

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 25/41

NAME OF APPLICANT: Office of Public Works

ADDRESS FOR CORRESPONDENCE: c/o East Region Maintenance, OPW, Robinstown, Mullingar, Co. Westmeath, N91 XO99.

NATURE OF APPLICATION: request for declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the removal of vegetation from behind the weir and repair the stonework is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Belmont Weir, Ballingowan, Belmont, Birr, Co. Offaly, R42 VE28.

WHEREAS a question has arisen as to whether the removal of vegetation from behind the weir and repair the stonework on the weir and fish pass is or is not development and is or is not exempted development at Belmont Weir, Ballingowan, Belmont, Birr, Co. Offaly. R42 VE28.

AS INDICATED on the particulars received by the Planning Authority on the 25th February 2025.

AND WHEREAS OPW c/o East Region Maintenance, OPW, Robinstown, Mullingar, Co. Westmeath, N91 XO99 has 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:

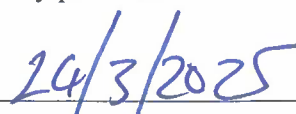
- (a) Sections 2(1), 3(1) and 57 of the Planning & Development Act 2000 (as amended).
- (b) Section 57 of the Planning and Development Act 2000 (as amended).
- (c) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended.
- (d) Class 35 of Part 1 of Schedule 2 of the Planning and 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 removal of vegetation from behind the weir and repair the stonework on the weir and fish pass is development and is exempted development at Belmont Weir, Ballingowan, Belmont, Birr, Co. Offaly. R42 VE28.

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

File Reference:	<i>Dec. 25/41</i>
Question:	<i>Whether the removal of vegetation from behind the weir and repair the stonework on the weir and fish pass is or is not development and is or is not exempted development</i>
Applicant:	<i>OPW</i>
Correspondence Address:	<i>c/o East Region Maintenance, OPW, Robinstown, Mullingar, Co. Westmeath, N91 XO99.</i>
Location:	<i>Belmont Weir, Ballingowan, Belmont, Birr, Co. Offaly. R42 VE28</i>

1. Introduction

The question has arisen as whether the removal of vegetation from behind the weir and repair the stonework on the weir and fish pass is or is not development and is or is not exempted development at the Belmont Weir.

2. Background

The subject site comprises of weir and fish pass at Belmont Weir which is c.700km south east of Belmont Sraid.

