

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

REFERENCE: DEC 22/17

NAME OF APPLICANT: Liam Taylor

ADDRESS: C/o Gerard Buckley
GBD,
Stonestown,
Cloghan,
Co. Offaly

ADDRESS FOR CORRESPONDENCE: C/o Gerard Buckley
GBD,
Stonestown,
Cloghan,
Co. Offaly

NATURE OF APPLICATION: Request for Declaration under Section 5 of the Planning & Development Act 2000, as amended as to whether or not an existing greenhouse (17m²) is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: Ballyloughan, Cloghan, Co. Offaly.

WHEREAS a question referred to Offaly County Council on 22/08/2022 as to whether or not an existing greenhouse (17m²) at Ballyloughan, Cloghan, 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, 3(1) and 4(1) of the Planning & Development Act 2000, as amended.
- (b) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2, Part 3, Class 3 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the existing glasshouse with a stated gross floor area of 17m² **is development and is not exempted development.**

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 existing glasshouse with a stated gross floor area of 17m² **is development and is not exempted development** at Ballyloughan, Cloghan, 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.



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

File Reference:	<i>Dec. 22/17</i>
Question:	<i>Whether a greenhouse (17m²) is or is not development and is or is not exempted development.</i>
Applicant:	<i>Liam Taylor</i>
Correspondence Address:	<i>c/o Gerard Buckley GBD, Stonestown, Cloghan, Co. Offaly</i>
Location:	<i>Ballyloughan, Cloghan, Co. Offaly.</i>

1. Proposal

The question has arisen as to whether or not an existing greenhouse (17m²) is or is not development and is or is not exempted development.

2. Location

The subject site is located in the open countryside of Co. Offaly on the Belmont Road, in close proximity to the village of Cloghan.

3. Relevant Planning History:

- 22/147: Liam Taylor has sought permission for the demolition of existing rear extension and to construct a rear extension to existing dwelling house and replace the front door with a window and all associated site works – *FI requested 19th May 2022.*

The structure which is subject to this Declaration is shown on the submitted plans as 'existing garage'.

- 22/414: Liam Taylor has sought retention permission for 1 no. commercial unit which consists of a log cabin for a sole trader which include services required for same, and a single domestic garage, both to the rear of my property all associated site works – *Decision due date is 10th October 2022.*

The structure which is subject to this Declaration is shown on the submitted plans as 'existing greenhouse'.

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.

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 - Exempted Development

Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act including:

(h) *development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure and which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.*

Section 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.*

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.*

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.

5. Proposal by Applicant

The applicant wishes to ascertain whether or not an existing greenhouse with a stated gross floor area of 17m² and maximum height of 2.72m 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?

The following exemption class is applicable to this assessment:

ARTICLE 6 - PART 1 - Exempted Development — General

Column 1 Description of Development	Column 2 - Conditions and Limitations
CLASS 3 The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure.	<ol style="list-style-type: none">1. No such structure shall be constructed, erected or placed forward of the front wall of a house.2. The <u>total area</u> of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.3. The construction, erection or placing within

	<p>the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.</p> <p>4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.</p> <p>5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.</p> <p>6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.</p>
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The submitted site layout plan shows an existing garage with a stated gross floor area of 50m² and the existing glasshouse with a GFA of 17m² which amounts to a total area of 67m². In addition, the plan shows an existing commercial unit (20m² GFA) which is subject to a current planning application.

As the total area of the outbuildings (including the glasshouse and garage) at the subject site exceeds 25 square metres, the glasshouse is not exempted development.

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 a glasshouse with a stated gross floor area of 17m² is or is not development and is or is not exempted development at Ballyloughan, Cloghan, Co. Offaly.

AS INDICATED on the particulars received by the Planning Authority on the 22nd ^{August} ~~July~~ 2022, is development and is or is not exempted development,

AND WHEREAS Liam Taylor 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, 3(1) and 4(1) of the Planning & Development Act 2000, as amended.
- (b) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- (c) Schedule 2, Part 3, Class 3 of the Planning and Development Regulations 2001, as amended.

AND WHEREAS Offaly County Council has concluded that the existing glasshouse with a stated gross floor area of 17m² is development and is not exempted development.

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 glasshouse with a stated gross floor area of 17m² is **development and is not exempted development** at Ballyloughan, Cloghan, Co. Offaly.

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.



Úna McCafferkey
Executive Planner

16th September 2022

Date



Carroll Melia (A/Senior Executive Planner)

16th September 2022

Date

**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/22/17

(A) DESCRIPTION OF PROJECT AND LOCAL SITE:			
Proposed development:			
Site location:			
Site size:	n/a	Floor Area of Proposed Development:	17m ² (existing)
Identification of nearby <i>European Site(s)</i> :	SAC 000581 – Moyclare Bog SAC – 3.67km SAC 000216 – River Shannon Callows SAC – 4.52km SAC 000575 – Ferbane Bog SAC – 6.16km SAC 000566 – All Saints Bog and Esker SAC – 9.81km SAC 000576 – Fin Lough (Offaly) SAC – 9.99km		
Distance to <i>European Site(s)</i> :	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 <i>European site</i> :	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 site</i> :			
<p><u>Moyclare Bog SAC</u> Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150]</p> <p><u>River Shannon Callows SAC</u> Molinia meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinia caerulea</i>) [6410] Lowland hay meadows (<i>Alopecurus pratensis</i>, <i>Sanguisorba officinalis</i>) [6510] Alkaline fens [7230] Limestone pavements [8240] Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] Lutra lutra (Otter) [1355]</p> <p><u>Ferbane Bog SAC</u> Active raised bogs [7110] Degraded raised bogs still capable of natural regeneration [7120] Depressions on peat substrates of the Rhynchosporion [7150]</p> <p><u>All Saints Bog and Esker SAC</u> Semi-natural dry grasslands and scrubland facies on calcareous substrates (<i>Festuco-Brometalia</i>) (* 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]</p> <p><u>Fin Lough (Offaly) SAC</u></p>			

aline fens [7230] Vertigo geyeri (Geyer's Whorl Snail) [1013]	
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 <i>European</i> site synopses and, if applicable, a Conservation Management Plan; all available on www.npws.ie) (ATTACH INFO.)	
Moyclare Bog SAC https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000581.pdf River Shannon Callows SAC https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000216.pdf Ferbane Bog SAC https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000575.pdf All Saints Bog and Esker SAC https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000566.pdf Fin Lough (Offaly) SAC https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO000576.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:	
<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>	
Given the location the limited nature and size of the development applied for and the characteristics of <i>European</i> 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 <i>European</i> sites within 100 metres of the development applied for and therefore no significant effects on any <i>European</i> 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.
... 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 other plans known of in the vicinity of the site. The site is sufficient distance from the European site.

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: 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:

Úna McCafferkey



Position:

Exec. Planner

Date:

16th September 2022