

**OFFALY COUNTY COUNCIL
DECLARATION UNDER SECTION 5 OF THE**

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

REFERENCE: DEC 21/20

NAME OF APPLICANT: THOMAS HANLON
ADDRESS: RATHCONNELL, BOOLEIGH, KILDARE.
ADDRESS FOR CORRESPONDENCE: C/O RUTH TREACY,
GOLDER ASSOCIATES,
TOWN CENTRE HOUSE,
NAAS,
CO. KILDARE.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Derryvilla, Portarlinton, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 30.7.2021 as to whether the infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage at a depth not exceeding 1.5 metres at Derryvilla, Portarlinton, 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 of the Planning & Development Regulations, 2001, as amended.
- (c) Article 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 powers conferred on it by Section 5 (2)(a) of the Planning and Development Act 2000, as amended hereby decides that the infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage at a depth not exceeding 1.5 metres at Derryvilla, Portarlinton, Co. Offaly is development and is not 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

29.10.2021

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**

File Reference:	<i>Dec 21/20</i>
Question:	<i>Whether the following is development and if so, exempted development: (a) Infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage</i>
Applicant:	<i>Thomas Hanlon</i>
Correspondence Address:	<i>As indicated on application form</i>
Location:	<i>Derryvilla, Portarlinton, Co. Offaly</i>

1. Introduction

The question has arisen as to whether the Infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage (as shown on submitted map is or not development, and is or is not exempted development.

2. Further Information

Further information was sought by the Planning Authority on 26th August 2021 and subsequently received by the Planning Authority on 7th October 2021. This report should be read in conjunction with the previous planner's report dated 17th August 2021. The following further information was sought and the response is as follows:

- (a) Provide details on the area of the subject site at Derryvilla i.e. include a site layout plan, scale 1:500, appropriately annotated and indicate the area to be infilled. It is not clear if it is intended to fill the entire lands outlined in red in the submitted site location map, scale 1:2500.

The Applicant has submitted a site layout plan at a scale of 1:500 indicated the area to be infilled in magenta

- (b) Detail access arrangements to the site which will be used for the purposes of proposed infilling.

The Applicant has indicated the access for the purposes of filling is proposed through the existing residential/farm yard access as identified on the site layout plan. Trucks will proceed through the existing gate, past the house before turning right to the deposition area. Trucks will exit the site at the same entrance.

- (c) Provide details on the volume of soil and stone that it is proposed to import onto the subject site at Derryvilla.

The Applicant confirms 28,974 cubic metres is proposed to be imported onto the site.

- (d) Provide details of traffic volumes associated with proposed infilling.

The Applicant has stated the stated the estimated traffic volumes will be an average of 8 deliveries (16 movements) per day

- (e) Provide details on the proposed increase in height (i.e. difference between the existing natural ground level and proposed ground level) at the subject site at Derryvilla. Scaled cross sections detailing existing and proposed ground levels should also be submitted. Given scale of works, several cross sections may be required.

The Applicant has indicated an increase in height between the natural existing ground level and the proposed fill ranges from approximately 0.4 to 1.5m proposed depth of fill. The average depth of fill is c.1.0m.

- (f) Provide details as to the source of material to be imported.

The Applicant has indicated the source of material will be from greenfield sites in the greater Offaly, Kildare and Dublin areas

- (g) Clarify the implications of infilling on the residential property on the lands.

The Applicant has stated there will be limited impacts to the residential property on site as the property is vacant at present. It is proposed that delivery trucks enter the site through the combined residential/yard gate and proceed past the side gable of the residence through the rear yard before turning right to the deposition area which is located northeast of the residence.

- (h) In light of the likely overland connection to River Barrow And River Nore SAC, a Natura 2000 site, you are required to submit an appropriate assessment screening report in respect of the proposed development (i.e. raising of land). The screening report should take full account of the type of material to be imported, and levels to be raised, together with any hydrological connection to the SAC, and the cumulative impact of the proposal together with other developments.

The screening report shall be undertaken by a suitably qualified ecologist, in accordance with best practice.

The applicant has submitted an Appropriate Assessment Screening Report which states the *'proposed works have the potential to impact on the Qualifying interest of the River Barrow and Nore SAC and should therefore be subject to a stage 2 Appropriate Assessment (NIS)'*

Planners Appraisal on Items (a) – (h) inclusive: The further information received by the Planning Authority in relation to items (a) to (h) inclusive have been assessed and it is deemed satisfactory.

3. EVALUATION

Having assessed the Further Information received and the previous planning report on file, it is considered the proposed importation of invert soil and stone onto low

ground to be spread at a depth up to 1.5 metres is development and is not exempted development.

There are no exemptions under the current Planning legislation that allows for the movement of such volumes of invert soil and stone onto low ground to be spread at a depth up to 1.5 metres, for commercial purposes, without obtaining planning permission.

