

**OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE**

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/26

NAME OF APPLICANT: MARY MINNOCK

ADDRESS: INISHFREE, CLONMINCH ROAD, TULLAMORE, CO. OFFALY,
R35 EN28.

ADDRESS FOR CORRESPONDENCE: INISHFREE,
CLONMINCH ROAD,
TULLAMORE,
CO. OFFALY,
R35 EN28.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether (i) Completed single storey extension to rear of existing dwelling and (ii) the completed attic conversion in the main house is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: INISHFREE, CLONMINCH ROAD, TULLAMORE,
CO. OFFALY. R35 EN28

WHEREAS a question referred to Offaly County Council on 8.9.2021 as to whether (i) Completed single storey extension to rear of existing dwelling and (ii) the completed attic conversion in the main house at Inishfree, Clonminch Road, Tullamore, Co. Offaly, R35 EN28 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) Part 1, Section 4, part (h) of the Planning and Development Act 2000 (as amended)
- (b) Part 1, Section 2(1) of the Planning and Development Act 2000 (as amended)
- (c) Part 1, Section 3(1) of the Planning and Development Act 2000 (as amended)
- (d) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended)
- (e) Section 57 (1 (a) and (b)) of Part IV of the Planning and Development Act 2000 (as amended)

AND WHEREAS Offaly County Council has concluded that the house extension and attic conversion does not come within the scope of the above, for the following reasons;

- (a) the extension and attic conversion by reason of its design and works materially affects the character of the protected structure (RPS No. 23-306).

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 that the house extension and attic conversion **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

29.10.2021

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:	<i>Dec 21/26</i>
Question:	Whether (i) Completed single storey extension to rear of existing dwelling and (ii) the completed attic conversion in the main house is development and is or is not exempted development;
Applicant:	<i>Mary Minnock</i>
Location:	<i>Inishfree, Clonminch Road, Tullamore R35 EN28</i>
Date received:	<i>8th September 2021</i>
Date due:	<i>31st October 2021</i>

Further information was requested on 5th October 2021, as follows:

1. In order to fully assess the impact of internal works relating to the attic conversion please contact the Planning Department to arrange a suitable date/time for a member of staff to inspect the property.

An internal site inspection was undertaken on 11th October 2021. Refer to photos below. It should be noted that additional works were noted – such as replacement of the front door and surround.

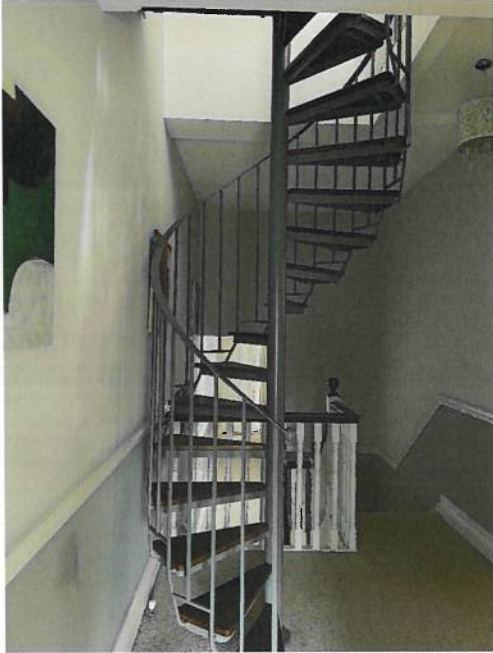


Plate 1: Circular staircase inserted to access attic conversion

1. Development

The questions are as follows:

- (i) Whether the Completed single storey extension to rear of existing dwelling and is development and is or is not exempted development or is not exempted development.
- (ii) the completed attic conversion in the main house is development and is or is not exempted development or is not exempted development.

Documents submitted with the declaration request states that the extension measures 16sqm, and the attic conversion measures 13.2sqm.



Plate 2: Extension



Plate 3: House extended

2. Background

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

A new County Development Plan (CDP 2021-2027) came into effect on 22nd of October 2021, since the submission of the Section 5 Declaration. The site is zoned 'existing residential' under the new CDP.

There is an existing two storey semi-detached house on site.

The house is a protected structure, listed in the CDP 2021-2027, ref. 23-306. Extract from the CDP as follows:

"One of a pair of semi-detached two-bay two-storey houses, built in 1909. Set within own grounds. Pitched slate roof with stone gable coping, ruled-and-lined render to chimneystacks and cast-iron rainwater goods. Ruled-and-lined render to walls with rendered quoins. Timber sash windows with painted sills, canted-bay window with timber sash window and painted sills. Recessed doorway with painted rendered surround, timber panelled door to porch with sidelights and overlights of glazed glass. Cast and wrought-iron gates to site.

