

Date: 23<sup>rd</sup> October 2024. Our Ref: ED/1149.

Shirley O'Leary, c/o Jim Berkeley, 3 Ashgrove Avenue, Naas, Co. Kildare.

RE: Application for a Declaration of Exempted Development under Section 5 of Planning and Development Act 2000 (as amended) for development at 1861 Lourdesville, Kildare Town, Co. Kildare.

Dear Sir/Madam,

I refer to your correspondence received on 23rd August 2024 in connection with the above.

Please find attached declaration made under Section 5 of Planning and Development Acts 2000 (as amended) in this regard.

Yours sincerely,

Senior Executive Officer, Planning Department.



# Declaration of Development & Exempted Development under Section 5 of the Planning and Development Act 2000 (as amended).

ED/1149.

WHEREAS a question has arisen as to whether the demolition of an existing rear extension and construction of a new 24.4sqm kitchen at 1861 Lourdesville, Kildare Town, Co. Kildare is exempted development,

AS INDICATED on the plans and particulars received by the Planning Authority on 23rd August 2024

**AND WHEREAS** Shirley O'Leary requested a declaration on the said question from Kildare County Council,

**AND WHEREAS** Kildare 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) Planning and Development Act 2000 (as amended) and
- (b) Planning and Development Regulations 2001 (as amended); and

**AND WHEREAS** Kildare County Council has concluded that the development comprises works to which the provisions of the following applies:

- (a) Sections 2, 3, 4, 5, 6(1) and 9(1) of the Planning and Development Act 2000 (as amended):
- (b) The nature, extent and purpose of the works,

NOW THEREFORE Kildare 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 demolition of an existing rear extension and construction of a new 24.4sqm kitchen at 1861 Lourdesville, Kildare Town, Co. Kildare

is development and is exempted development pursuant to Section (2, 3, 4, 5, 6(1) and 9(1)) of the Planning and Development Act 2000 as amended and Article 6, Article 9 of the Planning and Development Regulations 2001 as amended.

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.

23rd October 2024.

Senior Executive Officer, Planning Department.

#### **KILDARE COUNTY COUNCIL**



#### PLANNING & STRATEGIC DEVELOPMENT DEPARTMENT

Section 5 referral & declaration on development & exempted development

#### Planning & Development Act 2000 (as amended)

R	eference No. ED/1149
Name Of Applicant(s):	Shirley O'Leary
Address Of Development:	1861 Lourdesville, Kildare Town, Co. Kildare
Development Description:	Demolition of kitchen/bathroom and construction
	of new kitchen/utility room & WC
Due date	20/09/2024

#### Introduction

This is a request for a **DECLARATION** under Section 5(1) of the Planning and Development Act 2000 (as amended) to establish whether under Section 5 of the Act the construction of new kitchen area with minor changes to internal ground floor such as a new utility room and WC is or is not exempted development.

#### **Site Location**

The site is located along Chapel Hill, in the Lourdesville Housing Estate in Kildare town. The rectangular shaped site contains a terrace cottage with open fronting onto other existing two storey dwellings at Lourdesville by Chapel Lane. Even more Lourdesville houses are bound to the rear of the site across a laneway. It is noted that the site is close to a SPA.

#### **Description of Proposed Development**

The proposed development will consist of 1. the demolition of existing 11.9m<sup>2</sup> bathroom and kitchenette and bathroom and 2. the construction of new kitchen area 24.4m<sup>2</sup> with minor changes to internal ground floor such as a new utility room and WC as shown on the proposed floor plans.

Figure 1: Site Location and context



Figure 2: Aerial view of subject site marked in black (Google Images)







#### <u>Planning History</u>

Nothing can be found on record regarding the initial construction of the dwelling nor the 12m<sup>2</sup> rear extension added. It has been noted on the applicant's application form that the existing rear extension of 12m<sup>2</sup> in bad condition.

#### **Relevant Legislative Background**

#### Planning and Development Act 2000 (as amended)

#### Section 2(1)

'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)

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(1)

The following shall be exempted development for the purposes of the 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;

#### **Section 5(7) EIA Screening**

The proposed development is not specified in Part 2 of Schedule 5 of the Planning and Development Regulations 2001(as amended). In any event, it is considered, having regard to nature, size and location, the proposed development would not be likely to have significant effects on the environment. Therefore, EIA is not required.

