

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 24/81

NAME OF APPLICANT: Michael McEvoy

ADDRESS FOR CORRESPONDENCE: C/O Michael Middleton, Hawkswood, Killeigh, Co. Offaly

NATURE OF APPLICATION: Request for Declaration Under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the existing 35.02m² extension to the rear of existing dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: 38 O'Molloy Street, Tullamore, Co. Offaly, R35 YF90.

WHEREAS a question has arisen as to whether or not, the existing 35.02m² extension to rear of existing dwelling is, or is not development, and is, or is not exempted development at 38 O'Molloy Street, Tullamore, Co. Offaly, R35 YF90.

AS INDICATED on the particulars received by the Planning Authority on the 19th July 2024.

AND WHEREAS Michael McEvoy 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(2)(a) of the Planning & Development Act 2000 (as amended).
- (b) Article 6 of the Planning and Development regulations 2001 (as amended).
- (c) Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 of the Planning & Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development having particular regard to 4(2)(a) of the aforementioned act and Schedule 2 Part I, Class 1 of the aforementioned regulations.

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 existing extension (35.02m²) to the rear of an existing dwelling is **development and is exempted development** at 38 O'Molloy Street, Tullamore, Co. Offaly, R35 YF90.

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

17/08/24

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.

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

File Reference:	Dec 24/81
Question:	Whether or not, the existing 35.02m ² extension to rear of existing dwelling is, or is not development, and is, or is not exempted development.
Applicant:	Michale McEvoy
Correspondence address:	c/o Michael Middleton, Hawkswood, Killeigh, Co. Offaly.
Location:	38 O'Molloy Street, Tullamore, Co. Offaly, R35 YF90.
Date received:	19 th July 2024

1. Proposal

The question has arisen as to, whether or not, the existing 35.02m² extension to rear of existing dwelling is or is not development and is or is not exempted development at 38 O'Molloy Street, Tullamore, Co. Offaly, R35 YF90.

2. Background

The subject site is in the townland of Srah in Tullamore. The site is zoned as *Existing Residential* and has access via O'Molloy Street to Regional Roads R-443-2 to the south-west and R-420 to the north-east. The existing dwelling is a two-storey, mid-terrace, 1930s-style house.



Figure 1: Site Location (red line boundary)



Photo 1: South-east view of rear extension

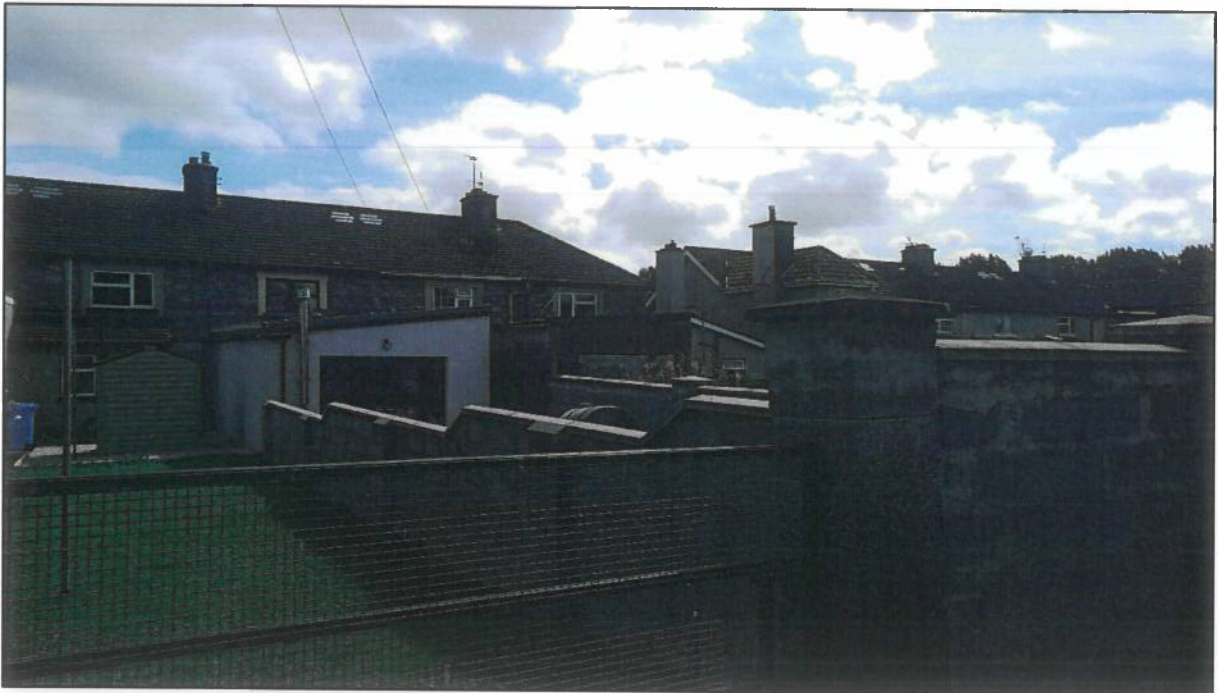


Photo 2: South-east view from back lane of rear extension



Photo 3: North-west view of subject dwelling with site notice

3. Relevant Planning History:

On site:

24/94: The Applicant has applied for permission to build a domestic garage and all ancillary work (Decision due 12th September 2024).

