

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 23/8

NAME OF APPLICANT: GERALD HYNES

ADDRESS: C/O CONON QUINN  
FARRANS CONSTRUCTION,  
COOLVILLE, RHODE, CO. OFFALY. R35 TF62

**NATURE OF APPLICATION:** REQUEST FOR DECLARATION UNDER SECTION 5 OF THE PLANNING & DEVELOPMENT ACT 2000, AS AMENDED AS TO WHETHER OR NOT THE RAISING OF 2 HECTARES OF AGRICULTURAL FIELD LEVELS BY 0.5M LOCATED ADJACENT TO THE TURBINE 13 (YELLOW RIVER WIND FARM) USING OWN VIRGIN MATERIAL IS OR IS NOT DEVELOPMENT AND IS OR IS NOT EXEMPTED DEVELOPMENT.

**LOCATION OF DEVELOPMENT:** COOLVILLE, RHODE, CO. OFFALY

**WHEREAS** A question referred to Offaly County Council on 13/04/2023 as to whether or not the raising of 2 hectares of agricultural field levels by 0.5m in height located adjacent to the turbine 13 (Yellow River Wind Farm) using own virgin material is or is not development and is or is not exempted development at Coolville, Rhode, Co. Offaly under the Planning and Development Act 2000, (as amended).

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

- (a) Section 2 of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4(1) of the Planning & Development Act 2000, as amended and
- (d) Article 8C of the Planning and Development Regulations 2001, as amended.

**AND WHEREAS** Offaly County Council has concluded that –

The works are considered **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 2000, as amended, hereby decides that the raising of 2 hectares of agricultural field levels by 0.5m located adjacent to the turbine 13 (Yellow River Wind Farm) using own virgin material is **development** and is **exempted development** at Coolville, Rhode, Co. Offaly.

**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

10/5/2023

**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.

# OFFALY COUNTY COUNCIL

## Planning Report

### Section 5 Declaration

<b>File Reference:</b>	Dec 23/08
<b>Question:</b>	Whether or not the raising of 2 hectares of agricultural field levels by 0.5m located adjacent to the turbine 13 (Yellow river wind farm) using own virgin material is or is not development and is or is not exempted development.
<b>Applicants:</b>	Gerald Hynes, Coolville House, Rhode Co. Offaly
<b>Location:</b>	Coolville, Rhode Co. Offaly
<b>Date received:</b>	13 <sup>th</sup> April 2023
<b>Date due:</b>	10 <sup>th</sup> May 2023

#### 1. Proposal

The question has arisen as to whether or not the raising of 2 hectares of agricultural field levels by 0.5m located adjacent to the turbine 13 (Yellow river wind farm) using own virgin material is or is not development and is or is not exempted development.

#### 2. Background

The site is located in the open countryside of County Offaly in the townland of Coolville, Rhode, Co. Offaly. The subject site is adjacent to SSE Yellow River Wind Farm construction site (turbine 13) and surrounded by field drains to the east of the site. There is an existing track to the south of the site which provides access to Turbine 13 which is currently under construction. A hedgerow with shrubs and trees surrounds the perimeter to the east, south and west

#### 3. Relevant Planning History:

**19.PA0032:** 15 year Permission **Granted** to Green Wind Energy (Wexford) for a 29 turbine wind farm

#### 4. Legislative Context

[Planning and Development Act 2000 \(as amended\)](#)

- Section 2

*"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.*

*“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock...*

- Section 3(1)

*“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)

*The following shall be exempted development for the purposes of the Act-*

*(a) Development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;*

#### Planning and Development Regulations 2001 (as amended)

- Article 6

*(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.*

*(2) Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.*

- Article 8C Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development

- Article 9 – Restrictions on exemptions

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,

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

(iii) endanger public safety by reason of traffic hazard or obstruction of road users,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate

assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area,

(b) in an area to which a special amenity area order relates, if such development would be development:—

(i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof ), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or

(ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or

(iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or

(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,

(c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,

(d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

### **5. Proposal by Applicant**

The applicant wishes to ascertain whether or not the raising of 2 hectares of agricultural field levels by 0.5m in height located adjacent to the turbine 13 (Yellow river wind farm) using own virgin material is or is not development and is or is not exempted development.

### **6. APPROPRIATE ASSESSMENT SCREENING:**

A screening report was submitted as part of the application to determine the potential for impacts arising from the development on the conservation objectives and ecological integrity of surrounding Natura 2000 sites. Based on the information presented in the screening report submitted with the application it found that 'there is no risk of direct or indirect impacts on any Natura 2000 Sites' and therefore it concluded that Appropriate Assessment is not required

### **7. Appropriate Assessment**

A screening exercise for an appropriate assessment has been carried out and it is concluded that the development is unlikely to have significant effects on any European sites. Please see attached report under Appendix A.

### **8. Evaluation**

#### **Question: Is the following works considered as Development?**

It is considered that the proposal constitutes 'development' as defined by Section 3(1) of the Act.

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

Having regard to Article 8C of the Planning & Development Regulations 2001 (as amended), it is the view of the Planning Authority, that the works proposed consists of re-contouring of land, including infilling of virgin soil (but not waste material) within a farm holding is exempted development.

### **9. Conclusion**

It is recommended that the applicants be advised that the proposed development 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 raising of 2 hectares of agricultural field levels by 0.5m in height located adjacent to the turbine 13 (Yellow river wind farm) using own virgin material is or is not development and is or is not exempted development.

At Coolville Rhode, Co. Offaly

**AND WHEREAS** Gerald Hynes & Conan Quinn 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) Section 2 of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4(1) of the Planning & Development Act 2000, as amended and
- (d) Article 8C of the Planning and Development Regulations 2001, as amended.

