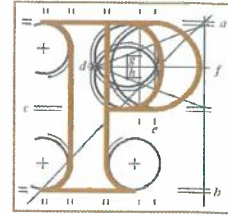


Our Case Number: ABP-309705-21

Planning Authority Reference Number: DEC 21/02



An
Bord
Pleanála

Offaly County Council
Áras an Chontae
Charleville Road
Tullamore
Co. Offaly

Date: - 4 AUG 2021

Re: Whether the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the War Memorial, O'Connor Square, Tullamore (Protected Structure RPS No: 23-221) is or is not development or exempted development.
War Memorial, O'Connor Square, Tullamore, Co. Offaly.

Dear Sir / Madam,

An order has been made by An Bord Pleanála determining the above-mentioned referral under the Planning and Development Acts 2000 to 2020. A copy of the order is enclosed.

In accordance with section 146(5) of the Planning and Development Act 2000, as amended, the Board will make available for inspection and purchase at its offices the documents relating to any matter falling to be determined by it, within 3 days following the making of its decision. The documents referred to shall be made available for a period of 5 years, beginning on the day that they are required to be made available. In addition, the Board will also make available the Inspector's Report, the Board Direction and Board Order in respect of the matter on the Board's website (www.pleanala.ie). This information is normally made available on the list of decided cases on the website on the Wednesday following the week in which the decision is made.

The Public Access Service for the purpose of inspection/purchase of file documentation is available on weekdays from 9.15am to 5.30pm (including lunchtime) except on public holidays and other days on which the office of the Board is closed.

Yours faithfully,

Miriam Baxter
Executive Officer

RL100n

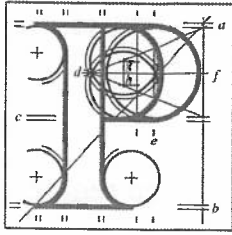


Teil
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Facs
Láithreán Gréasáin
Ríomhphost

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64 Sráid Maoilbhríde
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64 Marlborough Street
Dublin 1
D01 V902



An
Bord
Pleanála

Board Order
ABP-309705-21

Planning and Development Acts 2000 to 2020

Planning Authority: Offaly County Council

Planning Register Reference Number: DEC 21/02



WHEREAS a question has arisen as to whether the alteration of the raised stone kerbing and the removal of gravel finish surrounding the base of the war memorial at O'Connor Square, Tullamore, County Offaly is or is not development or is or is not exempted development:

AND WHEREAS Fergal MacCabe of 4 Summerhill Parade, Sandycove, County Dublin requested a declaration on the question from Offaly County Council and the Council issued a declaration on the 17th day of February, 2021 stating that the matter is development and is exempted development:

AND WHEREAS Offaly County Council in considering this declaration request determined that the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial is development and is exempted development by reference to Section 2 and Section 3 of the Planning and Development Act 2000, as amended, and furthermore the works carried out under the Part 8 consent by Offaly County Council and the provisions of Section 4(1)(aa) and (f) of that Act would also support the view that the works constituted exempted development:

AND WHEREAS Fergal MacCabe referred the declaration for review to An Bord Pleanála on the 11th day of March, 2021:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- (b) Sections 4(1)(aa) and 4(1)(f) of that Act, and
- (c) the provisions of Section 57(1) of that Act:

AND WHEREAS An Bord Pleanála has concluded that the alteration of the raised stone kerbing surrounding the base of the war memorial materially affects the character of the protected structure in question and an element of the structure (that is, the area where wreaths were laid) which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, and was therefore not deemed to be exempted development under Section 4(1)(aa) of the Planning and Development Act 2000, as amended in accordance with the provisions of Section 57(1)(aa) of that Act:

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the alteration of the raised stone kerbing and the removal of gravel finish surrounding the base of the war memorial at O'Connor Square, Tullamore, County Offaly is development and is not exempted development.

Matters Considered

In making its decision, the Board 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.

DR. Maria Fitzgerald

Maria FitzGerald

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this *3rd* day of *August* 2021.



OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 21/02

NAME OF APPLICANT: FERGAL MCCABE

ADDRESS 4 SUMMERHILL PARADE,
SANDYCOVE,
CO. DUBLIN

ADDRESS FOR CORRESPONDENCE: 4 SUMMERHILL PARADE,
SANDYCOVE,
CO. DUBLIN.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial at O Connor Square, Tullamore, Co Offaly is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: O CONNOR SQUARE, TULLAMORE, CO OFFALY

WHEREAS a question referred to Offaly County Council on 21/01/2021 as to whether the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial at O Connor Square, 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) Section 2 of the Planning & Development Act 2000 as amended
- (b) Sections 3 of the Planning & Development Act 2000 as amended
- (c) That the works were carried out under a Part 8 consent by Offaly County Council
- (d) Section 4(1)(f) of the Planning & Development Act 2000 as amended

AND WHEREAS Offaly County Council has concluded that the alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial at O Connor Square, Tullamore, Co Offaly 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 raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial is development and is exempted development at O Connor Square, Tullamore, 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

17/2/2021
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 Dec 21/2

Re: Section 5 Declaration

A question has arisen as to whether:

“The alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial”

at O Connor Square, Tullamore, Co Offaly is or is not development and is or is not exempted development.

Assessment

I refer to the above. I have inspected the site and noted and considered the submissions on file. I would consider the works to be development having considered Sections 2 and 3 of the Planning & Development Act 2000 as amended.

Section 2-

2.—(1) In this Act, except where the context otherwise requires—

“development” has the meaning assigned to it by section 3, and “develop” shall be construed accordingly;

Section 3:

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.

In the interests of transparency, it should be noted that the transposition and incorporation of the raised stone kerb, which surrounded the War Memorial, has also been subject of a complaint to the Office of the Planning Regulator. The OPR did not uphold the complaint, please see OPR Case Reference Number **20-134-8-OPR**.

In order to resolve the issue as to whether the subject works are deemed exempt the following issues are deemed pertinent.

O Connor Square, in which the subject War Memorial is located, has been subject in recent years to an upgrade which was facilitated by a Part 8 consent approved by the elected members of Offaly County Council in 2017. O Connor Square was, before the upgrade works, effectively a public car park.

Please see photographs on next page of O Connor Square and the War Memorial before the part 8 works took place.



The original Part 8 proposal to upgrade the square included the removal of the War Memorial from the square.

During the Part 8 period of public consultation and period for prescribed bodies to comment on the Part 8 proposal, a submission was received by Offaly County Council from the Department of Culture, Heritage and the Gaeltacht indicating serious concerns regarding the removal of the War Memorial from the square.

On the basis of this submission, the Executive of Offaly County Council recommended that the Part 8 be approved by Elected Councillors, subject to the modification that the War Memorial be kept in its original position in O Connor Square.

Revised drawings were included in the Chief Executives Part 8 report showing the War Memorial in its original position.

It is noted that Council development such as the redevelopment of O Connor Square is exempted under section 4 of the Planning and Development Act 2000, as amended:

4.—(1) The following shall be exempted developments for the purposes of this Act—

(f) development carried out on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity;

Notwithstanding this exemption from requiring planning permission, the Local Authority was still required to obtain a Part 8 consent to carry out the works to O Connor Square.

The Part 8 consent was obtained and the works to the War Memorial surround were carried out by the by the Local Authority.

In the interests of providing a thorough assessment of the issues and while not strictly relevant to this Section 5 Declaration, the issue of the authorisation of works shall be explored if they had been carried out by an independent party.

It is noted that question refers to “alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the War Memorial”.

It is considered that above works may qualify under the following exemption in the planning acts:

4(1)(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 or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

A question arises as to whether the alteration of the War Memorial surround resulted in works to a protected structure that are not exempted development, if they materially affected the character of the protected structure.

The War Memorial is protected structure 23-221 in the Tullamore and Environs Development Plan 2010-2016 as extended. The Tullamore Town record of protected structures notes that it was erected in the 1950s.

