

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 24/36

NAME OF APPLICANT: Assumpta Walsh

ADDRESS FOR CORRESPONDENCE:



NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the proposed works of a gateway for a farm is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Derryvilla, Edenderry, Co. Offaly, R45 E624

WHEREAS a question has arisen as to whether the proposed works of a gateway for a farm is or is not development and is or is not exempted development at Derryvilla, Edenderry, Co. Offaly, R45 E624.

AS INDICATED on the particulars received by the Planning Authority on the 5th April 2024.

AND WHEREAS Assumpta Walsh 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:

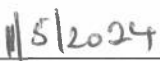
- (a) Section 2, 3(1) and 4(2)(a) of the Planning & Development Act 2000, as amended.
- (b) Article 6 of the Planning and Development Regulations 2001 (as amended).
- (c) Class 9, Schedule 2, Part 2 of the Planning and Development Regulations 2001 (as amended).
- (d) Article 9 (1) (ii) – Restrictions on Exemption, 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)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the proposed works of a gateway for a farm is **development** and is **exempted development** at Derryvilla, Edenderry, Co. Offaly, R45 E624.

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.


A/Administrative Officer


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:	<i>Dec. 24/36</i>
Question:	<i>Whether the proposed works of a gateway for a farm is or is not development and if so, are they exempted development.</i>
Applicant:	<i>Assumpta Walsh</i>
Correspondence Address:	
Location:	<i>Derryvilla, Edenderry, Co. Offaly, R45 E624</i>

1. Introduction

Whether the proposed works of a gateway for a farm is or is not development and if so, are they exempted development.

Background

The site is located on a local tertiary road and is within an Area of High Amenity. The land is of high sensitivity landscape classification.

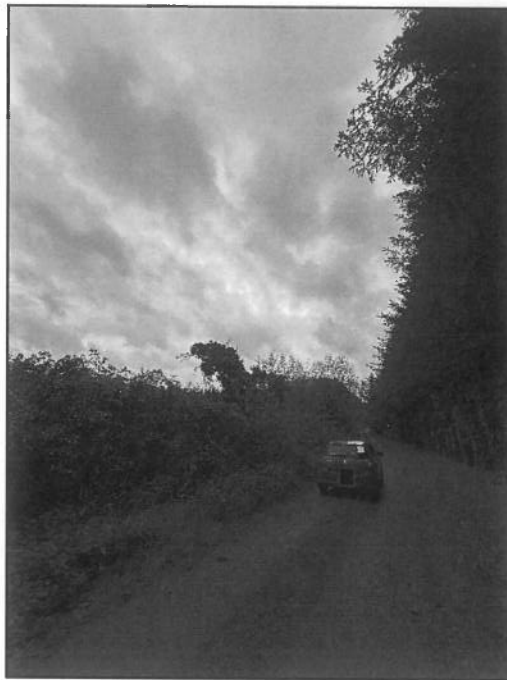


Image 1: Site inspection.

2. Site History

No relevant planning history or enforcement procedures.

3. 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 sets out what is exempted development for the purposes of this Act including:

4 (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).

Regulatory Provisions

Article 6 of the Planning and Development Regulations 2001 (as amended) states, *inter alia*, that:

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.

Schedule 2 part2 includes:

CLASS 9 *The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.*

Subject to the following conditions:

The height of any such structure shall not exceed 2 metres.

Article 9 (1) (ii) – Restrictions on Exemption, of the Planning and Development Regulations 2001 (as amended) states that:

(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—

(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.

Assessment

The width of the road of which the proposed gateway is situated is deemed acceptable and in line with Article 9 (1) (ii).

4. Proposal by Applicants

The Applicant of proposed works of the installation of a gateway for a farm.

6. Appropriate Assessment EIA Screening

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

It is considered that the proposed development does not constitute a development listed in Schedule 5 of the Planning and Development Regulations 2001 as amended. Furthermore, it is not a sub-threshold development. Accordingly an EIAR is not required.

7. Evaluation

Question: Whether the proposed works to the existing dwelling 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 as it includes the construction of a gateway for a farm.

Question: Is this proposal considered as Exempted Development?

It is the opinion of the Planning Authority that these works meet the criteria of exempt development under statutory provisions having regard to Class 9 above. The proposed works of a gateway for a farm comply with Article 9 (1) (ii) – Restrictions on Exemption, of the Planning and Development Regulations 2001.

8. Recommendation

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 the proposed works of a gateway for a farm is or is not development and if so, are they exempted development at Derryvilla, Edenderry, Co. Offaly, R45 E624.

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AND WHEREAS Offaly County Council, in considering this declaration request, had regard particularly to:

- (a) Section 2, 3(1) and 4(2)(a) of the Planning & Development Act 2000, as amended.
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- (d) Article 9 (1) (ii) – Restrictions on Exemption, 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)(a) of the Planning and Development Act 2000 (as amended), hereby decides that:

- The proposed works of a gateway for a farm **is development and is exempted development** at Derryvilla, Edenderry, Co. Offaly, R45 E624.

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.



Enda Dolan
Assistant Planner

Date 30th April 2024.

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 24/36

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the proposed works of a gateway for a farm is or is not development and if so, are they exempted development.		
Site location:	Derryvilla, Edenderry, Co. Offaly, R45 E624.		
Site size:	N/A	Floor Area of Proposed Development:	Not given
Identification of nearby European Site(s):	The Long Derries, Edenderry SAC		
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):			
The Long Derries SAC – Features of interest include: <ul style="list-style-type: none"> Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] 			
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: The Long Derries SAC SAC Site Code: 000925 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000925.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:			

<p><i>(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).</i></p>	
<p>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>	
<p>Would there be... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	<p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>
<p>... a reduction in habitat area on a European site?</p>	<p>There will be no reduction in the habitat area. The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	<p>Not likely due to the location and type of development The site is sufficient distance from the European site.</p>
<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>	<p>Not likely due to the location and type of development The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	<p>None likely due to the location and type of development. The site is sufficient distance from the European site.</p>
<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>	<p>No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.</p>
<p>(E) SCREENING CONCLUSION:</p>	
<p>Screening can result in:</p>	
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.
<p>Therefore, does the project fall into category 1, 2 or 3 above?</p>	<p>Category 2</p>
<p>Justify why it falls into relevant category above:</p>	<p>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.</p>
<p>Name:</p>	<p>Enda Dolan</p>
<p>Position:</p>	<p>Assitant Planner</p>
<p>Date:</p>	<p>30th April 2024.</p>

