

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 2010

NAME OF APPLICANT: ULTAN BRACKEN
ADDRESS KILMUCKLIN, CLARA, CO. OFFALY

ADDRESS FOR CORRESPONDENCE: KILMUCKLIN.,
CLARA,
CO OFFALY

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether a slatted shed, with a floor area of 199sqm at Kilmucklin, Clara, Co Offaly, is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: KILMUCKLIN, CLARA, CO. OFFALY.

WHEREAS a question referred to Offaly County Council on 22nd June has arisen as to whether a slatted shed, with a floor area of 199sqm at Kilmucklin, Clara, Co Offaly 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) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- (b) Article 6 and Article 9(1) (a) (viii) of the Planning and Development Regulations 2001 (as amended)
- (c) Classes 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);

AND WHEREAS Offaly County Council has concluded that the proposed slatted shed comes within the scope of Classes 6 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001

NOW THEREFORE O Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the erection of a slatted shed at Kilmucklin, Clara, 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

17.7.2020

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.



Plate 2: View of site (from within yard)

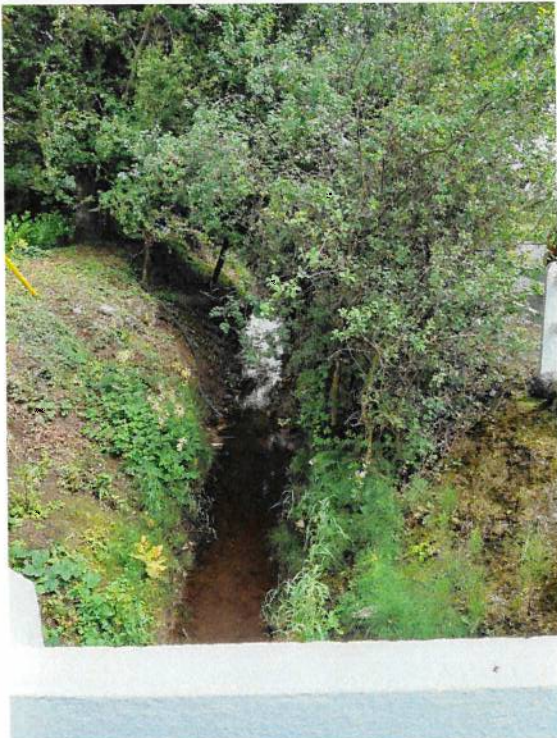


Plate 3: View of watercourse along road frontage

3. Site History

P1596 – details not available

7822 – permission granted for a house to Maeve Bracken.

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:

“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.

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock...

“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,

“unauthorised structure” means a structure other than— (a) a structure which was in existence on 1 October 1964, or (b) a structure, the construction, erection or making of which was the subject of a permission for development granted under Part IV of the Act of 1963 or deemed to be such under section 92 of that Act or under section 34 of this Act, being a permission which has not been revoked, or which exists as a result of the carrying out of exempted development (within the meaning of section 4 of the Act of 1963 or section 4 of this Act);

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:

- (a) *Development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used*

Regulatory Provisions

Article 6 of the Planning and Development Regulations 2001 (as amended) states:

- (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.*

- (3) Subject to article 9, in areas other than a city, a town or an area specified in section 19(1)(b) of the Act or the excluded areas as defined in section 9 of the Local Government (Reorganisation) Act, 1985 (No. 7 of 1985), development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

Article 9 – Restrictions on exemptions

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,

(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,

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,

(viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to

any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

(xi) obstruct any public right of way,

(xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area, (b) in an area to which a special amenity area order relates, if such development would be development:— (i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or (ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or (iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or (iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited, (c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive, (d) if it consists of the provision of, or modifications to, an establishment, and could have significant repercussions on major accident hazards.

Class 6 Agricultural Structures

'Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 200 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage'.

The associated conditions and limitations are discussed below.

5. Proposal by Applicants

The Applicant wishes to ascertain whether a slatted shed with a floor area of 199sqm is exempted development. The shed has a height of 6.3m.

The proposed development is considered against the conditions and limitations of Class 6:

1. *No such structure shall be used for any purpose other than the purpose of agriculture.*

The proposed structure is intended to be used for agricultural purposes.

2. *The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 300 square metres gross floor space in aggregate.*

A schedule has been provided with the Section 5 documentation which indicates that the total existing agricultural floor area is 563sqm, of which only 1 shed measuring 13sqm are identified as a class 6 use – used for housing animals. It is considered that the proposal is acceptable in this instance as 'such' structures does not exceed 300sqm.

