

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 23/6

NAME OF APPLICANT: GERARD & COLETTE MOONEY.

ADDRESS:

NATURE OF APPLICATION: REQUEST FOR DECLARATION UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000, AS AMENDED AS TO WHETHER THE INSTALLATION OF A GRAVEL INTERNAL ROADWAY TO PROVIDE EASE OF ACCESS FOR ANIMALS AND MACHINERY TO VARIOUS FIELDS ON THE FARM IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT.

LOCATION OF DEVELOPMENT: DRUMMIN HILL, NEWTOWN, KINNITTY, CO. OFFALY

WHEREAS A question referred to Offaly County Council on 30/03/2023 as to whether or not the installation of a gravel internal roadway to provide ease of access for animals and machinery to various fields on the farm is or is not development, and is or is not exempted development at Drummin Hill, Newtown, Kinnitty, Co. Offaly 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, 3(1) and 4(1) of the Planning & Development Act 2000, as amended.
- (b) Article 6 and 9 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

The installation of a gravel internal roadway to provide ease of access for animals and machinery to various fields on the farm **is development and is exempted development.**

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended, hereby decides that the installation of a gravel internal roadway to provide ease of access for animals and machinery to various fields on the farm **is development and is exempted development** at Drummin Hill, Newtown, Kinnitty, Co. Offaly.

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

25/4/2023

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.

Planning Report - Section 5 Declaration

File Reference:	Dec 23-06
Question:	<i>Whether the installation of a gravel internal roadway to provide ease of access for animals and machinery to various fields on the farm is or is not development, and if so, is or is not exempted development.</i>
Applicant:	<i>Gerard & Colette Mooney</i>
Correspondence Address:	
Location:	<i>Drummin Hill, Newtown, Kinnitty, Co. Offaly.</i>

1. Introduction

The question has arisen as to whether the installation of a gravel internal roadway to provide ease of access for animals and machinery to various fields on the farm is or is not development, and if so, is or is not exempted development.

2. Background

The subject site is on agricultural lands located approximately 3.7km south east of Clareen Sráid. It consists of an existing 360m trackway which leads from an existing agricultural entrance (with adjacent animals holding pens), extending along the northern hedgerow boundary of the landholding providing access to the internal fields and ruins of an old dwelling/farmyard.

Approximately 190m south east of the eastern end of the accessway is a national monument (Monument Identifier OF01753) which is within the landholding. It is described as roughly circular raised area enclosed by a wide flat bottomed fosse with external bank. The site located within a defined Area of High Amenity (Slieve Bloom Mountains). Approximately 600m to the south east is the western boundary of the Slieve Bloom Mountains SPA.



Figure 1: Subject Site (Source: OCC GIS).



Figure 2: Subject Site (Source: Goggle Maps).

3. Site History

No recent planning history associated with the subject site.

4. Legislative Context

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

Statutory Provisions

Section 2 (1) Planning and Development Act 2000 (as amended) states as follows:

“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.

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock...

Section 3 (1) Planning and Development Act 2000 (as amended) defines development as:

“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 - Exempted Development, Planning and Development Act 2000 (as amended)

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

- (a) Development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used.

Regulatory Provisions

Article 6 of the Planning and Development Regulations 2001 (as amended) states:

- (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 – Restrictions on Exemptions

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—

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

(b) in an area to which a special amenity area order relates, if such development would be development:—

(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or

(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or

(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

5. Proposal by Applicants

The Applicant wishes to add a top layer of gravel to an existing accessway that is 360m in length (see photos below). This accessway leads from an existing agricultural entrance (with adjacent animals holding pens), extending along the northern hedgerow boundary of the landholding providing access to the internal fields and ruins of an old dwelling/farmyard.



As part of their application to the Department of Agriculture for a grant for the installation of the farm roadway on land folio OY6563, the Applicant requires confirmation from the Planning Authority as to whether the proposed work is or is not exempted development.

6. Appropriate Assessment Screening

A screening exercise for an appropriate assessment has been carried out and it has been deemed that the development is unlikely to have significant effects on any European sites. Please see attached report.

7. Evaluation

Question: Is the following works considered as Development?

The proposed works seek to improve the quality of the existing accessway within a farm landholding. It is considered that the works are 'development' in accordance with section 3(1) of the Planning and Development Act, 2000, as amended.

Question: Is the following works proposal considered as Exempted Development?

Based on the Planner's assessment of the information submitted with the referral and having visited the subject site, the Planning Authority are satisfied that the works are for the purposes of agriculture and are minor in nature. The works are therefore deemed as exempted development.

8. Conclusion

It is recommended that the Applicant be advised that the proposed development is development and is exempted development.

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 or not the installation of a gravel internal roadway to provide ease of access for animals and machinery to various fields on the farm is or is not development, and if so, is or is not exempted development at Drummin Hill, Newtown, Kinnitty, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 30th March 2023 is development and is or is exempted development,

AND WHEREAS Gerard & Colette Mooney 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, 3(1) and 4(1) of the Planning & Development Act 2000, as amended.
- (b) Article 6 and 9 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the installation of a gravel internal roadway to provide ease of access for animals and machinery to various fields on the farm is development and is exempted development.

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 installation of a gravel internal roadway to provide ease of access for animals and machinery to various fields on the farm **is development and is exempted development** at Drummin Hill, Newtown, Kinnitty, Co. Offaly.

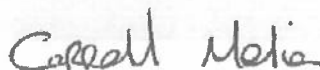
Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.



Una McCafferty
Executive Planner

21st April 2023

Date



Carroll Melia
(A/Senior Executive Planner)

25th April 2023

Date

APPENDIX A

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. No: DEC 23-06

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the installation of a gravel internal roadway to provide ease of access for animals an machinery to various fields on the farm is or is not development, and if so, is or is not exempted development.		
Site location:	Drummin Hill, Newtown, Kinnitty, Co. Offaly.		
Site size:	N/A	Floor Area of Proposed Development:	360m in length
Identification of nearby European Site(s):	Slieve Bloom Mountains SPA – 0.88km Slieve Bloom Mountains SAC – 2.39km		
Distance to European Site(s):	As above – all as 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 EIAR?	Yes: ☐	No: ☒	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Slieve Bloom Mountains SPA - Features of interest include: - Hen Harrier (Circus cyaneus) [A082] Slieve Bloom Mountains SAC - Features of interest include: - Northern Atlantic wet heaths with Erica tetralix [4010] - Blanket bogs (* if active bog) [7130] - Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]			
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.)			
Site Name: Slieve Bloom Mountains SAC, Site Code: 000412 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000412.pdf Site Name: Slieve Bloom Mountains SAC, Site Code: 000412 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000412.pdf			
(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 *in-combination effects* 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. | AA is not required because the project is directly connected with / necessary to the nature conservation management of the site. |
| 2. | No potential for significant effects / AA is not required. |
| 3. | 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. |

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:

Úna McCafferkey


Position:

Executive Planner

Date:

21st April 2023