

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

REFERENCE: DEC 24/26

NAME OF APPLICANT: Gerard and Patricia Mahon

ADDRESS FOR CORRESPONDENCE: [REDACTED]

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the clearing of forest and re-wetting and re-establishment of the regenerating habitat is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Coolfin Glebe, Kilcormac, Birr, Co. Offaly

WHEREAS a question has arisen as to whether the clearing of forest (11.43ha) and re-wetting and re-establishment of the regenerating habitat is or is not development and if so, is or is not exempted development at Coolfin Glebe, Kilcormac, Birr, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 15th March 2024.

AND WHEREAS Gerard & Patricia Mahon of The Glebe, Coolfin, Kilcormac, Birr, Co. Offaly. R42 KP27 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:

- Sections 2(a), 3 and of the Planning & Development Act 2000, as amended.

AND WHEREAS Offaly County Council has concluded that the proposed works is development and is not 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 clearing of forest (11.43ha) and re-wetting and re-establishment of the regenerating habitat is **development** and is **not exempted development** at Coolfin Glebe, Kilcormac, Birr, 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



Date

Note: 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.

Planning Report

Section 5 Declaration

| | |
|------------------------|---|
| File Reference: | Dec. 24/26 |
| Question: | <i>Whether the clearing of forest and re-wetting and re-establishment of the regenerating habitat is or is not development and is or is not exempted development.</i> |
| Applicant: | <i>Gerard & Patricia Mahon</i> |
| Location: | <i>Coolfin Glebe, Kilcormac, Birr, Co. Offaly.</i> |

1. Introduction

The question has arisen as whether the clearing of forest and re-wetting and re-establishment of the regenerating habitat is or is not development and is or is not exempted development.

2. Background

The subject site located within a rural area approximately 2.42km north west of Cadamstown Sráid. The subject site is partially located within lands that have been identified as being subject to flooding with a Current Indicative Fluvial Extent of Medium to High Probability. In addition, the site is partially located within a protected view as defined within the Offaly County Development Plan 2021 – 2027:

- MAP_REFV17
- VIEW FROM: Road No. L-06034 in the townlands of Knockhill and Drinagh.
- VIEW TO: Towards North East and North West over lowlands.

3. Site History

On Site – No recent planning applications associated with the subject site.

Enforcement – No recent history associated with the subject site.

Adjoining Lands to the north – Recent planning applications associated with the adjoining lands include:

ABP Case Number: 306246

- Development Description: Application for leave to apply for substitute consent under section 177C of the Planning and Development Act 2000, (as amended) to regularise the planning status of Bord na Mona's historic peat extraction (and ancillary works) on the milled peat production bogs.
- Development Address: Boora bog group located predominantly in county Offaly.
- ABP Decision Status: Application Granted

ABP Case Number: 307282

- Development Description: Application for substitute consent in relation to Peat Extraction at Bogs in the Boora Bog Group.
- Development Address: Bellair North, Lemanaghan, Kilaranny, Noggusboy, etc. in Co Laois. Hall, Clonaltra (King), etc. in Co Westmeath. Lemanaghan, Lumcloon, etc. in Co Offaly.
- ABP Decision Status: Application withdrawn (applicant).

Tree Felling Licence Application – ref. TFL00993923

| SITE DETAILS | |
|--|--------------|
| Required License Duration (Years) | 10 |
| Planning Permission Required | No |
| Will the area to be clearfelled be replanted? | Yes |
| Will an alternative area be planted (Instead of the area for clearfell)? | Yes |
| Associated Afforestation Contract No. | Cover letter |

| TREE FELLING PLOTS | | |
|--------------------|-------------------|----------------|
| Plot No | Claimed Area (ha) | Harvest Events |
| 1 | 8.05 | 1 |
| 2 | 3.38 | 1 |

| HARVEST EVENTS | | | | | | | |
|----------------|--------------|--------------|--------------------------------|-----------|-----------|----------|--------------|
| Plot No | Harvest Type | No. Of Trees | Species | Canopy(%) | Fell Year | Fell Age | Est. Vol(m3) |
| 1 | Clearfell | 2480 | Sitka spruce | 100.0 | 2024 | 29 | 1800.0 |
| 2 | Clearfell | 1050 | Lodgepole Pine (North Coastal) | 100.0 | 2024 | 29 | 700.0 |

| REPLANT PLOTS | | |
|---------------|-------------------|---------|
| Plot No | Claimed Area (ha) | Species |
| 1 | 8.05 | 1 |
| 2 | 3.38 | 1 |

| REPLANT SPECIES | | | | |
|-----------------|--------------|-----------|--------------|-------------------------|
| Plot No | Species | Canopy(%) | No. of Trees | Reforestation Objective |
| 1 | Sitka spruce | 100.0 | 17100 | CF |
| 2 | Sitka spruce | 100.0 | 7100 | CF |

The Applicant has submitted a letter from the Department of Agriculture, Food and the marine dated 31st January 2024. This letter notes the following:

Inspector's Advice/Remarks: The DAFM position, as set out in its Felling and Reforestation Policy document, is that the provisions of the Planning and Development Act 2000, as amended, and the Planning and Development Regulations 2001, as amended, as they are currently worded are to be interpreted such that projects involving deforestation for the purposes of conversion to another land use, including nature restoration, are subject to a planning permission requirement (in addition to any requirement for a tree felling licence). In light of the this, the applicant should submit a copy of a Grant of Planning Permission for the proposed deforestation project or a Section 5 Declaration stating the project is 'exempted development', whichever the relevant planning authority deems to be required / appropriate

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.

