

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

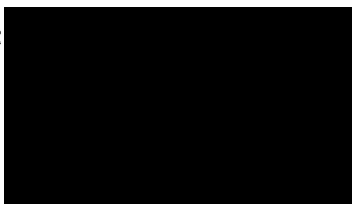
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/33

NAME OF APPLICANT:

RAHAN COMMUNITY ALERT GROUP

ADDRESS FOR CORRESPONDENCE:



NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the installation of 2 no. community CCTV cameras and an associated structures/supports at the subject site is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: MOLLY PROPERTY, BALLYNASRAH, TULLAMORE, CO. OFFALY R35 NY73

WHEREAS a question referred to Offaly County Council on 6/12/21 as to whether the installation of 2 no. community CCTV cameras and an associated structures/supports at the subject site at Molly Property, Ballynasrah, Tullamore, Co. Offaly R35 NY73 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-

- Sections 2, 3, 4 and 254 of the Planning and Development Act 2000 (as amended);
- Article 6 and Article 9 of the Planning and Development Regulations 2001 (as amended)

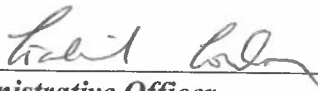
AND WHEREAS Offaly County Council has concluded that the installation of community CCTV cameras (2 no.) and associated structures/supports is development and is exempted development

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 installation of community CCTV cameras (2 no.) and associated structures/supports at Ballynasrah, Tullamore, Co. Offaly, R35 NY73 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.

Advice Note to Applicant:

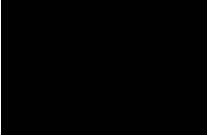
Prior to the commencement of works, the Applicant is required to liaise with the Tullamore Municipal District Area Engineer.


Administrative Officer

10/1/2022
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 21/33
Question: as stated	<i>Is the information on the 2 no. CTV camera and associated structures/supports at this location, is or is not development and is or is not exempted development?</i>
Applicant:	<i>Rahan Community Alert Group c/o Tom Minnock</i>
Correspondence Address:	
Location:	<i>Molly property, Ballynasrah, Tullamore, Co. Offaly R35 NY73</i>

1. Introduction

Having regard to the Applicant's response to Question 5 on the submitted Section 5 application form, the Applicant is seeking confirmation of the following:

- Whether the installation of 2 no. community CCTV cameras and an associated structures/supports at the subject site is or is not development and is or is not exempted development.

2. Background

Role of the Department of Justice

The Department of Justice established a grant aid scheme to support community based CCTV in 2017, in pursuance of the Programme for a Partnership Government commitment to provide investment in CCTV systems. As outlined on the Departments website, the scheme is intended to support local communities wishing to install and maintain CCTV security systems in their area, with the aim of increasing public safety and deterring illegal or anti-social behaviour.

Community CCTV may be authorised in areas to which the public have access. This type of CCTV is governed by section 38(3)(c) of the Garda Síochána Act 2005 and the Garda Síochána (CCTV) Order 2006 (SI No 289 of 2006). This legal framework requires that any proposed community CCTV scheme must:

- (a) Be approved by the local Joint Policing Committee,
- (b) Have the prior support of the relevant local authority, which must act as data controller, and
- (c) have the authorisation of the Garda Commissioner.

A grant aid scheme is administered by the Department of Justice for establishment, upgrade or extension of Community CCTV systems which meet the legal requirements as outlined above. The Rahan Community Alert Group intends to seek funding from this scheme. The location of the proposed cameras has been considered in associated with An Garda Síochána. As part of their funding application to the Department of Justice, the group are

required to seek confirmation from the Planning Authority as to whether planning permission is required for their proposals.

Role of An Garda Síochána

With regard to Community CCTV, the organisations website states:

An Garda Síochána are in favour of CCTV systems as an aid to policing. There is a demand nationally from community and business groups for CCTV systems in their respective towns and cities. Whilst the use of CCTV by a police service can have great merit, its use can have a direct impact on the human rights of individuals. Therefore, its introduction needs to be carefully planned and its use, competently managed.

In accordance with Section 38 of the Garda Síochána Act 2005 Community CCTV schemes must be authorised by the Garda Commissioner. A CCTV advisory committee meets every quarter to examine applications for CCTV projects, place them in appropriate categories and make recommendations relative to prioritisation in accordance with the objective criteria set out in the policy. The committee is appointed by the Garda Commissioner.

Community Schemes as provided for under Section 38 (3) (c) of the Garda Síochána Act 2005 and Garda Schemes are provided for under Section 38 (3) (a) of the Garda Síochána Act 2005.

