

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

REFERENCE: DEC 19/21

NAME OF APPLICANT: Bridgestock Care Ltd
On behalf of The Department of Justice

ADDRESS FOR CORRESPONDENCE: C/o Patrick Little, Axis Architecture
O'Moore Hall, O'Moore Street
Tullamore
Co. Offaly

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether carrying out of internal modifications to the Protected Structure on condition of the Fire Safety Certificate to facilitate the use of the premises by the Department of Justice is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Marion Hostel,
High Street,
Tullamore,
Co. Offaly

WHEREAS a question referred to Offaly County Council on 23rd December 2019 has arisen as to whether carrying out of internal modifications to the Protected Structure on condition of the Fire Safety Certificate to facilitate the use of the premises by the Department of Justice at Marion Hostel, High Street, Tullamore, 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(1) of the Planning & Development Act 2000, as amended,
- (b) Section 3(1) of the Planning & Development Act 2000, as amended,
- (c) Section 4(1)(h) of the Planning & Development Act 2000, as amended,
- (d) Section 4(2)(a) of the Planning & Development Act 2000, as amended,
- (e) Section 57(1) of the Planning & Development Act 2000, as amended,
- (f) Article 6 of the Planning and Development Regulations 2001, as amended,
- (g) Class 14 of Schedule 2 of Part 1 of the Planning and Development Regulations, 2001, as amended,
- (h) Class 41 of Schedule 2 of Part 1 of the Planning and Development Regulations, 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

- (a) The carrying out of internal modifications to Marion Hostel, a Protected Structure, on condition of the Fire Safety Certificate comprise works which materially alter the structure and
- (b) The change of use of Marion Hostel, a Protected Structure, to an emergency accommodation for protected person entails works which materially alter the structure.

The proposed works **Is Development and IS NOT Exempted Development**

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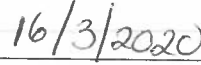
DEC 19/21

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 carrying out of internal modifications to the Protected Structure on condition of the Fire Safety Certificate to facilitate the use of the premises by the Department of Justice at Marion Hostel, High Street, Tullamore, 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



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 (Report no. 2)

Section 5 Declaration

File Reference:	Dec 19/21
Question:	Whether the following exempted development: (a) Carrying out internal modifications to the protected structure on condition of the fire safety certificate to facilitate the use of the premises by the Department of Justice.
Applicant:	<i>Bridgepark Case Ltd</i> Axis Architecture On behalf of the Department of Justice
Correspondence Address:	O'Moore Hall O'Moore Street, Tullamore
Location:	Marion Hostel, High Street, Tullamore

1. Introduction

The question has arisen as to whether works (i.e. the carrying out of internal modifications) is exempted development under Schedule 2, Part 1 Class 41(e) of the Planning and Development Regulations 2001 (as amended).

In considering this question it was also necessary to consider the following:
Whether the change of use of Marion Hostel to emergency accommodation for protected persons is development and is or is not exempted development.

2. Background

The subject site is on lands zoned as 'town centre' under the *Tullamore Town and Environs Development Plan 2016 – 2020*.

The site comprises two structures listed as 'protected structures'. Ref 23-384 and Ref 23-385.

Extract from the *Tullamore Town and Environs Development Plan 2016-2020*:

Ref. 23-384 Marian Hostel

Originally a 7 bay 2 storey house with added 3rd storey. Now combined with house - Ref No 119



Ref, 23-385 High Street

2 bay 3 storey house



3. Relevant Site History

TU9266: Permission granted for the reconstruction of Blessed Sacrament Convent (1966)

TU20468: Permission granted to extend the Blessed Sacrament Convent (1969)

TU198086: Permission granted to for change of use of premises from bedroom accommodation to activation unit and reopen access' (1986)

TU198186: Permission granted to erect ancillary toilets (1986)

TU141180: Permission granted for the erection of a temporary building/classroom at Marian Hospital (1981)

TU44772: Permission granted for an extension and renovation to Marian Hostel

S57 Declaration DEC19/8:

A declaration under s.57(2) issued on 12th December 2019, which states the following:

Works which would materially affect the character of the protected structure and, as a result, require planning permission

The list noted in brackets, in the two sections below relates to correspondence received 27/11/19.

