

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC17/9

**NAME AND ADDRESS OF APPLICANT:** David Byrnes, Kilkenny Aerodrome, Airfield Road, Holdensrath, Co. Kilkenny.

**NAME AND ADDRESS OF OWNER:** Irish Parachute Club Limited, 2 Nurney Lawn, The Donaghres, Rahenny, Dublin 13

**NAME AND ADDRESS OF OCCUPIER:** Irish Parachute Club Limited, Clonad, Clonbullogue, Co. Offaly R45 RT99

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Acts 2000, as amended as to whether (1) Clonbullogue Airfield is or is not development and is or is not exempted development. (2) whether the intensification of the use of Clonbullogue Airfield for sponsored parachute jumping is or is not development and is or is not exempted development under the Planning and Development Act 2000, as amended

**LOCATION OF DEVELOPMENT:** Clonbullogue Airfield, Clonbullogue, Co. Offaly.

**WHEREAS** a question referred to Offaly County Council on 1<sup>st</sup> August 2017 has arisen as to whether (1) Clonbullogue Airfield is or is not development and is or is not exempted development (2) whether the intensification of the use of Clonbullogue Airfield for sponsored parachute jumping 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-

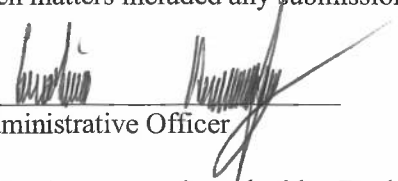
- (a) Section 2(1), 3(1) and 4 of the Planning and Development Act, 2000, as amended.
- (b) Articles 6(1)1 & 9(1) of the Planning and Development Regulations, 2001 as amended.

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

The development subject of this Section 5 Declaration Application **IS Development** and **IS NOT Exempted Development**.

**NOW THEREFORE** Offaly County Council, in exercise of powers conferred on it by Section 5 (2) of the Planning and Development Act 2000, as amended, hereby decides that (1) Clonbullogue Airfield **Is Development** and is **Not Exempted Development** (2) The intensification of the use of Clonbullogue Airfield for sponsored parachute jumping **Is Development** and **Is NOT 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

25/8/2017  
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 Bord within four weeks of the issuing of the Declaration.

# Planning Report

## Section 5 Declaration

**File Reference:** Dec17/9

**Referral Party:** David Byrnes (third party)

**Address of correspondence:** David Byrnes, Kilkenny Aerodrome, Airfield Road, Holdensrath, Co. Kilkenny

**Location of development:** at Clonbullogue Airfield, Clonbullogue, Co. Offaly

### The Question:

Two questions have been formulated by the referrer:

1. Whether Clonbullogue Airfield is or is not development and is or is not exempted development.
2. Whether the intensification of the use of Clonbullogue Airfield, for sponsored parachute jumping is or is not development and is or is not exempted development.

The two questions will be assessed independently of each other:

### Development Plan Policy:

The subject site is on unzoned / whitelands in the countryside of county Offaly.

### SITE HISTORY:

Application Number	Received Date	Application Type	Application Status	Applicant Name	Description	Decision	Decision Date
90169	23/04/1990	PERMISSION	Application Finalised	IRISH PARACHUTE CLUB	CHANGE OF USE OF LANDS TO AIRSTRIP, ALSO ERECTION OF HANGAR, CLUBHOUSE AND TOILET BLOCK	Granted (Conditional)	20/06/1990
91343	04/09/1991	PERMISSION	Application Finalised	IRISH PARACHUTE CLUB	AMENDMENT OF APPROVED PLANS (REF PL2/90/169) INCORPORATING PROVISION OF AIRCRAFT HANGER AREA, TRAINING ROOMS, TOILETS AND SEPTIC TANK SYSTEM	Granted (Conditional)	25/10/1991
9519	18/01/1995	PERMISSION	Application Finalised	IRISH PARACHUTE CLUB LTD.	INSTALLATION OF BULK FUEL STORAGE FOR AIRCRAFT	Granted (Conditional)	25/07/1995
897	16/01/1989	PERMISSION	Application Finalised	IRISH PARACHUTE CLUB LTD	CONSTRUCTION OF PARACHUTE PACKING SHED	Granted (Conditional)	24/02/1989
99737	01/07/1999	PERMISSION	Application Finalised	IRISH PARACHUTE CLUB	CLUBHOUSE	Granted (Conditional)	22/12/1999
99738	01/07/1999	PERMISSION	Application Finalised	IRISH PARACHUTE CLUB	EXTENSION TO EXISTING HANGER	Granted (Conditional)	18/11/1999

