



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

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RL 5660 3311 3IE

**Your Clients: Sean & Frances Earls**

**12th April, 2022**

**Section 5 referral Reference R22-24 – Sean & Frances Earls**

Is the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch, at Rathclooney, Tulla, Co. Clare considered to be development, and if so, is it exempted development?

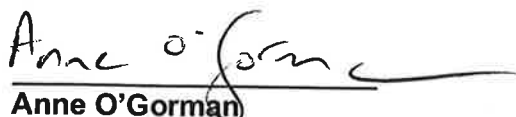
A Chara,

I refer to your application received on 05th April 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at [www.pleanala.ie](http://www.pleanala.ie)

Mise, le meas



**Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate**

**An Roinn Pleanála  
An Stiúrthóireacht Forbairt Gheilleagrach  
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2**

**Planning Department  
Economic Development Directorate  
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2**



**DECLARATION ISSUED UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

**Reference No.: R22-24**



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R22-24**

**Is the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch, at Rathclooney, Tulla, Co. Clare considered to be development, and if so, is it exempted development?**

**AND WHEREAS, Sean & Frances Earls** has requested a declaration from Clare County Council on the said question.

**AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –**

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- c) Class 16 of Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended;
- d) Article 8F of the Planning and Development Regulations 2001, as amended
- e) The works as indicated in submitted documents from the referrer.

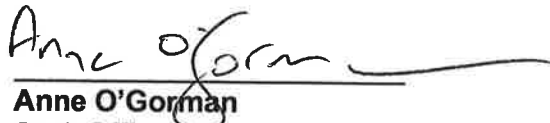
**And whereas Clare County Council has concluded:**

- (a) The removal of 1.04ha of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch constitutes "works" which come within the scope of section 2(1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) the said removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch is exempted development by virtue of Schedule 2, Part 3, Class 16 of the Planning and Development Regulations 2000 (as amended) and Article 8F of the Planning and Development Regulations 2000 (as amended)

**THEREFORE:** The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch at Rathclooney,

Tulla, Co. Clare is development and is exempted development as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.

A handwritten signature in black ink, appearing to read 'Anne O'Gorman', is written over a horizontal line.

**Anne O'Gorman**  
**Staff Officer**  
**Planning Department**  
**Economic Development Directorate**

**12th April, 2022**

**CLARE COUNTY COUNCIL**

**SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED**

**DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT**

Chief Executive's Order No: 79602

Reference Number: R22-24

Date Referral Received: 05th April 2022

Name of Applicant: Sean & Frances Earls

Location of works in question: Rathclooney, Tulla, Co. Clare

**Section 5 referral Reference R22-24 – Sean & Frances Earls**

Is the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch, at Rathclooney, Tulla, Co. Clare considered to be development, and if so, is it exempted development?

**AND WHEREAS Clare County Council, in considering this referral, had regard in particular to –**

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 16 of Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended;
- (d) Article 8F of the Planning and Development Regulations 2001, as amended
- (e) The works as indicated in submitted documents from the referrer.

**AND WHEREAS Clare County Council has concluded:**

- (a) The removal of 1.04ha of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch constitutes "works" which come within the scope of section 2(1) of the Planning and Development Act 2000, as amended;
- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) the said removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch is exempted development by virtue of Schedule 2, Part 3, Class 16 of the Planning and Development Regulations 2000 (as amended) and Article 8F of the Planning and Development Regulations 2000 (as amended)

**ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch at Rathclooney, Tulla, Co. Clare is development and is exempted development.

**Signed:**

  
\_\_\_\_\_  
**GARETH RUANE**  
**SENIOR EXECUTIVE PLANNER**

*As of*

**Date:**

**12th April, 2022**

**CLARE COUNTY COUNCIL**  
**SECTION 5 DECLARATION OF EXEMPTION APPLICATION**  
**PLANNERS REPORT**

<b>FILE REF:</b>	R22-24
<b>APPLICANT(S):</b>	Sean and Frances Earls
<b>REFERENCE:</b>	Whether the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch is or is not development and is or is not exempted development.
<b>LOCATION:</b>	Rathclooney, Tulla, Co Clare
<b>DUE DATE:</b>	2 <sup>nd</sup> May 2022

**Site Location**

The proposal site is located in a rural area approximately 3.5km northeast of Spencilhill and 7km northwest of Tulla.

