

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 21/05

NAME OF APPLICANT: JONATHAN BRADY

ADDRESS C/O DOUGLAS MCGEE ARCHITECTS,
WORKLABS, IDA BUSINESS PARK
CORK ROAD,
WATERFORD CITY, X91 DC96

ADDRESS FOR CORRESPONDENCE: C/O DOUGLAS MCGEE ARCHITECTS,
WORKLABS, IDA BUSINESS PARK
CORK ROAD,
WATERFORD CITY, X91 DC96

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the erection of 3 polytunnels, (3.7m x 6m x 2.28m) for commercial use is development and is or is not exempted development. Whether the erection of 1 polytunnel for private use at Coolanarney, Blueball, Co. Offaly is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: COOLANARNEY, BLUEBALL, CO. OFFALY

WHEREAS a question referred to Offaly County Council on 24/02/2021 as to whether the erection of 3 polytunnels, (3.7m x 6m x 2.28m) for commercial use is development and is or is not exempted development. Whether the erection of 1 polytunnel for private use at Coolanarney, Blueball, 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)(iii) of the Planning and Development Regulations 2001 (as amended)
- (c) Classes 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 polytunnel(s) comes within the scope of Class 9 of Schedule 2 of Part 3 of the Regulations and that the development would constitute a traffic hazard and is therefore not considered exempted development as per the provisions of Article 9 (1)(a)(iii) of the Planning and Development Regulations, 2001:

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 erection of 3 polytunnels, (3.7m x 6m x 2.28m) for commercial use is development and is or is not exempted development. Whether the erection of 1 polytunnel for private use is development and is not exempted development at Coolanarney, Blueball, 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

23/03/2021
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.

OFFALY COUNTY COUNCIL

Planning Report

Section 5 Declaration

File Reference:	<i>Dec 21/5</i>
Question:	<i>Whether the erection of 3 polytunnels, (3.7m x 6m x 2.28m) for commercial use is development and is or is not exempted development. Whether the erection of 1 polytunnel for private use is development and is or is not exempted development.</i>
Applicant:	<i>Jonathan Brady</i>
Location:	<i>Coolanarney, Blueball, Co. Offaly</i>
Date received:	<i>24th February 2021</i>
Date due:	<i>23rd March 2021</i>

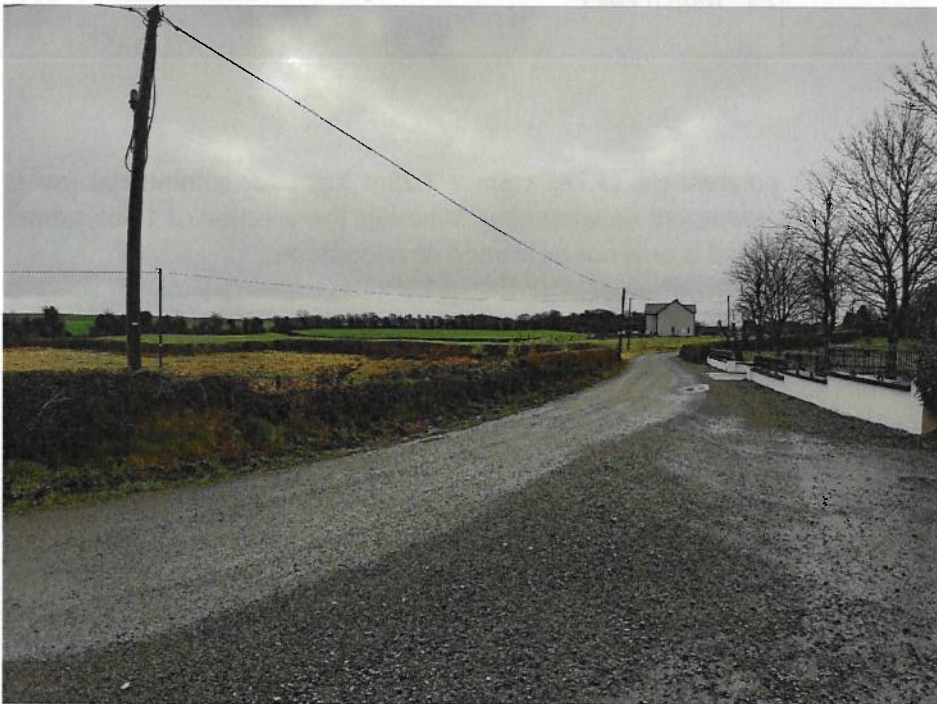
1. Proposal

Whether the erection of 3 polytunnels, (3.7m x 6m x 2.28m high) for commercial use is development and is or is not exempted development. Whether the erection of 1 polytunnel for private use is development and is or is not exempted development.

One polytunnel = 22sqm.
Three polytunnels = 66.6sqm.

2. Brief Site Description

The site comprises a field. There are mature field boundaries on all boundaries. There is an existing gated field opening along the front boundary which is on a bend. There are houses either side. Utility wires traverse the site and the site frontage. The eastern corner of the site is in an Area of High Amenity, Esker. The proposed siting of the polytunnels would be outside the Area of High Amenity.



3. Relevant Planning History:

06/1301: Permission granted to Kevin and Pauline Cunningham for a house & WWTS.

93/57: Outline permission granted to John Mitchell for a house and septic tank.