The European Convention on Human Rights Act 2003 which came into force on 31st December, 2003 provides that "every organ of the State shall perform its function in a manner compatible with the State's obligations under the Convention provisions". An Garda Síochána is "an organ of the State" for the purposes of the 2003 Act.

Role of Local Authority

In an email dated 1st February 2021 to the Planner, the Community and Culture Section of Offaly County Council confirm the role of the Local Authority in the Community CCTV scheme as follows:

- *Offaly County Council is fully supportive of the proposed CCTV System at Coolderry, Kilcolman and Aghancon and has indicated its approval of same to Offaly Joint Policing Committee.*
- *Offaly County Council has agreed to be Data Controller for the scheme in accordance with law and with the Garda Síochána (CCTV) order 2006 (SI No. 289 of 2006).*
- *Offaly County Council works in partnership with An Garda Síochána (AGS) and Coolderry, Kilcolman and Aghancon Community CCTV and other groups to develop and implement schemes which comply with the Code of Practice for the operation of Community CCTV Schemes*
- *Provides funding received from AGS to Community Groups when they have complied fully with the Code of Practice*
- *Assists in the establishment of the Federation of Community based CCTV Group Schemes*
- *Acts as Data Controller –see below*
- *Oversees the management and processing of personal data in respect of each CCTV system*
- *Ensures full compliance with Code of Conduct via audit procedure*

- *Manages Data Subject Access Requests in partnership with Data Processors*
- *Carries out audits on CCTV systems annually and for new proposed systems*
- *Provide funding to train Data Processors*

In relation to Data Access Requests:

- *The Community Group will put forward two nominees to be Data Processor. These individuals will be vetted and will be the only members allowed to access the DVR to view or download footage from the CCTV.*
- *Access requests from An Garda Síochána will be dealt with directly by the Data Processor and proper records in relation to footage viewed/copied will be kept for inspection by the Group. (Document templates to be developed to register DSAR's and forms for AGS to complete in terms of access requests).*
- *Copies of all data access requests and consequential records will be forwarded to the local authority for Data Controller records.*
- *Data Access requests from members of the public will be processed by the local authority and a DSAR instruction given to the Federation in this regard within the appropriate timeframe. Similarly, to above AGS requests, DSAR's from public will be logged by the Federation and the group for audit trail and forwarded to the local authority.*
- *All costs associated with data access requests will be borne by the Community Group.*
- *Local authority will keep records in relation to all DSAR's made and forwarded, for comparison at audit.*

The correspondence from the Community and Culture Section also advises that:

- *All Community CCTV groups must be a member of the Offaly CCTV Federation and must abide by its rules or the CCTV system will no longer be authorised or supported by the Council or the Gardaí. The Garda CCTV Advisory Committee, established by the Garda Commissioner, oversees the application process for Community CCTV Schemes. When the Offaly CCTV Federation is established, each Community CCTV scheme will be accountable to the Federation for the operation of the scheme in compliance with the Code of Practice and must have signed a Service Level Agreement to confirm that the system is properly maintained, that training has been provided by the installer and the necessary signage erected and maintained. This will be reviewed on a regular basis.*

3. Site History

Subject site: No planning history.

Rahan Community Alert Group: please refer to Section 5 Declaration Ref. 21-24.

4. Proposal by Applicants

Following on from meetings with the Local Authority, information was submitted to the Planning Authority on the 6th December 2021. This outline that the group wish to erect 2 no. community CCTV cameras and associated structures/supports at the subject site.

Proposed Camera

- Hikvision 2 MP VF Bullet Network Camera.

- Drawing No. 2 confirms dimensions as 290mm (L) x 105mm (W) x 105mm (D)
- Attached to structure using bracket (aluminium with paint finish) with dimensions as follows – 385mm x 315mm.

Support Structures

- Drawing No. 2A provides details of the 'camera clamps'.

DVR Storage

- DS-7600NI-12/P Series NVP proposed.
- This will be located within a lockable storage box – refer to Drawing No. 1.

Summary of Camera Location

Camera Location	Description
Location No. 3 (Applicant's ref.) Vincent Molly property	 Owner Consent: Letter dated 4th December 2021 signed by Vincent Molly. Address: Ballynasrah, Tullamore, Co. Offaly Eircode: R35 NY73. Site Location Map/Site Layout Plan: Provided, No. of Cameras: 2 at a height of 4m (see submitted Drawing No. 3) above natural ground level. Location: Attached to a 4m high proposed galvanised steel tube which would be attached to existing boundary wall (height not specified by estimated to be c.1m) using a steel plate. DVR Storage: at the base of the steel tube.