**Recent Planning History**

No previous planning applications on the proposal site.

**Background to Referral**

This Referral under Section 5(1) of the Planning and Development Act 2000 (as amended) has been made by Sean and Frances Earls. They are the stated owners of the lands to which this referral relates.

The applicants are seeking a Section 5 Declaration as to whether the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch is or is not development and is or is not exempted development.

**Statutory Provisions**

**Planning and Development Act, 2000 (as amended)**

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

S.3.(1) In this Act, “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.

‘Works’ are defined in Section 2 of the *Planning and Development Act 2000, as amended* 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 4(1)(i) of the Planning and Development Act 2000, as amended**

The following shall be exempted development:

*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;*

Section 4(4) of the Planning and Development Act 2000 (as amended):

*Notwithstanding paragraph (i) of subsection 1 and any regulation under subsection 2 development shall not be exempted development of an Environmental Impact assessment or an appropriate assessment of the development is required.*

Section (4A) states of the Planning and Development Act 2000 (as amended)

*Notwithstanding subsection 4 the Minister may make regulations prescribing development or any class of development that is:*

- (a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and
- (b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development. ]

Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states 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.

Article 8F of Planning and Development Regulations 2001 (as amended)

Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of –

- (a) the thinning, felling or replanting of trees, forests or woodlands,
  - (b) works ancillary thereto,
- shall be exempted development.

Planning and Development Regulations 2001 (as amended) Schedule 2, Part 3, Class 16

The replacement of broadleaf high forest by conifer species.

Conditions and limitations:

The area involved shall be less than 10 ha.

Under Article 9 (1) of the same Regulations, *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 compromise 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.*

## Assessment

### Basis of Referral

The applicants are seeking a Section 5 Declaration as whether the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch is or is not development and is or is not exempted development.

Notwithstanding the provisions of Section 4(4) of the Act and Article 8 F of the Planning and Development Regulations, Section (4A) makes provision for the Minister to make regulations prescribing development or any class of development that is authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and as respects which an environmental impact assessment or an appropriate assessment is required to be exempted development for the purposes of the Planning Acts. In this instance Part 3 Exempted Development- Rural- Article 6, Class 16 states that the replacement of broadleaf high forest by conifer species is exempted development provided the area involved shall be less than 10 ha.

The total area proposed for replanting under this referral is 1.08ha (confirmed by e-mail from the applicants on 11/04/2022).

In this regard it is noted that the proposed planting will require a licence (under the Forestry Act 2014) and the question of Environmental Impact Assessment and Appropriate Assessment in respect of the proposed development is dealt with through the Forestry Licence process.

### **Conclusion**

Having regard to the information provided, it is considered that the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch at Rathclooney, Tulla, Co. Clare constitutes both 'works' and 'development'. Regard has also been had to Section (4A) (Planning and Development Act 2000) and Class 16 (Part 3 Exempted Development- Rural- Article 6 ) of the Regulations made thereunder, which states that the replacement of broadleaf high forest by conifer species is exempted development when the area is less than 10 ha.

## Recommendation

### **The following question has been referred to the Planning Authority:**

Whether the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch at Rathclooney, Tulla, Co. Clare is considered to be development and if so, is it exempted development.

### **The Planning Authority in considering this referral had regard to:**

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended;
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended;
- (c) Class 16 of Schedule 2, Part 3 of the Planning and Development Regulations 2001, as amended;
- (d) Article 8F of the Planning and Development Regulations 2001, as amended
- (e) The works as indicated in submitted documents from the referrer.

### **And whereas Clare County Council (Planning Authority) has concluded:**

- (a) The removal of 1.04ha of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch constitutes "works" which come within the scope of section 2(1) of the Planning and Development Act 2000, as amended;

- (b) The said works constitute "development" which comes within the scope of section 3(1) of the Planning and Development Act 2000, as amended;
- (c) the said removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch is exempted development by virtue of Schedule 2, Part 3, Class 16 of the Planning and Development Regulations 2000 (as amended) and Article 8F of the Planning and Development Regulations 2000 (as amended)

Now therefore Clare County Council (Planning Authority) hereby decides that the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch at Rathclooney, Tulla, Co. Clare is development and is exempted development.

