

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 22/10

NAME OF APPLICANT: KEVIN FLANAGAN

ADDRESS: C/O ADPS  
MOLOUGH,  
NEWCASTLE,  
CLONMEL,  
CO. TIPPERARY

**NATURE OF APPLICATION:** Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether the construction of an agricultural shed of 299m<sup>2</sup> (Class 9) and two polytunnel totalling 250sqm (Class 9) is or is not development and is or is not exempted development.

**LOCATION OF DEVELOPMENT:** MEELAGHANS, KILLEIGH, TULLAMORE, CO. OFFALY

**WHEREAS** a question referred to Offaly County Council on 19/04/2022 as to whether or not the construction of a 299sqm storage shed and two polytunnel totalling 250sqm at Meelaghans, Killeigh, 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) 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 3, Class 9 of the Planning and Development Regulations 2001, as amended.

**AND WHEREAS** Offaly County Council has concluded that –

The construction of an agricultural shed of 299m<sup>2</sup> (Class 9) and two polytunnel totalling 250sqm (Class 9) as indicated on the documentation submitted by the Applicant on the 19<sup>th</sup> April 2022 **is development and is 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 2000, as amended, hereby decides that the the construction of a 299sqm storage shed and two polytunnel totalling 250sqm as indicated on the documentation submitted by the Applicant on the 19<sup>th</sup> April 2022 **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

**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

<b>File Reference:</b>	Dec 22/10
<b>Question:</b>	Whether an agricultural shed of 299m <sup>2</sup> (Class 9) and two polytunnel totalling 250sqm (Class 9) is or is not development and is or is not exempted development
<b>Applicant:</b>	Kevin Flanagan
<b>Location:</b>	Meelaghans, Killeigh, Tullamore, Co. Offaly
<b>Date received:</b>	9 <sup>th</sup> May 2022
<b>Date due:</b>	3 <sup>rd</sup> June 2022

#### 1. Proposal

The question has arisen as to whether or not the construction of a 200sqm agricultural storage shed and two polytunnel totalling 250sqm is or is not development and is or is not exempted development.

#### 2. Location

The site is located in the open countryside of County Offaly in the townland of Meelaghans, Killeigh, Tullamore, Co. Offaly.

#### 3. Relevant Planning History:

No record of any planning history on site.

#### 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 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;

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.
- 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.

**Schedule 2, Part 3 Exempted Development — Rural**

<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>	<ul style="list-style-type: none"><li>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.</li><li>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.</li><li>3) No such structure shall be situated within 10 metres of any public road.</li><li>4) No such structure within 100 metres of any public road shall exceed 8 metres in height.</li><li>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</li></ul>
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	<p>consent in writing of 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>
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**Article 9(1) - Restrictions on exemption.**

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, in the draft variation of the 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.
- 2) Sub-article (1)(a)(vi) shall not apply where the development consists of the construction by any electricity undertaking of an overhead line or cable not exceeding 100 metres in length for the purpose of conducting electricity from a distribution or transmission line to any premises.
  - 3) For the avoidance of doubt, sub-article (1)(a)(vii) shall not apply to any operation or activity in respect of which a Minister of the Government has granted consent or approval in accordance with the requirements of regulation 31 of the Habitats Regulations 1997, and where regulation 31(5) does not apply.

#### **5. Proposal by Applicant**

The applicant wishes to ascertain whether or not the construction of a 299sqm storage shed and two polytunnel totalling 250sqm 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 construct an agricultural storage shed of 299sqm and 2 no. polytunnels totaling 250sqm the works is not in excess of 900sqm, the structures would be located in excess of 10 metres from the public road, would not exceed 8 metres in height and no structure would be situated within 100 metres of any house.

#### **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 construction of a 299sqm storage shed and two polytunnel totalling 250sqm is or is not development and is or is not exempted development

At Meelaghans, Killeigh, Tullamore, Co. Offaly

**AND WHEREAS** Kevin Flanagan 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 3, Class 9 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 construction of a 299sqm storage shed and two polytunnel totalling 250sqm is **development and is exempted development.**



\_\_\_\_\_  
*Naomi Scully (Executive Planner)*

31<sup>st</sup> May 2022

*Date*



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*Ed Kelly (A/Senior Executive Planner)*

*Date 2/6/2022*



## 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/22/10

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether an agricultural shed of 299m <sup>2</sup> (Class 9) and two polytunnel totalling 250sqm (Class 9) is or is not development and is or is not exempted development		
Site location:	Meelaghans, Killeigh, Tullamore, Co. Offaly		
Site size:	n/a	Floor Area of Proposed Development:	n/a
Identification of nearby European Site(s):	2000 site(s): SAC 000571– Charleville Wood SAC – 6.47km 2000 site(s): SAC 000572– Clara Bog SAC – 6.48km		
Distance to European Site(s):	As above		
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:			
<u>Charleville Wood SAC</u> 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]			
<u>Clara Bog SAC</u> Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (* important orchid sites) [6210] Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150] Bog woodland [91D0]			
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](http://www.npws.ie)) **(ATTACH INFO.)**

Please see:

Charleville Wood SAC

[https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO000571.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000571.pdf)

Clara Bog SAC

[https://www.npws.ie/sites/default/files/protected-sites/conservation\\_objectives/CO000572.pdf](https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000572.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 *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 *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?

Not likely to have an adverse impact due to its location, scale and characteristics.

Would the project interfere with mitigation measures put in place for other plans / projects. [Look at *in-combination effects* 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.

**(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:2</i>
	<b><i>Justify why it falls into relevant category above:</i></b> <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>

**Signed:**



**Position:**

Exec. Planner

**Date:**

31<sup>st</sup> May 2022

