

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

REFERENCE: DEC 19/5

NAME AND ADDRESS OF APPLICANT: Sean Roe, Townparks, Daingean, Co. Offaly.

ADDRESS FOR CORRESPONDENCE: Sean Roe, Townparks, Daingean, Co. Offaly.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the construction of an entrance onto a public road and of hard-core roadway to allow access to existing forestry to facilitate timber harvesting is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Townparks, Daingean, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 15/03/2019, has arisen as to whether the construction of an entrance onto a public road and of hard-core roadway to allow access to existing forestry to facilitate timber harvesting is or is not development and is or is not exempted development.

is or is not 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 of the Planning & Development Act 2000, as amended,
- (b) Section 3 of the Planning & Development Act 2000, as amended,
- (c) Section 4 of the Planning & Development Act 2000, as amended,
- (d) Article 9 (1) of the Planning & Development Regulations 2001 – 2018,
- (e) Planning & Development Regulations 2001 – 2018, Part 2 Section 8F,
- (f) Planning & Development Regulations 2001 – 2018, Part 2 Section 8G.

AND WHEREAS Offaly County Council has concluded that –

The proposed development **Is Development and Is 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 the construction of an entrance onto a public road and of hard-core roadway to allow access to existing forestry to facilitate timber harvesting **Is Development and Is Exempted Development** at Town Parks, Daingean, 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

09/05/2019

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 Section 5 Declaration

Ref No: 19/5

APPLICANT: Sean Roe, Townspark, Daingean, Co. Offaly.

The question before the planning authority is whether the modification of an established agricultural access and construction of hard core roadway to allow access to existing forestry to facilitate timber harvesting is considered to be development or development which is exempt development.

REFERRER'S QUESTION:

"In regard to the construction of an entrance on to a public road and of hard – core roadway to allow access to existing forestry to facilitate timber harvesting, I ask Offaly County Council if this comprised development which is 'exempt development' or 'development' as defined under the Act?"

SUBJECT SITE:

The subject site is located approximately 1.6 km west of Daingean in open rural countryside.

LEGISLATIVE CONTEXT:

The following statutory provisions are relevant in this case Section 2(1) of the Planning and Development Act 2000 as amended states as follows:

"In this Act, except where the context otherwise requires – "development" has the meaning assigned to it by Section 3.1 of the Planning and Development Act. The Act states as follows:

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 in the use of any structures or other land.

The Act defines 'works' as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

Section 4 (1) (a) – (l) set out what is exempted development for the purposes of this Act.

The following exempted development provisions should be considered in the context of the subject referral:

Planning and Development Regulations 2001 – 2018

Part 2 Section 8F

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, shall be exempted development.

Part 2 Section 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.

ASSESSMENT:

The proposed construction of an entrance to a public road along with the construction of a hard core road way to allow access to existing forestry to facilitate timber harvesting is considered to be development as defined under Section 3 (1) of the Act. However, it is noted that an existing agricultural access exists at this location. Therefore, the established agricultural 'access' itself has the benefit of not requiring planning permission.

However, modification of said established access and construction of a non-public hard core road way are works, which are considered to be exempt development by virtue of **Part 2 Section 8F** and **Part 2 Section 8G** of the Planning and Development Regulations 2018, with regard to:

Development consisting of the felling {...} of trees {...} or works ancillary to the that development but not including the replacement of broadleaf high forest by conifer species, shall be exempted development.

And,

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.

Therefore, it is concluded that the response to the question before Offaly County Council is that the proposed development is development but is development, which is exempt development.

It should be noted that there are no restrictions on exemption with respect of Article 9 (1) in this instance.

I therefore recommend that the following Chief Executive Order be issued.

WHEREAS a question has arisen as to whether:

The modification of an established agricultural access and construction of hard core roadway to allow access to existing forestry to facilitate timber harvesting is considered to be development or development which is exempt development.

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

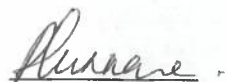
- (a) Sections 2 of the Planning & Development Act 2000, as amended,
- (b) Section 3 of the Planning & Development Act 2000, as amended,
- (c) Section 4 of the Planning & Development Act 2000, as amended,
- (d) Article 9 (1) of the Planning and Development Regulations 2001 - 2018
- (e) Planning and Development Regulations 2001 – 2018, Part 2 Section 8F
- (f) Planning and Development Regulations 2001 – 2018, Part 2 Section 8G

AND WHEREAS Offaly County Council has concluded that –

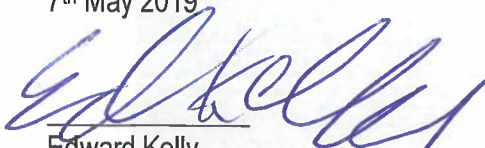
The proposed works is **development** and is **exempted development**.

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

The modification of an established agricultural access and construction of hard core roadway to allow access to existing forestry to facilitate timber harvesting at Town Parks Daingean, is considered to be development, which is exempt development.



Aisling Cunnane
Assistant Planner
7th May 2019



Edward Kelly
A/Senior Executive Planner
7th May 2019