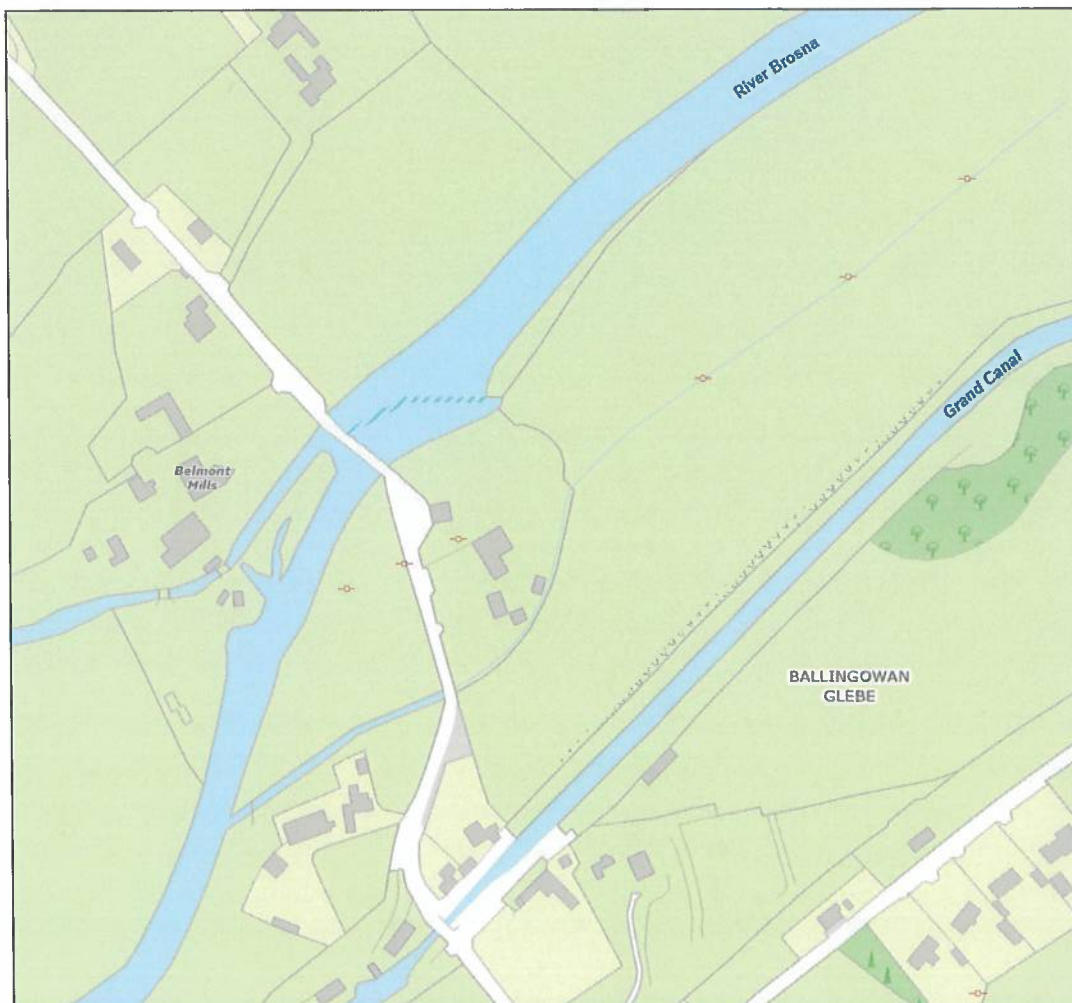


Figure 1: Site Location.



Figure 2: Works area outlined in red (as submitted).

The Area Planner confirms that the subject site comprises of 2 no. protected structures under the County Offaly Record of Protected Structures which was adopted in September 2021.

RPS ref. 30-016

Structure: Belmont Bridge.

- *Description: Five-arch masonry road bridge, built c.1750, carrying a minor road to Belmont over the River Brosna. Thick piers and dressed rubble voussoirs to arches, random coursed walls with roughly cut stone parapet. V-shaped cutwaters to upstream elevation. Square-shaped pedestrian refuges at road level to north-east wall. Semicircular profile arches. Upstream diagonally set weir which diverts water to Belmont Mill. Headrace flow through two smaller segmental arches at north end of the bridge. Located near the 33rd lock on the Grand Canal.*
- *Appraisal: Belmont Bridge, on the River Brosna, is a finely executed crossing with notable eighteenth century construction features which include pedestrian refuges or step-ins and relatively thick piers. It was formerly spelled Bellmount Bridge. V-shaped cutwaters and the nearby weir are notable elements. The purpose of the upstream cutwaters is to create a smooth flow and thus minimise eddies which may cause scouring and undercutting of the abutments and piers on the downstream side. It is one of the five five-arched bridges in County Offaly.*

RPS ref. 30-017

Structure: Belmont – Weir

- *Description: Cut stone elongated weir with on the River Brosna, erected c.1840, at the Belmont Bridge, diverting water to Belmont Mill.*
- *Appraisal: The cut stone weir at the Belmont Bridge leads the waters of the River Brosna towards Belmont Mill. Though the mill is no longer in use the weir is still functional. Its size makes it an imposing feature in the riverscape and one that is associated with the industrial heritage of the area.*

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 - No recent planning applications associated with the adjoining lands.

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 – Planning and Development Act 2000 (as amended)

Section 2 (1) of the Act 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) of the Act defines development as follows:

“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 57 of the Act refers to:

Works which may affect the character of protected structures or proposed protected structures. Section 57 also allows for the owner or occupier of a protected structure to apply to the Planning Authority for a declaration as to the type of works which it considered would or would not materially affect the character of the structure or any element of the structure. Such declarations clarify which works would be considered exempted development.

The following is stated:

57.—(1) Notwithstanding section 4(1)(a), (h), (i), (ia) (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those 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.

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in subsection (1)(b), of that structure.

Regulatory Provisions - Planning and Development Regulations 2001 (as amended)

Article 6 of the Regs. 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”.

Article 9 – Restrictions on Exemptions states:

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.

