

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 22/13

NAME OF APPLICANT: FEARGHAL KEALEY

ADDRESS: BALLINCUR,
KINNITTY,
BIRR,
CO. OFFALY

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not the replacing 1.1 hectares of diseased Ash with Western Red Cedar and 15% broadleaf is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: KNOCKBALLYBOY, BALLINAGAR, TULLAMORE,
CO. OFFALY.

WHEREAS a question referred to Offaly County Council on 17/06/22 as to whether the development by Ferghal Kealey of the replacement of 1.1 hectares of diseased Ash with Western Red Cedar and 15% broadleaf at Knockballyboy, Ballinagar, 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) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- b) Article 9(1) (a) (viiC) of the Planning and Development Regulations 2001, as amended.
- c) Section 3(1) of the Planning & Development Act 2000, as amended.
- d) Section 4 of the Planning & Development Act 2000, as amended.
- e) Schedule 2, Part 3, Class 16 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

- The works are considered 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 2000, as amended, hereby decides that the replacing of 1.1 hectares of diseased Ash with Western Red Cedar and 15% broadleaf at Knockballyboy, Ballinagar, Co. Offaly, is located within the Daingean Bog National Heritage Area (NHA). It is unclear from the documentation submitted that proposed works would not have an adverse impact on the Daingean Bog NHA and therefore it is considered that the proposed works are not exempted development, due to the restrictions of exempted development under Article 9(1)(a)(viiC) of the Planning and Development Regulations, as amended. The works are development and are 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.

Rubnell
Administrative Officer

Date 13/07/2022

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 22/13
Question:	Whether or not the replacing 1.1 hectares of diseased ash with western red cedar and 15% broadleaf is or is not development and is or is not excepted development
Applicant:	Fearghal Kealey
Location:	Knockballyboy, Ballinagar, Co. Offaly
Date received:	17 th June 2022
Date due:	14 th July 2022

1. Proposal

The question has arisen as to whether or not the replacing 1.1 hectares of diseased ash with western red cedar and 15% broadleaf is or is not development and is or is not excepted development is or is not development and is or is not excepted development

2. Background

The site is located in the open countryside of County Offaly in the townland of Knockballyboy, Daingean, site area is given as 1.1 ha and access is onto the L-10202-1 Local Tertiary Road. It is noted the subject site is located within Daingean Bog NHA

3. Relevant Planning History:

None

4. Legislative Context

Schedule 2, Part 3

CLASS 16 Replacement of broadleaf high forest by conifer species.	The area involved shall be less than 10 hectares.
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Article 6(3) of the Planning and Development Regulations 2001, as amended:

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(1)(a)(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.

Section 3 (1) Planning and Development Act 2000, as amended, defines development.

“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 Planning and Development Act 2000, as amended - Exempted Development

4.—(1) *The following shall be exempted developments for the purposes of this Act—*
(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;]

(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.

5. Proposal by Applicant

The applicant wishes to ascertain whether or not the replacing 1.1 hectares of diseased ash with western red cedar and 15% broadleaf is or is not development and is or is not excepted 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?

The applicant is proposing to replace 1.1 hectares of diseased ash with western red cedar and 15% broadleaf which is located within Daingean Bog NHA. It is unclear from the documentation submitted that proposed works would not have an adverse impact on the Daingean Bog NHA and therefore it is considered the proposed works are not exempted development due to the restrictions of exempted development under Article 9(1)(a)(viiC) of the Planning and Development Regulations, as amended.

8. Conclusion

It is recommended that the applicant be advised that the proposed development 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 or not the replacing 1.1 hectares of diseased ash with western red cedar and 15% broadleaf is or is not development and is or is not exempted development

At Knockballyboy, Ballinagar, Co. Offaly

AND WHEREAS Fearghal Kealey 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) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- (b) Article 9(1)(a)(viiC) of the Planning and Development Regulations 2001, as amended.
- (c) Section 3(1) of the Planning & Development Act 2000, as amended.
- (d) Section 4 of the Planning & Development Act 2000, as amended.
- (e) Schedule 2, Part 3, Class 16 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that –

- The works are considered development and is not exempted development.

