

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

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/32

NAME OF APPLICANT: PÁDRAIG AND MARIA KEANE

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 the silage slab from 21.35m to 24.4m (as granted under PL2/20/132) is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ridgemount/ Ballywilliam, Kilcormac, Birr, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 15/11/2021 as to whether the increase in the silage slab from 21.35m to 24.4m (as granted under PL2/20/132) at Ridgemount/Ballywilliam, Kilcormac, Birr, 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.
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the increase in the silage slab from 21.35m to 24.4m (as granted under PL2/20/132) **is 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 increase in the silage slab from 21.35m to 24.4m (as granted under PL2/20/132) at Ridgemount/Ballywilliam, Kilcormac, Birr, 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

Date

10/12/2021

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. 21/32
Question:	<i>Whether the increase in the silage slab from 21.35m to 24.4m (as granted under PL2/20/132) is or is not development and is or is not exempted development.</i>
Applicant:	<i>Pádraig and Maria Keane</i>
Correspondence Address:	
Location:	<i>As above.</i>

1. Introduction

The question has arisen as to whether the increase in a silage slab from 21.35m to 24.4m (as granted under PL2/20/132) is development and if so, exempted development.

2. Background / Site History

Planning ref. 20/132: Pádraig and Maria Keane were granted planning permission on the 9th July 2020 for the construction of a cubicle housing for dairy cattle in existing farmyard including ancillary works (namely unroofed handling and feed areas) and permission for the new construction of a walled silage pit and unroofed slatted tank area and ancillary works (i.e. ancillary concrete yards all for agricultural purposes only).

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. 20/132) issued on the 19th August 2020, Condition No. 1 states:

The development shall be retained and carried out (as appropriate) in accordance with the plans and particulars submitted to the Planning Authority on the 9th April 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

In an email to the Area Planner on the 12th November 2021, the Applicant advised the following:

The primary reason for this advice is on health and safety grounds. The machinery associated with silage harvesting has increased significantly in recent years. In particular, the heavy duty articulated loaders require substantial turning radius. The existing planning permission provides 21.35m as the overall width of the silage slab. This is approximately 70 feet or 35 feet per silo. The current advice is to allow 40 feet width per silo, to allow for adequate space for a large articulated loader to turn. Consequently, we require an additional 5 feet per silo. I apologise for not finding this out before submitting planning permission. In summary, I am asking for permission to increase the overall width of the proposed silage slab from 21.35m by 3.03m to 24.38m.

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 the silage slab from 21.35m by 3.03m to 24.38m would not result in a material alteration to the design. The external perimeter of the silage slab will not increase but rather the silage slab will be extended inwards towards the existing farmyard and associated buildings. 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 the silage slab from 21.35m (as granted under PL2/20/132) to 24.4m is or is not development and, where it is development, whether or not it is or is not exempted development at Ridgemount/Ballywilliam, Kilcormac, Co. Offaly.

AND WHEREAS Pádraig and Maria Keane 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.
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

The increase in the silage slab from 21.35m to 24.4m over and above what was granted under planning permission ref. PL2/20/132 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;

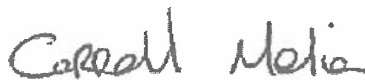
The increase in the silage slab from 21.35m to 24.4m over and above what was granted under planning permission ref. PL2/20/132 at Ridgemount/Ballywilliam, Kilcormac, Co. Offaly is development and is exempted development.



Úna McCafferkey
Assistant Planner

2nd December 2021

Date



Carroll Melia
(A/Senior Executive Planner)

10th December 2021

Date

APPENDIX A

APPROPRIATE ASSESSMENT SCREENING REPORT FOR PLANNING APPLICATIONS



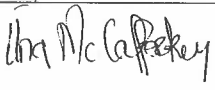
Screening is used to determine if an AA is necessary by examining:

- 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 21-32

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the increase in the silage slab from 21.35m to 24.4m (as granted under PL2/20/132) is or is not development and is or is not exempted development.		
Site location:	Ridgemount / Ballywilliam, Kilcormac, Co. Offaly		
Site size:	1.185ha	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Clonaslee Eskers and Derry Bog SAC – 6.27km Slieve Bloom Mountains SPA – 7.81 km Slieve Bloom Mountains SAC – 10.31km		
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:	Úna McCafferkey 		
Position:	Assistant Planner	Date:	2 nd December 2021