

OFFALY COUNTY COUNCIL

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

REFERENCE: DEC 22/4

NAME OF APPLICANT: PATRICK DOLAN

ADDRESS: CASTLE STREET,  
CLOGHAN,  
CO. OFFALY.

ADDRESS FOR CORRESPONDENCE: C/O FEARGHAL KEALEY,  
FOREST AND TREE SERVICES,  
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 the removal of 1.2 hectares of diseased ash trees due to Chalara and trees to be replaced by planting conifers namely (Norway) Spruce is or is not development and is or is not exempted development.

LOCATION OF DEVELOPMENT: TONLEMONE, CLOGHAN, CO. OFFALY

WHEREAS a question referred to Offaly County Council on 04<sup>th</sup> February 2022 as to whether the removal of 1.2 hectares of diseased ash trees due to Chalara and trees to be replaced by planting conifers namely (Norway) Spruce at Tonlemone, 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) Article 6(3) of the Planning and Development Regulations 2001, as amended.
- (b) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4 of the Planning & Development Act 2000, as amended.
- (d) 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 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 removal of 1.2 hectares of diseased ash trees due to Chalara and trees to be replaced by planting conifers namely (Norway) Spruce at Tonlemone, Cloghan, 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.

  
\_\_\_\_\_  
Administrative Officer

Date

03/03/2022

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.

## Planning Report - Section 5 Declaration

|                                |  |
|--------------------------------|--|
| <b>File Reference:</b>         | <i>Dec. 22/04</i>  |
| <b>Question:</b>               | <i>Whether or not the removal of 1.2 hectares of diseased Ash trees due to Chalara and trees to be replaced by planting conifers namely (Norway) Spruce is or is not development and is or is not excepted development</i> |
| <b>Applicant:</b>              | <i>Patrick Dolan</i>   |
| <b>Correspondence Address:</b> | <i>c/o Fearghal Kealey,<br/>Forest &amp; Tree Services,<br/>Ballincur,<br/>Kinnitty,<br/>Birr,<br/>Co. Offaly</i>  |
| <b>Location:</b>               | <i>Tonlemone, Cloghan, Co. Offaly.</i>   |

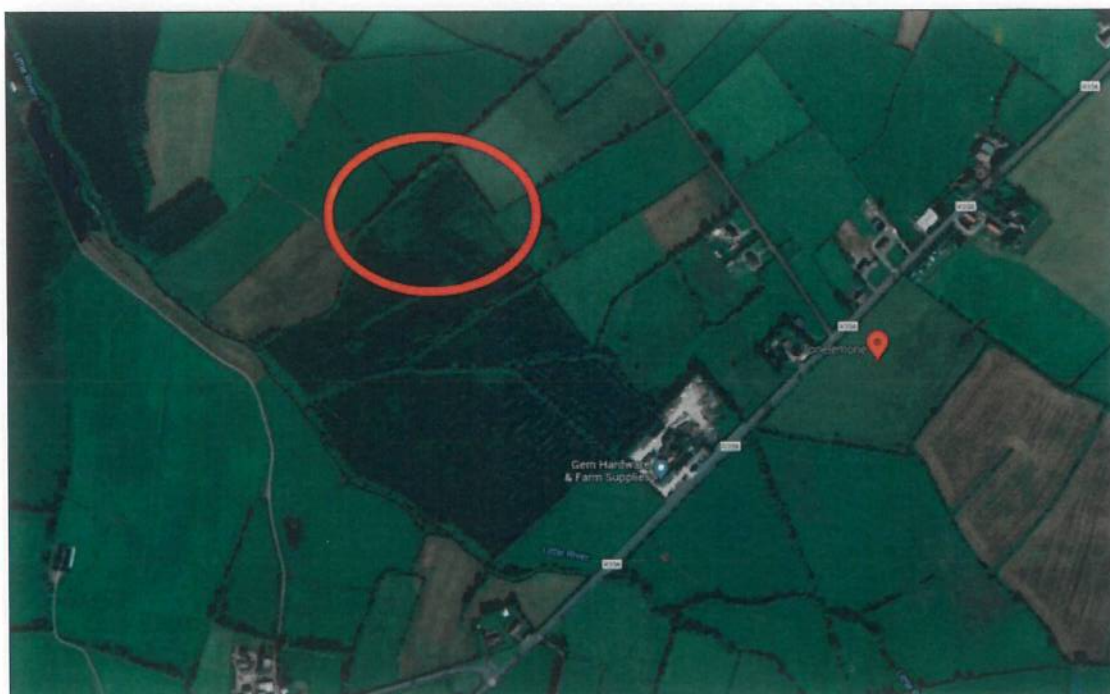
### 1. Introduction

The question has arisen as to whether or not the removal of 1.2 hectares of diseased Ash trees due to Chalara and trees to be replaced by planting conifers namely (Norway) Spruce is or is not development and is or is not excepted development.

The Planner notes that Chalara is also commonly referred to as Ash dieback.

### 2. Background

The subject site is located in the open countryside in the townland of Tonlemone approximately 2km south west of Cloghan Village.



*Photo 1: Site Location.*

### 3. Site History

There is no recent planning history on the subject site.

