

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

**REFERENCE:** DEC 25/13

**NAME OF APPLICANT:** Anthony Cocoman

**ADDRESS FOR CORRESPONDENCE:** C/O Pamela Maleady, Tus Nua Environmental, The Bungalow, Slaney Park, Baltinglass, Co. Wicklow, W91 E4E6.

**NATURE OF APPLICATION:** request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the levelling of agricultural lands by the importation of soil and stone materials under Article 27 declaration is or is not development and is or is not exempted development.

**LOCATION OF DEVELOPMENT:** Ballykilleen, Shean, Edenderry, Co. Offaly

**WHEREAS** a question has arisen as to whether or not the levelling of agricultural lands by the importation of soil and stone materials from outside the landholding is, or is not development, and is, or is not, exempted development at Ballykilleen, Edenderry, Co. Offaly.

**AS INDICATED** on the particulars received by the Planning Authority on the 30th January 2025.

**AND WHEREAS** Anthony Cocoman 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(1), 3(1), 4 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 levelling of agricultural lands by the importation of soil and stone materials from outside the landholding **is development and is not exempted development** at Ballykilleen, Edenderry, 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 include any submissions and observations received by it in accordance with statutory provisions.

  
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

<b>File Reference:</b>	<b>Dec 25/13</b>
<b>Question:</b>	Whether or not the levelling of agricultural lands by the importation of soil and stone materials under Article 27 declaration is or is not development and is or is not exempted development
<b>Applicant:</b>	Anthony Cocoman
<b>Correspondence address:</b>	c/o Pamela Maleady, Tus Nua Environmental, The Bungalow, Slaney Park, Baltinglass, Co Wicklow, W91 E4E6
<b>Location:</b>	Ballykilleen, Shean, Edenderry, Co. Offaly

#### 1. Introduction

The question has arisen as whether works which include the levelling of agricultural lands by the importation of soil and stone materials under Article 27 declaration is or is not development and is or is not exempted development.

#### 2. Background

The school is located in the townland of Ballykilleen, which is 5km south-west of Edenderry Town. The site is located off Rural Road R-401-2. In the *Offaly County Development Plan (OCDP) 2021-27* this townland is classified as a *Rural Areas under Strong Urban Influence* with a low sensitivity landscape classification. The Area Planner notes that a tributary of the Figile River forms the north-eastern boundary of the subject site.



Figure 1: Site Location (red arrow)



**Figure 2: Site Location (red line boundary)**

### **3. Site History**

#### *On Site*

No recent, relevant history.

#### *Enforcement*

No recent history associated with the subject site.

#### *Adjoining Lands*

Ref 16/177: Anthony Cocoman **granted** permission conditionally for infilling of lands with material consisting of clean, uncontaminated soil and stones and for the crushing of concrete on a sporadic basis (which is not for infilling on the site) prior to its removal for reuse. One temporary onsite portable toilet and one temporary portacabin which will serve as an office for the duration of the infilling process. A *Natura Impact Statement (NIS)* and Article 6 (3) of the *Habitats Directive* screening for appropriate assessment report have been prepared in respect of the proposed development. Subsequent to planning a waste facility permit will be sought from Offaly County Council Environment Section for the duration of the infilling process.





**Photo 1:** View north of subject site from Regional Road R-401-2



**Photo 1:** View north-east of subject site from Regional Road R-401-2

#### 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:

##### (i) 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 Planning and Development Act 2000, as amended, defines exempted development as:**

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

*(a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;*

*(aa) development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area);*

*(ab) development by a coastal planning authority that—*

*(i) owns the maritime site on which the development is proposed to be situated, or*

*(ii) is the holder of a maritime area consent granted for the occupation of a maritime site for the purposes of the proposed development,*

*in its nearshore area;*

*(ab) development consisting of the carrying out of relevant works or related activities over principal burial land, ancillary burial land or ancillary land within the meaning of the Institutional Burials Act 2022;*

*(e) development consisting of the carrying out by a local authority of any works required for the construction of a new road or the maintenance or improvement of a road;*

*(f) development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;]*

*(fa) development to which section 179A applies;*



(g) development consisting of the carrying out by any local authority or statutory undertaker of any works for the purpose of inspecting, repairing, renewing, altering or removing any sewers, mains, pipes, cables, overhead wires, or other apparatus, including the excavation of any street or other land for that purpose;

(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;

(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;

(ia) development (other than development consisting of the provision of access to a national road within the meaning of the **Roads Act 1993**) that consists of—

(I) the construction, maintenance or improvement of a road (other than a public road) that serves a forest or woodland, or

(II) works ancillary to such construction, maintenance or improvement;]

(j) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

(k) development consisting of the use of land for the purposes of a casual trading area (within the meaning of the **Casual Trading Act, 1995**);

(l) development consisting of the carrying out of any of the works referred to in the **Land Reclamation Act, 1949**, not being works comprised in the fencing or enclosure of land which has been open to or used by the public within the ten years preceding the date on which the works are commenced F52[or works consisting of land reclamation or reclamation of estuarine marsh land and of callows, referred to in section 2 of that Act.

