

OFFALY COUNTY COUNCIL

DECLARATION UNDER SECTION 5 OF THE

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 20/20

NAME OF APPLICANT: NOEL COSGRAVE

ADDRESS KINGSBOROUGH HOUSE, FORTAL, BIRR, CO. OFFALY

ADDRESS FOR CORRESPONDENCE: KINGSBOROUGH HOUSE,  
FORTAL,  
BIRR,  
CO. OFFALY

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m at Boggaunreagh in the Barony of Garrycastle, Mounterin ED, Co. Offaly is or is not development and is or is not exempted development

LOCATION OF DEVELOPMENT: BOGGAUNREAGH IN THE BARONY OF GARRYCASTLE,  
MOUNTERIN ED, CO. OFFALY

WHEREAS a question referred to Offaly County Council on 19<sup>th</sup> November 2020 as to whether the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m at Boggaunreagh in the Barony of Garrycastle, Mounterin ED, 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, 3 & 4 of the Planning & Development Act 2000, as amended.
- b) Article 6 & 9 of the Planning & Development Regulations, 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m at Boggaunreagh in the Barony of Garrycastle, Mounterin ED, Co. Offaly 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 the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m. is development and is not exempted development at Boggaunreagh in the Barony of Garrycastle, Mounterin ED, 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.

  
A/Senior Executive Officer

15/12/2020  
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.

## Planning Report

### Section 5 Declaration

<b>File Reference:</b>	<b><i>Dec 20/20</i></b>
<b>Question:</b>	<i>Whether the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m is or is not development and if so, is or is not exempted development.</i>
<b>Applicant:</b>	<i>Noel Cosgrave</i>
<b>Correspondence Address:</b>	<i>Kingsborough House, Fortal, Birr, Co. Offaly</i>
<b>Location:</b>	<i>Boggaunreagh in the Barony of Garrycastle, Mounterin ED, Co. Offaly (as provided by the applicant)</i>

#### 1. Introduction

The question has arisen as to whether the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m (as shown on submitted map) is or not development, and is or is not exempted development.

#### 2. Background

The subject site is located within the open countryside along the local road (L306) approximately 5km south east of Banagher Town, Co. Offaly. From a desk top review, the site appears to be in scrubland and may have been used for turf cutting and commercial planting of trees.

The source of the soil and gravel is the Lumcloon Energy Storage Facility which is currently under construction at Lumcloon, Cloghan, approximately 17km south east of the subject site.

It is not clear from the information submitted or desktop review, if there is direct access to the subject site from the adjoining local road. The Applicant has submitted an extract from Land Registry which shows a Right of Way from the local road to the south to the rear of the subject site. However, it appears that there is no formalised access point at this ROW location.

#### 3. Site History

- On site: No recent planning history associated with the subject site:
- Enforcement: No record of any enforcement matters on the subject site.
- Adjoining Lands: Lands to the north: ref. 15/44 - Meenwaun Wind Farm Ltd. was granted planning a 10-year permission for the construction of a wind farm comprising up to 5 no. turbines with a maximum tip height of up to 169m.

#### 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:

**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.*

**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 purpose 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, *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”.*

#### 5. Proposal by Applicants and Evaluation

In the documentation submitted, the Applicant advises that he seeks to import approximately 6,000 tonnes of inert soil onto the subject site to cover an area of 0.02ha of low ground. The soil will be spread at a depth not exceeding 2.0m. The source of the soil has not been identified.

#### 6. Evaluation

**Question: Is the following works considered as Development?**

As the proposed works comprises of alteration to the subject site, 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 applicant has stated the volume of inert soil to be imported is approximately 6,000 tonnes and be spread at a depth not exceeding 2m. There are no exemptions under the current planning legislation that allows for the movement of such volumes of inert soil waste onto low ground to be spread at a depth not exceeding 2m without obtaining planning permission.