#### Planning and Development Regulations 2001 (as amended)

#### Article 6(1)

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.

#### **Article 9 (1)(a)(i)**

Restrictions on exemption.

- 9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—
- (a) if the carrying out of such development would—....(15 items).

#### Schedule 2 Part 1

Development within the curtilage of a house

#### 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' shall be exempted,

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

The proposed extension is to be  $24.4m^2$ , thus under the  $40m^2$  aforementioned limit.

(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.

The extension does not include any first-floor area.

(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.

The house is in a row of terraced houses and thus not applicable to this policy.

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.

The previous extension's gross floor area does not exceed  $40m^2$ .

(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.

The extension is at ground floor only.

party boundary.

(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.

The proposed extension does not call for any above ground floor construction.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any

Not applicable as no above ground floor extension proposed.

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.

The height of the ground floor extension does not exceed the height of the property's rear wall.

(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.

The height of the ground floor extension does not exceed the height of the two-storey dwelling's wall.

(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.

The proposed extension does not consist of a flat roof.

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.

The construction of the rear extension shall see more than the required 25m<sup>2</sup> open space remain.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

The proposed rear windows of the extension are further than 1 meter away from the rear boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

The rear windows of the proposed extension are noted in excess of the 11m minimum distance boundary from the boundary it faces.

(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.

The proposed extension does not consist of any first floor extension.

7. The roof of any extension shall not be used as a balcony or roof garden.

The proposed extension is noted to have a gabled roof and no flat roof or balcony.

#### **Assessment**

Having regard to definition of "development" under Section 3(1) of the Planning and Development Act 2000 (as amended), the subject works are considered to constitute development.

The application seeks a Declaration of Exempted Development on the basis of Article 6, which relates to development within the curtilage of a house.

The application has been assessed against each of the provisions of Class 1, column 2 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);

Development within the curtilage of a house (as above)

Section 3 of the Planning and Development Act 2000 defines 'development' as '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 2 of the Planning and Development Act 2000 defines 'works' as '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.'

It is considered that the demolition of existing 11.9m<sup>2</sup> bathroom and kitchenette and bathroom and the construction of new kitchen area 24.4m<sup>2</sup> with minor changes to internal ground floor such as a new utility room and WC as shown on the proposed floor plans would involve the carrying out of 'works' and therefore constitutes development.

Exemption is being sought under Class 1 of Part 1 of Schedule 2 of the Planning and Development Regulations 2000 (as amended).

#### **Conclusion**

Having regard to:

- Sections 2(1) of the Planning and Development Act 2000 (as amended);
- Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and
- The nature, extent and purpose of the works;

It is considered that the proposed works **constitutes development** as defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and **is exempted development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

#### **Recommendation**

It is recommended that the applicant be advised that the development as described in the application is development and is exempted development.

Signed:

Planner: Thomas Mooney

(Graduate Planner) Date: 10/09/2024

Signed:

A/Senior Executive Planner

13/09/2024

#### **Declaration of Development & Exempted Development under**

#### Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to whether the proposed development will consist of 1. the demolition of existing 11.9m2 bathroom and kitchenette and the construction of a new kitchen 24.4m2 and, 2. the construction of new kitchen area with minor changes to internal ground floor such as a new utility room and WC as shown on the proposed floor plans.

AS INDICATED on the plans and particulars received by the Planning Authority on

**AND WHEREAS** Shirly O' Leary requested a declaration on the said question from Kildare County Council, 23/08/2024.

**AND WHEREAS** Kildare 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) Planning and Development Act 2000 (as amended); and
- (b) Planning and Development Regulations 2001 (as amended);

**AND WHEREAS** Kildare County Council has concluded that the proposal comprises of development to which the provisions of the following applies:

- (a) Sections 2, 3, 4, 5, 6(1) and 9(1) of the Planning and Development Act 2000 (as amended);
- (b) The nature, extent and purpose of the works,

**NOW THEREFORE** Kildare 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 proposed development will consist of 1. the demolition of existing 11.9m<sup>2</sup> bathroom and kitchenette and the construction of a new kitchen 24.4m<sup>2</sup> and, 2. the construction of new kitchen area with minor changes to internal ground floor such as a new utility room and WC as shown on the proposed floor plans.

