

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

REFERENCE: DEC 24/66

NAME OF APPLICANT: Niall O'Toole

ADDRESS FOR CORRESPONDENCE: Rathcobican, Rhode, Co. Offaly, R35 N671

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

LOCATION OF DEVELOPMENT: Rathcobican, Rhode, Co. Offaly, R35 N671

WHEREAS a question has arisen as to whether renovations of an existing dwelling is or is not development and is or is not exempted development at Rathcobican, Rhode, Co. Offaly R35 N671.

AS INDICATED on the particulars received by the Planning Authority on the 13th June 2024.

AND WHEREAS Niall O'Toole 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(1), 3(1) and 4(1)(h), of the Planning & Development Act 2000, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development having particular regard to the fact that no subsurface work is proposed.

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 of an existing dwelling **is development and is exempted development** at Rathcobican, Rhode, Co. Offaly R35 N671.

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

10/07/24

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

File Reference:	Dec. 24/66
Question:	<i>Whether the proposed works of renovations to an existing dwelling is or is not development and if so, are they exempted development?</i>
Applicant:	<i>Niall O'Toole</i>
Correspondence Address:	<i>Rathcobican, Rhode, Co. Offaly R35 N671</i>
Location:	<i>Rathcobican, Rhode, Co. Offaly R35 N671</i>

1. Introduction

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

2. Background

The existing detached, one storey dwelling is a corner site, located off the regional road R-400-3 (vehicular entrance) and local secondary road L-5013-1. Rhode National School directly adjoins the north of the site.

The site is located directly alongside a national monument and is also located in proximity to three other national monuments . www.archaeology.ie descriptions include:

Adjoining national monument:

1. **OF011-017005- : Enclosure : RATHCOBICAN** - *Test excavation was undertaken by Dominic Delany under licence no. 99E0461, from 30 August to 3 September 1999, before application for planning permission for four detached dwellings. The sites are within the area of constraint around a ringfort that consists of a raised circular platform (diameter 44.8m, height 1m), enclosed by a slight bank largely reduced to a scarp, and an external fosse (width 4m, depth 0.9m). The SMR file for this site also notes that a field system possibly associated with the ringfort exists in the area west and south-west of the monument. The ringfort (OF011-017001-) is 25m from the eastern edge of the proposed development site, which measures 70m north-south by 125m. A large spread of burnt material (OF011-017004-) was encountered midway along Trench 1. The burnt material directly underlay the sod and had an average thickness of 0.35m, lensing out to 0.05m at the east and west. The eastern edge of the spread is clearly defined by a curvilinear feature, 1.7m wide, and a second curvilinear feature, 1.2m wide, was encountered 22m west of the burnt material. It is possible that the curvilinear features represent the east and west limits of a large circular enclosure (diameter c. 44m).*

In proximity to:

1. **OF011-017003- : Fulacht fia : RATHCOBICAN** - *Test excavation was undertaken by Dominic Delany under licence no. 99E0461, from 30 August to 3 September 1999, before application for planning permission for four detached dwellings. The sites are within the area of constraint around a ringfort that consists of a raised circular platform (diameter 44.8m, height 1m), enclosed by a slight bank largely reduced to a scarp, and an external fosse (width 4m, depth 0.9m). The SMR file for this site also notes that a field system (OF011-017002-) possibly associated with the ringfort exists in the area west and south-west of the monument. The ringfort (OF011-017001-) is 25m from the eastern edge of the proposed development site, which measures 70m north-south by 125m. Three test-trenches were mechanically excavated, 125m long and 1.5m wide, extending east-west across the site. The features encountered were*

Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

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(a) Section 2(1), 3(1) and 4(1)(h), of the Planning & Development Act 2000, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development having particular regard to the fact that no subsurface work is proposed.

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 of an existing dwelling is development and is exempted development at Rathcobican, Rhode, Co. Offaly R35 N671.

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.

