

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 24/4

NAME OF APPLICANT: John Corbett.

ADDRESS:

ADDRESS FOR CORRESPONDENCE: C/o Mark Ward, Ruane, Creagh, Ballinasloe, Co. Offaly.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the construction of an outdoor horse exercise area is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Dungar, Roscrea, Co. Offaly.

WHEREAS a question has arisen as to whether the construction of an outdoor horse exercise area is or is not development and is or is not exempted development at Dungar, Roscrea, Co. Offaly

AS INDICATED on the particulars received by the Planning Authority on the 12th , January 2024.

AND WHEREAS John Corbett 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) Sections 2, 3(1), 4(1) and 57 of the Planning and Development Act 2000,as amended;
- (b) Article 6 of the Planning and Development Regulations 2001, as amended;
- (c) Schedule 2, Part 3, Class 10 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 construction of an outdoor horse exercise area is **development** and is **exempted development** at Dungar, Roscrea, 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

7/2/2024

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. 24/4</i> |
| Question: | <i>Whether the construction of an outdoor horse exercise area is or is not exempted development</i> |
| Applicant: | <i>John Corbett, C/o Mark Ward, Ruane, Creagh, Ballinasloe, Co. Offaly.</i> |
| Correspondence Address: | <i>Mark Ward, Ruane, Creagh, Ballinasloe, Co. Offaly.</i> |
| Location: | <i>Dungar, Roscrea, Co. Offaly</i> |

1. Introduction

The question has arisen as to whether the construction of an outdoor horse exercise area is or is not exempted development.

2. Background

It is noted that according to the Offaly County Development Plan, the subject site is located with the curtilage of a protected structure RPS Number 62-010 (see below).



Photo 1: Subject Site.

3. Site History

- 07/1059:** John Corbett applied for permission for the construction of a slatted and loose cattle house. The application was subsequently deemed **Invalid**.
- 02/606:** John Corbett was **Granted** permission to alter dwelling house and construct first floor extension to rear of dwelling house subject to 5 conditions.
- 02/434:** John Corbett applied for permission to alter dwelling house and construct first floor extension to rear of dwelling house. The application was subsequently deemed **Invalid**.
- 01/673:** John Corbett was **Granted** permission for alteration & extension to dwellinghouse. Subsequently the application was appealed to An Bord Pleanala (Ref PL 126495) who refused the application subject to the following reason.
1. Having regard to the architectural importance of Dungar Park, it is considered that the proposed development, by reason of the detailed design of the alterations to the front porch, the design of the proposed first floor extension and the nature of the internal works particularly at first floor level, would significantly detract from the character of this building which is worthy of protection. The proposed development would, therefore, be contrary to the proper planning and development of the area

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:

5. Statutory Provisions

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- (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;*

Section 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 any works to a protected structure, or a proposed protected structure, shall be exempt development only if these 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.

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.

Exempted development Classes in Part 3 of Schedule 2 (Exempted Development – Rural) - Agricultural Structures

CLASS 10: The erection of an unroofed fenced area for the exercising or training of horses or ponies, together with a drainage bed or soft surface material to provide an all-weather surface.

- 1. No such structure shall be used for any purpose other than the exercising or training of horses or ponies.
- 2. No such area shall be used for the staging of public events.
- 3. No such structure shall be situated within 10 metres of any public road, and no entrance to such area shall be directly off any public road.
- 4. The height of any such structure shall not exceed 2 metres.

6. ASSESSMENT:

It is considered the proposed development which consists of 22m by 40m outdoor horse exercise area with a 1.8m high post and rail fencing constitutes 'development' as defined by Section 3(1) of the Act. It is noted the proposal in question is located within the curtilage of a protected structure. Following verbal consultation with the Senior Executive Architect, it is considered given the existing agricultural structures (see images below) located directly adjacent to the proposed works and the distance the proposal is from the actual protected structure that the proposal will not affect the interior or exterior special architectural character of the Protected Structure.



Photo 2: Shed directly adjacent to subject site.

7. 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 the construction of an outdoor horse exercise area is or is not development and if so, is or is not exempted development at Dungar, Roscrea, Co. Offaly

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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.

Michael Duffy

Michael Duffy

Executive Planner

6th February 2024

Ed Kelly

Ed Kelly

Acting Senior Executive Planner

7th February 2024

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: Offaly County Council

Planning Application Ref. No.: DEC/24/4

| (A) DESCRIPTION OF PROJECT AND LOCAL SITE: | | | |
|---|-------------------------------------|-------------------------------------|-------------------|
| Proposed development: | Outdoor horse exercise area | | |
| Site location: | Dungar, Roscrea, Co. Offaly | | |
| N/A | N/A | Floor Area of Proposed Development: | 880m ² |
| Identification of nearby European Site(s): | Slieve Bloom Mountains SPA – 1.09km | | |
| 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"> [4010] Wet Heath [7130] Blanket Bogs (Active)* [91E0] Alluvial Forests* | | | |
| 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 SPA 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 | | |

| | | | |
|--|--|---|--|
| Sur. ... of advice received from NPWS in written form (ATTACH SAME): | | None Received | |
| (D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS: | | | |
| <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> | | | |
| If the answer is 'yes' to any of the questions below, then the effect is significant. <i>(Please justify your answer. 'Yes' / 'No' alone is insufficient)</i> | | | |
| 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 <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. | | 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: | | Michael Ouffy | |
| Position: | | Executive Planner | Date: 6 th February 2024 |

