

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 18/3

NAME AND ADDRESS OF APPLICANT: Sam Tyler
30 Gleann Glas
Glentara
Roscrea
Co. Tipperary

ADDRESS FOR CORRESPONDENCE: C/o Thomson Planning Consultant Limited
T/A Peter Thomson Planning Solutions
4 Priory Grove
Kells
Co. Kilkenny

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Acts 2000, as amended as to whether the works involved in the repair of the fire damaged dwelling, is or is not exempted development under the Planning and Development Act 2000 (as amended).

LOCATION OF DEVELOPMENT: Drumakeenan, Birr, Co. Offaly

WHEREAS a question referred to Offaly County Council on 22nd March 2018 has arisen as to whether the the works involved in the repair of the fire damaged dwelling at Drumakeenan, Birr, Co. Offaly is **development and is or is not exempted development**

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended
- (b) Section 3(1) of the Planning and Development Act, 2000, as amended
- (c) Section 4(1)(h) of the Planning and Development Acts, 2000 as amended

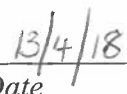
AND WHEREAS Offaly County Council has concluded that:

✓ The proposed development is **Development and is NOT Exempted Development**

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2) hereby decides that the works involved in the repair of the fire damaged dwelling at Drumakeenan, Birr, Co. Offaly **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

Planning Report S.5 Declaration 18/3

Section 5 Declaration

Applicant: Sam Tyler

A Question has arisen as to whether:

The works involved in the repair of the fire damaged dwelling house at Drumakeenan, Birr, Co. Offaly is or is not development or is or is not exempted development within the meaning of the Act.

Address of correspondence: C/O Peter Thomson Planning Consultant Ltd, T/A Peter Thomson Planning Solutions, 4 Priory Grove, Kells, Co. Kilkenny.

Location of development: Drumakeenan, Birr, Co Offaly

Whereas a question has arisen as to whether the above development is exempted development.

Development Plan Policy: The subject site is located ~~on~~ in the open countryside and is located within Parsonstown Drainage District and OPW Flood Zone A.

SITE HISTORY

PL2 85/271 – Owen Kiely sought permission for Permission for front porch to dwelling house and domestic garage. **Granted.**

LEGISLATIVE FRAMEWORK

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

Planning and Development Act, 2000 as amended
Section 2 provides a definition of:

“Works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

“Alterations” includes:-

- (a) Plastering or painting or the removal of plaster or stucco, or
- (b) The replacement of a door, window or roof,

That materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures”.

“habitable house” means a house which—

- (a) is used as a dwelling,
- (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or
- (c) was provided for use as a dwelling but has not been occupied.

“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.

Section 3 provides a definition of development.

S.3.(1) In this Act, “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 provides a definition of development.

S.4.(1) The following shall be exempted developments for the purposes of this Act-

- (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures.

S.193 – (1) Nothing in section 191 shall prevent compensation being paid—

(a) in a case in which there has been a refusal of permission for the erection of a new structure substantially replacing a structure (other than an unauthorised structure) which has been demolished or destroyed by fire or otherwise than by an unlawful act of the owner or of the occupier with the agreement of the owner within the 2 years preceding the date of application for permission, or there has been imposed a condition in consequence of which the new structure may not be used for the purpose for which the demolished or destroyed structure was last used, or

(b) in a case in which there has been imposed a condition in consequence of which the new structure referred to in paragraph (a) or the front thereof, or the front of an existing structure (other than an unauthorised structure) which has been taken down in order to be re-erected or altered, is set back or forward.

(2) Every dispute and question as to whether a new structure would or does replace substantially within the meaning of subsection (1) a demolished or destroyed structure shall be referred to the Board for determination.

