

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 24/1

NAME OF APPLICANT: Kilbeggan Organic Foods, C/o John Lalor MD  
ADDRESS: C/o John Lalor MD, Ballard, Kilbeggan, Westmeath N91 PRH2  
ADDRESS FOR CORRESPONDENCE: C/o John Lalor MD, Ballard, Kilbeggan, Westmeath N91 PRH2

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the removal of internal steel stairs, installation of internal bulk bag discharger, installation of internal pallet packing & Installation of an internal new doorway and steps to mezzanine is or is not development and is or is not exempt development.

LOCATION OF DEVELOPMENT: Unit 3F, Cluster 2, Axis Business Park, Tullamore, Co. Offaly.  
R35 WK22

WHEREAS A question has arisen as to whether the removal of internal steel stairs, installation of internal bulk bag discharger, installation of internal pallet packing and installation of an internal new doorway and steps to mezzanine to an existing industrial/warehousing unit is or is not development and is or is not exempt development at Unit 3F, Cluster 2, Axis Business Park, Tullamore, Co. Offaly. R35 WK22

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

AND WHEREAS Kilbeggan Organic Foods C/o John Lalor MD 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) and 4(1)(h) of the Planning and Development Act 2000 (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 removal of internal steel stairs, installation of internal bulk bag discharger, installation of internal pallet packing and installation of an internal new doorway and steps to mezzanine to an existing industrial/warehousing unit is development and is exempted development at Unit 3F, Cluster 2, Axis Business Park, Tullamore, Co. Offaly. R35 WK22.

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 11 Feb '24

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>	<i>Dec. 24/1</i>
<b>Question:</b>	<i>Whether the</i> <ul style="list-style-type: none"><li>• <i>Removal of internal steel stairs</i></li><li>• <i>Installation of internal bulk bag discharger</i></li><li>• <i>Installation of internal pallet packing</i></li><li>• <i>Installation of an internal new doorway and steps to mezzanine</i></li></ul> <i>is or is not development and if so, are they exempted development.</i>
<b>Applicant:</b>	<i>Kilbeggan Organic Foods, C/o John Lalor MD, Ballard, Kilbeggan, Co. Westmeath</i>
<b>Correspondence Address:</b>	<i>John Lalor, Ballard, Kilbeggan, Westmeath N91 PRH2</i>
<b>Location:</b>	<i>Unit 3F, Cluster 2, Axis Business Park, Tullamore, Co. Offaly. R35 WK22</i>

#### 1. Introduction

The question has arisen as to whether the proposed internal works (as detailed) within an existing Industrial/Warehouse building is or is not development and if so, is it exempted development.

#### 2. Background

The Industrial/Warehouse unit is located within the Axis Business park (see below)



Photo 1: Subject Site.

### 3. Site History

**06/972:** Permission **Granted** to John Flanagan Development Ltd for the construction of 4 blocks of industrial/warehousing buildings and associated office accommodation consisting of 28 units totalling 8,536 sq.m. the 4 blocks consist of block f, 2,802 sq.m. containing 10 units, block g, 1,466 sq.m. containing 4 units, block h, 2802 sq.m. containing 10 units and block j, 1,466 sq.m. containing 4 units, with all associated site works, including car parking spaces, site services, ancillary site works and site access via road network granted planning 05/971 subject to 16 conditions.

### 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)(h):** *of the Planning and Development Act 2000 (as amended) speaks of exempted development and states:  
The following shall be exempted developments for the purposes of this Act— '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'..*

### 6. ASSESSMENT

The application has been assessed against Section 4(1)(h) of the Planning and Development Act 2000 (as amended) which states that exempted development includes:

*'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'.*

With regard to Section 4(1)(h) it is considered that the proposed development accords with this particular prescribed form of exempted development as the proposal consists of internal modifications to existing unit.

#### **7. Appropriate Assessment**

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.

#### **8. CONCLUSION**

It is considered that the proposal for the removal of internal steel stairs, installation of internal bulk bag discharger, installation of internal pallet packing and installation of an internal new doorway and steps to mezzanine to an existing industrial/warehousing unit at Unit 3F, Cluster 2, Axis Business Park, Tullamore, Co. Offaly. R35 WK22 is **development** as defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and is **exempted development** pursuant to section 4(1)(h) of the Planning and Development Act 2000 (as amended). As the proposed works constitute internal works to the existing unit.

**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 internal steel stairs, installation of internal bulk bag discharger, installation of internal pallet packing and installation of an internal new doorway and steps to mezzanine to an existing industrial/warehousing unit is or is not development and if so, are they exempted development at Unit 3F, Cluster 2, Axis Business Park, Tullamore, Co. Offaly. R35 WK22

**AS INDICATED** on the particulars received by the Planning Authority on the 5<sup>th</sup>, January 2024

**AND WHEREAS** John Lalor 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) and 4(1)(h) of the Planning and Development Act 2000 (as amended);

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**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 the removal of internal steel stairs, installation of internal bulk bag discharger, installation of internal pallet packing and installation of an internal new doorway and steps to mezzanine to an existing industrial/warehousing unit **is development** and **is exempted development** at Unit 3F, Cluster 2, Axis Business Park, Tullamore, Co. Offaly. R35 WK22

*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*

*31<sup>st</sup> January 2024*

Ed Kelly

*Ed Kelly*

*Acting Senior Executive Planner*

*31<sup>st</sup> January 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 Application Ref. No.: Dec. 24/1**