It is noted that the War Memorial was not a protected structure in the previous 2003-2010 Tullamore and Environs Development Plan.

Under Section 57 of the Planning and Development Act, as amended, it is noted that:

57.—(1) 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.

Below is a photograph of the war memorial taken shortly before the 2017 Part 8 works were commenced.

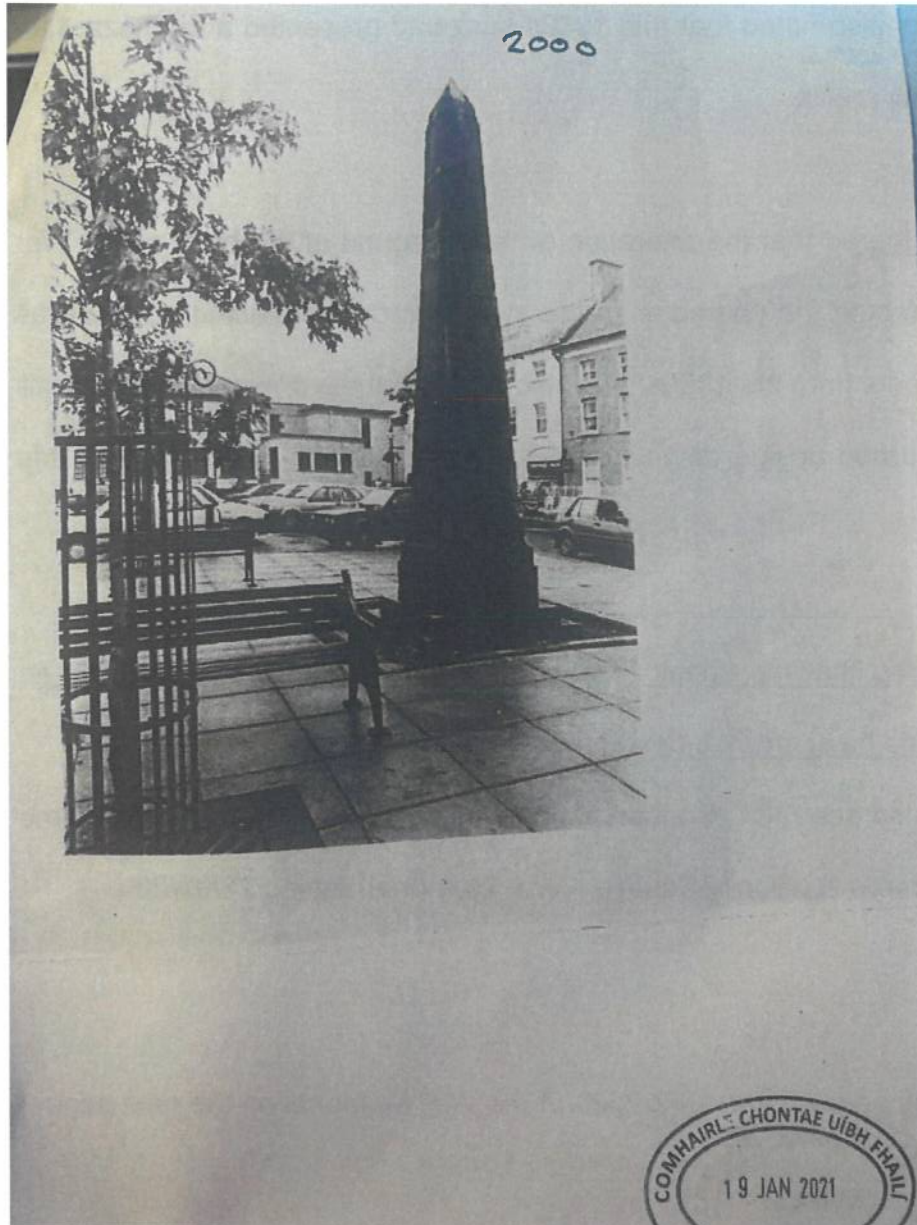


The request for the declaration includes the following photos from the 1950s which appear to show the War Memorial as it was original constructed. (See below)



It would appear, from comparing photographs from pre 2017 and 1950, that the War Memorial surround was radically altered with the visible height of the kerb considerably

reduced by the provision of paving. This is supported by the photograph titled “2000” which accompanies the written request for this declaration. See photograph below.