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 24/66

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed works of renovations to an existing dwelling is or is not development and if so, are they exempted development.		
Site location:	Rathcobican, Rhode, Co. Offaly R35 N671.		
Site size:	0.33ha	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	Raheenmore Bog – 8.64km		
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"> Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150] Salmo salar (Salmon) [1106] Lutra lutra (Otter) [1355] Trichomanes speciosum (Killarney Fern) [1421] Margaritifera durrovensis (Nore Pearl Mussel) [1990] 			

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. (Please justify your answer. 'Yes' / 'No' alone is insufficient)	
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.	<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:	Enda Dolan <i>Enda Dolan</i>		
Position:	Assitant Planner	Date:	1 st July 2024

three spreads of burnt material, probably levelled fulachta fiadh, and portion of a circular enclosure, possibly a ring-ditch. Several linear and curvilinear features were also encountered, but it was not clearly established whether these were of archaeological significance. The archaeological features were recorded as follows. A large spread of burnt material (OF011-017004-) was encountered midway along Trench 1. The burnt material directly underlay the sod and had an average thickness of 0.35m, lensing out to 0.05m at the east and west. The eastern edge of the spread is clearly defined by a curvilinear feature, 1.7m wide, and a second curvilinear feature, 1.2m wide, was encountered 22m west of the burnt material. It is possible that the curvilinear features represent the east and west limits of a large circular enclosure (OF011-017005-). A spread of burnt material (12.5m east-west) was encountered close to the east end of Trench 3. The east edge of the spread is defined by a curvilinear feature, 2.4m wide, and a second curvilinear feature, 2m wide, was encountered 25m east of the burnt material. A spread of burnt material (12.5m east-west) was encountered close to the east end of Trench 3. The east edge of the spread is defined by a curvilinear feature, 2.4m wide, and a second curvilinear feature, 2m wide, was encountered 25m east of the burnt material.

2. **OF011-017002- : Field system : RATHCOBICAN** - This site was on good pastureland beside the platform ringfort (OF011-017001-). There was no evidence of a field system in this area, however the field has been enlarged due to agricultural improvement. During this time the field systems may have been destroyed. Field systems were identified from aerial photographs taken in 1966 (CUCAP APH 76).
3. **OF011-017001- : Ringfort - rath : RATHCOBICAN** - Univallate ringfort (int. diam. c. 45m E-W) situated in a low lying area and defined by an earthen bank mainly reduced to a scarp with external fosse. Present remains consists of a raised circular area defined by an earthen bank that has been much degraded (max int. H c. 0.5m; Wth 1.5m), with enclosing external fosse (Wth 4m; D 0.9m). No evidence of entrance. Roadside field boundary intersects edge of external fosse at north. No evidence of field system (OF011-017002-) as seen on aerial photo (CUCAP APH 76) at ground level.

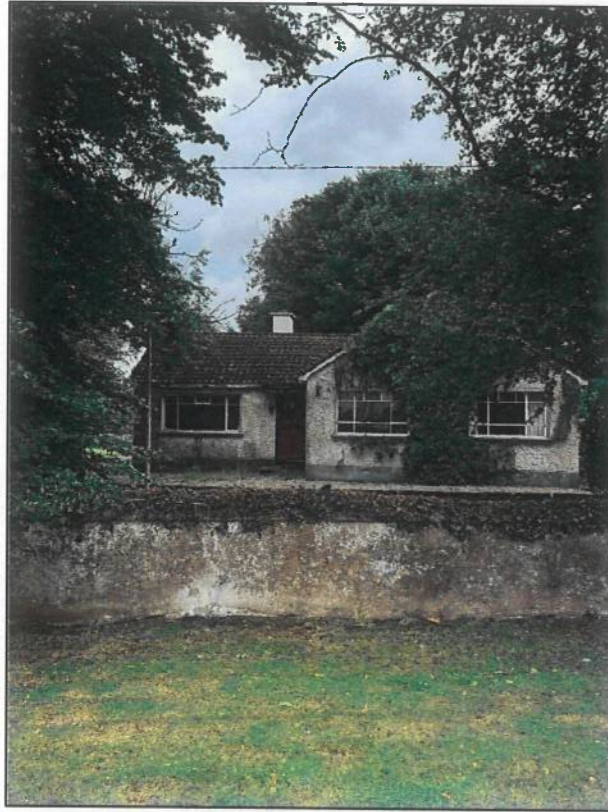
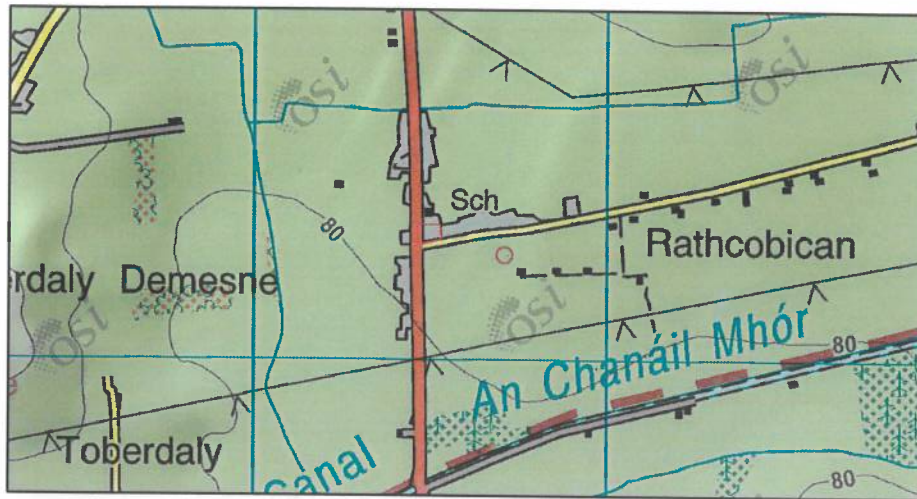