IS development and IS EXEMPTED development pursuant to Section (2, 3, 4, 5, 6(1) and 9(1)) of the Planning and Development Act as amended and Article 6, Article 9 of the Planning and Development Regulations as amended.

Please note that any person issued with a declaration under Section 5 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.

## Appendix 1: Appropriate Assessment Screening



# APPROPRIATE ASSESSMENT SCREENING REPORT AND DETERMINATION

(A) Project Details	
Planning File Ref	ED1149
Applicant name	Shirley O'Leary
Development Location	1861 Lourdesville, Kildare Town, Co. Kildare
Site size	24.4m <sup>2</sup>
Application	No
accompanied by an EIS	
(Yes/NO)	
Distance from Natura	4.45km
2000 site in km	

**Description of the project/proposed development** – The demolition of existing 11.9m<sup>2</sup> bathroom and kitchenette and bathroom and the construction of new kitchen area 24.4m<sup>2</sup> with minor changes to internal ground floor such as a new utility room and WC as shown on the proposed floor plans.

	Identification of Natura 2000 posed development	sites which may be impa	cted by the
-	·		Yes/No If answer is yes, identify list name of Natura 2000 site likely to be impacted.
1	Impacts on sites	Is the development	
	designated for freshwater	within a Special Area of	
	habitats or species.	Conservation whose	
		qualifying interests	
	Sites to consider: River	include freshwater	
	Barrow and Nore, Rye	habitats and/or species,	
	Water/Carton Valley,	or in the catchment	
	Pollardstown Fen,	(upstream or	
	Ballynafagh lake	downstream) of same?	
2	Impacts on sites	Is the development	
	designated for wetland	within a Special Area of	
	habitats - bogs, fens,	Conservation whose	
	marshes and heath.	qualifying interests	

	Sites to consider: River	include wetland habitats	
	Barrow and Nore, Rye	(bog, marsh, fen or	
	Water/Carton Valley,	heath), or within 1 km of	
	Pollardstown Fen, Mouds	same?	
	Bog, Ballynafagh Bog, Red		
	Bog, Ballynafagh Lake		
3	Impacts on designated	Is the development	
	terrestrial habitats.	within a Special Area of	
	Sites to consider: River	Conservation whose	
	Barrow and Nore, Rye	qualifying interests	
	Water/Carton Valley,	include woodlands,	
	Pollardstown Fen,	dunes or grasslands, or	
	Ballynafagh Lake	within 100m of same?	
4	Impacts on birds in SPAs	Is the development	
	Sites to consider:	within a Special	
	Poulaphouca Resevoir	Protection Area, or within	
		5 km of same?	

### Conclusion:

If the answer to all of the above is **No**, significant impacts can be ruled out for habitats and bird species.

No further assessment in relation to habitats or birds is required. If the answer is **Yes** refer to the relevant sections of **C**.

II tile a	1134461 13 163 1	eler to the relevant sections of C.
(G) S	SCREENING C	CONCLUSION STATEMENT
Sele	cted relevant c	ategory for project assessed by ticking box.
1	AA is not re	quired because the project is directly connected
	with/necess	ary to the conservation management of the site
2	No potential	significant affects/AA is not required
3	Significant e	effects are certain, likely or uncertain.
	Seek a Natu	ura Impact Statement
	Reject propo	osal. (Reject if potentially damaging/inappropriate)
Justif	y why it falls	into relevant category above (based on information
in abo	ove tables)	
NI		Thomas Mooney
Nam	e:	,
Posi	tion:	Graduate Planner
Date	:	10/09/2024

# COMHAIRLE CONTAE CHILL DARA





# **Director of Services Order**

I, Alan Dunney, Director of Services, am duly authorised and delegated by Chief Executive's
Order number: CE48043 to make the following Order in accordance with Section 154 of the
Local Government Act, 2001, as amended.