This house on Killeigh Road, with its rendered façade and timber sash windows, along with its projecting bay window has some worthy architectural details to offer yet the focus of this structure is on the unusual entranceway, rendered moulding surrounds, a square-headed opening to a recessed door. A plain timber door is accentuated by glazed timber panels to the side and above, adding character to the structure."

3. Relevant Planning History:

TU245491 Permission granted for alterations to existing entrances.

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

*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 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;*

4 —(4) 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.

Section 57 Planning and Development Act 2000, as amended - Exempted Development

57.—(1) Notwithstanding section 4(1)(a), (h), (i), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of— (a) the structure, or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

5. Evaluation

5.1 Question:

Are the works ‘development’?

Yes

5.2 Question:

Are the works exempted development?

The declaration request was referred to the County Architect, who states in response that "any new extension would require planning permission". The report does not elaborate on this point.

It is noted that the area of the extension and other dimensions otherwise accord with the provisions for exempted development under the P&D Regulations.

Having regard to the comment by the County Architect it must be concluded that the extension materially affects the character of the protected structure.

The attic conversion falls to be considered under section 4(1)(h) of the Planning and Development Act 2000, as amended.

The attic conversion does not materially alter the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. However, s.57 of the P&D Act must be considered, i.e. exempted only if those works would not materially affect the character of— (a) the structure or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

The attic conversion itself is a relatively minor intervention, however, the circular stair case to access same is not a minor intervention and arguably could be stated to materially affect the character of the structure/ special architectural elements (such as hall and stair features).

5.3 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 would 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.

5.4 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.

6.0 Conclusion & Recommendation:

The extension is not exempted development (the Co. Architect considers the extension requires permission; the only way the extension is not exempted development - as provided for under the P&D Regs - is if it materially affects the character of the protected structure).

The attic conversion, and access to same is not exempted development as it considered that it materially affects the character of the protected structure.

Having regard to the provisions of Section 57 (1 (a) and (b)) of Part IV of the Planning and Development Act 2000 (as amended), it is considered that the extension and attic conversion by reason of its design and works materially affects the character of the protected structure (RPS No. 23-306 refer). **The development therefore does not constitute exempted development.**

Declaration on Development and Exempted Development

under Section 5 of the

Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to whether a house extension and completed attic conversion in the main house / protected structure at 'Innishfree', Clonminch Road, Tullamore,

AS INDICATED on the particulars received by the Planning Authority on 8th September 2021, is development and is or is not exempted development,

AND WHEREAS Mary Minnock, Innisfree, Clonminch Road, Tullamore, Co. Offaly R35 EN28, requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council as the Planning Authority, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- (a) Part 1, Section 4, part (h) of the Planning and Development Act 2000 (as amended)
- (b) Part 1, Section 2(1) of the Planning and Development Act 2000 (as amended)
- (c) Part 1, Section 3(1) of the Planning and Development Act 2000 (as amended)
- (d) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended)
- (e) Section 57 (1 (a) and (b)) of Part IV of the Planning and Development Act 2000 (as amended)

AND WHEREAS Offaly County Council has concluded that the house extension and attic conversion does not come within the scope of the above, for the following reasons;

- (a) the extension and attic conversion by reason of its design and works materially affects the character of the protected structure (RPS No. 23-306).

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 the house extension and attic conversion **is development** and **is not exempted development**.

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.

Alaine Clarke

Alaine Clarke
Executive Planner

28th October 2021

Date

Carroll Melia

Carroll Melia
A/Senior Executive Planner

29th October 2021

Date

**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 21/26

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Residential extension & attic conversion		
Site location:	Innishfree, Clonminch Road, TULLAMORE, CO OFFALY		
Area	unknown.	Floor Area of Proposed Development:	16sqm (ext) 13.2 (attic)
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC		
Distance to European Site(s):	1.5km		
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: V		
(B) IDENTIFICATION OF THE RELEVANT European SITE(S):			
The reasons for the designation of the European site:	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, <i>Alnion incanae</i> , <i>Salicion albae</i>) [91E0] Vertigo <i>moulinsiana</i> (Desmoulin's Whorl Snail) [1016]		
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 www.npws.ie) (ATTACH INFO.)			
https://www.npws.ie/protected-sites/sac/000571			

(C) NPWS ADVICE:

Advice received from NPWS over phone:	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

<p>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.</p>	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 NIS 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 European sites from the proposed development.
Name:	<i>Alaine Clarke</i>
Position:	Exec. Planner
Date:	28 th Oct. 2021