

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

REFERENCE: DEC 18/11

NAME AND ADDRESS OF APPLICANT: John Byrne, Ballyhassan, Mountlucas
Tullamore, Co. Offaly

ADDRESS FOR CORRESPONDENCE: John Byrne, Ballyhassan, Mountlucas
Tullamore, Co. Offaly

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Acts 2000, as amended as to whether the creation of a combined field and forest road entrance on to a public road is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ballaghassan, Mountlucas, Co. Offaly

WHEREAS a question referred to Offaly County Council on 03/10/2018, has arisen as to whether the creation of a combined field and forest road entrance on to a public road at Ballaghassan, Mountlucas, Co. Offaly is considered exempted development in 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, 3 and 4 of the Planning and Development Act 2000 as amended and
- (b) Article 6 of the Planning and Development Regulations, 2001, as amended
- (c) Schedule 2, Part 1, Class 9 of the Planning and Development Regulations, 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the construction of a combined field and forest road entrance with gates (a) would constitute the carrying out of works which comes within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended) and is exempted development having regard to Article 6, Schedule 2, Part 1, Class 9 of the Planning and Development Regulations as amended.

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 the proposed development of a combined field and forest entrance at Ballaghassan, Mountlucas, 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

18/12/2018
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.

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SECOND REPORT

Section 5 Declaration

A question has arisen as to whether the opening of a combined field and forest road entrance onto road L-5014-1 at Ballaghassan, Mountlucas, Co. Offaly is or is not development and is or is not exempted development.

Background

The Applicant, Mr. John Byrne, seeks to open a combined field and forest road entrance onto local road L-5014-1 at Ballaghassan, Mountlucas.



Assessment

Section 2 of the Planning and Development Act, 2000 (as amended) states as follows:

2.— (1) In this Act, except where the context otherwise requires—

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

Section 3 of the Planning and Development Act, 2000 (as amended):

3.— (1) In this Act, “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 (2) of the Planning and Development Act, 2000 (as amended) provides for exempted development namely 'the Minister may by regulations provide for any class of development to be exempted development'. These regulations are prescribed in the Planning and Development Regulations 2001 – 2018.

Section 4 of the planning and development act (as amended) has the following exemption:

(i) development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;

(ia) development (other than where the development consists of provision of access to a public road) consisting of the construction, maintenance or improvement of a road (other than a public road) or works ancillary to such road development, where the road serves forests and woodlands;

I note that section 8 of the Planning and Development (Amendment) Act 2018 has not yet commenced which amends the above section.

In note the following article in the planning and development regulations

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.

The following exemption is found in schedule two, part one:

CLASS 9

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

The height of any such structure shall not exceed 2 metres.

There are a number of restrictions on stated exemptions of which the following is relevant: 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—

- (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

The subject road, L-5014-1, is 3.7 metres in width at the entrance at the entrance.

The applicant was requested to provide the following further information (in blue font):

1A) Please indicate the height of all proposed gates in metric scale. Please note that planning exemption found in schedule 2, Part 1, Class 9 of the Planning and Development Regulations, 2001, as amended required gates to not be more than two metres in height.

In response the applicant has submitted revised details indicating gates less than 2 metres in height

B) Please submitted a revised drawing of the proposed entrance which accurately measured distances in metric scale as the submitted drawings appear to show a three metre wide entrance.

In response the applicant has submitted revised details, a 1:200 scale drawing, showing a 34 metres opening onto the road.

I would therefore recommend that the following Chief Executive Order issue:

WHEREAS a question has arisen as to whether the creation of a combined field and forest road entrance on to a public road at Ballaghassan, Mountlucas, Co Offaly 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-

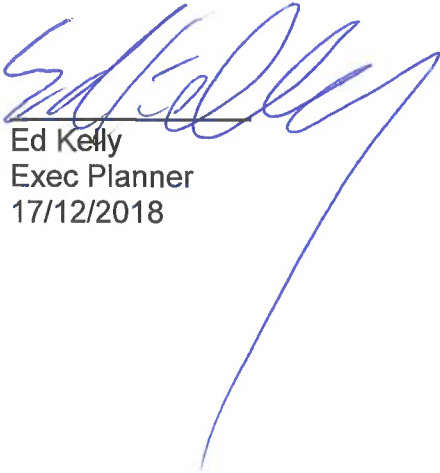
(A) Sections 2, 3, and 4 of the Planning & Development Act 2000 as amended and

(B) Article 6 of the Planning and Development Regulations, 2001, as amended

(C) Schedule 2, Part 1, Class 9 of the Planning and Development Regulations, 2001, as amended

AND WHEREAS Offaly County Council has concluded that the construction of a combined field and forest road entrance with gates (a) would constitute the carrying out of works which comes within the meaning of development in section 3(1) of the Planning and Development Act 2000, (as amended) and is exempted development having regard to article 6 schedule 2 Part 1, Class 9 of the Planning and Development Regulations as amended.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) hereby decides that the proposed development of a combined field and forest entrance at Ballaghassan, Mountlucas, Co Offaly is development and is exempted development.



Ed Kelly
Exec Planner
17/12/2018

Carroll Nohia

A/SEP

19/12/2018