

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/85

NAME OF APPLICANT: James Bradley

ADDRESS FOR CORRESPONDENCE: 37 The Priory, Kilcormac, Co. Offaly, R42 PX67.

NATURE OF APPLICATION: Request for Declaration Under Section 5 of the Planning & Development Act 2000, as amended as to whether or not, renovation of the existing bungalow and addition of a single storey extension is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Coolfin, Kilcormac, Co. Offaly, R42 A381.

WHEREAS a question has arisen as to whether or not, renovation of the existing bungalow and addition of a single storey extension is or is not, exempted development at Coolfin, Kilcormac, Co. Offaly, R42 A381.

AS INDICATED on the particulars received by the Planning Authority on the 15th August 2024.

AND WHEREAS James Bradley 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), 3(1), 4(1)(h) and 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 – 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 renovation and single-storey extension 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 renovation of the existing bungalow and addition of a single storey extension **is development and is exempted development** at Coolfin, Kilcormac, Co. Offaly, R42 A381.

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.

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

File Reference:	Dec 24/85
Question:	Whether or not, renovation of the existing bungalow and addition of a single storey extension is, or is not development and, is or is not, exempted development.
Applicant:	James Bradley
Correspondence address:	37 The Priory, Kilcormac, Co. Offaly, R42PX67
Location:	Coolfin, Kilcormac, Co. Offaly, R42A381
Date received:	15 th August 2024

1. Proposal

The question has arisen as to, whether or not, renovation of the existing bungalow and addition of a single storey extension is, or is not development and, is or is not, exempted development at Coolfin, Kilcormac, Co. Offaly, R42A381.

2. Background

The subject site is in the townland of Killeen and Lugnaboley. The existing dwelling is a bungalow located off Local Road L-6038-1 about 2km south-east of Kilcormac town. This area is classified as a *rural area under strong urban influence* in the *Offaly County Development Plan 2021-27 (OCDP)* and is in a protected view (V17).



Figure 1: Site Location (red line boundary)



Photo 1: Front (east) elevation of existing dwelling



Photo 2: Rear (west) elevation of existing dwelling

3. Relevant Planning History

On site:

No recent, relevant planning history.

Enforcement:

No enforcement history.

Adjoining Lands:

No recent, relevant planning history.

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.

Furthermore, in relation to the proposed development – renovation of the existing bungalow and addition of a single storey extension – Section 4(1)(h) of the *Planning and Development Act 2000 (as amended)* states that the following shall be exempted development, namely (emphasis added):

*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 or 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 of neighbouring structures;*

From the submitted drawings of the proposed and existing front and rear elevations, the proposed development does not appear to materially affect the external appearance of the front. Overall, the proposed development would not be inconsistent with the character of the existing dwelling or other neighbouring structures.

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.

5. Regulatory Provisions

Further to the above legislative context, regulatory provision is provided by Article 6 of the *Planning and Development Regulations 2001 (as amended)* which 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.”

In order to qualify for the above Class 1 exemption there are several conditions and limitations which are set out in Schedule 2, Part 1, Exempted Development – General, Column 2, these will be assessed below.

6. Proposal by the applicant

The Applicant has advised that the proposed works consist of renovation of the existing bungalow and the addition of a single storey extension.