Schedule 2, Part 1 of Article 6 contains the following specific class of development under Class 35:

CLASS 35

Development consisting of—

(a) the carrying out by or on behalf of a statutory undertaker of any works for the maintenance, improvement, reconstruction or restoration of any watercourse, canal, river, lake or other inland waterway, or any lock, quay, mooring, harbour, pier, dry-dock or other structure forming part of the inland waterway or associated therewith, and any development incidental thereto,

(b) the erection or construction by or on behalf of a statutory undertaker of facilities required in connection with the operation, use or management of a watercourse, canal, river, lake or other inland waterway.

1. The floor area of any building constructed or erected shall not exceed 40 square metres.
2. The height of any building constructed or erected shall not exceed, in the case of a building with a pitched roof, 6 metres or, in any other case, 3 metres.
3. Any car park provided or constructed shall incorporate parking space for not more than 24 cars.

5. Proposal by Applicants

The Applicant has outlined that they propose to complete the work over 2 phases:

Phase 1

- Tree work adjacent to the weir.

Phase 2

- To remove fallen trees from behind the weir and from the eyes of the bridge.
- Reduce the silt level behind the weir.
- Repair the stonework on the weir.

The Applicants have not provided an Architectural Conservation Assessment or a Conservation Methodology Statement detailing the proposed works. However, the Planner notes that the Applicant has submitted a request for Section 57 declaration (ref. 25/07) to the Planning Authority. This is currently being considered by the Local Authority's Senior Executive Architect and no decision has been issued to date.

6. Referrals

The submitted documentation was referred to NPWS who subsequently forwarded it to the National Building Heritage Service. No response has been received to date.

Internally, the submitted documentation was referred to the Local Authority's Environment Section. No response has been received to date.

7. Appropriate Assessment (AA)

The subject site is located 1.31km from Moyclare Bog SAC and 4.94km Middle Shannon Callows SPA. Having regard to the nature of the proposed works; its location at Belmont Bridge; and, the implementation of best management practice procedures including a construction silt management plan and water pollution control; it is considered that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on the Natura 2000 network and appropriate assessment is not therefore required.

8. EIA Screening

No screening required, see appendix A attached.

9. Other Screening

The proposed development is not contrary to the RSES and so it was not referred to the Eastern and Midland Regional Assembly.

10. 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.

Question: Is this proposal considered Exempted Development?

With regard to the proposed works which are described in the submitted documents, the Planning Authority note the provisions of Class 35 (as detailed above) apply as the development consisting of works being carried out by OPW, a statutory undertaker. The works comprise of a maintenance / improvement / restoration of the River Brosna.

With regard to the works to the protected structure, the Planning Authority are satisfied the works will not impact the character of the protected structure. It is noted that this declaration was referred to the National Built Heritage Service of the Dept of Housing, Local Government and Heritage who have not indicated any concerns.

11. Conclusion & 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 removal of vegetation from behind the weir and repair the stonework on the weir and fish pass is or is not development and is or is not exempted development at Belmont Weir, Ballingowan, Belmont, Birr, Co. Offaly. R42 VE28.

AS INDICATED on the particulars received by the Planning Authority on the 25th February 2025.

AND WHEREAS OPW c/o East Region Maintenance, OPW, Robinstown, Mullingar, Co. Westmeath, N91 XO99 has 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(1), 3(1) and 57 of the Planning & Development Act 2000 (as amended).
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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 removal of vegetation from behind the weir and repair the stonework on the weir and fish pass **is development** and **is exempted development** at Belmont Weir, Ballingowan, Belmont, Birr, Co. Offaly. R42 VE28.

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 McCafferkey

Executive Planner

24th March 2025

Date



Ed Kelly

(A/Senior Executive Planner)

24th March 2025

Date

APPENDIX A

APPENDIX A

EIA Screening

Establishing if the proposal is a 'sub-threshold development':	
Planning Register Reference:	Dec 25-41
Development Summary:	The question has arisen as whether the removal of vegetation from behind the weir and repair the stonework on the weir and fish pass is or is not development and is or is not exempted development at the Belmont Weir.
Was a Screening Determination carried out under Section 176A-C?	No, Proceed to Part A
A. Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1, of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)	
No	Proceed to Part B
B. Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2, of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)	
No, the development is not a project listed in Schedule 5, Part 2	No Screening required



Una McCafferkey

Executive Planner

24th March 2025

Date