4. ADDITIONAL INFORMATION:

Furthermore, according to the Appropriate Assessment Screening Report submitted as part of the Further Information response, the screening statement states *'proposed works have the potential to impact on the Qualifying interest of the River Barrow and Nore SAC and should therefore be subject to a stage 2 Appropriate Assessment (NIS)'*

According to Article 9(1)(viiB) of the Planning and Development Regulations 2001 (as amended) in relation to restrictions on exemption states;

'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'

Therefore, if the declaration in question was deemed exempted development, due to the restrictions on developments where an NIS is required, Article 9(1)(viiB) of the *Planning and Development Regulations* (as amended) states the subject development would be deemed to be not exempted development

5. CONCLUSION

The infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage at a depth not exceeding 1.5 metres, at Derryvilla, Portarlinton, Co. Offaly is development and is not exempted development.

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 Infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage at a depth not exceeding 1.5 metres is or not development, and is or is not exempted development at Derryvilla, Portarlington, Co. Offaly.

AND WHEREAS Thomas Hanlon requested a declaration on the said question from Offaly County Council;

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 of the Planning & Development Regulations, 2001, as amended.
- c) Article 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;

The infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage at a depth not exceeding 1.5 metres, at Derryvilla, Portarlington, Co. Offaly *is development and is not exempted development.*

Michael Duffy

Michael Duffy

Assistant Planner

21st October 2021

Carroll Melia

Carroll Melia

Acting Senior Executive Planner

26th October 2021

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:

Offaly County Council

Planning Application Ref. No.:

DEC/21/20

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:

Proposed development:	Infilling of clean natural soil and stone to raise and recontour land surface to facilitate drainage		
Site location:	Derryvilla, Portarlinton, Co. Offaly		
Site size:	Not indicated	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Barrow and river Nore cSAC		
Distance to European Site(s):	2.77km		
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:	unknown		
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:	<p>The site is a candidate SAC selected for alluvial wet woodlands and petrifying springs, priority habitats on Annex I of the E.U. Habitats Directive. The site is also selected as a candidate SAC for old oak woodlands, floating river vegetation, estuary, tidal mudflats, <i>Salicornia</i> mudflats, Atlantic salt meadows, Mediterranean salt meadows, dry heath and eutrophic tall herbs, all habitats listed on Annex I of the E.U. Habitats Directive. The site is also selected for the following species listed on Annex II of the same directive - Sea Lamprey, River Lamprey, Brook Lamprey, Freshwater Pearl Mussel, Nore Freshwater Pearl Mussel, Crayfish, Twaite Shad, Atlantic Salmon, Otter, Desmoulin's Whorl Snail <i>Vertigo moulinsiana</i> and the Killarney Fern.</p>
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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.)**

1016 Desmoulin's whorl snail *Vertigo moulinsiana*
 1029 Freshwater pearl mussel *Margaritifera margaritifera*
 1092 White-clawed crayfish *Austropotamobius pallipes*
 1095 Sea lamprey *Petromyzon marinus*
 1096 Brook lamprey *Lampetra planeri*
 1099 River lamprey *Lampetra fluviatilis*
 1103 Twaite shad *Alosa fallax*
 1106 Atlantic salmon (*Salmo salar*) (only in fresh water) 1130 Estuaries
 1140 Mudflats and sandflats not covered by seawater at low tide
 1310 Salicornia and other annuals colonizing mud and sand
 1330 Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
 1355 Otter *Lutra lutra* 1410 Mediterranean salt meadows (*Juncetalia maritimi*)
 1421 Killarney fern *Trichomanes speciosum*
 1990 Nore freshwater pearl mussel *Margaritifera durrovensis*
 3260 Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation
 4030 European dry heaths
 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
 7220 * Petrifying springs with tufa formation (*Cratoneurion*)
 91A0 Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
 91E0 * Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002162.pdf

(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:

*(The purpose of this is to identify if the effect(s) identified could be significant – if **uncertain** assume the effect(s) are significant).*

Given the location the limited nature and size of the development applied for and the characteristics of *European* 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 *European* sites within 100 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.

Would there be...

... any impact on an Annex 1 habitat?
 (Annex 1 habitats are listed in Appendix 1 of AA Guidance).

Unknown

... a reduction in habitat area on a *European* site?

There will be no reduction in the habitat area.

... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the <i>European</i> site?	Unknown
... 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)?	Unknown
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> site?	Unnkown
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.	Unknown
(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 Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.</i>
	<i>Conclusion:3</i>
	<p>Justify why it falls into relevant category above:</p> <p>The applicant has submitted an Appropriate Assessment Screening Report which states the '<i>proposed works have the potential to impact on the Qualifying interest of the River Barrow and Nore SAC and should therefore be subject to a stage 2 Appropriate Assessment (NIS)</i>'</p>
Signed:	Michael Duffy
Date:	20 th October 2021