

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

REFERENCE: DEC 24/74

NAME OF APPLICANT: Matt Colgan

ADDRESS FOR CORRESPONDENCE: Annamoe, Portarlinton, Co. Offaly

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 a derelict house is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Annamoe, Portarlinton, Co. Offaly, R32 EC89.

WHEREAS a question has arisen as to whether renovation works to a derelict house is or is not development and is or is not exempted development at Annamoe, Portarlinton, R32 EC89

AS INDICATED on the particulars received by the Planning Authority on the 3rd July 2024.

AND WHEREAS Matt Colgan 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(1) and 3(1) of the Planning & Development Act 2000, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed renovation works to a derelict house **is development and is not exempted development** because the use of the structure on site as a house is deemed to have been abandoned.

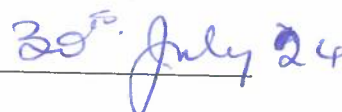
NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that:

The proposed renovation works to a derelict house **is development and is not exempted development** at Annamoe, Portarlinton, R32 EC89.

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: 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

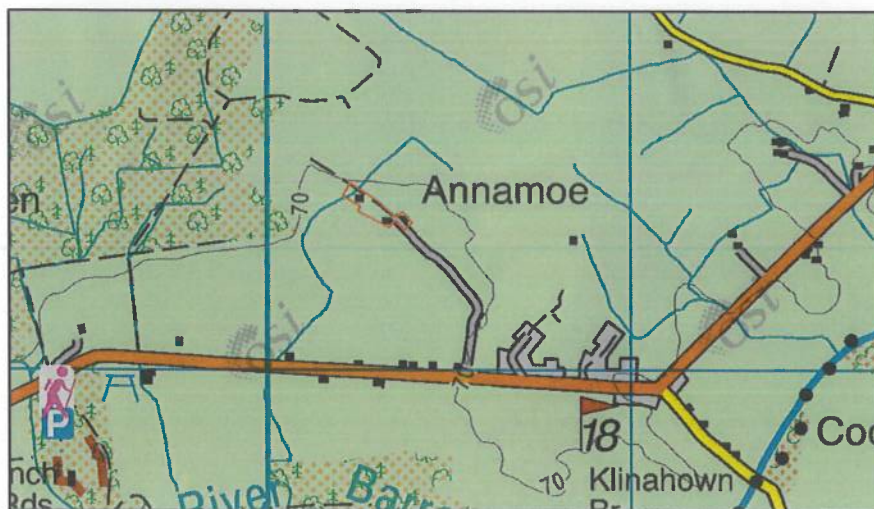
File Reference:	<i>Dec. 24/74</i>
Question:	<i>Whether the proposed renovation works to a derelict house is or is not development and is or is not exempted development.</i>
Applicant:	<i>Matt Colgan</i>
Correspondence Address:	<i>Annamoe, Portarlington</i>
Location:	<i>Annamoe, Portarlington, R32 EC89</i>

1. Introduction

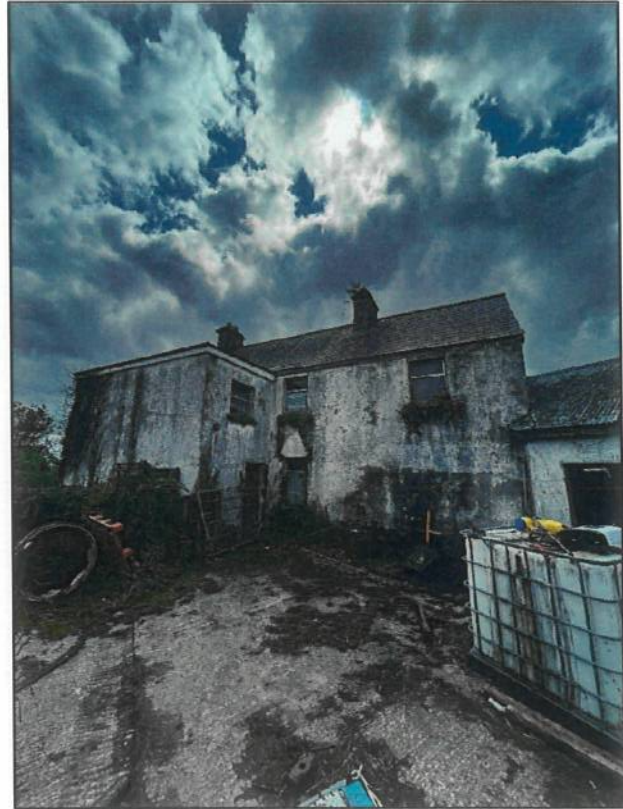
The question has arisen as to whether the proposed renovation works to a derelict house is or is not development and is or is not exempted development.

2. Background

The site is located off the local tertiary road L-50181-1, approximately 830m from Portarlington Golf Club. The dwelling is a derelict, two storey located within an existing farmyard.



Photos 1-2: Site location (red line boundary).



Photos 3-4: Site inspection.

3. Site History

On site:

Ref 07228: James J Colgan was granted permission conditionally for the construction of straw bedded cow and calf shed, extension to an existing slatted and loose cattle shed, new concrete aprons to yard and ancillary works.

Enforcement: No relevant enforcement proceedings.