ORDER NO:	DO55348	Section:	Planning
SUBJECT:	5 of Planning and Dev	eration of Exempted De relopment Act 2000 (as Lourdesville, Kildare To	
SUBMITTED:		recommendation from om the Council's Techn	
ORDER:	the powers conferred Development Act 2000	on it by Section 5(2)(a) 0 (as amended) hereby	
MADE THIS23 <sup>-1</sup>	DAY	SIGNED: Acare	sun,
OF October	YEAR 2024	DIRECTOR OF SE	RVICES

## Kildare County Council

## Declaration of Exempt Development under Section 5,

of the Planning and Development Act 2000
Kildare County Council

Planning Department

Incomplete application forms will be deemed invalid and returned



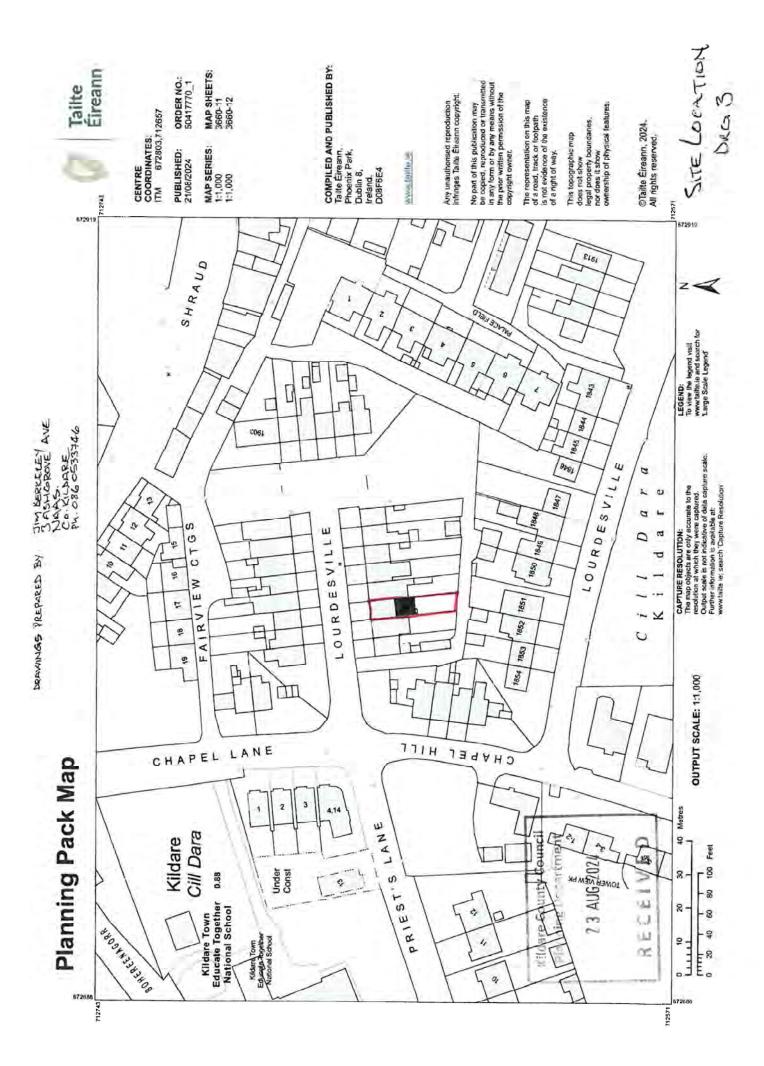
23 AUG 2024 All responses must be in block

Section 1	Details of Applicants
1. Name of A	Phone No Parth Brand Grange Con Co Wicklow
Section 2	Person/Agent acting on behalf of applicant (if applicable)
1. Name of Pe	Phone No. 9860533746 Fax No. —  3 ASHGROVE AVE. NAAS. CO. KUDARE
Section 3	Company Details (if applicable)
3. Address Section 4	Details of Site
	listory of Site. NOTHING ON RECORD, EXISTING REAR EXTENSION.
2. Location of	F 12 MZ IN BAD CONDITION.  f Proposed Development. (861 LOURDSVILLE, KILDARE TOWN.)
3. Ordnance S	Survey Sheet No. 3660-11 3660-12
	e the Applicants interest in the site OWNER.
*****	
5. Please state  BATHE	e the extent of the proposed development. DEMOLITION OF EXISTING 11.9