  
Executive Planner

Date: 11/04/2022

  
Senior Executive Planner

Date: 12/04/22



**Clare County Council**  
**Screening for Appropriate Assessment & Determination**

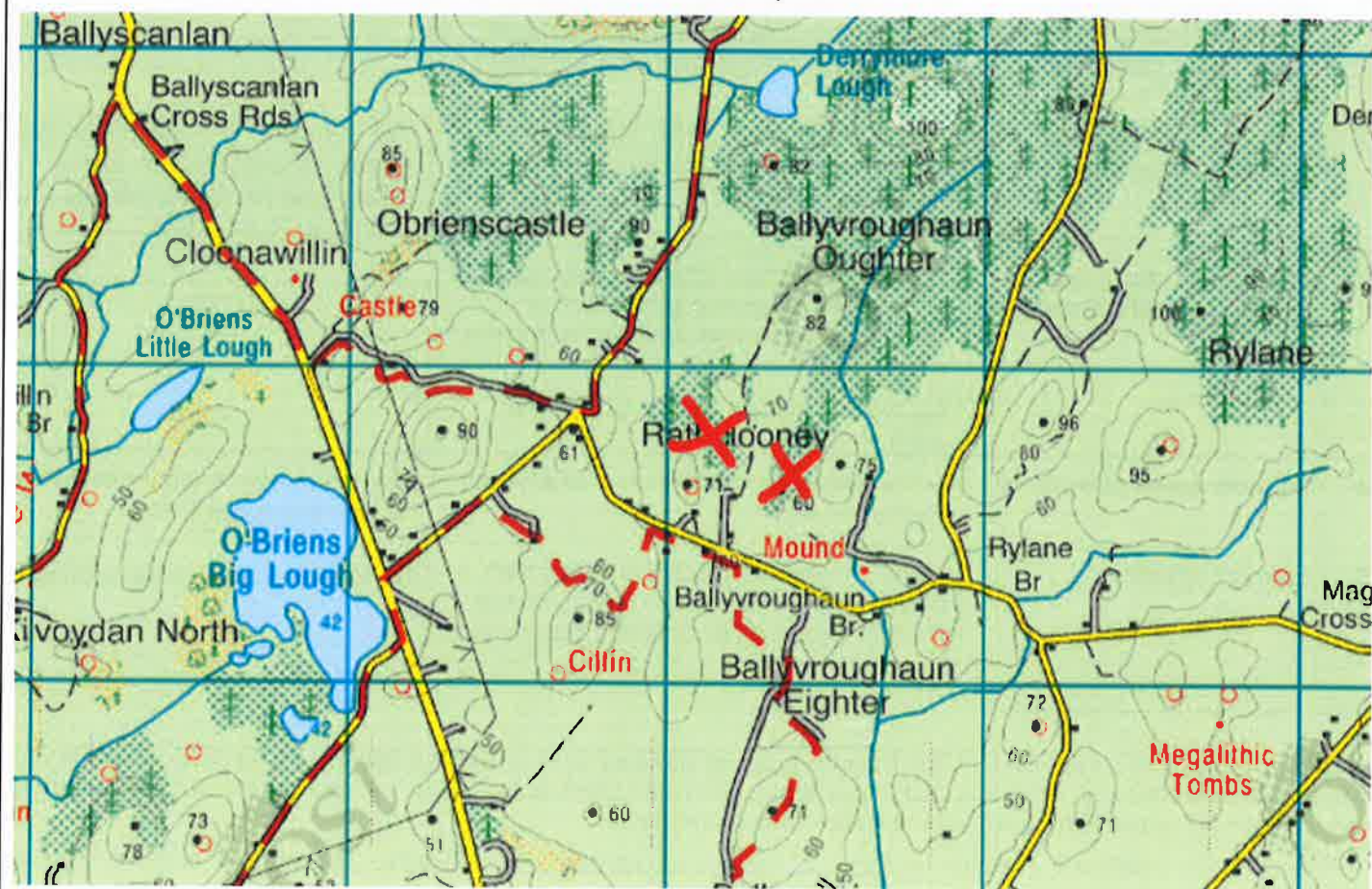
1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all developments regardless of location which require an EIS

**Table 1: Project Details**

<b>Planning File Reference</b>	R22-24
<b>Applicant Name</b>	Sean and Frances Earls
<b>Development Location</b>	at Rathclooney, Tulla, Co. Clare
<b>Application accompanied by an EIS</b>	No
<b>Application accompanied by an NIS</b>	No

**Description of the project (To include a site location map):**

Whether the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch is or is not development and is or is not exempted development.



