

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 21/18

NAME OF APPLICANT: ALAN & ORLA KELLY

ADDRESS 55 NORBURY WOODS GREEN,  
NORBURY WOODS,  
TULLAMORE,  
CO. OFFALY.

ADDRESS FOR CORRESPONDENCE: 55 NORBURY WOODS GREEN,  
NORBURY WOODS,  
TULLAMORE,  
CO. OFFALY.

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

LOCATION OF DEVELOPMENT: 55 Norbury Woods Green, Norbury Woods, Tullamore, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 18<sup>th</sup> June 2021 as to whether a proposed single storey extension on to rear of a semi-detached house at 55 Norbury Woods Green, Norbury Woods, Tullamore, Co. Offaly is or is not development and is or is not exempted development under the Planning and Development Act 2000, (as amended).

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

- (a) Section 2 of the Planning & Development Act 2000 as amended and
- (b) Section 3 of the Planning & Development Act 2000 as amended and
- (c) Section 4 of the Planning & Development Act 2000 as amended and
- (d) Article 6 of the Planning and Development Regulations 2001 as amended and
- (e) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

The proposed works is development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2)(a) of the Planning and Development Act 2000, as amended hereby decides that the proposed single storey extension to the rear of a semi-detached house at 55 Norbury Woods Green, Norbury Woods, Tullamore, 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.

  
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Administrative Officer

Date 28/7/2021

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**

<b>File Reference:</b>	<i>Dec 21/18</i>
<b>Question:</b>	Whether proposed single storey extension to rear of existing dwelling is development and is or is not exempted development or is not exempted development;
<b>Applicant:</b>	<i>Alan &amp; Orla Kelly</i>
<b>Location:</b>	<i>55 Norbury Woods, Tullamore</i>
<b>Date received:</b>	<i>18<sup>th</sup> June 2021</i>
<b>Date due:</b>	<i>31<sup>st</sup> July 2021</i>

**1. Proposal**

The question has arisen as to whether a proposed single storey extension to rear of existing dwelling is development and is or is not exempted development.

The proposed extension measures 12.47sqm.

I visited the site on 19<sup>th</sup> July 2021.

**2. Background**

The subject site is zoned for 'residential' use in the Tullamore Town Development Plan 2010-2016 (as extended).

There is an existing semi-detached house on site.

**3. Relevant Planning History:**

19/439 – split decision - permission refused for two storey extension, retention permission granted for single storey extension. Area of extension retained = 15.52sqm.

**4. Legislative Context**

Schedule 2, Part 1

<p>Development within the curtilage of a house:</p> <p>CLASS 1 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.</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(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.</p> <p>(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.</p>
	<p>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.</p> <p>(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.</p> <p>(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.</p>
	<p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary</p>
	<p>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.</p> <p>(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.</p> <p>(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.</p>
	<p>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.</p>
	<p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(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</p>
	<p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>

**Article 6(1) of the Planning and Development Regulations 2001, as amended:**

*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.*

**Section 2 (1) Planning and Development Act 2000, as amended, defines development.**

“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) Planning and Development Act 2000, as amended, defines development.**

*“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 Planning and Development Act 2000, as amended - Exempted Development**

*Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

**5. Proposal by Applicant**

The applicant wishes to ascertain whether a single storey rear extension measuring 12.47sqm is exempted development.

**6. Evaluation**

**6.1 Question:**

**Are the works ‘development’?**

Yes

**6.2 Question:**

**Are the works exempted development?**

Based on the information provided and having regard to the limitations of Schedule 2, Part 1 the proposed extension is exempted.

**6.3 Other matters:**

The development will not contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included of either of the relevant planning permission.