0323	04/04/2000	PERMISSION	Application Finalised	IRISH PARACHUTE CLUB	RETENTION & COMPLETION OF CLUB HOUSE FACILITIES	Granted (Conditional)	13/07/2000
021005	01/10/2002	RETENTION	Further Information	IRISH PARACHUTE CLUB	NEW AIRCRAFT HANGER AND ANCILLARY WORKS	n/a	n/a
061849	21/12/2006	RETENTION	Application Finalised	IRISH PARACHUTE CLUB	320SQ.M AIRCRAFT HANGER AND ASSOCIATED SITE WORKS	Granted (Conditional)	20/02/2007
07260	23/02/2007	PERMISSION	Application Finalised	IRISH PARACHUTE CLUB	CONSTRUCTION OF 800M X 18M (14,400SQ.M.) TARMACADAM AIRCRAFT RUNWAY ON EXISTING GRASS AIRCRAFT RUNWAY, INCLUDING ALL DRAINAGE, SURFACE MARKINGS AND ASSOCIATED SITE WORKS	Granted (Conditional)	18/04/2007

I have also reviewed An Bord Pleanála's website to establish whether the issue of airstrips has ever been previously considered by the Board. There are a number of decisions regarding Section 5 Declarations concerning helicopter pads and one relating to a model aircraft airfield. I believe these are of relevance and they are summarised below:

**14.RL2483:** Refers to a declaration where the question posed was "whether use of land as a model aircraft airfield at Gowlan, Killashee, County Longford is or is not development and whether it is exempted development". The Board determined in this case that the use of the land as a model aircraft constitutes a material change of use and is development.

**13.RL2288:** Refers to a declaration where the question posed was "whether the use of lands for the taking off and landing of a helicopter and the use of a shed for storage of the helicopter at "The Paddocks", Knockanes, Adare, County Limerick is or is not development or is or is not exempted development". The Board determined that the use of the lands for the landing and taking off of a helicopter constitutes a material change of use of the land by reference to section 3 of the Planning and Development Act, 2000, and was therefore "development" and considered that it was not exempted development.

**29S.RL2262:** Refers to a declaration where the question posed was "whether the use of the land for the landing and taking off of a helicopter on the seaward side of Rock Road/Merrion Road, opposite Trimelston Avenue, is or is not development". The Board determined that the use of the land for the landing and taking off of a helicopter constitutes a material change of use and therefore comes within the meaning of development and is not exempted development. **04.RL2452:** Refers to a declaration where the question posed was "whether use of land for the landing and take off of a helicopter at Rockfield House, Kilcrea, Ovens, County Cork is or is not development or is or is not exempted development". The Board determined that it was development and is not exempted development.

**10.RL3240:** Refers to a declaration where the question posed was "whether the intensification of use of Kilkenny Airfield for sponsored parachute jumping is or is not

development and is or is not exempted development within the meaning of the Planning & Development Acts 2000-2013.” The Board determined that the said intensification of use of Kilkenny Airfield for sponsored parachute jumping constitutes a material change of use which is development and is not exempted development at Kilkenny Airfield, Holdensrath, County Kilkenny.

#### **LEGISLATIVE FRAMEWORK**

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:**

“structure” means any building, erection, structure (including a movable structure), excavation, or other thing constructed, erected, made or placed on, in or under any land, or any part of a structure so defined and, where the context so admits, includes the land on, in or under which the structure is situated;

##### **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 defines Exempted Development.**

S.4.(1) The following shall be exempted developments for the purposes of this Act-

- (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which only affect the interior of the structure or which do not materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure or of neighbouring structures.

##### **Article 6(1) Planning and Development Regulations, 2001, as amended states as follows:**

Article (6)(1) of the Regulations states 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 2.

Article 9 (1) of the Planning and Development Regulations 2001, as amended, provides for restrictions on exemption and states:

*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.*

**Assessment on whether Clonbullogue Airfield is or is not development and is or is not exempted development:**

On the 20<sup>th</sup> of June, 1990 “Irish Parachute Club” was granted permission for change of use of lands to airstrip, also erection of hangar, clubhouse and toilet block at Clonad, Clonbullogue. The applicant has stated in the application form that Clonbullogue Airfield was granted permission. However, the query subject to this declaration is whether Clonbullogue Airfield is or is not development and is or is not exempted development?