Adjoining lands: 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

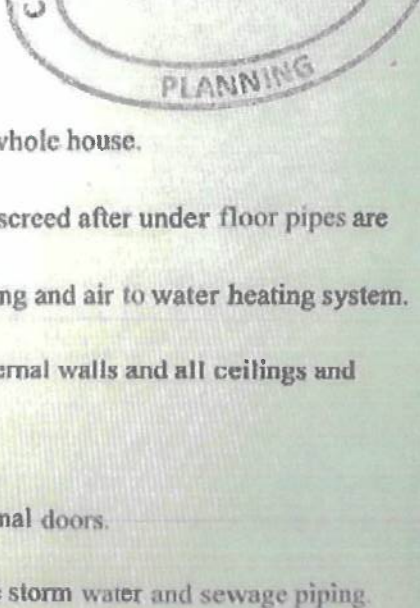
structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

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.

5. Proposal

The Applicant has proposed renovations works to a derelict dwelling.

- 
- To Supply and erect scaffolding
 - To Strip and dispose of existing roof.
 - To re roof the whole house.
 - To install new PVC fascia, soffit, gutters and downpipes on whole house.
 - To dig out floor in house install DPM and pour sub floor.
 - To fit 100mm insulation over all Sub floors and pour liquid screed after under floor pipes are installed.
 - To First and second fix plumbing to include under floor piping and air to water heating system.
 - To first and second fix electrical.
 - To install insulated slabs on all walls on the inside of all external walls and all ceilings and insulate attics.
 - To re plaster and skim where required.
 - To install new external windows and doors.
 - To install new skirting and architrave and hang all new internal doors.
 - To install new window boards.
 - To install new percolation area and septic tank and complete storm water and sewage piping.

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 a derelict dwelling.

Question: Is this proposal considered as Exempted Development?

The use of the structure on site as a house is deemed to have been abandoned. I note the following from OPR practice note 5:

Abandonment: Abandonment can occur in relation to either development consisting of works or the operation of a use. Abandonment may occur where the development has ceased for a considerable period of time with no intention of resuming it. Unless it is exempt from the requirement to obtain planning permission for other reasons, the resumption of an abandoned development is likely to represent a material change of use.

I consider that the works are not exempted development as the structure is in a derelict, dilapidated condition that would require extensive material works in order to restore the dwelling to a liveable standard. The house does not appear to have been in a habitable state for a considerable period. I note that the works subject of this declaration include a new treatment system.

7. Screening

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.

It is considered that the proposed development does not constitute a development listed in Schedule 5 of the Planning and Development Regulations 2001 as amended. Accordingly an EIAR is not required.

8. Recommendation

It is recommended that the Applicant be advised that the proposed works is development and is not exempted development.

Declaration on Development and Exempted Development

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

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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:

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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

Date: 22nd July 2024.



Ed Kelly A/Senior Executive Planner

Date: 26/7/2024

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 24/74

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed renovation works to a derelict house is or is not development and is or is not exempted development.		
Site location:	Annamoe, Portarlinton, R32 EC89		
Site size:	0.74ha	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	River Barrow And River Nore SAC – 0.73km Mountmellick SAC – 2.69km		
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):	<p>River Barrow And River Nore SAC – Features of interest include:</p> <ul style="list-style-type: none"> • Estuaries [1130] • Mudflats and sandflats not covered by seawater at low tide [1140] • Reefs [1170] • Salicornia and other annuals colonising mud and sand [1310] • Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330] • Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410] • Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation [3260] • European dry heaths [4030] 		

- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels [6430]
- Petrifying springs with tufa formation (Cratoneurion) [7220]
- Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0]
- Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]
- Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]
- Margaritifera margaritifera (Freshwater Pearl Mussel) [1029]
- Austropotamobius pallipes (White-clawed Crayfish) [1092]
- Petromyzon marinus (Sea Lamprey) [1095]
- Lampetra planeri (Brook Lamprey) [1096]
- Lampetra fluviatilis (River Lamprey) [1099]
- Alosa fallax fallax (Twaite Shad) [1103]
- Salmo salar (Salmon) [1106]
- Lutra lutra (Otter) [1355]
- Trichomanes speciosum (Killarney Fern) [1421]

Mountmellick SAC – Features of interest include:

- [1016] Desmoulin's Whorl Snail (Vertigo moulinsiana)

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: River Barrow And River Nore SAC Site Code: 002162

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002162.pdf>

Site Name: Mountmellick SAC Site Code: 002141

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002141.pdf>

(C) NPWS ADVICE:

Advice received from NPWS over phone:	None Received
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Summary of advice received from NPWS in written form (ATTACH SAME):	None Received
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(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)*

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.

<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>
<p>(E) SCREENING CONCLUSION:</p>	
<p><i>Screening can result in:</i></p>	
<p>1.</p>	<p><i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.</p>
<p>2.</p>	<p><i>No potential for significant effects / AA is not required.</i></p>
<p>3.</p>	<p><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.</p>
<p>Therefore, does the project fall into category 1, 2 or 3 above?</p>	<p>Category 2</p>
<p>Justify why it falls into relevant category above:</p>	<p>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.</p>
<p>Name:</p>	<p>Enda Dolan </p>
<p>Position:</p>	<p>Assistant Planner</p>
<p>Date:</p>	<p>22nd July 2024.</p>