(1A) Subject to subsection (1B), the following classes of development shall also be exempted development for the purposes of this Act if carried out wholly in the maritime area:

(a) development for the purposes of any survey for archaeological purposes;

(b) development for the purposes, or consisting, of—

(i) the exploration for petroleum, within the meaning of Part II of the Petroleum and Other Minerals Development Act 1960, in accordance with a licence under section 8, 9 or 19 of that Act or a lease under section 13 of that Act,

(ii) the working, within such meaning, of such petroleum, in accordance with such lease or licence, or

(iii) the restoration of the area in which such exploration or working has taken place;

*(c) development consisting, or for the purposes, of the construction or operation, in accordance with a consent under subsection (1) of section 40 of the Gas Act 1976, of an upstream pipeline,*

*(d) development for the purposes, or consisting, of dumping within the meaning of the Dumping At Sea Act 1996;*

*(e) development authorised under section 638 of the Merchant Shipping Act 1894 or section 3 of the Merchant Shipping (Commissioners of Irish Lights) Act 1997 by the Commissioners of Irish Lights for the purposes, or consisting, of the placement of aids to navigation;*

*(f) activities that are the subject of, or require, a licence under Part 5 of the Maritime Area Planning Act 2021;*

*(g) development consisting of the use of any land or maritime site for the purposes of—*

*(i) the harvesting of shellfish, or*

*(ii) activities relating to fishing or aquaculture.*

*(1B) Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an environmental impact assessment of the development is required.*

*(1C) Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an appropriate assessment of the development is required.*

*(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).*

*(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.*

*(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.*

*(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.*

*(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—*

*(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and*

*(b) as respects which an environmental impact assessment or an appropriate assessment is required,*

*to be exempted development.*

*(5) Before making regulations under this section, the Minister shall consult with any other State authority where he or she or that other State authority considers that any such regulation relates to the functions of that State authority.*

The Area Planner notes that the proposed levelling of agricultural lands by the importation of soil and stone materials under Article 27 declaration is not covered by any exemption as described in Section 4. It is noted that exemptions under *The European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011* for reencountering can not be applicable as the fill material is being sourced from outside the landholding.

## **5. Proposal by Applicants**

The Applicant has advised that the proposed works would include the addition of 12,299m<sup>3</sup> of fill to be levelled and the piping of an existing stream.

## **6. Appropriate Assessment**

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

## **7. Environmental Impact Assessment Screening**

A preliminary examination of the proposed development considers that it is a category of development specified in the *Planning and Development Regulations 2001 as amended* Schedule 5.

Class 11.(b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule

Article 103 (1) of the *2001 Planning and Development Regulations* requires that where a Planning Authority considers that a sub-threshold development is likely to have significant effects on the environment, it shall request the applicant to submit an EIA.

The site is to be levelled with 12,299m<sup>3</sup> of fill material. It is unclear if the material is a byproduct waste material. In the event that the material is a waste article 103 (1) of the *2001 Planning and Development Regulations* requires that where a Planning Authority considers that a sub-threshold development is likely to have significant effects on the environment, it shall request the applicant to submit an EIA.

Having regard to Article 103 and Schedule 7 of the *Planning and Development Regulations 2001 as amended*, it is considered that there is no significant doubt that the proposed development would be unlikely to have significant effects on the environment and will therefore not require an EIA. It is considered that there are no sensitivities relating to the characteristics and location of the proposed development nor are there potential impacts, that would result in a likely significant impact on the environment given the nature, size or location of the proposed development.

## 8. Evaluation

**Question:** Whether the proposed levelling of agricultural lands by the importation of soil and stone materials under Article 27 declaration is or is not development and is or is not exempted development?

Article 27 of the European Communities (Waste Directive) Regulations, 2011, allows an economic operator to decide that a material is a by-product and not a waste

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.

### **Question: Is this proposal considered as Exempted Development?**

No exemptions exist for these works. Based on the information received, the Planning Authority is satisfied that the proposed works are **not exempted development** as defined by Section 4 of the *Planning and Development Act 2000, as amended*.

## 9. Recommendation

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 or not the levelling of agricultural lands by the importation of soil and stone materials from outside the landholding is, or is not development, and is, or is not, exempted development at Ballykilleen, Edenderry, Co. Offaly.

**AS INDICATED** on the particulars received by the Planning Authority on the 30<sup>th</sup> January 2025.

**AND WHEREAS** Anthony Cocoman 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(1), 3(1), 4 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 levelling of agricultural lands by the importation of soil and stone materials from outside the landholding is **development** and is **not exempted development** at Ballykilleen, Edenderry, 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.*



Enda Finlay

Date 25<sup>th</sup> February 2025

Graduate Planner



Ed Kelly  
ASEP

Date 25<sup>th</sup> February 2025



## 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 25/13**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not the levelling of agricultural lands by the importation of soil and stone materials under Article 27 declaration is or is not development and is or is not exempted development		
Site location:	Ballykilleen, Ededderry, Co. Offaly		
Site size:	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	The Long Derries SAC 4.5Km		
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):			
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 <a href="http://www.npws.ie">www.npws.ie</a> ) (ATTACH INFO.)			
The Long Derries SAC Site Code: 0925			
<a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000925.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000925.pdf</a>			
(C) NPWS ADVICE:			
Advice received from NPWS over phone:	None Received		

Summary of advice received from NPWS in written form <b>(ATTACH SAME):</b>	None Received		
<b>(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:</b>			
<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>			
<b>Would there be...</b>			
... 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.		
<b>(E) SCREENING CONCLUSION:</b>			
<b>Screening can result in:</b>			
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.		
<b>Name:</b>	 Enda Finlay		
<b>Position:</b>	Graduate Planner	<b>Date:</b>	25 <sup>th</sup> February 2025