Derelict Sites Act 1990

S.3 —In this section “derelict site” means any land (in this section referred to as “the land in question”) which detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of—

- (a) the existence on the land in question of structures which are in a ruinous, derelict or dangerous condition, or
- (b) the neglected, unsightly or objectionable condition of the land or any structures on the land in question, or
- (c) the presence, deposit or collection on the land in question of any litter, rubbish, debris or waste, except where the presence, deposit or collection of such litter, rubbish, debris or waste results from the exercise of a right conferred by statute or by common law.

PROPOSAL BY APPLICANTS:

The property is a dormer detached dwelling and was constructed pre- October 1964, therefore planning permission was not required.

Permission was granted for a garage and additions to the house and new entrance 30th October 1985 (PL2 85/271). *It was extensively fire damaged in 2014.*

“It is proposed to retain all internal and external walls of the existing structure. All of these walls are structurally sound and they are not in need of replacement. They will be re-plastered internally and externally where required. Externally the plaster finish will be nap plaster, as per the finish before the fire”.

“It is proposed to repair the existing structure, by replacing the roof in its entirety with a new slate roof. Associated fascia boards and rainwater goods will also be replaced on a like for like basis”.

“The existing room layout will be unaltered, floors will be repaired and replaced where necessary and all ceilings and skirtings and facing will be replaced”.

“All windows and doors will be replaced on a like for like basis with openings which satisfy current building regulations. The appearance of all windows doors will reflect the external appearance of the doors and windows which previously existed”.

In conclusion, “having regard to the nature and scale of the works proposed and previous cases, considered by An Bord Pleanala it is submitted that, as no demolition works are proposed and the proposed works are all improvements and alterations for the purposed repairing an existing fire damaged dwelling house, the works are exempted under Section 4(1)(H) of the Act”.

ASSESSMENT:

Having regard to the details submitted by the applicant, the Planning Authority considers that the proposed structure in question was previously a dwelling house before the fire, but as a result of the fire damage it lost its residential use, as it could ~~no~~ longer to occupied as a ‘dwelling’ due to the damage and the lack of a roof, accordingly, the residential use had been extinguished. *abandoned since 2014.*

It is further considered that the structure can be determined to be derelict as defined under the Derelict Sites legislation.

S.193 of the Planning and Development Act has been mentioned in the case if a new dwelling was proposed.

Conclusion:

Having considered Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended) the proposed development is considered to be Development and is NOT Exempted Development.

S O'Toole

S O'Toole A.P
10th April 2018

C. Keenan
11/4/18

WHEREAS a question has arisen as to whether:

A question has arisen as to whether:

The works involved in the repair of the fire damaged dwelling house at
Drumakeenan, Birr, Co. Offaly

are considered exempted development in the Planning and Development Act 2000 (as amended).

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

- (a) Section 2 (1) of the Planning and Development Acts, 2000 as amended
- (b) Section 3 (1) of the Planning and Development Acts, 2000 as amended
- (c) Section 4 (1)(h) of the Planning and Development Acts, 2000 as amended

AND WHEREAS Offaly County Council has concluded that –

The proposed development IS development and IS NOT Exempted development.

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

The works involved in the repair of the fire damaged dwelling house

IS Development and is **NOT Exempted** development at this location in Drumakeenan, Birr, Co. Offaly.

**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. S5 Dec 18/3

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:		
Proposed development:	The works involved in the repair of the fire damaged dwelling house	
Site location:	Drumakeenan, Birr	
Site size:	0. ha	Floor Area of Proposed Development: -
Identification of nearby European Site(s):	Slieve Bloom Mountain SAC & SPA	
Distance to European Site(s):	6.5km as the 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 EIS?	Yes: <input type="checkbox"/>	No: X <input type="checkbox"/>
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):		
The reasons for the designation of the European site(s):	Blanket Bog Hen Harrier, Merlin and Peregrine	
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.)	PLEASE SEE SITE SYNOPSIS and CONSERVATION OBJECTIVES SHEETS ATTACHED.	
(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:

(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 I habitat? (Annex I 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 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 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 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: Suzanne O'Toole

Position: Assistant Planner

Date:

10th April 2018

Suz O'Toole

*W. Kelly
11/4/18*