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

- The replacing of 1.1 hectares of diseased ash with western red cedar and 15% broadleaf at Knockballyboy, Ballinagar, Co. Offaly, is located within the Daingean Bog National Heritage Area (NHA). It is unclear from the documentation submitted that proposed works would not have an adverse impact on the Daingean Bog NHA and therefore it is considered that the proposed works are not exempted development, due to the restrictions of exempted development under Article 9(1)(a)(viiC) of the Planning and Development Regulations, as amended.

The works are **development** and are **not exempted development**.

Michael Duffy

Michael Duffy

Assistant Planner

29th June 2022

Carroll Melia

Carroll Melia

Acting Senior Executive Planner

13th July 2022



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 Natura 2000 site.
- If the effects will be significant on a Natura 2000 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/22/13

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:	Whether or not the replacing 1.1 hectares of diseased ash with western red cedar and 15% broadleaf is or is not development and is or is not excepted development		
Site location:	Knockballyboy, Ballinagar, Co. Offaly		
Site size:	1.1 ha	Floor Area of Proposed Development:	N/A
Identification of nearby <i>European</i> Site(s):	Raheenmore Bog		
Distance to <i>European</i> Site(s):	5.32kms		
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 <i>European</i> 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 <i>European</i> site:			
<p>Please see the following extract from Raheenmore Bog SAC National Parks and Wildlife Conservation Plan for 2005-2010</p> <p>Raheenmore Bog is situated 12km north-east of Tullamore, Co. Offaly and comprises 182ha. It developed in a small basin in the catchment of the Brosna and Boyne rivers, and is the deepest remaining raised bog in Ireland. The majority of the site (89%) comprises a statutory Nature Reserve. The underlying rock is Carboniferous limestone, with overlying gravely glacial till and lacustrine deposits above this. Deep peripheral drains surround the bog. Surface drains are also present, mostly on the eastern side of the bog. By far the most important habitat present is the active raised bog, an Annex I priority habitat listed in the</p>			

E.U. Habitats Directive. The habitat has a well-developed hummock and hollow system. The hummocks are often colonised by the bog mosses *Sphagnum imbricatum* and *S. fuscum*. Pool areas support Great Sundew, the moss *Sphagnum cuspidatum* and the liverwort *Cladopodiella fluitans*. In places, moss lawns of *S. magellanicum* have infilled the pools. Overall, the cover of bog mosses on the bog is very good. Away from the dome summit, Bog Asphodel flats dominate the peat surface. Other species include Ling Heather, Deergrass, lichens, Bog Cottons and White Beak-sedge. Other habitats present on the site include cutover bog, strips of Birch woodland at the margins, lowland wet grassland (fertilised to varying degrees) and freshwater marsh. Small relict areas of poor fen or lagg vegetation have been identified at Raheenmore. It may therefore be possible to restore some lagg areas, which would add to the quality of the site. Noteworthy plant species present include Tussock Sedge and the moss *Sphagnum pulchrum*. Merlin frequents the site and the Irish Red Grouse recently bred on the bog.

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.)**

The nature conservation objectives for this site are:

Objective 1: To maintain and, where possible, enhance the quality of the active raised bog (64% of the site).

Objective 2: To restore areas of lagg vegetation around the raised bog i.e. in the westnorth-west and south of the site.

Objective 3: To maintain and, where possible, enhance the ecological quality of other habitats, in particular dry, broadleaved semi-natural woodland (3% of site), cutover bog (10%), lowland wet grassland (23%), and freshwater marsh (<1%).

Objective 4: To maintain, and possibly increase, the populations of Annex I and other important species of flora and fauna present e.g. Merlin, Grouse and *Sphagnum pulchrum*.

Objective 5: To maintain effective liaison between NPW, landowners and other interested parties, in order to effectively manage the site for conservation.

(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 <i>European</i> 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 <i>European</i> site.
... direct / indirect damage to the size, characteristics or reproductive ability of populations on the <i>European</i> 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 <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.	No
(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>
	<i>Justify why it falls into relevant category above:</i> <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>
Name:	Michael Ouffy
Date:	29 th June 2022