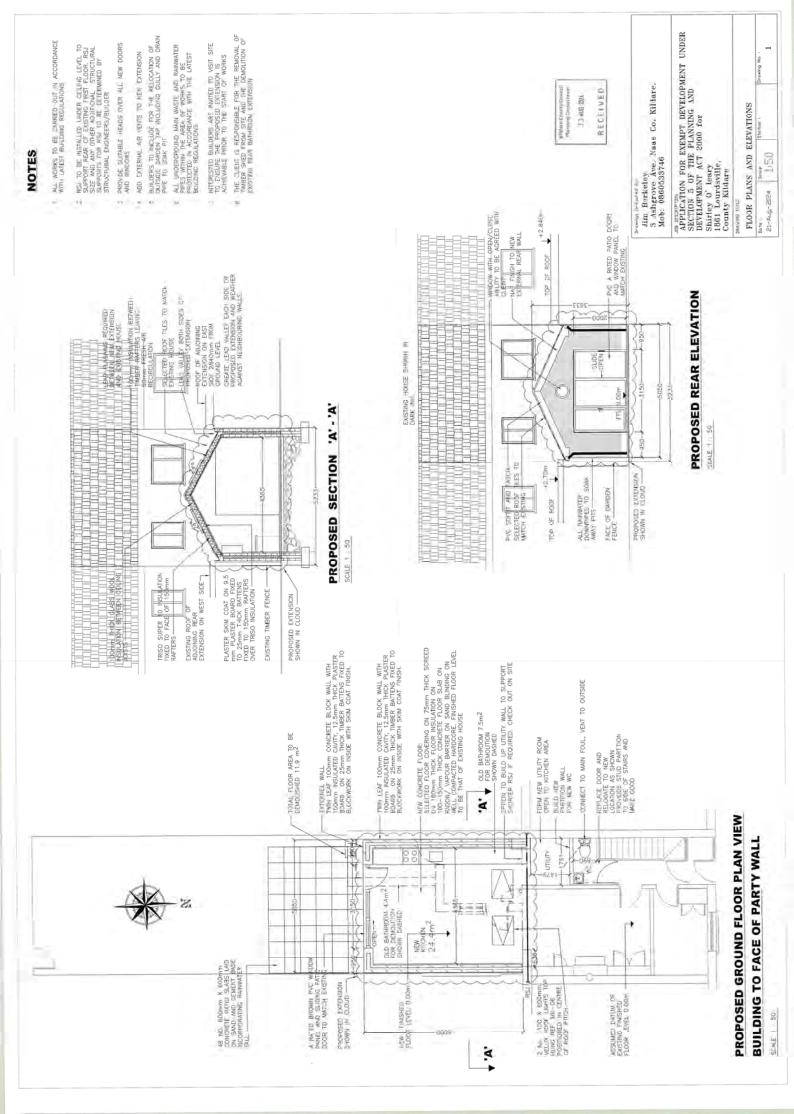
	Class.	OF PART OF SCHEDULE ZOF PAD RECULATION	13
7. PI	ease give a	detailed description of the Proposed Development (Use separate page if necessary)	
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	W	ITH MINOR CHANGES TO INTERNAL GROWN	>
	FA	OOR SULH AS NEW! UTILITY ROOM AM	>
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Signature: James Berkelon

Date: 23/8/2024.









Receipt No. FIN1/0/503276

Shirley O' Leary

PLANNING EXEMPT DEVELOP FEES 80.00 GOODS 80.00 VAT Exempt/Non-vatable

Total:

80.00 EUR

Tendered : Credit Card Debit Mastercard \*\*3570 0000

80.00

Change :

0.00

Issued By: Sally Pallister Finance Section From: Financial Lodgement Area Vat reg No.0440571C