- A. (1) The installation of a significant number of new partitions on each floor resulting in the reconfiguration of the existing floor plan and part of the original house plan.*
- B. (3) Swapping the use of the kitchen with the dining room - details not provided.*
- C. (4) Upgrade and update smoke detection and emergency lighting. This appears to involve every room in the property.*
- D. The provision of necessitated bathrooms and shower facilities to accommodate the 47 bedrooms.*

Works which would not materially affect the character of the protected structure and as a result would not require planning permission

- A. (2) Replace non-original fire doors and glazed overlights on the doors to the north and south corridors with fire compliant doors and glazing.*
- B. (4) Upgrade and update existing fire alarm.*
- C. (5) Replacement of modern wall finishes to existing bathrooms with new finishes.*
- D. (6) Redecorate walls and floors throughout with new paint and carpet.*
- E. Items of essential repair and routine maintenance in accordance with DOAHG Conservation Guidelines including localised repairs.*

All works shall be designed to cause minimum intervention to existing fabric and shall retain the maximum amount of surviving historic fabric and features

in situ. All works shall be carried out in accordance with Best Conservation Practice and the Department of Arts, Heritage, Gaeltacht 'Guidelines for Architectural Heritage Protection.

Special Remarks

The application as presented, in conjunction with a site visit (18/11/19), proposes a variety of alterations to the existing Protected Structure. There are some areas of ambiguity, such as the location of shower rooms, kitchen and dining areas, separation of private and staff accommodation. The cumulative effect of the proposed alterations, to practically every room over the three floors, would materially alter the Protected Structure and hence require Planning Permission.

4. 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

Section 2 (1) Planning and Development Act 2000 (as amended) states as follows:

"alteration" includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;

"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.

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and— (a) where the context so admits, includes the land on, in or under which the structure is situate, and (b) in relation to a protected structure or proposed protected structure, includes— (i) the interior of the structure, (ii) the land lying within the curtilage of the structure, (iii) any other structures lying within that curtilage and their interiors, and (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

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

"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 - Exempted Development, Planning and Development Act 2000 (as amended)

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

(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 other structures 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.*

Section 57 refers to works affecting character and states:

(1) F368[Notwithstanding section 4(1)(a), (h), (i), F369[(ia)] (j), (k), or (l) and any regulations made under section 4(2),] the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—
(a) the structure, or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

(2) An owner or occupier of a protected structure may make a written request to the planning authority, within whose functional area that structure is situated, to issue a declaration as to the type of works which it considers would or would not materially affect the character of the structure or of any element, referred to in ABP-301688-18 Inspector's Report Page 10 of 17 subsection (1)(b), of that structure.

Regulatory Provisions

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”.

Article 10 (1) states: Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not— (a) involve the carrying out of any works other than works which are exempted development, (b) contravene a condition attached

to a permission under the Act, (c) be inconsistent with any use specified or included in such a permission, or (d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Planning and Development (Amendment) Regulations 2013

Class 41

Works consisting of or incidental to-

(e) the carrying out of development in compliance with a condition or conditions attached to a fire safety certificate granted in accordance with Part III of the Building Regulations, 1997 other than the construction or erection of an external fire escape or watertank.

Planning and Development (Amendment) (No. 4) Regulations 2015

“ ‘protected person’, for the purposes of Schedule 2, means— (a) a person who has made an application to the Minister for Justice and Equality under the Refugee Act of 1996 or the Subsidiary Protection Regulations 2013 (S.I. No. 426 of 2013), (b) a person who falls to be considered or has been considered under section 3 of the Immigration Act of 1999, or (c) a programme refugee within the meaning of section 24 of the Refugee Act of 1996;”.

CLASS 14 Development consisting of a change of use—

(i) from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons,

Explanatory note:

Class 14(i): Change of use of various forms of premises providing overnight accommodation to use as an emergency reception and orientation centre (EROC) for refugees and asylum seekers. A network of EROCs will be established by the Department of Justice and Equality for the initial reception of persons arriving in Ireland under the IRPP e Government's Irish Refugee Protection Programme (IRPP)

5. Proposal by Applicants

The Applicant wishes to ascertain whether the works in *Carrying out internal modifications to the protected structure on condition of the fire safety certificate* are exempted development.

The applicant has not specified the works which are required to be undertaken, although they are referenced in submitted drawings.

The site was inspected on 24th January 2020. A request for further information issued on 28th January requesting the following information:

1. *Submit a detailed schedule of all works, listed in order. Each element of work shall include a detailed methodology statement including details of finishes with accompanying detailed drawings as necessary.*
2. *In order to avail of the exemption in relation to the principal change of use, (Class 14, Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended) please submit documentary evidence of when the building was last used as a hostel or residential institution.*
3. *In order to avail of the exemption in relation to Class 41(e) Schedule 2, Part 1 of the Planning and Development Regulations 2001, as amended, submit a copy of the Fire Certificate, which indicates the condition(s) that are required to be complied with.*

A response was submitted on 3rd March 2020.