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	<ul style="list-style-type: none"> <li>Removal of internal steel stairs</li> <li>Installation of internal bulk bag discharger</li> <li>Installation of internal pallet packing</li> <li>Installation of an internal new doorway and steps to mezzanine</li> </ul>		
Site location:	Unit 3F, Cluster 2, Axis Business Park, Tullamore, Co. Offaly. R35 WK22		
Area	N/A	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC		
Distance to European Site(s):	1.5km		
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		
(B) IDENTIFICATION OF THE RELEVANT European SITE(S):			
The reasons for the designation of the European site:			
Charleville Wood is considered to be one of the very few ancient woodlands remaining in Ireland, with some parts undisturbed for at least 200 years. 'Old Oak woodland is a habitat listed on Annex I of the EU Habitats Directive, while the rare snail species, <i>Vertigomoulin siana</i> , is listed on Annex II of this			

directive. The wetland areas, with their associated bird populations, the rare insect and Myxomycete species contribute further to the conservation significance of the site.	
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 Natura 2000 site synopses and, if applicable, a Conservation Management Plan; all available on <a href="http://www.npws.ie">www.npws.ie</a> ) (ATTACH INFO.)	
To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Code Description 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles * denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail Vertigo moulinsiana	
<b>(C) NPWS ADVICE:</b>	
Advice received from NPWS over phone:	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 <b>uncertain</b> 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>	Not likely due to the location and type of development
... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of ...)	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 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 /	No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.

plans within and adjacent to European sites and identify them]. Simply stating that there		
<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 NIS 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?		<b>Category 2</b>
Justify why it falls into relevant category above:		<b>There would be no likely significant impact on European sites from the proposed development.</b>
<b>Name:</b>	Michael Ouffy	
<b>Position:</b>	Exec. Planner	<b>Date:</b> 31 <sup>th</sup> January 2024

#### SITE SYNOPSIS

**SITE NAME: CHARLEVILLE WOOD**

**SITE CODE: 000571**

Charleville Wood is a large Oak woodland surrounded by estate parkland and agricultural grassland located about 3 km south-west of Tullamore. The site, which is underlain by deep glacial deposits, includes a small lake with a wooded island, and a stream runs along the western perimeter. The woodland is considered to be one of very few ancient woodlands remaining in Ireland, with some parts undisturbed for at least 200 years.

Some 10% of the woodland has been underplanted with conifers and other exotic trees, but the rest of the area is dominated by Pedunculate Oak (*Quercus robur*).

Apart from Oak, there is much Ash (*Fraxinus excelsior*) and scattered Wych Elm (*Ulmus glabra*), while Birch (*Betula* spp.) is a feature of the boggy margins. The shrub layer is composed largely of Hazel (*Corylus avellana*), Hawthorn (*Crataegus monogyna*) and Blackthorn (*Prunus spinosa*). The ground layer is varied, including damp flushed slopes with Ramsons (*Allium ursinum*) and drier, more open areas with a moss sward composed largely of *Rhytidiadelphus triquetris*. The fungal flora of the woodland is notable for the presence of several rare Myxomycete species, namely *Hemitrichia calyculata*, *Perichaena depressa*, *Amaurochaete atra*, *Collaria arcyronema*, *Stemonitis nigrescens* and *Diderma deplanata*. A number of unusual insects have also been recorded in Charleville Wood, notably *Mycetobia obscura* (Diptera), a species known from only one other site in Ireland. The site is also notable for the presence of a large population of the rare snail species, *Vertigo moulinsiana*.



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Extensive swamps of Bulrush (*Typha latifolia*) and Bottle Sedge (*Carex rostrata*) have developed in the lake shallows. The lake is an important wildfowl habitat – it supports populations of Mute and Whooper Swan and a number of duck species, including Teal, Wigeon, Shoveler, Pochard and Tufted Duck. The wooded island at its centre is famed for its long history of non-disturbance. Hazel, Spindle (*Euonymus europaeus*) and Ivy (*Hedera helix*) reach remarkable sizes here.

Charleville Wood is one of the most important ancient woodland sites in Ireland. The woodland has a varied age structure and is relatively intact with both areas of closed canopy and open areas with regenerating saplings present. The understorey and ground layers are also well represented. Old Oak woodland is a habitat listed on Annex I of the EU Habitats Directive, while the rare snail species, *Vertigomoulin siana*, is listed on Annex II of this directive. The wetland areas, with their associated bird populations, the rare insect and Myxomycete species contribute further to the conservation significance of the site.

6.12.1999

## Conservation objectives for Charleville Wood SAC [000571]

The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. These habitats and species are listed in the Habitats and Birds Directives and Special Areas of Conservation and Special Protection Areas are designated to afford protection to the most vulnerable of them. These two designations are collectively known as the Natura 2000 network. European and national legislation places a collective obligation on Ireland and its citizens to maintain habitats and species in the Natura 2000 network at favourable conservation condition. The Government and its agencies are responsible for the implementation and enforcement of regulations that will ensure the ecological integrity of these sites. The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. Favourable conservation status of a habitat is achieved when: • its natural range, and area it covers within that range, are stable or increasing, and • the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and • the conservation status of its typical species is favourable. The favourable conservation status of a species is achieved when: • population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and • the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and • there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis. Objective: To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Code Description 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles \* denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail *Vertigo moulinsiana*

Citation: NPWS (2015) Conservation objectives for Charleville Wood SAC [000571]. Generic Version 4.0. Department of Arts, Heritage and the Gaeltacht.

13/02/2015