

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 21/8

NAME OF APPLICANT: BARRY LIFFEY

ADDRESS KILBALLYSKEA,  
SHINRONE,  
BIRR,  
CO. OFFALY.

ADDRESS FOR CORRESPONDENCE: KILBALLYSKEA,  
SHINRONE,  
BIRR,  
CO. OFFALY.

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Kilballyskea, Shinrone, Birr, Co. Offaly

WHEREAS a question referred to Offaly County Council on 07/04/2021 as to whether the removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation at Kilballyskea, Shinrone, Birr, 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 16 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);

AND WHEREAS Offaly County Council has concluded that the removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation comes within the scope of Class 16 of Part 3 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;

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 removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation at Kilballyskea, Shinrone, Birr, 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.

  
A/Senior Executive Officer

4/5/21  
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>	<i>Dec 21-08</i>
<b>Question:</b>	<i>Whether the removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation is/is not development and whether it is/is not exempted development?</i>
<b>Applicant:</b>	<i>Barry Liffey</i>
<b>Agent</b>	<i>Fearghal Kealey of Forest and Tree Services Limited</i>
<b>Correspondence Address:</b>	<i>Kilballyskea, Shinrone, Birr, Co. Offaly</i>
<b>Location:</b>	<i>Kilballyskea, Shinrone, Birr, Co. Offaly</i>

### 1. Introduction

The question has arisen as to whether the removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation is/is not development and whether it is/is not exempted development? The Applicant advises that the area contains poor quality commercial broadleaves and chalara infected Ash.

### 2. Background

The subject site (4.33ha) is on agricultural lands located approximately 1.8km south east of Shinrone. The protected structure (RPS ref. 61-012) Kilballyskea House is located in close proximity to the subject lands.

The lands are not located within on SAC or SPA.

Part of the lands are located within an Area of High Amenity (Eskers). This is a central strip that transverses through the two plots of land. The replanting of this area is not considered to adversely interfere with the character of this high amenity area.

### 3. Site History

Planning ref. 06/94 – located centrally between the two areas of forestry. Bernadette Liffey sought permission for the construction of new agricultural shed with associated site works – Granted.

### 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 (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 of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and “agricultural” shall be construed accordingly;*



Photo 1: Location of Subject Sites (outlined in red)

**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:

- (i) *development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species;*

**Circular Letter: EUIPR 01/2020 dated 20 February 2020**

This circular advises that the Planning and Development (Amendment) Act 2018 (Commencement) Order 2020 (S.I. No. 44 of 2020), and new Regulations entitled the

Planning and Development Act 2000 (Exempted Development) Regulations 2020 (S.I. No. 45 of 2020), were signed on 7 February 2020 by Mr Eoghan Murphy, T.D., Minister for Housing, Planning and Local Government and came into effect 8 February 2020.

Extract from S.I. No. 45 of 2020:

*The Planning and Development Regulations 2001 (S.I. No. 600 of 2001) are amended by-*

*(a) the substitution of the following Article for Article 8F:*

*“8F. Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of –*

*(a) the thinning, felling or replanting of trees, forests or woodlands, or*

*(b) works ancillary thereto,*

*shall be exempted development.”,*

### **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 16 - Replacement of broadleaf high forest by conifer species*.

<i>Column 1 Description of Development</i>	<i>Column 2 - Conditions &amp; Limitations</i>
<i>Class 16: Replacement of broadleaf high forest by conifer species.</i>	<i>The area involved shall be less than 10 hectares</i>

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

The Applicant wishes to ascertain whether the replacement of existing broadleaf forest with conifer species is development, and if so, is or is not exempted development.

The proposed development is considered against the conditions and limitations of Class 16:

- 1. The area involved shall be less than 10 hectares*

The Applicant advises that the subject site is 4.26ha in area.

## 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 removal of 4.26ha of broadleaf trees and replacement with conifer species, 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 16, 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

30<sup>th</sup> April 2021  
Date



Carroll Melia  
(A/Senior Executive Planner)

4<sup>th</sup> May 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 removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation at Kilballyskea, Shinrone, Birr, Co. Offaly is or is not development and if so, is or is not exempted development.

**AND WHEREAS** Barry Liffey 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 16 of Part 3 of Schedule 2 of the Planning and Development Regulations 2001 (as amended);

**AND WHEREAS** Offaly County Council has concluded that the removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation comes within the scope of Class 16 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 removal of 4.26ha of broadleaf forest and replacement with conifers species at Kilballyskea, Shinrone, Birr, 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



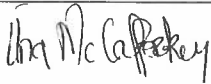
Screening is used to determine if an AA is necessary by examining:

- 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 21-08

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	The removal of 4.26ha of broadleaf forest and replacement with conifers species as part of a standard forest operation		
Site location:	Kilballyskea, Shinrone, Birr, Co. Offaly		
Site size:	4.26ha	Floor Area of Proposed Development:	N/A
Identification of nearby European Site(s):	Sharavogue Bog SAC – 1.43km Lisduff Fen – 7.49km		
Distance to European Site(s):	As above – all as crow flies		
The characteristics of existing, proposed or other approved plans / projects which may cause interactive / cumulative impacts with the project being assessed and which may affect the European site:	None		
Is the application accompanied by an EIAR?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>	
(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):			
The reasons for the designation of the European site(s):			
<b>Sharavogue Bog SAC – Features of interest include:</b>	<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>		
<b>Lisduff Fen – Features of interest include:</b>	<ul style="list-style-type: none"> <li>• Petrifying springs with tufa formation (Cratoneurion) [7220]</li> <li>• Alkaline fens [7230]</li> <li>• Vertigo geyeri (Geyer's Whorl Snail) [1013]</li> </ul>		
The conservation objectives / qualifying interests of the site and the factors that contributes to the conservation value of the site: (which are taken from the European site synopses and, if applicable, a Conservation Management Plan; all available on <a href="http://www.npws.ie">www.npws.ie</a> ) (ATTACH INFO.)			
Site Name: Sharavogue Bog SAC Site Code: 000585 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000585.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY000585.pdf</a> Site Name: Lisduff Fen SAC Site Code: 002147 <a href="https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002147.pdf">https://www.npws.ie/sites/default/files/protected-sites/synopsis/SY002147.pdf</a>			
(C) NPWS ADVICE:			
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.	AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.		
2.	No potential for significant effects / AA is not required.		
3.	Significant effects are certain, likely or uncertain. (In this situation seek a Natura Impact Statement from the applicant, or reject the project. Reject if too potentially damaging / inappropriate.		
Therefore, does the project fall into category 1, 2 or 3 above?		Category 2	
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.	
Name:	Úna McCafferkey 		
Position:	Assistant Planner	Date:	30 <sup>th</sup> April 2021