A further site inspection was carried out by Rachel McKenna, Senior Executive Architect, on 10th March 2020, following the response and a detailed report was prepared and it attached to the file (annotated spreadsheet, marked drawings and accompanying labelled photographs).

6. Evaluation

In response to question no. 1 of the further information request, a schedule of works and associated methodology statement was submitted. A number of works which were undertaken have not been captured in the schedule of works, and the methodology statement is lacking.

The Senior Executive Architect concludes (by email dated 12th March 2020) that *"there appear to be areas of new build not shown on the drawings and items omitted or altered. As noted in the initial Section 57 Declaration and following this site visit, the quantity of new build and amendments throughout each floor have materially altered the protected structure".*

In respect of question no. 2 of the further information request, a letter was submitted signed by the Blessed Sacrament Sisters stating that the Hostel was resided in until 2016. The response to further information indicates that Marian Hostel was used as a residence up to May 2016 by the Blessed Sacrament Sisters. For the purposes of assessment, Marion Hostel can be considered to have been most recently been in use as a residential institution or convent. I am satisfied that the use of a hostel or laterally as a residential institution/convent was not abandoned, and ordinarily a change of use to emergency accommodation for protected persons would be exempted development.

This exemption (a change of use) is limited by section 57 of the Planning and Development Act, 2000, as amended which states that the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of— (a) the structure, or (b) any element of the structure which contributes to its special

architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

In respect of question no. 3, a copy of the Fire Certificate is submitted.

The applicant seeks to avail of class 14, Schedule 2, Part 1, of the Planning and Development Regulations, as amended: *development consisting of a change of use from use as a hotel, motel, hostel, guesthouse, holiday accommodation, convent, monastery, Defence Forces barracks or other premises or residential institution providing overnight accommodation, or part thereof, or from the change of use specified in paragraph (h) of the said premises or institution, or part thereof, to use as an emergency reception and orientation centre for protected persons,*

With respect to the works, the applicant is seeking an exemption under class 41 – the works are being carried out to comply with a condition or conditions of a fire safety certificate. Although the Fire Safety Certificate has now been submitted, it is considered that the works to achieve compliance with the Fire Safety Certificate materially affect the character of the protected structure, and therefore the works cannot avail of this exemption.

The applicant makes reference to section 181(1)(a) which references instances where the provisions of the Act shall not apply to certain classes of developments. It is considered that the provision of the Act is not relevant to development proposed and is not considered further here.

Appropriate Assessment Screening

Appropriate Assessment screening report attached, no likely significant affects arising.

7. Recommendation

WHEREAS questions have arisen as to whether:

The carrying out of internal modifications to the protected structure on condition of the fire safety certificate to facilitate the use of the premises by the Department of Justice.

The change of use of Marion Hostel to an emergency accommodation for protected persons 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-

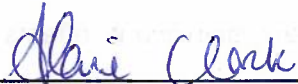
- (a) Sections 2(1) of the Planning & Development Act 2000, as amended,
- (b) Section 3(1) of the Planning & Development Act 2000, as amended,
- (c) Section 4(1)(h) of the Planning & Development Act 2000, as amended,
- (d) Section 4(2)(a) of the Planning & Development Act 2000, as amended,
- (e) Section 57(1) of the Planning & Development Act 2000, as amended,
- (f) Article 6 of the Planning and Development Regulations 2001, as amended,
- (g) Class 14 of Schedule 2 of Part 1 of the Planning and Development Regulations, 2001, as amended,
- (h) Class 41 of Schedule 2 of Part 1 of the Planning and Development Regulations, 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

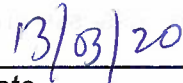
- (a) The carrying out of internal modifications to Marion Hostel, a protected structure, on condition of the fire safety certificate comprise works which materially alter the structure and
- (b) The change of use of Marion Hostel, a protected structure, to an emergency accommodation for protected person^S entails works which materially alter the structure.

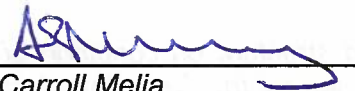
The works and change of use is **development** and is **not exempted development**.

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) hereby decides that the change of use of Marion Hostel to emergency accommodation for protected persons is development and is not exempted development. In addition, the works to facilitate the change of use, on foot of the Fire Safety Certificate, is development and is not exempted development.