The request for the declaration states that “sometime in the 1980s as the attached photos shows, a generous and symmetrical paved area was created around the memorial while retaining the raised kerb and gravel finish.”

It would appear that the War Memorial surround which existed prior to the Part 8 works is principally a feature from the 1980s and is therefore not an intrinsic part of this 1950s protected structure. It is also noted that this 1980s surround presented a trip hazard for pedestrians given its low profile.

It is therefore not considered that the alteration of the surround of the base of the War Memorial materially affected the character of the War Memorial protected structure as this was a feature of works from the 1980s. It is also noted that the original kerbing is still on site, having been turned upside down to provide a flat surface, which is not a trip hazard.

It is therefore considered that the subject works, if they had been carried out by an independent party, would be exempted development.

In this regard please also see OCC Conservation Architect Rachel Mc Kenna's memo dated 23/9/2020 "Tullamore O'Connor Square – War Memorial Setting 23/09/20"

Please see photographs below dated 15/2/2021 of the War Memorial on the next page.



I would therefore recommend that the following Chief Executive Order be issued;

WHEREAS a question has arisen as to whether the:

“The alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial”

At O Connor Square, Tullamore, Co. Offaly 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-

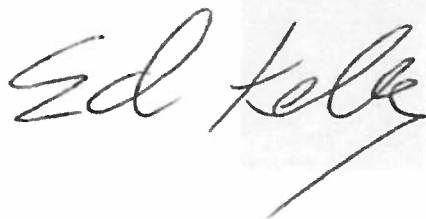
- (a) Section 2 of the Planning & Development Act 2000 as amended
- (b) Sections 3 of the Planning & Development Act 2000 as amended
- (c) That the works were carried out under a Part 8 consent by Offaly County Council
- (d) Section 4(1)(f) of the Planning & Development Act 2000 as amended

AND WHEREAS Offaly County Council has concluded that –

The works are development and are exempted development.

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

The alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial at O Connor Square, Tullamore, Co. Offaly was development and was exempted development.



Ed Kelly
Executive Planner
16/2/2021

Carroll Melia

Carroll Melia
A/ Senior Executive Planner
16th February 2021

**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 Application Ref. No.: Dec 21-

2

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:	
Subject development:	The alteration of the raised stone kerbing and the removal of the gravel finish surrounding the base of the war memorial
Site location:	O Connor Square, Tullamore, Co Offaly
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville 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 EIS?	No: <input checked="" type="checkbox"/>
(B) IDENTIFICATION OF THE RELEVANT European SITE(S):	
The reasons for the designation of the European site:	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, <i>Vertigomoulin siana</i> , 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 Natura 2000 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

(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... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>	Not likely due to the location and type of development.
	The site is sufficient distance from the European site.
<p>... a reduction in habitat area on a European site?</p>	There will be no reduction in the habitat area.
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
<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>	Not likely due to the location and type of development
	The site is sufficient distance from the European site.
<p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>	None likely due to the location and type of development
	The site is sufficient distance from the European site

<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 projects / plans within and adjacent to European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.</p>	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.	<i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i>
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 NIS 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 European sites from the proposed development.
Name:	Ed Kelly
Position:	Exec. Planner
Date:	16/2/2021

Given the location the nature and size of the development applied for and the characteristics of European sites in the vicinity it is considered that 500 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 European sites within 500 metres of the development applied for and therefore no significant effects on any European sites either alone or in combination with other plans and projects.

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, *Vertigo moulinsiana*, 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

Conservation objectives for Charleville Wood SAC [000571]

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 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*

Citation: NPWS (2015) Conservation objectives for Charleville Wood SAC [000571].
Generic Version 4.0. Department of Arts, Heritage and the Gaeltacht.
13/02/2015