4. Legislative Context

Planning and Development Act 2000, as amended:

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

'agriculture', includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;

'use', in relation to land, does not include the use of the land by the carrying out of any works thereon;

'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;

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

S.3 (1) In this Act 'development' means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land.

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

(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;

S.4 (2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that-
(i) by reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development,

(3) A reference in this Act to exempted development shall be construed as a reference to development which is-

(a) any of the development specified in subsection (1), or

(b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

4(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

S.5 (1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter.

Planning and Development Regulations 2001, as amended:

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.

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.

Part 3 of the Exempted Development Regulations deals with 'Rural' developments. Column 1 sets out the classes of development that are exempted and Column 2 sets out the conditions and limitations on the exemption.

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>CLASS 9 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.</p>	<ol style="list-style-type: none"> 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. 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. 3. No such structure shall be situated within 10 metres of any public road. 4. No such structure within 100 metres of any public road shall exceed 8 metres in height. 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

	<p>the owner and, as may be appropriate, the occupier or person in charge thereof.</p> <p>6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.</p>
--	--

5. Proposal by Applicants

The applicant wishes to ascertain whether one or three polytunnels with an individual floor area is exempted development. The polytunnels have a height of 2.7m.

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 proposed structure is intended to be used for agricultural purposes, excluding the housing of animals and storing effluent.

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 900 square metres gross floor space in aggregate.*

There is no farmyard complex associated with the site.

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

From looking at the aerial photograph (with proposed polytunnels indicated), the structure will be further than 10m from the public road.

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

Not relevant – the polytunnels are 2.7m in height.

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 polytunnels appear to be located within 100m of the house to the west, according to documents received the landowner of the site is the owner of the adjoining site, and a letter of consent is therefore required.

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

No metal sheeting is proposed.

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.

Other than the European sites addressed in the AA no other AA is potentially within the zone of influence of the project.

7. Environmental Impact Assessment Screening

The proposed development does not fall within a class of development set out in Part 1 or Part 2 of Schedule 5 of the Planning and Development Regulations 2001- 20 (as amended) and therefore is not subject to EIA requirements.

8. Evaluation

Question: Is the following works considered as Development?

As the proposed works comprises of the construction of agricultural structures, 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?

It is necessary to consider whether the development complies with the limitations set out under Class 9:

Article 9 – Restrictions on exemptions

As stated above:

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—

(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,

The Declaration request has been referred to the District Engineer for comment in respect of the above limitations. Following a site inspection, the District Engineer, has advised that sightlines are restricted at the entrance agricultural entrance and that in order to achieve sightlines the entrance would need to be widened and part of / all the front boundary would need to be removed. The road width is however less than 4m wide and it would seem that provision is made for widening an access under the Regulations- however, there is no provision to condition the requirement to achieve sightlines and without this certainty the development could lead to a traffic hazard. Having regard to the foregoing it is considered that the proposed development would endanger public safety by reason of traffic hazard.

(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,

The proposed development would not interfere with the adjoining Area of High Amenity.

Other Matters

The applicant queries whether the use of the polytunnels for commercial purposes is exempted. Agriculture use is generally a commercial use and were the polytunnel(s) exempted it is not considered to be a material issue unless the applicant were to open a farm shop. In any case the issue of extent of commerciality does not arise as the development is not exempted.

9. Recommendation

It is recommended that the applicant is advised that the development as described in the application is development and is not exempted development.

Alaine Clarke

Alaine Clarke
Executive Planner

23rd March 2021

Date

Carroll Melia

Carroll Melia
ASenior Executive Planner

23rd March 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 erection of 3 polytunnels or 1 polytunnel (3.7m x 6m x 2.28m high) is development and is or is not exempted development at Coolanarney, Blueball, Co. Offaly is or is not exempted development;

AND WHEREAS Jonathan Brady has 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)(iii) of the Planning and Development Regulations 2001 (as amended)
- Classes 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 polytunnel(s) comes within the scope of Class 9 of Schedule 2 of Part 3 of the Regulations and that the development would constitute a traffic hazard and is therefore not considered exempted development as per the provisions of Article 9 (1)(a)(iii) 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 polytunnel(s) at Coolanarney, Blueball, 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.



Planning Authority: OCC

Section 5 Ref. No: 21/5

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:		
Proposed development:	1 or 3 polytunnels	
Site location:	Coolanharney, Blueball, Tullamore	
Site size:	Not known	Floor Area of Proposed Development: 22sq or 665sqm
Identification of nearby European Site(s):	Charleville SAC	
Distance to European Site(s):	5 km	
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):	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae) [91E0] Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]	
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.)	See below	
(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).

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)

Would there be... ... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).	No
... a reduction in habitat area on a European site?	No
... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?	No
... serious / ongoing disturbance to species / habitats for which the European 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 European 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 European sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.	No

(E) SCREENING CONCLUSION:

Screening can result in:

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.</i> (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

Justify why it falls into relevant category above:

There are no likely significant impact on the European site from the development due to its scale and the separation distance

		between the subject site and European Site.
N a m e:	Alaine Clarke	
Po sit io n:	EP	Date: 23.03.21



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
91E0	Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (Alno-Padion, Alnion incanae, Salicion albae)*

* denotes a priority habitat

Code	Common Name	Scientific Name
1016	Desmoulin's Whorl Snail	<i>Vertigo moulinsiana</i>

For more information please go to: www.npws.ie/protected-sites/conservation-management-planning