

**OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE**

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/27

NAME OF APPLICANT: KEVIN BREEN

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 increase in wall height from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under PL2/20/415 due to unforeseen site conditions is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ballincarrig, Kilcormac, Co. Offaly

WHEREAS a question referred to Offaly County Council on 24/09/2021 as to whether the increase in wall height from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under PL2/20/415 due to unforeseen site conditions at Ballincarrig, Kilcormac, 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 and 4(1) h of the Planning & Development Act 2000 as amended.

AND WHEREAS Offaly County Council has concluded that the increase in wall height (of the silage slab and apron) from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under planning permission ref. PL2/20/415 **is development** and **is exempted development**.

MR

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 increase in wall height (of the silage slab and apron) from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under planning permission ref. PL2/20/415 at Ballincarrig, Kilcormac, Co. Offaly **is development** and **is 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.



Administrative Officer

20/10/2021

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:	Dec. 21/27
Question:	<i>Whether the increase in wall height from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under PL2/20/415 due to unforeseen site conditions is or is not development and is or is not exempted development.</i>
Applicant:	Kevin Breen
Correspondence Address:	[REDACTED]
Location:	As above.

1. Introduction

The question has arisen as to whether the increase in a wall height from the design a silage slab and apron which was granted planning permission under planning ref. 20/415 is development and if so, exempted development.

2. Background / Site History

Planning ref. 20/415: Kevin Breen was granted planning permission on the 14th December 2020 for the construction of a new silage slab, loading apron, effluent storage tanks and associated site works. The development has been constructed.

3. 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

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 - 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 the structure 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

Article 6 of the Planning and Development Regulations 2001 (as amended) 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 of the Planning and Development Regulations 2001 (as amended), identifies restrictions on exemption.

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.*

Grant of Planning Permission

Grant of planning permission (ref. 20/415) issued on the 14th December 2020, Condition No. 1 states:

The development shall be carried out in accordance with the plans and particulars submitted to the Planning Authority on the 8th September 2020, except where altered or amended by conditions in this permission.

Reason: To define the scope of permission, in the interest of orderly development.

4. Proposal by Applicants

The Applicant has advised that due to unforeseen site conditions during the construction of the permitted development, the wall height of the silage and apron was increased from 1.8m to 2.03m internally and 2.4m externally.

5. Evaluation

Question: *Whether the increase in wall height is development and if so, is it exempted development?*

In considering the works against the definitions of 'development' and 'works' as provided in the Act, it is the view of the Planning Authority that the works are deemed as development.

Question: Is this proposal considered as Exempted Development?

In considering the change to the design of the silage slab and apron, the Planning Authority conclude that the increase in wall height from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under PL2/20/415 would not result in a material alteration to the design. It is the opinion of the Planning Authority that the works are exempted development.

6. Conclusion

It is recommended that the development as described in the application 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 or not the increase in wall height (of the silage slab and apron) from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under planning ref. PL2/20/415 is or is not development and, where it is development, whether or not it is or is not exempted development at Ballincarrig, Kilcormac, Co. Offaly.

AND WHEREAS Kevin Breen 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 and 4(1) h of the Planning & Development Act 2000 as amended.

AND WHEREAS Offaly County Council has concluded that –

The increase in wall height (of the silage slab and apron) from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under planning permission ref. PL2/20/415 is 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 increase in wall height (of the silage slab and apron) from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under planning permission ref. PL2/20/415 at Ballincarrig, Kilcormac, Co. Offaly is development and is exempted development.



Úna McCafferkey
Assistant Planner

14th October 2021

Date



Carroll Melia
(A/Senior Executive Planner)

20th October 2021

Date

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS

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

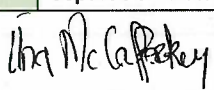
- If the plan / project is directly connected with / necessary to the management of the European site.
- If the effects will be significant on a European site in view of its conservation objectives, either alone / in combination with other plans / projects.



Planning Authority: OCC

Planning Application Ref. No: DEC 21-27

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the increase in wall height from 1.8m to 2.03m internally and 2.4m externally over and above what was granted under PL2/20/415 due to unforeseen site conditions is or is not development and is or is not exempted development.		
Site location:	Ballincarrig, Kilcormac, Co. Offaly		
Site size:	1.37ha	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Clonaslee Eskers and Derry Bog SAC – 1.27km Slieve Bloom Mountains SPA – 2.86km Slieve Bloom Mountains SAC – 6.6km		
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):			
Clonaslee Eskers and Derry Bog SAC -- Features of interest include: - Alkaline fens [7230] - Vertigo geyeri (Geyer's Whorl Snail) [1013] Slieve Bloom Mountains SPA – Features of interest include: - Hen Harrier (Circus cyaneus) [A082] Slieve Bloom Mountains SAC– Features of interest include: - Northern Atlantic wet heaths with Erica tetralix [4010] - Blanket bogs (* if active bog) [7130] - Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]			
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: SLIEVE BLOOM MOUNTAINS SPA, SITE CODE: 004160 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004160.pdf SITE NAME: SLIEVE BLOOM MOUNTAINS SAC, SITE CODE: 000412 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000412.pdf SITE NAME: CLONASLEE ESKERS AND DERRY BOG SAC, SITE CODE: 000859 https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000859.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:			
(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?	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:	14 th October 2021