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 - Exempted Development

Section 4—(1) The following shall be exempted developments for the purposes of this Act—

- i) *development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;*

(2) (a) *The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—*

(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

(3) *A reference in this Act to exempted development shall be construed as a reference to development which is—*

(a) any of the developments specified in subsection (1) or (1A), or

(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act

(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.*

Regulatory Provisions

Article 8(f) of the Planning and Development Regulations 2001 (as amended) states:

8F. Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of—

(a) the thinning, felling or replanting of trees, forests or woodlands, or (b) works ancillary thereto, shall be exempted development

SCHEDULE 5 - DEVELOPMENT FOR THE PURPOSES OF PART 10 - PART 2

1. Agriculture, Silviculture and Aquaculture

(d) (iii) Deforestation for the purpose of conversion to another type of land use, where the area to be deforested would be greater than 10 hectares of natural woodlands or 70 hectares of conifer forest.

5. Proposal by Applicants

The Applicant has advised that the proposed works will include clearing of forest (11.43ha) and re-wetting and re-establishment of the regenerating habitat. The applicant indicates that the forestry is a failed plantation.

6. Evaluation

Question: Whether the proposed works (as listed) are development and if so, are they exempted development?

In considering the proposed works against the definitions of 'development' and 'works' as provided in the Act, it is the view of the Planning Authority that the proposed works are deemed as development.

I note the following from the Felling and Reforestation Policy published by Dept of Agriculture Food and the Marine 2017:

Under the Planning & Development Act 2000, as amended (Part 1, section 4(1)(i) and (ii)),

(a) development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species; and

(b) development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road) or works ancillary to such road development, where the road serves forests and woodlands;

are classed as 'exempted development'. This means that they do not require planning permission from the local planning authority. However, both forms of development do require other statutory consents, namely a felling licence and a licence for forest road construction under the Forestry Act 2014, as set out in the Forestry Regulations 2017 (S.I.191 of 2017).

As deforestation is not listed as an 'exempted development' in the Planning & Development Acts or Regulations and as there is a mandatory threshold set out in Schedule 5, Part 2, Paragraph 1(d) (iii) of the Planning & Development Regulations 2001, as amended, which requires

deforestation for the purpose of conversion to another type of land use, where the area to be deforested would be greater than 10 hectares of natural woodlands or 70 hectares of conifer forest...

to be subject to an EIA (and developments below that threshold involving deforestation to be screened for EIA), projects involving deforestation must obtain (in addition to a felling licence) planning permission either from the local planning authority or from An Bord Pleanála.

On this basis I consider that the proposed deforestation is development and is not exempted development.

7. Conclusion

It is recommended that the Applicant be advised that the proposed development is **development** and is **not 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 the clearing of forest (11.43ha) and re-wetting and re-establishment of the regenerating habitat is or is not development and if so, is or is not exempted development at Coolfin Glebe, Kilcormac, Birr, Co. Offaly.

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AND WHEREAS Offaly County Council has concluded that the proposed works is development and is not 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 clearing of forest (11.43ha) and re-wetting and re-establishment of the regenerating habitat is **development** and is **not exempted development** at Coolfin Glebe, Kilcormac, Birr, 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.



Úna McCafferkey

Executive Planner

9th April 2024

Date



Ed Kelly

(A/Senior Executive Planner)

10th April 2024

Date

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



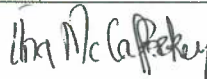
Screening is used to determine if an AA is necessary by examining:

- 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 24/26

| (A) DESCRIPTION OF PROJECT AND LOCAL SITE: | | | |
|--|---|-------------------------------------|-------|
| Proposed development: | Whether the clearing of forest and re-wetting and re-establishment of the regenerating habitat is or is not development and is or is not exempted development | | |
| Site location: | Coolfin Glebe, Kilcormac, Birr, Co. Offaly. | | |
| Site size: | N/A | Floor Area of Proposed Development: | N/A |
| Identification of nearby European Site(s): | Slieve Bloom Mountains SPA – 3.01km Island Fen SAC – 12.47km | | |
| 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? | | | No: X |
| (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: <ul style="list-style-type: none"> Hen Harrier (<i>Circus cyaneus</i>) [A082] | | | |
| Island Fen SAC – Features of interest include: <ul style="list-style-type: none"> <i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130] Alkaline fens [7230] | | | |
| 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: Island Fen SAC, Site Code: 002236 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002236.pdf | | | |
| Slieve Bloom Mountains SPA, SITE CODE: 004160 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.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 <i>uncertain</i> 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). | | Unable to confirm; additional information is required. | |
| ... a reduction in habitat area on a European site? | | Unable to confirm; additional information is required. | |
| ... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site? | | Unable to confirm; additional information is required. | |
| ... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)? | | Unable to confirm; additional information is required. | |
| ... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site? | | Unable to confirm; additional information is required. | |
| 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. | | Unable to confirm; additional information is required. | |
| (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 3 | |
| Justify why it falls into relevant category above: | | It is the view of the Planning Authority that given the extent of the lands, the proposed works which will involve the blocking of drains leading to an increase in the water table and their location within an area prone to flooding; that a Stage 1 Appropriate Assessment Screening is required. | |
| Name: | Úna McCafferkey  | | |
| Position: | Executive Planner | | Date: 10 th April 2024 |

8. Conclusion

It is recommended that the Applicant be advised that the proposed development is **development** and **is not exempted development**.