, the Planning Authority are satisfied that the proposed works would not result in a material alteration to the appearance of the dwelling and would not be detrimental to the character of the site or surrounding area. It is the opinion of the planning authority that these works meet the criteria of exempt development under section 4(1)(h) of the Planning and Development Act 2000 (as amended).

An appropriate assessment screening has been carried out see attached.

## 7. Conclusion

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)**

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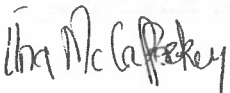
- The proposed renovations to an existing dwelling **is development and is exempted development** at Ballyfore, Edenderry, Co. Offaly, R45 EY76.

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Enda Dolan  
Assistant Planner

7<sup>th</sup> June 2024.



Úna McCafferkey  
A/Senior Executive Planner

10<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 24/54**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed renovations an existing dwelling is or is not development and is or is not exempted development.		
Site location:	Ballyfore, Edenderry, Co. Offaly, R45 EY76		
Site size:	0.19 hectares	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	The Long Derries, Edenderry SAC – 6.57km		
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):			
<b>The Long Derries, Edenderry SAC – Features of interest include:</b>	<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: The Long Derries, Edenderry SAC Site Code: 000925 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000925.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000925.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:			
(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><b>Would there be...</b></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:	<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>

<b>Name:</b>	Enda Dolan 
<b>Position:</b>	Assistant Planner
<b>Date:</b>	7 <sup>th</sup> June 2024.