3. *Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.*

I have consulted with the Environment and Water Services Section who are satisfied that the proposed effluent storage facilities will be adequate to serve the structure.

4. *No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.*

The proposed structure is located more than 10m from a public road.

5. *No such structure within 100 metres of any public road shall exceed 8 metres in height.*

The proposed structure will have a height of 6.3m.

6. *No such structure shall be situated, and no effluent from such structure shall be stored, within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for*

public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

The site layout plan indicates that the nearest dwelling is 71m, belonging to the applicant. There are no other residential building, school, hospital or building used for public assembly within 100m of the proposed structure.

7. *No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.*

The submitted drawings indicate that the external finish shall be clad to match the existing which is painted.

6. Appropriate Assessment Screening

European Court of Justice Case 293/17 asked the question "is the application of fertilisers on or below land a project? The CJEU held that Article 6(3) of the Habitats Directive had to be interpreted as meaning that the application of fertilisers on the surface of land or below its surface in the vicinity of Natura 2000 sites could be classified as a project within the meaning of that provision.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62017CA0293&from=DE>

The site is located in the Lower Shannon Catchment; the Clara Bog SAC is also located in the lower Shannon Catchments, albeit in different subcatchments. The site and that of Clara Bog SAC share the same groundwater body, however the site is located 1.2km from the SAC. There is no surface water connection directly to the SAC and the site (according to catchments.ie). The spreading of slurry is a matter for the compliance under the Nitrates Directive and is regulated by the Department of Agriculture, Food and Marine.

An appropriate assessment screening report was carried out and it attached to this report, which concludes that the proposed development is unlikely to have significant effects on the Clara Bog SAC.

7. Evaluation

Question: Is the following works considered as Development?

As the proposed works comprises of the construction of an agricultural building, it is considered that the works are 'development' in accordance with section 3(1) of the Planning and Development Act, 2000, as amended.

Question: Is the following works proposal considered as Exempted Development?

The works are considered to be exempted development.

8. Recommendation

It is recommended that the development as described in the application is development and is exempted development.



Elaine Clarke
Executive Planner

16.07.20



Carroll Melia
A/Senior Executive Planner

16/7/2020

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Declaration on Development and Exempted Development

Section 5 of the Planning and Development Act 2000 (as amended)

WHEREAS a question has arisen as to a slatted shed associated with existing agricultural activity at Kilmucklin, Clara, Co. Offaly is or is not exempted development;

AS INDICATED on the plans and particulars received by the Planning Authority on 22nd June 2020;

AND WHEREAS Ultan Bracken requested a declaration on the said question from Offaly County Council;

AND WHEREAS Offaly County Council as the Planning Authority, in considering this declaration under Section 5 of the Planning and Development Act 2000 (as amended), had regard to;

- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended);
- Article 6 and Article 9(1) (a) (viii) of the Planning and Development Regulations 2001 (as amended)
- Classes 6 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);

AND WHEREAS Offaly County Council has concluded that the proposed slatted shed comes within the scope of Classes 6 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001:

NOW THEREFORE Offaly County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Act 2000 (as amended), hereby decides that the erection of a slatted shed at Kilmucklin, Clara, Co. Offaly is development and is ~~not~~ exempted development.

Please note that any person issued with a declaration under subsection 2(a) of the Planning and Development Act 2000 (as amended) may on payment to the Board of the prescribed fee, refer a declaration to An Bord Pleanála within 4 weeks of the issuing of the decision.

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.

DEC 20/10

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Agricultural unit – slatted shed		
Site location:	Kilmucklin Clara, Co. Offaly		
Site size:	?	Floor Area of Proposed Development:	199 sqm
Identification of nearby European Site(s):	2000 site(s): SAC 000572– Clara Bog SAC		
Distance to European Site(s):	1.2km		
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:	Land spreading		
Is the application accompanied by an EIAR?	No		
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site:	Clara Bog has long been regarded as one of the most important lowland raised bogs in the country, being the largest remaining example of the true Midland sub-type. The ecology supports breeding Merlin (1-2 pairs), a scarce species in Ireland and one that is listed on Annex I of the EU Birds Directive		
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.)	PLEASE SEE SHEET ATTACHED		