**AND WHEREAS** Offaly County Council has concluded that –

- The works are considered development and is exempted development.

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) hereby decides that;

- The raising of 2 hectares of agricultural field levels by 0.5m located adjacent to the turbine 13 (Yellow river wind farm) using own virgin material is **development and is exempted development.**

Michael Duffy

Carroll Melia

*Michael Duffy*

*Carroll Melia*

*Executive Planner*

*Acting Senior Executive Planner*

*5<sup>th</sup> May 2023*

*8<sup>th</sup> May 2023*

**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:** Offaly County Council

**Planning Application Ref. No.:** Dec/23/08

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	The raising of 2 hectares of agricultural field levels by 0.5m in height located adjacent to the turbine 13 (Yellow river wind farm) using own virgin material		
Site location:	Coolville, Rhode Co. Offaly		
Site size:	2ha	Floor Area of Proposed Development:	N/A
Identification of nearby <i>European</i> Site(s):	Raheenmore Bog SAC		
Distance to <i>European</i> Site(s):	9.36km		
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 <i>European</i> site:	As the proposed development will not lead to a physical encroachment on the cut away bogland, woodland or will affect the water table below the European designated site from excessive water abstraction and the subject site not border the European designated site or linked through a surface water body, it is not considered likely to be interactive/cumulative impacts other existing, proposed or approved plans in the area.		
Is the application	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	



accompanied by an EIA?		
<b>(B) IDENTIFICATION OF THE RELEVANT <i>European</i> SITE(S):</b>		
The reasons for the designation of the <i>European</i> site(s):		
<p>Please see the following extract from Raheenmore Bog SAC National Parks and Wildlife Conservation Plan for 2005-2010.</p> <p>Raheenmore Bog is situated 12km north-east of Tullamore, Co. Offaly and comprises 182ha. It developed in a small basin in the catchment of the Brosna and Boyne rivers, and is the deepest remaining raised bog in Ireland. The majority of the site (89%) comprises a statutory Nature Reserve. The underlying rock is Carboniferous limestone, with overlying gravely glacial till and lacustrine deposits above this. Deep peripheral drains surround the bog. Surface drains are also present, mostly on the eastern side of the bog. By far the most important habitat present is the active raised bog, an Annex I priority habitat listed in the E.U. Habitats Directive. The habitat has a well-developed hummock and hollow system. The hummocks are often colonised by the bog mosses <i>Sphagnum imbricatum</i> and <i>S. fuscum</i>. Pool areas support Great Sundew, the moss <i>Sphagnum cuspidatum</i> and the liverwort <i>Cladopodiella fluitans</i>. In places, moss lawns of <i>S. magellanicum</i> have infilled the pools. Overall, the cover of bog mosses on the bog is very good. Away from the dome summit, Bog Asphodel flats dominate the peat surface. Other species include Ling Heather, Deergrass, lichens, Bog Cottons and White Beak-sedge.</p> <p>Other habitats present on the site include cutover bog, strips of Birch woodland at the margins, lowland wet grassland (fertilised to varying degrees) and freshwater marsh. Small relict areas of poor fen or lagg vegetation have been identified at Raheenmore. It may therefore be possible to restore some lagg areas, which would add to the quality of the site. Noteworthy plant species present include Tussock Sedge and the moss <i>Sphagnum pulchrum</i>. Merlin frequents the site and the Irish Red Grouse recently bred on the bog.</p>		
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 <i>European</i> site synopses and, if applicable, a Conservation Management Plan; all available on <a href="http://www.npws.ie">www.npws.ie</a> ) <b>(ATTACH INFO.)</b>		
<p>The nature conservation objectives for this site are:</p> <p><b>Objective 1:</b> To maintain and, where possible, enhance the quality of the active raised bog (64% of the site).</p>		

**Objective 2:** To restore areas of lagg vegetation around the raised bog i.e. in the westnorth- west and south of the site.

**Objective 3:** To maintain and, where possible, enhance the ecological quality of other habitats, in particular dry, broadleaved semi-natural woodland (3% of site), cutover bog (10%), lowland wet grassland (23%), and freshwater marsh (<1%).

**Objective 4:** To maintain, and possibly increase, the populations of Annex I and other important species of flora and fauna present e.g. Merlin, Grouse and *Sphagnum pulchrum*.

**Objective 5:** To maintain effective liaison between NPW, landowners and other interested parties, in order to effectively manage the site for conservation.

**(C) NPWS ADVICE:**

Advice received from NPWS over phone:	None received.
Summary of advice received from NPWS in written form <b>(ATTACH SAME):</b>	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).*

<b>Would there be...</b> ... 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 <i>European site</i> ?	Not likely due to the location and type of development. 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 <i>European site</i> ?	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 <i>European site</i> 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

<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> site?</p>	<p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>
<p>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 <i>European</i> sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.</p>	<p>No other plans known of in the vicinity of the site. The site is sufficient distance from the European site</p>
<p><b>(E) SCREENING CONCLUSION:</b></p>	
<p><b>Screening can result in:</b></p>	
<p>1</p>	<p><i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i></p>
<p>2</p>	<p><i>No potential for significant effects / AA is not required.</i></p>
<p>3</p>	<p><i>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.</i></p>
<p><i>Conclusion: 2 No potential for significant effects / AA is not required.</i></p>	
<p>As the proposed development will not lead to a physical encroachment on the cut away bogland, woodland of the Raheenmore Bog SAC or will affect the water table below the European designated site from excessive water abstraction and the subject site not border European designated site or linked through a surface water body, it is not considered likely to be have significant effects on the European Designated site.</p>	
<p>Name:</p>	
<p><b>Position:</b></p>	<p>Michael Duffy</p>
<p><b>Date:</b></p>	<p>5<sup>th</sup> May 2023</p>