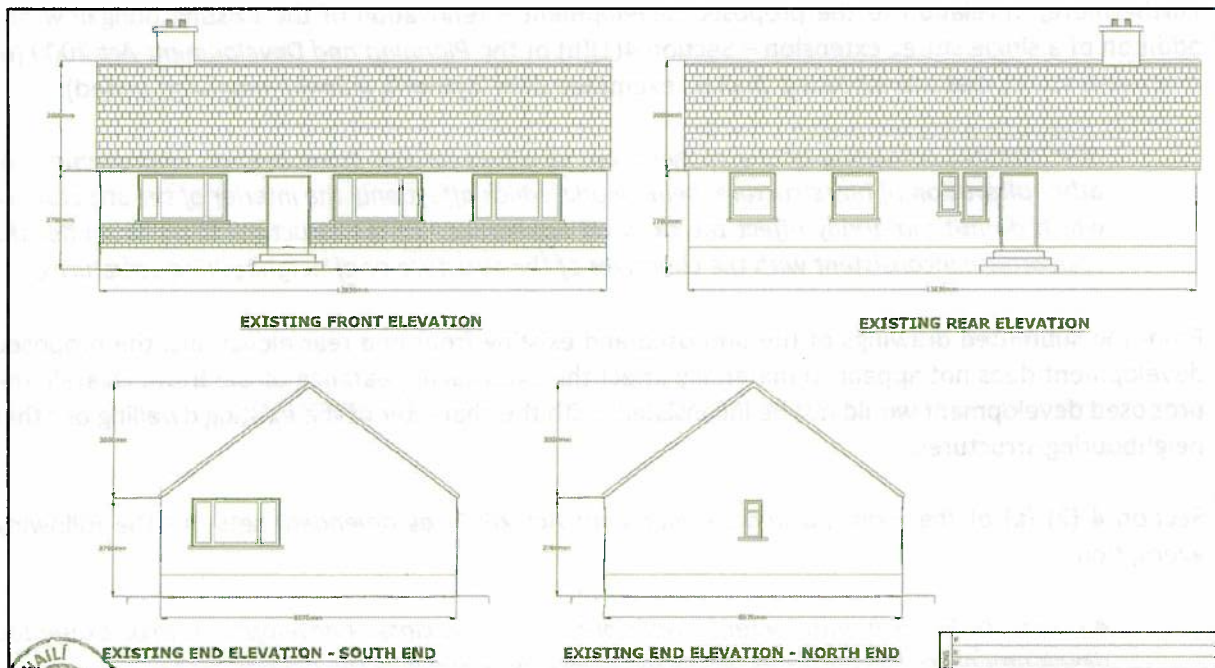


Figure 2: Existing elevations



Figure 3: Proposed elevations

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 these 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.

According to the submitted proposed ground floor plans (Drawing ref: Coolfin_1) the proposed extension will have a total area of 39m² which satisfies this limitation and there has not been a previous extension.

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.

1(b) is not applicable to the proposed development.

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 proposal is for a single-storey extension.

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 house has not been previously extended therefore 2(a) is not applicable.

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 is detached.

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

2 (c) is not applicable to the proposed development as the existing dwelling has not been previously extended.

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 proposed development satisfies this condition.

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.

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

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 proposed 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 proposed development satisfies this condition.

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

The proposed development satisfies this condition.

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 proposed extension is single-storey, 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 proposed extension is single-storey, Part 6(c) does not apply.

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

The proposed development satisfies this condition.

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 the renovation of an existing dwelling and the construction of an extension.

Question: Is this proposal considered as Exempted Development?

Based on the information received, the Planning Authority are satisfied that the proposed works would not result in a significant material alteration to the appearance of the dwelling and would not be detrimental to the character of the site or the 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 act.

11. 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, renovation of the existing bungalow and addition of a single storey is, or is not, exempted development at Coolfin, Kilcormac, Co. Offaly, R42A381.

AS INDICATED on the particulars received by the Planning Authority on the 15th August 2024.

AND WHEREAS James Bradley 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), 4(1)(h) and 4(2)(a)(i) of the *Planning & Development Act 2000* (as amended).
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- (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 renovation and single-storey extension 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:

Renovation of the existing bungalow and addition of a single storey extension is **development** and is **exempted development** at Coolfin, Kilcormac, Co. Offaly, R42A381.

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 9th September 2024

Graduate Planner



Ed Kelly

Date 10th September 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 24/85

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Existing development:	Whether or not, renovation of the existing bungalow and addition of a single storey is, or is not development and, is or is not, exempted development.		
Site location:	Coolfin, Kilcormac, Co. Offaly, R42A381		
Site size:	n/a	Floor Area of Proposed Development:	39m ²
Identification of nearby European Site(s):	Slieve Bloom Mountains SPA - 5.14km		
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):			
Slieve Bloom Mountains SPA:			
SPA – Qualifying interest include:			
Hen Harrier (<i>Circus cyaneus</i>) [A082]			
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:			
Slieve Bloom Mountains SPA Site Code: 004160			
https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.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/projects 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 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:	9 th September 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 5.14km 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.