

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 22/01

NAME OF APPLICANT: Gordon Cobbe

ADDRESS FOR CORRESPONDENCE: Sranure
Cloneygowan
Tullamore
Co.Offaly
R35 K5P0

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones through a national monument is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Clonsast Upper, Bracknagh, Rathdangan, Co. Offaly

WHEREAS a question referred to Offaly County Council on 13th January 2022 as to whether or not the upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones through a national monument at Clonsast Upper, Bracknagh, Rathdangan, 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) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4(1) of the Planning & Development Act 2000, as amended.
- (d) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- (e) Schedule 2, Part 1, Class 9 of the Planning and Development Regulations 2001, as amended.
- (f) Schedule 2, Part 3, Class 4 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

- The works are considered development and is 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 upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones which is not located within a national monument 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.


Administrative Officer

Date 2/2/2022

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:	Dec 22/01
Question:	Whether or not the upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones through a national monument is or is not development and is or is not exempted development.
Applicant:	Gordon Cobbe
Location:	Clonsast Upper, Bracknagh, Rathdangan, Co. Offaly
Date received:	13 th January 2022
Date due:	9 th February 2022

1. Proposal

The question has arisen as to whether or not the upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones through a national monument is or is not development and is or is not exempted development.

2. Background

The site is located in the open countryside of County Offaly in the townland of Clonsast Upper, Bracknagh, Rathdangan, Co. Offaly. It is noted the applicant has stated the subject development goes through a National Monument, however following a search of both the Planning and the National Monuments Service GIS system there is no indication of the proposal intersecting any National Monument. Furthermore, following consultation with the department, they confirmed via email on the 25th January 2022 that *"there is no recorded monument within the area denoted. The nearest monument is located 203.8m to the north of the sites northern boundary"*. The declaration will therefore be assessed as if there is no National Monument within the vicinity of the same development.

3. Relevant Planning History:

PL2/19/366: Permission **Granted** to Gordon Cobbe for the construction of a two storey dwelling, a garage, proposed landscaping, a new site entrance and waste water treatment system and polishing filter and all associated site works and services subject to 17 conditions.

4. Legislative Context

Planning and Development Act 2000 (as amended)

- Section 2

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock...

- Section 3(1)

“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(1)

The following shall be exempted development for the purposes of the Act-

(a) Development consisting of the use of any land for the purposes of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

Planning and Development Regulations 2001 (as amended)

- Article 6

(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.

(2) 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.

- Schedule 2, Part 1 Exempted Development — General

<i>Sundry Works</i>	<i>The height of any such structure shall not</i>
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<p>CLASS 9 The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.</p>	<p>exceed 2 metres.</p>
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• Schedule 2, Part 3 Exempted Development — Rural

<p>Class 4 The construction, erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house.</p>	<ol style="list-style-type: none"> 1. The height of the wall or fence, other than a fence referred to in paragraph 2, shall not exceed 2 metres. 2. The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.
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5. Proposal by Applicant

The applicant wishes to ascertain whether or not the upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones which is not located within a national monument is or is not development and is or is not exempted development.

6. Appropriate Assessment

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

7. Evaluation

Question: Is the following works considered as Development?

It is considered that the proposal constitutes 'development' as defined by Section 3(1) of the Act.

Question: Is the following works proposal considered as Exempted Development?

As the applicant is proposing to upgrade an existing agricultural fence to sheep fence and replacing existing gates with new ones which is not located within a national monument.

8. Conclusion

It is recommended that the applicant be advised that the proposed development is development and is 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 or not the upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones which is not located within a national monument is or is not development and is or is not exempted development.

At Clonsast Upper, Bracknagh, Rathdangan, Co. Offaly

AND WHEREAS Gordon Cobbe 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) Section 2 of the Planning & Development Act 2000, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4(1) of the Planning & Development Act 2000, as amended.
- (d) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- (e) Schedule 2, Part 1, Class 9 of the Planning and Development Regulations 2001, as amended.
- (f) Schedule 2, Part 3, Class 4 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

- The works are considered development and is exempted development.

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

- The upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones which is not located within a national monument is development and is exempted development.

Michael Duffy

Michael Duffy

Assistant Planner

31st January 2022

Ed Kelly

Ed Kelly

Acting Senior Executive Planner

1/2/2022

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/22/1

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:

Proposed development:	Whether or not the upgrading of an existing agricultural fence to sheep fence and replacing existing gates with new ones through a national monument is or is not development and is or is not exempted development.		
Site location:	Bracknagh, Rathangan		
Site size:	n/a	Floor Area of Proposed Development:	n/a
Identification of nearby European Site(s):	River Barrow and River Nore SAC (Site Code 002162)		
Distance to European Site(s):	11.15km		
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?	No		

(B) IDENTIFICATION OF THE RELEVANT EUROPEAN SITE(S):

The reasons for the designation of the European site:	
The site is a 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.	
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 <i>Vertigo moulinsiana</i> 1029 Freshwater pearl mussel <i>Margaritifera margaritifera</i> 1092 White-clawed crayfish <i>Austropotamobius pallipes</i>	

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 maritima*)
 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 *Ranuncion fluitantis* and *Callitricho-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).	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 <i>European</i> 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?	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 <i>European</i> 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.

<p>direct / indirect damage to the size, characteristics or productive ability of populations on the <i>European</i> site?</p>	<p>Not likely to have an adverse impact due to its location, scale and characteristics.</p>		
<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 <i>European</i> sites and identify them]. Simply stating that there are no cumulative impacts' is insufficient.</p>	<p>No other plans known of in the vicinity of the site. The site is sufficient distance from the European site.</p>		
<p>(E) SCREENING CONCLUSION:</p>			
<p>Screening can result in:</p>			
<p>1</p>	<p><i>AA is not required because the project is directly connected with / necessary to the nature conservation management of the site.</i></p>		
<p>2</p>	<p><i>No potential for significant effects / AA is not required.</i></p>		
<p>3</p>	<p><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></p>		
	<p><i>Conclusion:2</i></p>		
	<p>Justify why it falls into relevant category above: <i>Given the location and the nature and size of the development applied for and the characteristics of European sites in the vicinity and the appropriate assessment guidelines it is considered that the development will be unlikely to have significant effects on any European sites.</i></p>		
<p>Signed:</p>	<p>Michael Duffy</p>	<p>Date:</p>	<p>31st January 2022</p>