#### **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:**

*“alteration” includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures;*

*“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 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:

*(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 other structures 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, *inter alia*, that:

*“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”.*

Schedule 2 – Part 3 - Exempted Development — Rural (Miscellaneous) outlines the following exemption:

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

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

The Applicant wishes to ascertain whether or not the removal of 1.2 hectares of diseased Ash trees to be replanted with conifers namely (Norway) Spruce is or is not development and is or is not exempted development

#### **6. Evaluation**

Question: Is the following works considered as Development?

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?

As the applicant is proposing to remove 1.2 hectares of diseased Ash trees and replace with (Norway) Spruce, it is considered the proposed works are exempted subject to an assessment of the limitations of Schedule 2, Part 3, Class 16.

#### **7. Recommendation**

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 removal of 1.2 hectares of diseased Ash trees due to Chalara and trees to be replaced by planting conifers namely (Norway) Spruce is or is not development and is or is not exempted development at Tonlemone, Cloghan, Co. Offaly.

**AND WHEREAS** Patrick Dolan 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) Section 3(1) of the Planning & Development Act 2000, as amended.
- (c) Section 4 of the Planning & Development Act 2000, as amended.
- (d) 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 exempted development.

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

- The removal of 1.2 hectares of diseased ash trees due to Chalara and trees to be replaced by planting conifers namely (Norway) Spruce **is development and is exempted development.**



\_\_\_\_\_  
Una McCafferkey  
Executive Planner

1<sup>st</sup> March 2022

Date



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Carroll Melia  
(A/Senior Executive Planner)

2<sup>nd</sup> March 2022

Date

**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. 22/04

| (A) DESCRIPTION OF PROJECT AND LOCAL SITE:   |   |   |     |
|--|---|---|-----|
| Proposed development:  | Whether or not the removal of 1.2 hectares of diseased Ash trees due to Chalara and trees to be replaced by planting conifers namely (Norway) Spruce is or is not development and is or is not excepted development |   |     |
| Site location:   | Tonlemone, Cloghan, Co. Offaly.   |   |     |
| Site size:   | 1.2ha   | Floor Area of Proposed Development:     | N/A |
| Identification of nearby European Site(s):   | Middle Shannon Callows SPA – 3.35km<br>River Shannon Callows SAC – 3.35km<br>All Saints Bog SPA – 8.27km  |   |     |
| 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):   |   |   |     |
| <p><b>Middle Shannon Callows SPA – Features of interest include:</b></p> <ul style="list-style-type: none"> <li>• Whooper Swan (Cygnus cygnus) [A038]</li> <li>• Wigeon (Anas penelope) [A050]</li> <li>• Corncrake (Crex crex) [A122]</li> <li>• Golden Plover (Pluvialis apricaria) [A140]</li> <li>• Lapwing (Vanellus vanellus) [A142]</li> <li>• Black-tailed Godwit (Limosa limosa) [A156]</li> <li>• Black-headed Gull (Chroicocephalus ridibundus) [A179]</li> <li>• Wetland and Waterbirds [A999]</li> </ul> <p><b>River Shannon Callows SAC– Features of interest include:</b></p> <ul style="list-style-type: none"> <li>• Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410]</li> <li>• Lowland hay meadows (Alopecurus pratensis, Sanguisorba officinalis) [6510]</li> <li>• Limestone pavements [8240]</li> <li>• Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0]</li> <li>• Lutra lutra (Otter) [1355]</li> </ul> <p><b>All Saints Bog SPA – Features of interest include:</b></p> <ul style="list-style-type: none"> <li>• Greenland White-fronted Goose (Anser albifrons flavirostris) [A395]</li> </ul> |   |   |     |



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.)

SITE NAME: MIDDLE SHANNON CALLOWS SPA, SITE CODE: 004096

[SITE SYNOPSIS \(npws.ie\)](#)

SITE NAME: ALL SAINTS BOG SPA SITE CODE: 004103

[SITE SYNOPSIS \(npws.ie\)](#)

SITE NAME: RIVER SHANNON CALLOWS SAC, SITE CODE: 000216

[SITE SYNOPSIS \(npws.ie\)](#)

**(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).*


If the answer is 'yes' to any of the questions below, then the effect is significant. (Please justify your answer. 'Yes' / 'No' alone is insufficient)

|   |   |
|---|---|
| <p><b>Would there be...</b></p> <p>... any impact on an Annex 1 habitat? (Annex 1 habitats are listed in Appendix 1 of AA Guidance).</p>  | <p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>  |
| <p>... a reduction in habitat area on a European site?</p>  | <p>There will be no reduction in the habitat area. The site is sufficient distance from the European site.</p>          |
| <p>... direct / indirect damage to the physical quality of the environment (e.g. water quality and supply, soil compaction) in the European site?</p>   | <p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>  |
| <p>... serious / ongoing disturbance to species / habitats for which the European site is selected (e.g. because of increased noise, illumination and human activity)?</p>  | <p>Not likely due to the location and type of development. The site is sufficient distance from the European site.</p>  |
| <p>... direct / indirect damage to the size, characteristics or reproductive ability of populations on the European site?</p>   | <p>None likely due to the location and type of development. The site is sufficient distance from the European site.</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 European 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>     |

**(E) SCREENING CONCLUSION:**

**Screening can result in:**

|    |  |
|----|--|
| 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? | 2  |
| Justify why it falls into relevant category above:              | <i>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.</i> |
| Name:   | Úna McCafferkey   |
| Position:   | Exec. Planner  |
| Date:   | 1 <sup>st</sup> March 2022   |