

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 18/5

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 alterations and improvements to existing fire damaged house at Drumakeenan, Birr, Co. Offaly comprising the following works which are the full extent of the works proposed

- (a) **The roof:** Removing fire damaged areas and replacing with new, top plates, rafters, 2 no. replacement dormer windows at the front of house, insert roof battens and felt, re-slate the new sections of roof (matching the limited sections which will be retained) and new like for like replacement of fascia soffits and guttering and down pipes.
- (b) **Doors and windows:** All external doors and windows will be replaced with new, keeping existing dimensions and ensuring the window proportions of the original windows are re-introduced. The replacement materials will be the same as the original.
- (c) **Painting and repairing external walls:** Any chipped or cracked areas of render will be repaired and all walls will be re-painted.
- (d) **The chimneys:** These will be maintained and will remain in their existing positions on the house; the repair work to the chimneys will be made in line with the roof repair.
- (e) **Floors:** All first floor timber floors will be exposed and checked for fire damaged areas will be replaced with new, ground floor tiles and wooden flooring will be removed and replaced with new.
- (f) **Internal Walls:** All internal walls will be re-plastered re-painted.
- (g) **Fixtures and fittings:** all fixtures and fittings including kitchen, bathroom areas will be replaced with new.
- (h) **Plumbing and electrics:** All new plumbing and electrics will be carried out by registered professionals.

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 28th May 2018 has arisen as to whether alterations and improvements to existing fire damaged house at Drumakeenan, Birr, Co. Offaly comprising the following works which are the full extent of the works proposed

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- (h) **Plumbing and electrics:** All new plumbing and electrics will be carried out by registered professionals.

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 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:

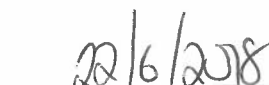
The proposed development **Is Development and Is Exempted Development**

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 house at Drumakeenan, Roscrea, Birr, Co. Offaly **IS DEVELOPMENT AND IS 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 18/5

Section 5 Declaration

Applicant: Sam Tyler

A Question has arisen as to whether:

Alterations and improvements to existing fire damaged house at Drumakeenan, Birr, Co. Offaly comprising the following works which are the full extent of the works proposed:

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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.**

S.5 Declaration Dec 18/3 – Sam Tyler applied for a S.5 and asked the question 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).

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.

PROPOSAL BY APPLICANTS:

The submission states *“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, which is an authorised 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 facings 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”.

“All repair and renewal works will be done on a like for like basis and there will be no deviations from the design of the house before the fire”.

The applicant defines the property as a ‘dwelling house’. *“It is not currently in use as a house as it is fire damaged and in need of repair, but it is authorised as a house and was last used as a house and has not become abandoned or derelict since it was last used. The only delay in restoration has been the time the previous owner took to come to terms with the fire, the time to negotiate with his insurers and then, following his lenders decision not to let him restore the property himself, the time taken to bring the house to the property market and auction”*.

The applicant goes on to define ‘abandonment’ in planning terms and the issue of ‘intent’. The applicant considers that *“there was never any intention to abandon the dwelling or its use”*. *“The owner was back residing on the property immediately following the fire and clearing out damaged material”*. It was stated that the adjoining landowner observed the previous owner back living on the site after the fire he was just unable to confirm whether he was living in the house, garage or caravan.

The applicant has referenced several An Bord Pleanála referrals regarding ‘abandonment’ in his submission.

He considers that *“all the evidence points to the previous owner clinging onto the previous residential use”*.

“In terms of the works, it is submitted that all of the works proposed comprise, exempted development and can be carried out in full as works for the maintenance, improvement and other alterations of an existing structure, being works which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure”.

There is a letter with the application from an adjoining landowner who state that the previous owner was always around the property after the fire and presumed he was still living there either in the part of the house that was undamaged by the fire, the garage or caravan.

The applicant has also submitted a letter on file and photographs showing the existing caravan on site.

In the current case there is no demolition works proposed. The only works proposed are replacement of damaged parts of the structure, maintenance and improvement works. The applicant considers that proposed works are exempt under Section 4(1)(h) of the planning and Development Act 2000 as amended.

ASSESSMENT:

Having regard to all the details submitted by the applicant including the Engineering Report, the Planning Authority considers that the full extent of the proposed works is exempt development.

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 Exempted Development.

Suzanne O'Toole

S O'Toole A.P
19th June 2018

Carol Mele

A/SEP

20/6/2018

WHEREAS a question has arisen as to whether:

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Alterations and improvements to existing fire damaged house at Drumakeenan, Birr, Co. Offaly comprising the following works which are the full extent of the works proposed:

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AND WHEREAS Offaly County Council has concluded that –

The proposed development IS development and IS 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 **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 18/5

(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 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 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 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:

19th June 2018
