

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 20/15

NAME AND ADDRESS OF APPLICANT:

Michael Kilmurray



ADDRESS FOR CORRESPONDENCE:

Michael Kilmurray
C/O Infinite Focus,
No. 10 Fr. McWey Street,
Edenderry,
Co. Offaly

NATURE OF APPLICATION: Request for Declaration under section 5 of the planning & development acts, 2000 as amended in relation to the importation of less than 25000 tonnes of invert soil waste onto an area of 2.22 hectares of low ground to be spread at a depth not exceeding 0.75m is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Esker More, Daingean, Co. Offaly

WHEREAS a question referred to Offaly County Council on 1 / 9 /2020 has arisen as to whether the importation of less than 25000 tonnes of invert soil waste onto an area of 2.22 hectares of low ground to be spread at a depth not exceeding 0.75m in Esker More, Daingean, Co. Offaly is or is not development and is or is not exempted development under the Planning and Development Act 2000 (as amended)

AND WHEREAS the Planning Authority, in considering this declaration request, had regard particularly to-

- (a) Sections 2, 3 & 4 of the Planning & Development Act 2000, as amended.
- (b) Article 6 of the Planning & Development Regulations, 2001, 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 powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended hereby decides that the importation of less than 25000 tonnes of invert soil waste onto an area of 2.22 hectares of low ground to be spread at a depth not exceeding 0.75m in Esker More, Daingean, Co. Offaly under **IS development and IS NOT exempted development**

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/Senior Executive Officer

20/11/2020
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 20/15</i>
Question:	<i>Whether the following is development and if so, exempted development: (a) Whether the importation of less than 25000 tonnes of invert soil waste onto an area of 2.22 hectares of low ground to be spread at a depth not exceeding 0.75m</i>
Applicant:	<i>Michael Kilmurray</i>
Correspondence Address:	<i>Infinite Focus, No. 10 Fr. McWey Street, Edenderry, Co. Offaly</i>
Location:	<i>Esker More, Daingean, Co. Offaly</i>

1. Introduction

The question has arisen as to whether the importation of less than 25000 tonnes of invert soil waste onto an area of 2.22 hectare of low ground to be spread at a depth not exceeding 0.75 metres (as shown on submitted map) is or not development, and is or is not exempted development at Esker More, Daingean, Co. Offaly

2. Further Information

Further information was sought by the Planning Authority on 24th September 2020 and subsequently received by the Planning Authority on 2nd November 2020. This report should be read in conjunction with the previous planner's report dated 22nd September 2020. The following further information was sought and the response is as follows:

(a) Provide details on the Exact volume of invert soil waste that it is proposed to import onto the subject site at Esker More.

The Applicants confirm that volume of invert soil waste that they wish to import onto the subject site is 16,046m³ or 24,069 tonnes.

(b) Provide details on the Exact increase in height (i.e. difference between the existing natural ground level and proposed ground level) at the subject site at Esker More.

The applicant has submitting cross sections of both the existing and proposed ground levels

(c) Clarify if there is an existing approved entrance to the subject site at Esker More. If so, please indicate the location of this entrance on a suitably scaled site location map (to a scale of not less than 1:2500). If no access is currently available to the site, please confirm how it is proposed to gain access.

The applicant has submitted details of an existing entrance to a gravel pit which will be used to access the subject site.

Planners Appraisal on Items (a) – (c): The further information received by the Planning Authority in relation to items (a), (b) and (c) have been assessed and it is deemed satisfactory.

3. Evaluation

Having assessed the Further Information received and the previous planning report on file, it is considered the proposed importation of invert soil waste onto an area of 2.22 hectare of low ground to be spread at a depth not exceeding 0.75 metres is development and is not exempted development.

There are no exemptions under the current Planning legislation that allows for the movement of such volumes of invert soil waste onto low ground to be spread at a depth not exceeding 0.75m, for commercial purposes, without obtaining planning permission.

4. Conclusion

WHEREAS a question has arisen as to whether or not the importation of less than 25000 tonnes of invert soil waste onto an area of 2.22 hectare of low ground to be spread at a depth not exceeding 0.75 metres is or not development, and is or is not exempted development at Esker More, Daingean, Co. Offaly is or not development and is or is not exempted development.

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

- a) Sections 2, 3 & 4 of the Planning & Development Act 2000, as amended.
- b) Article 6 of the Planning & Development Regulations, 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

The proposed development is development and is not exempted development.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) of the Planning and Development Act, as amended, hereby decides;

That the importation of soil waste is development and is not exempted development.

Michael Duffy

Michael Duffy

Assistant Planner

17th November 2020

Carroll Melia

Carroll Melia

A/ Senior Executive Planner

20th November 2020



APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATION



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: DEC/20/15

(A) BACKGROUND SITE INFORMATION :			
Nature of Project:	Whether the importation of less than 25000 tonnes of invert soil waste onto an area of 2.22 hectares of low ground to be spread at a depth not exceeding 0.75m		
Site location:	Esker More, Daingean , Co. Offaly		
Site Area:	2.22ha	Floor Area	n/a
Identification of nearby European Site(s):	European site(s): The Long Derries, Edenderry SAC 925		
Distance to European Site(s):	10.5km.		
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:	Given the scale of the development applied for, it is not considered that it will have any interactive / cumulative impacts with any other plan or project in the vicinity.		
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(s):			
The Long Derries is of botanical importance due to the presence of good quality dry, calcareous grassland, an interesting gravel pit flora and the presence of three rare plant species, two of which are legally protected. The presence of an interesting transition habitat from Esker to peatland, and a varied bird population, including the rare Nightjar and Partridge, adds to the site's importance.			
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 www.npws.ie (**ATTACH INFO.**)

An important aspect of this site is the presence of the rare, Red Data Book species, Blue Fleabane (*Erigeron acer*), and the legally protected (Flora Protection Order, 1987), Basil Thyme (*Acinos arvensis*) and Green-winged Orchid (*Orchis morio*). A large population of the latter species occurs in the grassland communities, including those in the transition to peatland zone. Blue Fleabane is found in grassland and gravel pits on the site, the latter habitat also supporting Basil Thyme.

The summer birdlife of this area includes Sand Martin, Whinchat, Whitethroat and Cuckoo. Nightjar, a rare species listed in Annex I of the EU Birds Directive, breeds on the site. Partridge, an endangered species in Ireland and one listed in the Red Data Book, is known from the site. Badgers have setts along some of the mature hedgerows.

(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:

*(The purpose of this is to identify if the effect(s) identified could be significant – if **uncertain** assume the effect(s) are significant).*

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)

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(s)?	There will be no reduction in the habitat area.
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European Site(s)?	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?	Not likely to have an adverse impact due to its location, scale and characteristics.
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
(E) SCREENING CONCLUSION:	
Screening can result in:	
1.	<i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.
2.	<i>No potential for significant effects / AA is not required.</i>
3.	<i>Significant effects are certain, likely or uncertain.</i> (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: <i>Given the location and the nature and size of the development applied for and the characteristics of European sites in the vicinity and the appropriate assessment guidelines it is considered that the development will be unlikely to have significant effects on any European sites.</i>	
Signed:	Michael Duffy Date: 17th November 2020