Enforcement:

UD24/030: Letter sent concerning an alleged unauthorised development in relation to rear extension.

Adjoining Lands - No recent planning history associated with the adjoining lands.

4. Legislative Context

To assess, whether or not, the existing works constitute exempted development, regard must be had to the following items of legislation:

Section 2(1) of the *Planning and Development Act 2000 (as amended)* provides a definition of 'house' and 'works' in the Act, it states that:

"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) of the *Planning and Development Act 2000 (as amended)* defines development as:

"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) of the *Planning and Development Act 2000 (as amended)* sets out the following exemptions:

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, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

5. 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 several conditions and limitations attached to Class 1, which are listed and assessed below.

6. Proposal by the applicant

The Applicant has advised that the existing works consist of a rear, single-storey extension.

The following floor plans and elevations have been provided as part of the Section 5 declaration:

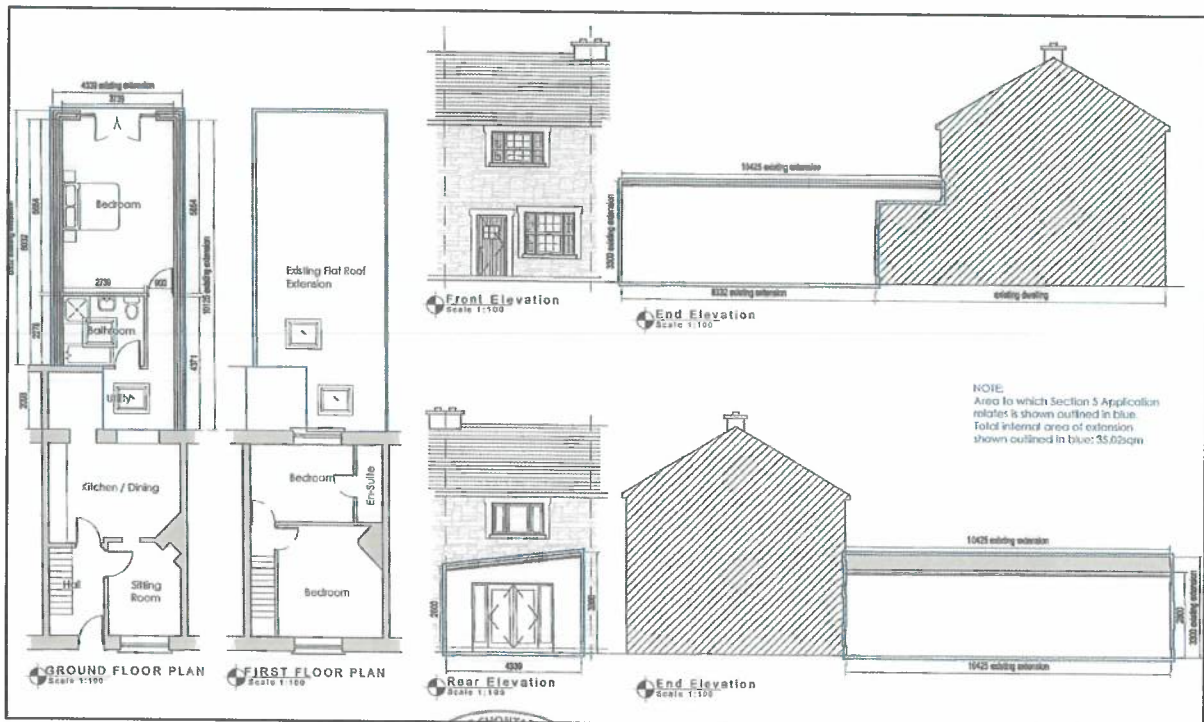


Figure 2: Existing elevations and floor plans

7. Assessment

The declaration is being sought under the provisions of Class 1 *Development within the curtilage of a house*, in Part 1, of Schedule 2 of the *Planning and Development Regulations 2001 (as amended)*. The description of development in Class 1 is:

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 several conditions and limitations attached to Class 1, which need to be complied with and which are assessed below:

1(a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

The Applicant has stated that the existing extension to the rear is 32.02m².

