

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

**REFERENCE:** DEC 19/14

**NAME OF APPLICANT:** Patrick Maher

**ADDRESS FOR CORRESPONDENCE:** C/o Fergal Kealey  
Forest and Tree Services Limited  
Ballincur  
Kinnitty  
Birr  
Co. Offaly

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether a new entrance onto existing road, to consist of setback loading bay to a length of 50m with half bell mouth at the entrance to a width of 15m, is or is not development and is or is not exempted development.

**LOCATION OF DEVELOPMENT:** Beagh, Roscomroe, Co. Offaly

**WHEREAS** a question referred to Offaly County Council on 17<sup>th</sup> September 2019 has arisen as to whether a new entrance onto existing road, to consist of setback loading bay to a length of 50m with half bell mouth at the entrance to a width of 15m at Beagh, Roscomroe, 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 of the Planning and Development Act 2000, as amended
- (b) Sections 3 of the Planning and Development Act 2000, as amended.
- (c) Section 4(1) (ia) of the Planning and Development Act 2000, as amended.
- (d) Schedule 4(4) of the Planning and Development Act 2000, as amended.
- (e) Article 8G of the Planning and Development Regulations 2001, as amended.

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

The proposed works **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 a new entrance onto existing road, to consist of setback loading bay to a length of 50m with half bell mouth at the entrance to a width of 15m at Beagh, Roscomroe, Co. Offaly **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*

14/10/19  
\_\_\_\_\_  
*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.

# OFFALY COUNTY COUNCIL

## Planning Report

### Section 5 Declaration

<b>File Reference:</b>	<i>Dec 19/14</i>
<b>Question:</b>	<i>Whether a new entrance onto existing road, to consist of setback loading bay to a length of 50m with half bell mouth at the entrance to a width of 15m, is or is not development and is or is not exempted development.</i>
<b>Applicant:</b>	<i>Patrick Maher</i>
<b>Correspondence Address:</b>	<i>Ferghal Kealey Forest and Tree Services Limited Ballincur Kinnitty Birr</i>
<b>Location:</b>	<i>Beagh, Roscomroe</i>
<b>Date received:</b>	<i>17<sup>th</sup> September 2019</i>
<b>Date due:</b>	<i>14<sup>th</sup> October 2019</i>

#### 1. Proposal

*A question has arisen as to whether a new entrance onto existing road, to consist of setback loading bay to a length of 50m with half bell mouth at the entrance to a width of 15m, is or is not development and is or is not exempted development.*

An OS map was not submitted. Detailed drawings were not submitted.

A cover letter submitted by the agent states:

*"as part of the approval process with the Forest Service...we need to confirm that the proposed road will not require planning permission. I would be grateful if you could confirm that this proposed road application is an exempted activity from planning as the proposed new road is connection onto an existing roadway under 4m in width."*

Other details submitted refer to proposed road measuring 65m.

While the question to be determined refers to a new entrance, the supporting documentation also relates to a new road. There is some ambiguity as to the exact nature of development or works.

#### 2. Site Location and Description

The site does not access a public road.

The site is approximately 2.7km east of Boheraphuca, in the Slieve Bloom Mountains. The site is elevated, and inclines to the south. There is an existing forestry planted on site. Most of land in vicinity consists of farmland – grazing. A watercourse runs alongside the western boundary, traverses under the road and continues to flow downhill.

The road accessing the site is narrow and unsurfaced.

The site is located in the Slieve Bloom Mountains Special Protection Area.  
The site is located within a Source Protection Zone for the Clareen GWS.  
The site is within an Area of High Amenity – Slieve Bloom Mountains.  
The site appears to be within 100m of national monument, OF01887 – ENCL. GIS extract:  
“Not visible at ground level. Potential enclosure identified from aerial photographs (GSI S 553/2). The above description is derived from the published 'Archaeological Inventory of County Offaly' (Dublin: Stationery Office, 1997). In certain instances, the entries have been revised and updated in the light of recent research. Date of upload: 23 May 2011.”

The site is approx. 1km from the Slieve Bloom SAC.

There is a quarry nearby (in the SPA), further south, circa 358m from proposed entrance. It appeared from hammering noise that quarry is being actively worked. Enforcement file UD03049 refers (relates to unauthorised extraction of stone and unauthorised use of land for commercial purposes). QY30 (in the name of David & James Kinsella) refers.

### **3. Relevant Planning History:**

None according to GIS

It was noted that there was a Site Notice for Forest Road Works on site. The dates and details are illegible.

### **4. Legislative Context**

The relevant legislative provisions as they relate to the question before the planning authority are as follows:

#### ***Planning and Development Act 2000 as amended;***

**Section 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 of use in the use of any structures or other land.

‘Works’ are defined under **Section 2** of the Act to include any Act or operation of construction, excavation, demolition, extension, alteration to repair a renewal.