5. 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) 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.

It states:

"In this Act, except where the context otherwise requires – "development" has the meaning assigned to it by Section 3.1 of the Planning and Development Act.

Section 3 (1) Planning and Development Act 2000, as amended, defines development as follows:

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

- (f) *development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;*
- (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 - Planning and Development Regulations 2001 (as amended)

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".

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.

- 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.*

Class 31 (works carried out by a statutory undertaker authorised to provide a telecommunications service) and Class 58 (development by Irish Water, for the purpose of the provision of water services) allow for the provision of CCTV in regard to appropriate works.

6. Referrals

N/A. The Planner notes previous requirements from Area Engineer which have been provided by the Applicant.

7. Evaluation

Assessment of Camera Location

The location of the camera is suitable and given the existing mature hedge along the inside of the boundary wall, the steel tube will not be overly visible from the adjoining local road.

Other Items to Consider

The Planning Authority note that the associated information signage will be located within the road verge of public roads and permission to erect these signs shall be sought by the Applicant under the provisions of a Section 254 licence.

If a road opening licence is required to excavate at any of the chosen camera locations, the Applicant will make an application for a road opening licence to the Tullamore Municipal MD prior to the commencement of works. This would be stipulated in the final decision from the Planning Authority.

8. Recommendation and Conclusion

Based on the information provided by the Applicant on the 6th December 2021, it is recommended that the proposed 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 the installation of 2 no. community CCTV cameras and associated structures/supports is or is not development and if so, is or is not exempted development at Ballynasrah, Tullamore, Co. Offaly, R35 NY73.

AND WHEREAS Rahan Community Alert Group c/o Mr Tom Minnock requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council as the Planning Authority, in considering this declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- Sections 2, 3, 4 and 254 of the Planning and Development Act 2000 (as amended);
- Article 6 and Article 9 of the Planning and Development Regulations 2001 (as amended)

AND WHEREAS Offaly County Council has concluded that –

- The installation of community CCTV cameras (2 no.) and associated structures/supports is development and is exempted development

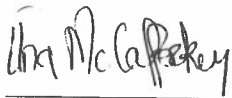
NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that:

- The installation of community CCTV cameras (2 no.) and associated structures/supports at Ballynasrah, Tullamore, Co. Offaly, R35 NY73 is development and is exempted development.

Please note that any person issued with a declaration under section 5 (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.

Advice Note to Applicant:

Prior to the commencement of works, the Applicant is required to liaise with the Tullamore Municipal District Area Engineer.



Una McCafferkey
Assistant Planner

7th January 2022

Date



Carroll Melia
(A/Senior Executive Planner)

10th January 2022

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 21/33

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the installation of 2 no. community CCTV cameras and an associated structures/supports at the subject site is or is not development and is or is not exempted development.		
Site location:	Ballynasrah, Tullamore, Co. Offaly, R35 NY73		
Site size:	Not specified	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Charleville Wood SAC – 2.73km Clara Bog SAC – 3.15km Split Hills and Long Hill Esker SAC – 12.44km Clonaslee Eskers and Derry Bog SAC – 13.46km		
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):			
Clara Bog SAC - Features of interest include: - Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] - Active raised bogs [7110] - Degraded raised bogs still capable of natural regeneration [7120] - Depressions on peat substrates of the Rhynchosporion [7150] - Bog woodland [91D0] Charleville Wood SAC - Features of interest include: - Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] - Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016] Clonaslee Eskers and Derry Bog SAC - Features of interest include: - Alkaline fens [7230] - Vertigo geyeri (Geyer's Whorl Snail) [1013] Split Hills and Long Hill Esker SAC - Features of interest include: - Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]			
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: Clara Bog SAC, Site Code: 000572			

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000572.pdf>

Site Name: Charleville Wood SAC, Site Code: 000571

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000571.pdf>

Site Name: Clonaslee Eskers and Derry Bog SAC, Site Code: 000859

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000859.pdf>

Site Name: Split Hills and Long Hill Esker SAC, Site Code: 001831

<https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY001831.pdf>

(C) NPWS ADVICE:

Advice received from NPWS over phone:	None Received
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Summary of advice received from NPWS in written form (ATTACH SAME):	None Received
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(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.
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... 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.
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... 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.
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... 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.
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... 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
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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.
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(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
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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
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		the subject site and European Site.	
Name:	Úna McCafferkey <i>Úna McCafferkey</i>		
Position:	Assistant Planner	Date:	7 th January 2022