**7. Recommendation**

It is recommended that the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m **does constitute development** defined in Section 3(1) of the Planning and Development Act 2000 (as amended) and **is not exempted development** as defined by the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

**Declaration on Development and Exempted Development**

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

**WHEREAS** a question has arisen as to whether or not the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m at Boggaunreagh, Garrycastle, Co. Offaly is or is not development and if so, is or is not exempted development

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

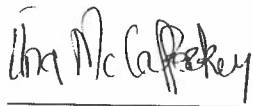
- a) Sections 2, 3 & 4 of the Planning & Development Act 2000, as amended.
- b) Article 6 & 9 of the Planning & Development Regulations, 2001, as amended.

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

The proposed development is development and is not exempted development.

**NOW THEREFORE** Offaly County Council, in exercise of the powers conferred on it by Section 5 (2) of the Planning and Development Act, as amended, hereby decides;

That the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m at Boggaunreagh, Garrycastle, Co. Offaly is development and is not exempted development.



Úna McCafferkey  
Assistant Planner

9<sup>th</sup> December 2020  
Date



Carroll Melia  
(A/Senior Executive Planner)

14<sup>th</sup> December 2020  
Date

## APPENDIX A

### 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 Application Ref. No: DEC 20/20

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether the importation of approximately 6,000 tonnes of inert soil to an area of 0.02ha of low ground to be spread at a depth not exceeding 2.0m is or is not development and if so, is or is not exempted development.		
Site location:	Boggaunreagh, Garrycastle, Co. Offaly		
Site size:	0.2ha	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	All Saints Bog and Esker SAC – 2.75km All Saints Bog SPA – 3.05km Ridge Road, SW of Rapemills SAC – 3.22km Dovegrove Callows SPA – 3.81km		
Distance to European Site(s):	As above – all as crow flies		
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: <input checked="" type="checkbox"/>	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
<b>All Saints Bog and Esker SAC - Features of interest include:]</b> <ul style="list-style-type: none"> <li>• Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]</li> <li>• Active raised bogs [7110]</li> <li>• Degraded raised bogs still capable of natural regeneration [7120]</li> <li>• Depressions on peat substrates of the Rhynchosporion [7150]</li> <li>• Bog woodland [91D0]</li> </ul>			
<b>All Saints Bog SPA - Features of interest include:</b> <ul style="list-style-type: none"> <li>• Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]</li> </ul>			
<b>Ridge Road, SW of Rapemills SAC - Features of interest include:</b> <ul style="list-style-type: none"> <li>• Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210]</li> </ul>			
<b>Dovegrove Callows SPA - Features of interest include:</b> <ul style="list-style-type: none"> <li>• Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]</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> ) (ATTACH INFO.)			

**SITE NAME: ALL SAINTS BOG SPA**

**SITE CODE: 004103**

All Saints Bog is a lowland raised bog located about 5 km north-west of Birr in Co. Offaly. It is separated from the River Little Brosna callows by a fragmented esker ridge. The site is unique in that it contains the largest stand of birch (*Betula* sp.) woodland in the country growing on an active raised bog.

At the time this site was designated as a Special Protection Area (SPA) it was known to be utilised by part of an internationally important population of Greenland White-fronted Goose. Greenland White-fronted Goose is regarded as a special conservation interest for this SPA.

All Saints Bog was formerly used by part of the internationally important Greenland White-fronted Goose population based on the River Little Brosna. In recent years, however, there has been little or no use of All Saints by the geese following a general trend of less usage of raised bogs in favour of grassland sites. The last record of Greenland White-fronted Goose within the site was 75 individuals in 1993/94.

Merlin has been seen on the bog during the breeding season and may breed there. The peat dome and marginal areas provide good foraging habitat for this bird of prey species.

**Site Name: Ridge Road, SW of Rapemills SAC**

**Site Code: 000919**

This site consists of steep-sided, twin esker ridges formed from glacial gravels. It is situated under 2 km south-west of the village of Rapemills in Co. Offaly. The more northerly ridge supports a road running towards the Little Brosna River. Hollows are present with deeper soils which are more nutrient-enriched, while the banks are slightly leached.