The Question of Material Change of Use of Lands to an Airstrip:

The existing airstrip was originally an agricultural field, however, in my opinion the following are relevant to assess whether or not a material change of use of an agricultural field has occurred. It has been determined in previous cases by the Board (Ref. Nos. RL2090, RL2262, RL2288 and RL2452) that the landing and taking-off of a helicopter constituted a material change of use for the time that a helicopter movement occurs. I see no reason why the Offaly County Council would consider the landing and take-off of aircrafts any differently. The use of agricultural land as an airstrip gives rise to new activities and materially different planning concerns. These include the impacts of noise, nuisance and disturbance on adjoining properties. The Planning and Development Regulations 2001 as amended provide for specific exemptions for certain temporary or transient uses. There is no provision for the temporary or transient use of agricultural lands as an airfield or an aerodrome.

**Conclusion:**

Having considered Section 4 of the Planning and Development Act 2000 (as amended) and the provisions of the Planning and Development Regulations, 2001 as amended. I conclude that use of land as an Airfield constitutes a material change of use of the land by reference to section 3 of the 2000 Act, as amended and therefore comes within the meaning of “development” in this section because:

1. A change in the use of the subject lands occurs for the time that the aircraft approaches, lands, and takes off;
2. The character of the use of the agricultural lands is altered in planning terms by the subject use;

Therefore, the construction of an Airfield is considered to be Development and is not Exempted Development as no exemption for such activity exists in the Planning Act or Regulations. However, it is noted that it has planning permission.

**Assessment on whether the intensification of use of Clonbullogue Airfield for sponsored parachute jumping is or is not development and is or is not exempted development:**

On the 20<sup>th</sup> of June, 1990 "Irish Parachute Club" was granted permission (PL2/90/169) for change of use of lands to airstrip, also erection of hangar, clubhouse and toilet block at Clonad, Clonbullogue.

The first point of note is "Irish Parachute Club" was the applicant when the original planning permission was granted in June, 1990.

However, the query subject is whether the intensification of use of Clonbullogue Airfield for sponsored parachute jumping is or is not development and is or is not exempted development.

In the current referral the applicant for permission for the construction and development of the airfield under PL2 90/169 was a Parachute club. No restrictions/limitations on the use of the airfield for parachuting were imposed by means of planning condition and given the nature of the applicant parachuting was an intended use.

However, the nature of a declaration under section 5 of the planning acts is not to describe the limits of what development has been granted, merely its purpose is to clarify what is and is not exempted development. The use of the lands as an airstrip for parachuting was granted planning permission under PL 90/169 this activity is authorised but it is not exempted development.

**Conclusion:**

Having considered Section 4 of the Planning and Development Act 2000 (as amended) and the provisions of the Planning and Development Regulations, 2001 as amended. I conclude that the use of Clonbullogue Airfield for sponsored parachute jumping constitutes a material change of use from agricultural use which is development and is not exempted development.

**Overall Conclusion:**

The query which arose is as follows:

1. Whether Clonbullogue Airfield is or is not development and is or is not exempted development?
2. Whether the intensification of the user of Clonbullogue Airfield, for sponsored parachute jumping is or is not development and is or is not exempted development?

I conclude in relation to both queries that the works and use is Development and is not Exempted Development as no exemption for such activities exists in the Planning Act or Regulations.

Michael Duffy

Michael Duffy  
Assistant planner  
15<sup>th</sup> August 2017

L. Mullen *mg*  
22/8/17

**WHEREAS** a question has arisen as to:

1. Whether Clonbullogue Airfield is or is not development and is or is not exempted development.
2. Whether the intensification of the use of Clonbullogue Airfield, for sponsored parachute jumping is or is not development and is or is not exempted development.

**AND WHEREAS** Offaly County Council, in considering this declaration request, had regard particularly to-

- (a) Sections 2(1), 3(1) & 4 of the Planning and Development Act 2000, as amended.
- (b) Articles 6(1) & 9(1) of the Planning and Development Regulations, 2001, as amended.

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

The proposed development is Development and is not Exempted Development.

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

1. That Clonbullogue Airfield is development and is not exempted development.
2. The intensification of use of Clonbullogue Airfield, for sponsored parachute jumping is development and is not exempted development.