

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

REFERENCE: DEC 24/89

NAME OF APPLICANT: Frank and Bernadette Hinch

ADDRESS FOR CORRESPONDENCE: Ballinasragh, Killeigh, Co. Offaly, R35 CY92

NATURE OF APPLICATION: Request for Declaration Under Section 5 of the Planning & Development Act 2000, as amended as to whether or not, to create storage space in the attic of an existing dwelling is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ballinasragh, Killeigh, Co. Offaly, R35 CY92

WHEREAS a question has arisen as to whether or not, to create storage space in the attic of an existing dwelling is, or is not, exempted development Ballinasragh, Killeigh, Co. Offaly, R35 CY92.

AS INDICATED on the particulars received by the Planning Authority on the 21st August 2024.

AND WHEREAS Frank and Bernadette Hinch requested a declaration on the said question from Offaly County Council.

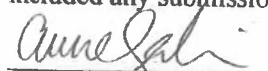
AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

(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 4(1)(h) of the aforementioned act.

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 to create storage space in the attic of an existing dwelling is **development and is exempted development** at Ballinasragh, Killeigh, Co. Offaly, R35 CY92.

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

16/09/2024

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 24/89
Question:	Whether or not, to create storage space in the attic of an existing dwelling is, or is not, exempted development.
Applicant:	Frank and Bernadette Hinch
Correspondence address:	Ballinasragh, Killeigh, Co. Offaly, R35 CY92
Location:	Ballinasragh, Killeigh, Co. Offaly, R35 CY92
Date received:	21 st August 2024

1. Proposal

The question has arisen as to, whether or not, to create storage space in the attic of an existing dwelling is, or is not, exempted development at Ballinasragh, Killeigh, Co. Offaly, R35 CY92.

2. Background

The subject site is in the townland of Ballinasragh, Killeigh. The site is in an area which is classified as a *rural area under strong urban influence* in the *Offaly County Development Plan 2021-27 (OCDP)*. The existing dwelling is a 1970s-style one-off bungalow located off Local Road L-20022-1, about 160m from National Secondary Road, N80 and 1.5km from Killeigh Village.

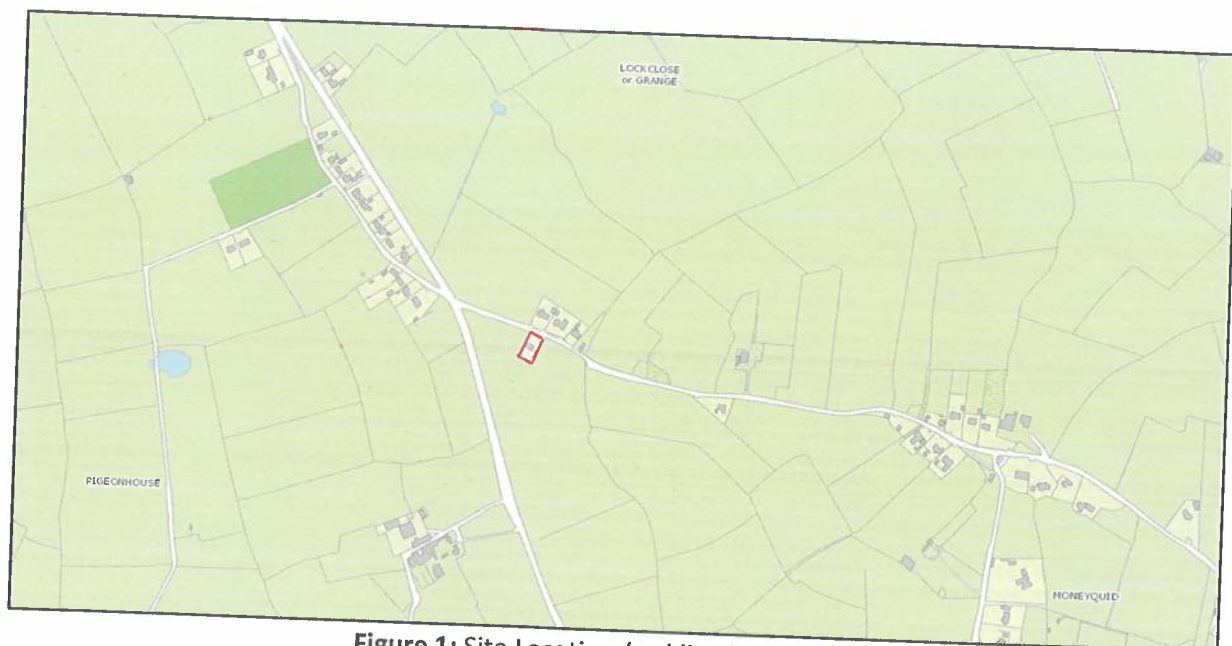


Figure 1: Site Location (red line boundary)



Photo 1: Front elevation of existing dwelling



Photo 2: Front elevation of existing dwelling

3. Relevant Planning History:

On site:

No recent, relevant planning history.

Enforcement:

No enforcement 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 – create storage space in an attic – 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;*

The subject attic conversion to storage space is considered to be in accordance with section 4 (1)(h) outlined above.

5. Proposal by the applicant

The Applicant has advised that the proposed works consist of converting the existing attic to storage.

6. 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.

7. 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.

8. 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 conversion of attic space in an existing dwelling.

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 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.

9. 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, to create storage space in the attic of an existing dwelling is, or is not, exempted development Ballinasragh, Killeigh, Co. Offaly, R35 CY92.

AS INDICATED on the particulars received by the Planning Authority on the 21st August 2024.

AND WHEREAS Frank and Bernadette Hinch 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 4(1)(h) of the aforementioned act.

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:

to create storage space in the attic of an existing dwelling is **development** and is **exempted development** at Ballinasragh, Killeigh, Co. Offaly, R35 CY92.

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 28th August 2024

Graduate Planner



Ed Kelly

Date 13th 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 24/89

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Existing development:	Whether or not, to create storage space in the attic of an existing dwelling is, or is not, exempted development.		
Site location:	Ballinasragh, Killeigh, Co. Offaly, R35 CY92		
Site size:	n/a	Floor Area of Proposed Development:	n/a
Identification of nearby European Site(s):	Rive Barrow and River Nore SAC 2.22km		
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):			
River Barrow and River Nore SAC – Features of interest include: SAC – Qualifying interest include: 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]			

<p>Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion 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]</p>	
<p>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.)</p>	
<p>SITE NAME: River Barrow and River Nore SAC Site Code: 002162 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002162.pdf</p>	
<p>(C) NPWS ADVICE:</p>	
<p>Advice received from NPWS over phone:</p>	<p>None Received</p>
<p>Summary of advice received from NPWS in written form (ATTACH SAME):</p>	<p>None Received</p>
<p>(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:</p>	
<p><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></p>	
<p>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></p>	
<p>Would there be... ... 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>

... 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:	28 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 2.22km 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.