Photo 1: Subject Site





Photos 2-3: Site location (red line boundary).

3. Site History

On site:

No relevant planning or enforcement history.

Adjoining lands:

Ref 09556: The Board of Management Scoile Mhuire Naofa was granted permission conditionally for installation of proprietary effluent treatment system with percolation area

Ref 05702: Scoil Mhuire Naofa was granted permission conditionally for retention of an existing front porch and permission for construction of a new extension to the side (northern elevation) of the existing school.

Ref 081012: Connor Doolan was granted permission conditionally for the construction of a dormer type dwelling house and detached garage/fuel store, installation of effluent treatment system and percolation area and all associated site works.

Ref 05664: Michael Mcnamee was refused permission for the construction of a commercial business park that will consist of 1394m² filling station, courtyard, vehicular repair area, refuse area and effluent treatment system; 1 no. 1858m² commercial/industrial unit and effluent treatment system; 4 no. 930m² commercial/industrial units, refuse areas and effluent treatment systems, all associated access and distributor roads, footpaths, car parking and landscaping.

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.*

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”.

Article 9 of the Planning and Development Regulations 2001 (as amended) states that:

“9, 1: Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,”

The Applicant has advised of proposed renovations to an existing dwelling. The Applicant has stated that no external alterations are proposed to take place.

5. Proposal by Applicants

The Applicant has advised of proposed renovations to an existing dwelling. The Applicant has stated that no external alterations are proposed to take place.

Gut house out
Remove roof and supply and fit new roof
New fascia and soffit /gutters
Knock wall and fit beams
Remove chimney
Supply and fit 9 new windows and 2 doors white pvc
Rewire house and cert
Replumb house where needed and supply oil burner
Supply and fit sanitary ware
remove floors for plumbing stone/insulate and pour
Dry line external walls and plaster
Supply and fit new white doors trough out
New white skirting and arc
New timber window boards
fit timber floor throughout
Tile bathrooms and kitchen floor lab only
Remove fire surround
top up insulation to attic
supply skips x 2
vents in rooms
supply and fit kitchen
paint house inside



Due to no groundworks being proposed, the development will not have an impact on subsurface archaeological remains.

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.

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?

The declaration assessed under Section 4 (1)(h) of the Planning and Development Act 2000 (as amended). In that regard it is considered that the proposed works are exempt.

7. EIA screening

The proposed development is not a class of development that requires EIA.

8. Recommendation

It is recommended that the Applicant be advised that the proposed development is **development** and **is exempted development**.

Enda Dolan

Enda Dolan (Assistant Planner)

Date: 1st July 2024

Ed Kelly

Ed Kelly A/Senior Executive Planner

Date 9th July 2024

Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

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APPENDIX A

**APPROPRIATE ASSESSMENT SCREENING
REPORT FOR PLANNING APPLICATIONS**



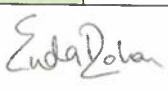
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- *If the plan / project is directly connected with / necessary to the management of the European site.*
- *If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.*

Planning Authority: OCC

Planning Application Ref. No: DEC 24/66

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Site size:	0.33ha	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	Raheenmore Bog – 8.64km		
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"> • Active raised bogs [7110] • Degraded raised bogs still capable of natural regeneration [7120] • Depressions on peat substrates of the Rhynchosporion [7150] • Salmo salar (Salmon) [1106] • Lutra lutra (Otter) [1355] • Trichomanes speciosum (Killarney Fern) [1421] • Margaritifera durrovensis (Nore Pearl Mussel) [1990] 			
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.
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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:	Enda Dolan 
Position:	Assitant Planner
Date:	1 st July 2024