The development does not relate to a structure which is in a special amenity area order relates, an area of special planning control or within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

The restrictions set out in article 9(1)(a) subparagraph:

- (iv) which relates to porches;
- (vii) which relates to places, caves, sites, features, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest;
- (viiA) which relates to archaeological monuments;
- (viiB) which relates to the requirement for an appropriate assessment;
- (viiC) which relates to natural heritage areas;
- (viii) which relates to an unauthorised structure or use;
- (ix) which relates to an objective in a development or draft development plan to ensure that the structure remain available for a use;

are not applicable in this instance and therefore do not restrict the proposed development.

The restrictions set out in article 9(1)(c) or (d) which relate to developments to which Part 10 (Environmental Impact Assessment) applies or to an establishment that could have significant repercussions on major accident hazards do not restrict the proposed development.

No details have been submitted which indicate that the proposed development would consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system.

#### **6.13 Question**

**Does the development require environmental impact assessment or an appropriate assessment of the development?**

No. Development is not of the type that requires environmental impact assessment or an appropriate assessment. Appropriate assessment screening report attached.

#### **7.0 Recommendation:**

The development meets the requirements of schedule two, part one, class one and is deemed exempt.

I would therefore recommend that the following Chief Executive Order be issued

Alaine Clarke

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Alaine Clarke  
Executive Planner

23rd July 2021

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Date

Carroll Melia

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Carroll Melia  
A/Senior Executive Planner

27<sup>th</sup> July 2021

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Date

**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 a proposed single storey extension on to the rear of a semi-detached house

At 55 Norbury Woods, Tullamore, Co Offaly is development and is or is not exempted development.

**AND WHEREAS** Alan & Orla Kelly 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 of the Planning & Development Act 2000 as amended and
- (b) Section 3 of the Planning & Development Act 2000 as amended and
- (c) Section 4 of the Planning & Development Act 2000 as amended and
- (d) Article 6 of the Planning and Development Regulations 2001 as amended and
- (e) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001, as amended.

**AND WHEREAS** Offaly County Council has concluded that –

The proposed works is development and is exempted development.

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

Single storey extension to the rear of the semi-detached at 55 Norbury Woods, Tullamore, Co Offaly is development and is exempted development.

**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 Application Ref. No.: DEC 21/18**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Residential extension		
Site location:	55 NORBURY WOODS GREEN , NORBURY WOODS, TULLAMORE, CO OFFALY		
Area	0.0024ha.	Floor Area of Proposed Development:	12sqm
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC		
Distance to European Site(s):	2km		
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?			No: ✓
(B) IDENTIFICATION OF THE RELEVANT European SITE(S):			
The reasons for the designation of the European site:			
Charleville Wood is considered to be one of the very few ancient woodlands remaining in Ireland, with some parts undisturbed for at least 200 years. 'Old Oak woodland is a habitat listed on Annex I of the EU Habitats Directive, while the rare snail species, <i>Vertigomoulin siana</i> , is listed on Annex II of this directive. The wetland areas, with their associated bird populations, the rare insect and Myxomycete species contribute further to the conservation significance of the site.			
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 Natura 2000 site synopses and, if applicable, a Conservation Management Plan; all available on <a href="http://www.npws.ie">www.npws.ie</a> ) <b>(ATTACH INFO.)</b>			
To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the			



Annex II species for which the SAC has been selected: Code Description 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles \* denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail Vertigo moulinsiana

**(C) NPWS ADVICE:**

Advice received from NPWS over phone:	None received
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**(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)*

<p><b>Would there be...</b>                  ... any impact on an Annex 1 habitat?                  (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	Not likely due to the location and type of development.
	The site is sufficient distance from the European site.
<p>... a reduction in habitat area on a European site?</p>	There will be no reduction in the habitat area.
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</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)?</p>	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.
<b>(E) SCREENING CONCLUSION:</b>	
<b>Screening can result in:</b>	
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 NIS 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?	<b>Category 2</b>
Justify why it falls into relevant category above:	<b>There would be no likely significant impact on European sites from the proposed development.</b>
Name:	<i>Alaine Clarke</i>
Position:	Exec. Planner
Date:	23rd July 2021