The site is a Special Area of Conservation (SAC) selected for the following habitats and/or species listed on Annex I / II of the E.U. Habitats Directive (\* = priority; numbers in brackets are Natura 2000 codes):

[6210] Orchid-rich Calcareous Grassland\*

The vegetation is primarily unimproved grassland in the western section and a mixture of dry, unimproved esker grassland and wet grassland in the more easterly section. An important feature of this site is the presence of orchid-rich calcareous grassland. This vegetation supports a rich diversity of plant species and a variety of unusual plant communities. Along with several uncommon or localised plant species, this site supports a large population of Green-winged Orchid (*Orchis morio*), a Red Data Book species.

Noteworthy is the presence of herb communities containing Bloody Crane's-bill (*Geranium sanguineum*), Burnet Rose (*Rosa pimpinellifolia*) and Zigzag Clover (*Trifolium medium*), in association with woody species such as Yew (*Taxus baccata*) and Buckthorn (*Rhamnus catharticus*). Other herb species present are Upright Brome (*Bromus erectus*), Dog's Mercury (*Mercurialis perennis*), Stone Bramble (*Rubus saxatilis*) and Wild Madder (*Rubia peregrina*), while shrubs such as Spindle (*Euonymus europaeus*), Crab Apple (*Malus sylvestris*) and Dwarf Cherry (*Prunus cerasus*) are also present. Some banks have mature Hazel (*Corylus avellana*) woods. The herb species mentioned are unusual in a midland, inland context.

Species-rich calcareous grasslands are sensitive to agricultural improvement, for example fertiliser application and re-seeding. At Ridge Road, the steep esker banks have restricted the agricultural use of this site and the lands are, in general, unfertilized. The site is used for cattle grazing. Overall, grazing is a positive influence on calcareous grasslands. However, it is important that the correct level of grazing is achieved, i.e. enough to halt the spread of shrub species and to maintain the balance between scrub and species-rich grassland. Too much grazing would result in damage to the vegetation cover.

Although small, this site is of ecological value as a good example of species-rich calcareous grassland, rich in orchids. This habitat type is increasingly rare as a result of agricultural intensification, and is given priority status on Annex I of the E.U. Habitats Directive. The vegetation at Ridge Road is diverse and features a variety of unusual plant communities, as well as a large population of Green-winged Orchid. Eskers are becoming increasingly rare in Ireland - many have been destroyed as a result of gravel extraction.

**SITE NAME: DOVEGROVE CALLOWS SPA**

**SITE CODE: 004137**

Dovegrove Callows is an area of callowland beside the Little Brosna River 2 km downstream from Birr, Co. Offaly and 5 km upstream from the start of the main area of River Little Brosna callows. The main habitat is wet grassland which floods.

The site is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for Greenland White-fronted Goose.

The site is an important feeding area for the internationally important Little Brosna Greenland White-fronted Goose flock (527 individuals - 5 year mean peak for the period 1994/95 to 1998/99) and is used on an occasional basis when other feeding sites

along the middle Shannon and Little Brosna callows are flooded. It is of particular importance as it can support the entire Little Brosna flock. For this reason the site is a key part of this flock's winter range and important for its protection. The bogroove Callows SPA is of major conservation significance as a feeding site for an internationally important flock of Greenland White-fronted Goose, a species that is listed on Annex I of the E.U. Birds Directive.

**(C) NPWS ADVICE:**

Advice received from NPWS over phone:	None Received
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Summary of advice received from NPWS in written form (ATTACH SAME):	None Received
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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)

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

**(E) SCREENING CONCLUSION:**

**Screening 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. |

Therefore, does the project fall into category 1, 2 or 3 above?	Category 2
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Justify why it falls into relevant category above:	There would be no likely significant impact on the European
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site from the proposed development due to the scale of the proposed development and the separation distance between the subject site and European Sites.

Name:

Úna McCafferkey



Position:

Assistant Planner

Date:

9<sup>th</sup> December 2020