

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 21/11

NAME OF APPLICANT: CMG AGRICULTURE LTD. C/O NIALL DONAGHY

ADDRESS C/O ADPS,  
MOLOUGH,  
NEWCASTLE,  
CLONMEL,  
CO. TIPPERARY.

ADDRESS FOR CORRESPONDENCE: C/O ADPS,  
MOLOUGH,  
NEWCASTLE,  
CLONMEL,  
CO. TIPPERARY.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the provision of an agricultural shed 299m is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Clonlyon Glebe, Clonlyon, Co. Offaly

WHEREAS a question referred to Offaly County Council on 06/04/2021 as to whether the provision of an agricultural shed 299m at Clonlyon Glebe, Clonlyon, 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 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) Class 9 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 agricultural storage shed and associated works comes within the scope of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;

<sup>DA</sup> NOW THEREFORE Offaly County Council, in exercise of powers conferred on it by Section 5 (2)(a) of the Planning and Development Act 2000, as amended hereby decides that the erection of an agricultural storage shed 299m at Clonlyon Glebe, Clonlyon, 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.

  
Senior Executive Officer

28/04/2021  
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>Dec 21-11</b>
<b>Question:</b>	<i>Whether the provision of an agricultural shed 299m<sup>2</sup> is or is not development and if so, is or is not exempted development.</i>
<b>Applicant:</b>	<i>CMG Agriculture Ltd. c/o Niall Donaghy</i>
<b>Correspondence Address:</b>	<i>c/o ADPS, Molough, Newcastle, Clonmel, Co. Tipperary.</i>
<b>Location:</b>	<i>Clonlyon Glebe, Clonlyon, Co. Offaly</i>

### 1. Introduction

The question has arisen as to whether the proposed development, an agricultural shed 299m<sup>2</sup> in area is or is not development, and if so, is or is not exempted development.

### 2. Background

The subject site (0.4ha) is on agricultural lands located approximately 3.8km north west of Ferbane Town. There are no recorded monuments located at the site.



Photo 1: Location of Subject Site (Source: Google Maps).

### **3. Site History**

20/189: Niall & Linda Donaghy sought permission for a new dwelling house, garage, new entrance, proprietary effluent treatment system and polishing filter and all ancillary site works – **Granted by OCC**, currently subject to a third party appeal – **decision due from An Bord Pleanála by the 5<sup>th</sup> May 2020.**

### **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...*

**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 outlines the restrictions that are applicable to exempted development detailed in Schedule 2. In this instance, the relevant exempted development classes in Part 3 of Schedule 2 (Rural Development) is *Class 9 – Agricultural Structures*.

*'Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres'.*

The Planning Authority notes that the Applicant proposes an agricultural storage shed with a gross floor area of 299m<sup>2</sup>.

### **5. Proposal by Applicants**

The Applicant wishes to ascertain whether an agricultural storage shed is development, and if so, is or is not exempted development.

The proposed development is considered against the conditions and limitations of Class 9:

1. *No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.*

The Applicant has advised that the proposed structure would be used as an agricultural storage shed.

2. *The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.*

There are no existing structures within 100m of the proposed agricultural storage shed.

3. *No such structure shall be situated within 10 metres of any public road.*

The proposed agricultural storage shed is not located within 10m of any public road.

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

Not applicable – no height restriction as the structures are in excess of 100m from the public road. It is noted that the proposed shed would have a maximum height of 11.235m.

5. *No such structure shall be situated 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 proposed shed is not located within 100m of any dwelling or public/community buildings listed above.

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

The submitted documentation does not identify the proposed material or finish of the proposed structure. However, the submitted elevations show the side metal sheeting and roof are shown in a green colour and the Planning Authority are satisfied that the proposed structure will comply with this condition.

**6. Appropriate Assessment Screening**

A screening exercise for an appropriate assessment has been carried out and it has been deemed that the development is unlikely to have significant effects on any European sites. Please see attached report.

**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?**

Based on the Planners assessment of the information submitted with the referral, the Planning Authority are satisfied that the proposed development complies with the conditions and limitations of Class 9, Part 3 of Schedule 2 (Rural Development). The works are deemed to be exempted development.

**8. Recommendation**

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



Úna McCafferkey  
Assistant Planner

27<sup>th</sup> April 2021

Date



Carroll Melia  
(A/Senior Executive Planner)

27<sup>th</sup> April 2021

Date

## **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 the provision of an agricultural storage shed (gross floor area 299m<sup>2</sup>) at Clonlyon Glebe, Clonlyon, Co. Offaly is or is not development and if so, is or is not exempted development.

**AND WHEREAS** CMG Agriculture Ltd. c/o ADPS 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)
- Class 9 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 agricultural storage shed and associated works comes within the scope of Class 9 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;

**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 an agricultural storage shed at Clonlyon Glebe, Clonlyon, Co. Offaly is development and is 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.

## 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 21-11

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Agricultural storage shed		
Site location:	Clonlyon Glebe, Clonlyon, Co. Offaly		
Site size:	0.4ha	Floor Area of Proposed Development:	299m <sup>2</sup>
Identification of nearby European Site(s):	Moyclare Bog SAC – 1.27km Ferbane Bog SAC – 1.98km Fin Lough (Offaly) SAC – 5.37km Mongan Bog SAC – 6.05km Mongan Bog SPA – 6.05km		
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: <b>X</b>	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
<p><b>Moyclare Bog SAC – Features of interest include:</b></p> <ul style="list-style-type: none"> <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> </ul> <p><b>Ferbane Bog SAC - Features of interest include:</b></p> <ul style="list-style-type: none"> <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> </ul> <p><b>Fin Lough (Offaly) SAC- Features of interest include:</b></p> <ul style="list-style-type: none"> <li>Alkaline fens [7230]</li> <li>Vertigo geyeri (Geyer's Whorl Snail) [1013]</li> </ul> <p><b>Mongan Bog SAC – Features of interest include:</b></p> <ul style="list-style-type: none"> <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> </ul> <p><b>Mongan Bog SPA – Features of interest include:</b></p> <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.)			

Name: Moyclare Bog SAC Site Code: 000581 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000581.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000581.pdf</a> Site Name: Ferbane Bog SAC Site Code: 000575 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000575.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000575.pdf</a> Site Name: Fin Lough (Offaly) SAC Site Code: 000576 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000576.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000576.pdf</a> Site Name: Mongan Bog SAC Site Code: 000580 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000580.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000580.pdf</a> Site Name: Mongan Bog Spa Site Code: 004017 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004017.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY004017.pdf</a>	
<b>(C) NPWS ADVICE:</b>	
Advice received from NPWS over phone:	None Received
Summary of advice received from NPWS in written form (ATTACH SAME):	None Received
<b>(D) ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS:</b>	
<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>	
If the answer is 'yes' to any of the questions below, then the effect is significant. <i>(Please justify your answer. 'Yes' / 'No' alone is insufficient)</i>	
<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.
<b>(E) SCREENING CONCLUSION:</b>	
<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. (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i>	
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.
<b>Name:</b>	Úna McCafferkey 	
<b>Position:</b>	Assistant Planner	<b>Date:</b> 27 <sup>th</sup> April 2021