Alaine Clarke
A/Senior 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

Planning Ref. No:DEC/19/21

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:		Works to a protected structure	
Site location:		High Street, Tullamore	
Site size:		unknown	Floor Area of Proposed Development: n/a
Identification of nearby European Site(s):		Charville Wood SAC	
Distance to European Site(s):		2km	
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: <input type="checkbox"/>		No: X
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
Charleville Wood is considered to be one of the very few ancient woodlands remaining in Ireland, with some parts undisturbed for at least 200 years. 'Old Oak woodland is a habitat listed on Annex I of the EU Habitats Directive, while the rare snail species, Vertigomoulin siana, is listed on Annex II of this directive. The wetland areas, with their associated bird populations, the rare insect and Myxomycete species contribute further to the conservation significance of the site			
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.)			
To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected: Code Description 91A0 Old sessile oak woods with Ilex and Blechnum in the British Isles * denotes a priority habitat Code Common Name Scientific Name 1016 Desmoulin's Whorl Snail Vertigo moulinsiana			
(C) NPWS ADVICE:			
Advice received from NPWS over phone:		None Received	
Summary of advice received from NPWS in written		None Received	

form (ATTACH SAME):	
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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)

<p>Would there be...</p> <p>... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	<p>Not likely due to the location and type of development development, the site is sufficient distance from the European site.</p>
<p>... a reduction in habitat area on a European site?</p>	<p>There will be no reduction in the habitat area. The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	<p>Not likely due to the location and type of development The site is sufficient distance from the European site.</p>
<p>... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?</p>	<p>Not likely due to the location and type of development The site is sufficient distance from the European site.</p>
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	<p>None 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</p>	<p>No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.</p>

projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	
(E) SCREENING CONCLUSION:	
Screening can result in:	
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 2
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 the subject site and European Site.
Name:	Alaine Clarke
Position:	Executive Planner
Date:	13/03/20

SITE SYNOPSIS

SITE NAME: CHARLEVILLE WOOD

SITE CODE: 000571

Charleville Wood is a large Oak woodland surrounded by estate parkland and agricultural grassland located about 3 km south-west of Tullamore. The site, which is underlain by deep glacial deposits, includes a small lake with a wooded island, and a stream runs along the western perimeter. The woodland is considered to be one of very few ancient woodlands remaining in Ireland, with some parts undisturbed for at least 200 years.

Some 10% of the woodland has been underplanted with conifers and other exotic trees, but the rest of the area is dominated by Pedunculate Oak (*Quercus robur*).

Apart from Oak, there is much Ash (*Fraxinus excelsior*) and scattered Wych Elm (*Ulmus glabra*), while Birch (*Betula* spp.) is a feature of the boggy margins. The shrub layer is composed largely of Hazel (*Corylus avellana*), Hawthorn (*Crataegus monogyna*) and Blackthorn (*Prunus spinosa*). The ground layer is varied, including damp flushed slopes with Ramsons (*Allium ursinum*) and drier, more open areas with a moss sward composed largely of *Rhytidiadelphus triquetris*. The fungal flora of the woodland is notable for the presence of several rare Myxomycete species, namely *Hemitrichia calyculata*, *Perichaena depressa*, *Amaurochaete atra*, *Collaria arcyronema*, *Stemonitis nigrescens* and *Diderma deplanata*. A number of unusual insects have also been recorded in Charleville Wood, notably *Mycetobia obscura* (Diptera), a species known from only one other site in Ireland. The site is also notable for the presence of a large population of the rare snail species, *Vertigo moulinsiana*.

Extensive swamps of Bulrush (*Typha latifolia*) and Bottle Sedge (*Carex rostrata*) have developed in the lake shallows. The lake is an important wildfowl habitat – it supports populations of Mute and Whooper Swan and a number of duck species, including Teal, Wigeon, Shoveler, Pochard and Tufted Duck. The wooded island at its centre is famed for its long history of non-disturbance. Hazel, Spindle (*Euonymus europaeus*) and Ivy (*Hedera helix*) reach remarkable sizes here.

Charleville Wood is one of the most important ancient woodland sites in Ireland. The woodland has a varied age structure and is relatively intact with both areas of closed canopy and open areas with regenerating saplings present. The understorey and ground layers are also well represented. Old Oak woodland is a habitat listed on Annex I of the EU Habitats Directive, while the rare snail species, *Vertigomoulina siana*, is listed on Annex II of this directive. The wetland areas, with their associated bird populations, the rare insect and Myxomycete species contribute further to the conservation significance of the site.

6.12.1999