(C) NPWS ADVICE:	
Advice received from NPWS over phone:	None received.
Summary of advice received from NPWS in written form (ATTACH SAME):	None received.
(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:	
<i>(The purpose of this is to identify if the effect(s) identified could be significant – if uncertain assume the effect(s) are significant).</i>	
<p>Given the location the limited nature and size of the development applied for and the characteristics of <i>European</i> sites in the vicinity it is considered that 100 metres should be used as a potential zone of impact of the project in accordance with section 3.2.3 of the appropriate assessment guidelines. There are no <i>European</i> sites within 100 metres of the development applied for and therefore no significant effects on any <i>European</i> sites either alone or in combination with other plans and projects.</p>	
Would there be...	No
... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	
... a reduction in habitat area on a <i>European</i> site?	No
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the <i>European</i> site?	No
... serious / ongoing disturbance to species / habitats for which the <i>European</i> site is selected (e.g. because of increased noise, illumination and human activity)?	No
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> site?	No
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 <i>European</i> sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	No
(E) SCREENING CONCLUSION:	

creening can result in:

1	AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.		
2	No potential for significant effects / AA is not required.		
3	Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.		
Conclusion:2			
Given the location and the nature and size of the development applied for and the characteristics of European sites in the vicinity and the appropriate assessment guidelines it is considered that the development will have no likely significant impacts on any European sites			
Position:	Executive Planner	Date:	
	<i>Olivia Clarke</i>		<i>16.07.20</i>

SITE SYNOPSIS

SITE NAME: CLARA BOG

SITE CODE: 000572

Clara Bog is situated some 2 km south of Clara village. Much of it is state-owned and designated a statutory Nature Reserve.

Clara Bog has long been regarded as one of the most important lowland raised bogs in the country, being the largest remaining example of the true Midland sub-type. It has well developed hummock and hollow complexes and one of the few remaining soak systems. The bog vegetation has been much studied and is well known. Variations in the proportions of Bog moss (*Sphagnum* spp.), Heather (*Calluna vulgaris*) and Cottongrass (*Eriophorum* spp.) has been related to ecological features such as pools, soaks and ridges.

Several rare invertebrate species are associated with the soak, including the midge, *Lasiodiamesa sphagnicola*, for which Clara Bog is its only known Irish site, a click beetle, *Ampedus pomorum* and another midge, *Parhelophilus consimilis*. The bog is also important for the rare moss, *Tetraplodon angustatus*, at its only known Irish station here.

Clara Bog supports breeding Merlin (1-2 pairs), a scarce species in Ireland and one that is listed on Annex I of the EU Birds Directive. Red Grouse also breeds, along with other common bogland species such as Meadow Pipit and Skylark.

To the east the transition into calcarous woodland, and to the north the transition to the esker ridge have been retained and some excellent examples of esker grassland occur in the site. Some peripheral reclaimed farmland is also included in the site, because management undertaken in these areas can have a profound effect upon the rest of the bog.

The site has been divided into a western and an eastern section by a road. The eastern part of the site has been damaged by previous drainage attempts, however, restoration work is in progress. Continuing peat extraction from the southern margins is also damaging and has

potential effect upon much of the internal bog, including the soak system. Ideally the whole bog should be managed as a hydrological unit.

Active raised bogs, once characteristic of central Ireland, are now rare and vulnerable, and have been recognised by the European Union as a habitat of international importance. Ireland has a special responsibility to conserve the best of its remaining bogs. Further drainage, peat extraction, burning or attempted land reclamation is not consistent with this responsibility.

25.2.1999

Conservation objectives for Clara Bog SAC [000572]

The overall aim of the Habitats Directive is to maintain or restore the favourable conservation status of habitats and species of community interest. These habitats and species are listed in the Habitats and Birds Directives and Special Areas of Conservation and Special Protection Areas are designated to afford protection to the most vulnerable of them. These two designations are collectively known as the Natura 2000 network. European and national legislation places a collective obligation on Ireland and its citizens to maintain habitats and species in the Natura 2000 network at favourable conservation condition. The Government and its agencies are responsible for the implementation and enforcement of regulations that will ensure the ecological integrity of these sites. The maintenance of habitats and species within Natura 2000 sites at favourable conservation condition will contribute to the overall maintenance of favourable conservation status of those habitats and species at a national level. Favourable conservation status of a habitat is achieved when:

- its natural range, and area it covers within that range, are stable or increasing, and
- the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species is favourable.

The favourable conservation status of a species is achieved when:

- population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

Objective: 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 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco Brometalia) (* important orchid sites)* 7110 Active raised bogs* 7120 Degraded raised bogs still capable of natural regeneration 7150 Depressions on peat substrates of the Rhynchosporion 91D0 Bog woodland* * denotes a priority habitat