1(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.

The existing extension is single-storey therefore 1(b) is not applicable.

1(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.

The existing extension is single-storey therefore 1(c) is 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.

The Applicant has stated that the existing extension to the rear is 32.02m². The Area Planner notes from their site visit that the house does not appear to have been previously extended. The existing extension corresponds to the submitted drawings.

2(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.

2(b) is not applicable as the existing dwelling has not been extended previously.

2(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.

2(c) is not applicable as the existing dwelling is terraced.

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

Part 3 is not applicable as the existing extension is ground floor only.

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.

The rear wall of the house does not include a gable, and the proposed extension does not exceed the height of the house.

4(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.

Part 4(b) does not apply as the rear wall of the house does not include a gable.

4(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.

The existing extension has a flat roof, which does not exceed the height of the highest part of the roof of the existing house.

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.

The existing extension would not reduce the area of private open space at the rear of the house to less than 25m².

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

Following an assessment of the submitted structural drawings and a site visit, the Area Planner confirms that there are no windows at ground level less than a metre from the boundary it faces.

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

As the existing extension is single storey, Part 6(b) does not apply.

6(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.

As the existing house is terraced, Part 6(c) does not apply.

7. The roof of any extension shall not be used as a balcony or roof garden.

The existing extension is not used as a balcony or roof garden, and therefore part 7 above is not applicable.

8. Appropriate Assessment

A screening exercise for an appropriate assessment has been carried out and it has been concluded that the existing development is unlikely to have significant effects on any European sites. Please see attached report under Appendix A.

9. Environmental Impact Assessment Screening

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the *Planning and Development Regulations 2001 (as amended)* and therefore is not subject to EIA requirements.

10. Evaluation

Question: Whether the existing works 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 alterations to the existing dwelling.

Question: Is this proposal considered as Exempted Development?

Based on the information received, the Planning Authority are satisfied that the existing extension located to the rear of the existing dwelling complies with Class 1, in Part 1, of Schedule 2 of the *Planning and Development Regulations 2001* (as amended).

8. Recommendation

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 or not, the existing 35.02m² extension to rear of existing dwelling is, or is not development, and is, or is not exempted development at 38 O'Molloy Street, Tullamore, Co. Offaly, R35 YF90.

AS INDICATED on the particulars received by the Planning Authority on the 19th July 2024.

AND WHEREAS Michael McEvoy 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:

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- (b) Article 6 of the *Planning and Development regulations 2001* (as amended).
- (c) Schedule 2 – Exempted Development, Part I - Development Within the Curtilage of a House, Class 1 of the *Planning & Development Regulations 2001* (as amended).

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is exempted development having particular regard to 4(2)(a) of the aforementioned act and Schedule 2 Part I, Class 1 of the aforementioned regulations.

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 existing extension (35.02m²) to the rear of an existing dwelling is **development** and is **exempted development** at 38 O'Molloy Street, Tullamore, Co. Offaly, R35 YF90.

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 Finlay

Date 12th August 2024

Graduate Planner



Ed Kelly

Date 13th August 2024

ASEP

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 24/81

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Existing development:	35.02m ² extension to rear of existing dwelling.		
Site location:	38 O'Molloy Street, Co. Offaly, R35 YF90.		
Site size:	0.19Ha	Floor Area of Proposed Development:	35.02m ² (total)
Identification of nearby European Site(s):	Charleville Wood SAC 0.92km		
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):			
Charleville Wood SAC – Features of interest include: SAC – Qualifying interest include: Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>) [91E0]			

Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]	
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: Charleville Wood SAC Site Code: 000571 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000571.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].	No other plans/projects known of in the vicinity of the site. The site is sufficient distance from the European site.

Simply stating that there are no cumulative impacts' is insufficient.		
(E) SCREENING CONCLUSION:		
Screening can result in:		
1.	<i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i>	
2.	<i>No potential for significant effects / AA is not required.</i>	
3.	<i>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.</i>	
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 impacts on the nearest European site from the existing development due to the scale of the existing development and the separation distance between the subject site and the European Site.
Name:		
Position:	Graduate Planner	Date: 12 th August 2024

Given the location, the nature, and size of the existing development applied for, and the characteristics of European sites in the vicinity, it is considered that 500 metres should be used as a potential zone of impact of the project, in accordance with section 3.2.3 of the appropriate assessment guidelines.

The nearest European site is 0.92km from the existing development, but, due to the existing development's nature and scale, it is highly unlikely that there will be any significant effects on the nearest European site, either alone, or in combination with other plans and projects.