

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 24/73

NAME OF APPLICANT: Noel and Margaret Malone

ADDRESS FOR CORRESPONDENCE: C/o Noel Kerrigan, Kilglass, Longwood, Co. Meath

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

LOCATION OF DEVELOPMENT: 933 St Francis St, Edenderry, Co. Offaly, R45 E274

WHEREAS a question has arisen as to whether the proposed extension to rear of dwelling and proposed domestic shed at rear of site is or is not development and is or is not exempted development at 933 St Francis St, Edenderry, Co. Offaly, R45 E274

AND WHEREAS Noel and Maragret Malone 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:

- Section 2 of the Planning & Development Act 2000, as amended.
- Section 3(1) of the Planning & Development Act 2000, as amended.
- Section 4(2) of the Planning & Development Act 2000, as amended.
- Article 6(1) of the Planning and Development Regulations 2001, as amended.
- Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended
- Schedule 2, Part 1, Class 3 of the Planning and Development Regulations 2001, as amended

AND WHEREAS Offaly County Council has concluded that –


- The domestic extension is considered **development and is exempted development.**
- The cumulative floor areas of the existing shed on site proposed to be demolished and the proposed shed exceeds the exemption limits of Schedule 2, Part 1, Class 3 and therefore the demolishing and building of a new shed **is development and is not exempted development.**

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2) hereby decides that:

- The domestic extension **Is Development and Is Exempted Development.**  
And
- The proposed shed **Is Development and is Not Exempted Development.**

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

  
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. 24/73</i>
<b>Question:</b>	<i>Whether the proposed extension to rear of dwelling and proposed domestic shed at rear of site is or is not development and if so, are they exempted development?</i>
<b>Applicant:</b>	<i>Noel and Maragret Malone</i>
<b>Correspondence Address:</b>	<i>Kilglass, Longwood, Co. Meath</i>
<b>Location:</b>	<i>933 St Francis St, Edenderry, Co. Offaly, R45 E274</i>

#### 1. Introduction

The question has arisen whether the proposed extension to rear of dwelling and proposed domestic shed at rear of site is or is not development and if so, are they exempted development.

#### 2. Background

The site is located on St Francis Street, a local primary road. The site is zoned under Existing Residential within the Edenderry Local Area Plan 2023-2029. The dwelling on site is a semidetached, two storey house. There is an existing domestic shed located to the rear of the site.



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 061552:* Mary Kennedy was granted permission conditionally for the demolition of an existing single storey extension to the rear of, demolition of domestic garage to the side of, construction of a new single storey extension to the rear of and internal alterations to the existing 2 storey dwelling. The new extension incorporates kitchen, lounge, bedroom, utility and toilet. Front elevation alterations include removal of 2 no. chimneys and erection of 1 new chimney on the roof ridge line. Related site works.

*Ref 00976:* Martin Hackett was granted permission conditionally for extension to dwellinghouse, new a type roof over kitchen & bathroom & extension to front porch.

### 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 (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.*

Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 3 specifies:

*“The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.”*

*There are a number of conditions and limitations attached to Class 3, which are listed and assessed below.*

**Assessment**

**CLASS 1**

The declaration is being sought under 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 house has not been extended previously. Proposed floor of extension is 39.91m<sup>2</sup>. Proposed works comply.

*(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.*

Floor area of proposed attic floor extension is 7.05m<sup>2</sup>. Proposed works comply.

*(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.*

Not applicable.

*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.*

Not applicable.

*(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.

*(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.*

Not applicable.

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

Proposed works comply.

*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.*

Not applicable.

*(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.*

Proposed works comply.

*(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.*

Not applicable.

*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.*

Proposed works comply.

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

Proposed works comply.

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

Proposed works comply.

*(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.*

Proposed works comply.

*Proposed works compliant with Class 1, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended).*

### **CLASS 3**

The declaration is being sought under the provisions of Class 3, in Part 1, of Schedule 2 of the Planning and Development Regulations 2001 (as amended). Class 3 limitations to be complied with are as follows:

*1. No such structure shall be constructed, erected or placed forward of the front wall of a house.*

Proposed works comply.

*2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.*

The floor area of the proposed shed is 24.93m<sup>2</sup>. I note that the existing sheds on site (which are proposed to be demolished) are of a similar size.

On the basis that the existing and proposed sheds have a combined floor area of over 25sqm I consider these works are not exempted.

#### **5. 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 demolition and construction works.

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

It is considered that the proposed domestic extension is exempted development. Given that an existing shed is on site and notwithstanding the applicant's intention to demolish this shed, the cumulative floor area of the proposed and existing sheds exceed 25sqm and are not exempted development.

An appropriate assessment screening has been carried out see attached.

#### **7. EIA screening**

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

#### **8. Conclusion**

It is recommended that the applicant be advised that the proposed domestic extension is **development and is exempted development.**

It is recommended that the applicant be advised that the demolishing and building of a shed is **development is development and is not 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 extension to rear of dwelling and proposed domestic shed at rear of site is or is not development and if so, are they exempted development at 933 St Francis St, Edenderry, Co. Offaly, R45 E274

**AND WHEREAS** Noel and Maragret Malone 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:

- (a) Section 2 of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4(2) of the Planning & Development Act 2000, as amended.
- (d) Article 6(1) of the Planning and Development Regulations 2001, as amended.
- (e) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended
- (f) Schedule 2, Part 1, Class 3 of the Planning and Development Regulations 2001, as amended

**AND WHEREAS** Offaly County Council has concluded that –

- The domestic extension is considered development and is exempted development.
- The cumulative floor areas of the existing shed on site proposed to be demolished and the proposed shed exceeds the exemption limits of Schedule 2, Part 1, Class 3 and therefore the demolishing and building of a new shed is development and is not exempted development.

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5(2) hereby decides that;

- The domestic extension  
**Is development and is exempted development.**

*And*

- The proposed shed  
**Is development and is not exempted development.**



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Enda Dolan (Assistant Planner)

Date: 23<sup>rd</sup> July 2024.



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Ed Kelly A/Senior Executive Planner

*Date: 23<sup>rd</sup> July 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 24/73**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed extension to rear of dwelling and proposed domestic shed at rear of site is or is not development and if so, are they exempted development		
Site location:	933 St Francis St, Edenderry, Co. Offaly, R45 E274		
Site size:	0.04	Floor Area of Proposed Development:	39.91m <sup>2</sup> .
Identification of nearby European Site(s):	The Long Derries, Edenderry SAC – 4.59km		
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: <input checked="" type="checkbox"/>
(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:			
<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)

<p><b>Would there be...</b>                  ... 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:** *Enda Dolan*  
Enda Dolan

**Position:** Assistant Planner **Date:** 23<sup>rd</sup> July 2024.