

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

REFERENCE: DEC 24/55

NAME OF APPLICANT: Theresa and George Burns

ADDRESS FOR CORRESPONDENCE: Newtown, Rhode, Co. Offaly, R35 RF40.

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

LOCATION OF DEVELOPMENT: Ballyhue, Mount Lucas, Daingean, Co. Offaly, R35 E7T3.

WHEREAS a question has arisen as to whether the proposed renovation works to an existing dwelling is or is not development and is or is not exempted development at Ballyhue, Mount Lucas, Daingean, Offaly, R35 E7T3.

AS INDICATED on the particulars received by the Planning Authority on the 29th May 2024.

AND WHEREAS Theresa and George Burns 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), 4(2)(a)(i) of the Planning & Development Act 2000, as amended.
- Article 6 of the Planning and Development Regulations 2001, as amended.
- 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 renovation works to an existing dwelling is **development** and is **exempted development** at Ballyhue, Mount Lucas, Daingean, Offaly, R35 E7T3.

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

24/06/2024

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

File Reference:	<i>Dec. 24/55</i>
Question:	<i>Whether the proposed renovation works to an existing dwelling is or is not development and is or is not exempted development.</i>
Applicant:	<i>Theresa and George Burns</i>
Correspondence Address:	<i>Newtown, Rhode, Offaly, R35 RF40</i>
Location:	<i>Ballyhue, Mount Lucas, Daingean, Offaly, R35 E7T3</i>

1. Introduction

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

2. Background

The subject site is located on a private lane off a local tertiary road, approximately 5.3km from Daingean GAA club. The existing dwelling on site is a bungalow. The site is surrounded by agricultural lands.



Images 1-2: Site location



Image 3: Site inspection image.

3. Site History

On site: No relevant on-site planning history.

Adjoining sites: No relevant planning history.

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 renovation works to an existing dwelling, including updating electrics, plumbing, new kitchen, bathroom, painting and decorative works.

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

Cottage renovations	
QUANTITY	DESCRIPTION
Works	Complete strip out of cottage, to include removal of timber floors, timber drylining on outside walls, ceiling slabs, all plumbing & electrics
floors	1200 gauge polythene, 150mm insulation, 100mm concrete
Walls	Metal stud all outside walls, with 80mm insulated slabs,
Ceilings	50mm insulated to all ceilings, with 80mm ridged insulation between joist
Plaster	Skim all new slabs & reskim inside walls
Electrics	Total rewire of house
Plumbing	Total replumb of house including new grant boiler
Kitchen	New kitchen units, tile kitchen floor
bath rm	New sanitary ware, tile walls floor
Carpentry	New doors, skirting & architrave

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)

WHEREAS a question has arisen as to whether the proposed renovation works to an existing dwelling is or is not development and is or is not exempted development at Ballyhue, Mount Lucas, Daingean, Offaly, R35 E7T3.

AS INDICATED on the particulars received by the Planning Authority on the 29th May 2024.

AND WHEREAS Theresa and George Burns 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 renovation works to an existing dwelling **is development and is exempted development** at Ballyhue, Mount Lucas, Daingean, Offaly, R35 E7T3.

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.



Enda Dolan
Assistant Planner

17th June 2024.



Ed Kelly
A/Senior Executive Planner

24th June 2024.

APPENDIX 1

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: Offaly County Council

Planning Application Ref. No.: DEC 24/55

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed renovation works to an existing dwelling is or is not development and is or is not exempted development.		
Site location:	Ballyhue, Mount Lucas, Daingean, Offaly, R35 E7T3		
Site size:	0.12ha	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	Raheenmore Bog SAC – 8.35km		
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"> [7110] Raised Bog (Active)* [7120] Degraded Raised Bog [7150] Rhynchosporion Vegetation 			

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: Raheenmore Bog SAC. SITE CODE: 000582 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000582.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:	
<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>	
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.
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:	
Screening can result in:	
1.	AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.
2.	No potential for significant effects / AA is not required.
3.	Significant effects are certain, likely or uncertain. (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:	Enda Dolan <i>Enda Dolan</i>		
Position:	Assistant Planner	Date:	17 th June 2024