**Section 4(1)** of the Planning and Development Act 2000 states that the following shall be exempted development for the purposes of this Act.

*(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;*

#### **Section 4(4) states:**

*Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

#### ***Planning and Development Regulations, 2001, as amended:***

#### **Article 8G**

*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, shall be exempted development.

## 5. Evaluation

### 5.1 Question:

#### Are the works 'development'?

The first question relates to whether or not the "works" to be carried out constitutes development in accordance with the provisions of Section 3 of the Planning and Development Act as amended. Development is defined as the carrying out of "works" on, in or under land. Works include any Act or operation of, which involves inter alia, construction or excavation.

The creation of a new access road (albeit it onto a private road) and /or a forestry road would in my opinion clearly constitute development.

### 5.2 Is the development of a category of exempted development?

It is considered that the development could be considered to fall within Section 4(1)(ia) of the Act i.e. **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;**

The development is also considered to fall within the provisions of art. 8G of the Regulations: **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, shall be exempted development.**

### 5.3 Does the development require environmental impact assessment or an appropriate assessment of the development?

An appropriate assessment screening report has been undertaken, attached to this report. As the likely significant effects are considered to be uncertain, then the conclusion must be made that there are likely significant effects. It is considered therefore that the development is one which requires appropriate assessment.

### 5.4 Limitations on Exemption

Section 4(4) states:

*Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.*

It is considered that as an appropriate assessment is required in respect of the proposed development that the development cannot be considered to be exempted development.

## 6. Recommendation:

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

*a new entrance onto existing road, to consist of setback loading bay to a length of 50m with half bell mouth at the entrance to a width of 15m, 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 of the Planning & Development Act 2000, as amended,
- (b) Section 3 of the Planning & Development Act 2000, as amended,
- (c) Section 4(1)(ia) of the Planning & Development Act 2000, as amended,
- (d) Section 4(4) of the Planning & Development Act 2000, as amended,
- (e) Article 8G of the Planning and Development Regulations 2001, as amended

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

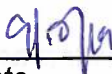
The proposed works is **development and is not exempted development.**

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

*A new entrance onto existing road, to consist of setback loading bay to a length of 50m with half bell mouth at the entrance to a width of 15m, is development and is not exempted development.*




Alaine Clarke  
Executive Planner

  
\_\_\_\_\_  
Date



Carroll Melia  
A/Senior Executive Planner

  
\_\_\_\_\_  
Date

**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

Section 5 Declaration Ref. No: DEC19/14

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	New entrance & roadway		
Site location:	Beagh, Roscomroe, Kinnitty Co. Offaly		
Site size:	unknown	Floor Area of Proposed Development:	unknown
Identification of nearby European Site(s):	Slieve Bloom Mountains SPA – 0km Slieve Bloom Mountains SAC – 1km		
Distance to European Site(s):	As above		
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:	Noise (from proposed works) and together with nearby quarry. Excavation works may impact on nesting or breeding area of the Hen Harrier.		
Is the application accompanied by an <del>ES</del> <sup>EAR</sup> ?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
<b>Slieve Bloom Mountains SPA – features of interest include:</b>	<ul style="list-style-type: none"> <li>Hen Harrier (Circus cyaneus) [A082]</li> </ul>		
<b>Slieve Bloom Mountains SAC – features of interest include:</b>	<ul style="list-style-type: none"> <li>Northern Atlantic wet heaths with Erica tetralix [4010]</li> <li>Blanket bogs (* if active bog) [7130]</li> <li>Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</li> </ul>		
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 <a href="http://www.npws.ie">www.npws.ie</a> ) <b>(ATTACH INFO.)</b>			
PLEASE SEE SITE SYNOPSIS and CONSERVATION OBJECTIVES SHEET ATTACHED.			
(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 <b>uncertain</b> 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).	Uncertain
... a reduction in habitat area on a European site?	Uncertain
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?	Uncertain
... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?	Uncertain
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?	Uncertain
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.	Uncertain
(E) SCREENING CONCLUSION:	
<b>Screening can result in:</b>	
1.	<i>AA is not required</i> because the project is directly connected with / necessary to the nature conservation management of the site.
2.	<i>No potential for significant effects / AA is not required.</i>
3.	<i>Significant effects are certain, likely or uncertain.</i> (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 3	
Justify why it falls into relevant category above:	<b>Impacts are uncertain, therefore effects are considered to be significant.</b>
Name:	Alaine Clarke <i>Alaine Clarke</i>
Position:	Exec. Planner
Date:	08 <sup>th</sup> October 2019

Photos taken 07/10/19



View south





View east