

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/19

NAME OF APPLICANT: PAUL WYNNE
C/O GALLEN UTD ASSOCIATION FOOTBALL CLUB,

ADDRESS:



ADDRESS FOR CORRESPONDENCE:



NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the construction of a gravel finish walking track around the perimeter of the property is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: BROSNA PRESS PARK, LOWER MAIN STREET, FERBANE,
CO. OFFALY R42 YV83

WHEREAS a question referred to Offaly County Council on 09th July 2021 as to whether the construction of a gravel finish walking track around the perimeter of the existing training grounds at Brosna Press Park, Lower Main Street, Ferbane, Co. Offaly R42 YV83 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-

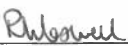
- (a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and;
- (c) Schedule 2, Part 1, Class 33 (c) (exempted Development – Development for amenity or recreational purposes, of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that –

The construction of a gravel finish walking track around the perimeter of the existing training grounds at Brosna Press Park, Lower Main Street, Ferbane, Co. Offaly R42 YV83 does constitute development and is exempted development.

NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2)(a) of the Planning and Development Act 2000, as amended hereby decides that the construction of a gravel finish walking track around the perimeter of the existing training grounds is development and is exempted development at Brosna Press Park, Lower Main Street, Ferbane, Co. Offaly. R42 YV83

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

5/8/2021

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:	Dec 21-19
Question:	<i>Whether the construction of a gravel finish walking track around the perimeter of the property is or is not development and is or is not exempted development.</i>
Applicant:	<i>Gallen Utd Association C c/o Paul Wynne</i>
Correspondence Address:	
Location:	<i>Brosna Press Park, Lower Main Street, Ferbane, Co. Offaly.</i>

1. Introduction

The question has arisen as to whether the proposed development (as listed above) is development, and if so, is it exempted development under Schedule 2, Part 1 Class 14(f) of the Planning and Development Regulations 2001 (as amended).

2. Background

The subject site is situated within Ferbane Town on the N52. The site is zoned Open Space in the Offaly County Development Plan 2014-2020. It consists of an existing clubhouse, changing rooms 2 no. pitches and car parking.

3. Site History

- 21/78: Gallen United sought permission for the erection of 18m lighting poles with lights at top to provide illumination for games on the existing soccer pitch, associated ducting and wiring and all ancillary works – **Granted**.
- 05/405: Gallen United Soccer Club sought planning permission for the erection of 60 x 40m artificial grass playing surface surrounded by a 3.6m high fence with intermediate supports and incorporating ball stop and pedestrian gate. the development will also include 4 no. 15m high lighting columns incorporating 2 no. 2Kw lights per column located at the fence corners – **Granted**.

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) states as follows:

'alteration' includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

'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) defines development as:

'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 - Exempted Development

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

- (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 and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of other structures or neighbouring structures.*

Section 4 (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.*

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

Article 6(1) 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

Development to which article 6 relates shall not be exempted development for the purposes of the Act save in a number of circumstances detailed in the Planning and Development Regulations and which have been considered as part of the assessment of this application.

Schedule 2, Part 1 - Class 33

'Development for amenity or recreational purposes: Development consisting of the laying out and use of land-

- (c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.'*

There are no conditions or limitations to this exemption.

5. Proposal by Applicants

The Applicant wishes to ascertain whether the following proposed development at the existing Gallen Utd. facilities in Ferbane Town is deemed to be development and if so, is it exempted development:

- Walking track (500m long) with 804 finish around the perimeter of the existing training facility.
- Track will be 1.2m in width (confirmed in subsequent phone conversation with Applicant).

The Applicant also confirms that there will be no charge to the use of the walking track.

6. Evaluation

Question: Is the following works considered as Development?

The construction of a 1.2m wide walking track around the perimeter of existing training grounds club constitutes 'development' as defined by Section 3 of the Act.

Question: Is the following works proposal considered as Exempted Development?

The legislation provides for exempted development for amenity and recreational purposes under Article 6 and Schedule 2, Part 1, Class 33 (c) of the Regulations (quoted above).

I consider the proposed development complies with the provisions of Class 33 (c) of Part 1, Schedule 2 as the proposed development is a walking track around the site for an athletic use. Furthermore, the Applicant has confirmed that there will be no charge made to visiting members of the public to access the site. Therefore, it is considered to constitute exempted development in accordance with Article 6 of the Regulations.

I have also reviewed Article 9 (Restrictions on exemption) of the Planning and Development Regulations 2001 (as amended) and I am satisfied that none of these restrictions apply in this instance.

7. Recommendation

It is recommended that the construction of a gravel finish walking track around the perimeter of the existing training grounds at Brosna Press Park which is the home ground of Gallen Utd. **does constitute development** defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and **is exempted development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

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 construction of a gravel finish walking track around the perimeter of the existing training grounds is or is not development and is or is not exempted development at Brosna Press Park, Lower Main Street, Ferbane, Co. Offaly

AND WHEREAS *Gallen Utd Association c/o Paul Wynne* has requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council, in considering this application for a declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard particularly to -

- (a) Sections 2 and 3 of the Planning and Development Act 2000 (as amended);
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001 (as amended); and;
- (c) Schedule 2, Part 1, Class 33 (c) (exempted Development – Development for amenity or recreational purposes, of the Planning and Development Regulations 2001 (as amended).

AND WHEREAS Offaly County Council has concluded that the construction of a gravel finish walking track around the perimeter of the existing training grounds at Brosna Press Park, Lower Main Street, Ferbane, Co. Offaly does constitute development and is 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 construction of a gravel finish walking track around the perimeter of the existing training grounds is **development** and is **exempted development** at Brosna Press Park, Lower Main Street, Ferbane, 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.



Una McCafferkey
Assistant Planner

3rd August 2021

Date



Carroll Melia
(A/Senior Executive Planner)

5th August 2021

Date

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS

Screening is used to determine if an AA is necessary by examining:

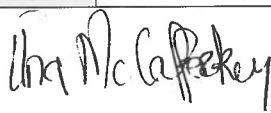
- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.



Planning Authority: OCC

Planning Application Ref. No: DEC 20/19

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Construction of a gravel finish walking track around the perimeter of the property		
Site location:	Brosna Press Park, Lower Main Street, Ferbane, Co Offaly		
Site size:	1.77 ha	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Ferbane Bog SAC: 1.04km Moyclare Bog SAC – 3.19km		
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?	Yes: ☐	No: ☒	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Ferbane Bog SAC – Features of interest include: • Active raised bogs [7110] • Degraded raised bogs still capable of natural regeneration [7120] • Depressions on peat substrates of the Rhynchosporion [7150] Moyclare Bog SAC – Features of interest include: • Active raised bogs [7110] • Degraded raised bogs still capable of natural regeneration [7120] • Depressions on peat substrates of the Rhynchosporion [7150]			
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: Ferbane Bog SAC Site Code: 000575 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000575.pdf Site Name: Moyclare Bog SAC Site Code: 000581 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000581.pdf			
(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:			
<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:	 Una McCafferkey		
Position:	Assistant Planner	Date:	3 rd August 2021