**Table 2: Identification of European sites which may be impacted by the proposed development.**

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)<sup>1</sup> is recommended. For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis.

Having regard to the nature of the proposed development and the established use of the site, the likely zone of impact is no greater than 3km.

**Table 2 (a): European Sites within 3km of Applicant Site**

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Slieve Aughty Mountains SPA	<ul style="list-style-type: none"> <li>• Hen Harrier <i>Circus cyaneus</i> [A082] breeding</li> <li>• Merlin <i>Falco columbarius</i> [A098] breeding</li> </ul>	0.0km Site is within the SPA
Old Domestic Buildings, Ryane SAC	<u>Annex II species</u> <ul style="list-style-type: none"> <li>• Lesser Horseshoe Bat <i>Rhinolophus hipposideros</i> [1303]</li> </ul>	1.0km
Newgrove House SAC	<u>Annex II species</u> <ul style="list-style-type: none"> <li>• Lesser Horseshoe Bat <i>Rhinolophus hipposideros</i> [1303]</li> </ul>	2.74km

1	Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.	Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?	No
2	Impacts on terrestrial habitats & species.	Is the development within 1km of a European site with terrestrial based habitats or species?	Yes – the site is within the Slieve Aughty Mountains SPA and is c.1km from the Old Domestic Buildings, Rylane SAC
3	Impacts on designated marine habitats & species.	Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: <i>Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs</i>	No
4	Impacts on birds in SPAs	Is the development within 1km of a Special Protection Area	Yes – the site is within the Slieve Aughty Mountain SPA
5	Indirect effects	Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European	No likely in-combination effects

<sup>1</sup> European Sites that are more than 15km from the proposal may have to be considered. For example in the case of sites with water dependent habitats or species and where a proposal could affect water quality or quantity it may be necessary to consider the full extent of the upstream and/or downstream catchment.

<sup>2</sup> European Site details are available on <http://webgis.npws.ie/npwsviewer/> or maybe obtained from internal mapping systems.



		<p>site?</p> <p><i>Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?</i></p>	No likely emissions
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**Conclusion:**

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer is *unknown* or *yes* proceed to Table 3 and refer to the relevant sections of Table 3.

**Table 3: Identification of potential impacts.**

2	<p align="center"><b>Impacts on terrestrial habitats and species.</b></p> <p align="center"><i>Please answer the following if the answer to question 2 in table 2 was yes.</i></p> <p align="center"><i>Does the development involve any of the following:</i></p>	
2a	<p>Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat.</p> <p>Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?</p>	<p>The Site Synopsis for the Slieve Aughty Mountains SPA indicates that new and second rotation conifer plantations together with bogs, heaths and moorlands are the most important habitat types for the qualifying interest species. Such areas will be unaffected by the current felling and replanting proposals.</p> <p>The proposal site will not directly or indirectly effect the Newgrove House SAC. It is outside the identified foraging range associated with the site.</p> <p>The proposed development location is c.1km from the Old Domestic Buildings (Rylane) SAC and is within the foraging area associated with same. The supporting documentation associated with the protected bat species (available on npws.ie) states <i>the target is that there is no significant decline in foraging habitat within 2.5km of qualifying roosts</i>. The proposal site forms a small part of the foraging area (1.04ha) and the proposal relates to replacement planting. There will be no overall reduction or fragmentation of foraging habitat as a result of the proposal.</p>
2b	<p>Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site</p>	<p align="center">No</p>
2c	<p>Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?</p>	<p align="center">No</p>

2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	No

4	<p align="center"><b>Impacts on birds in SPAs</b></p> <p align="center"><i>Please answer the following if the answer to question 5 in table 2 was yes.</i></p> <p align="center"><i>Does the development involve any of the following:</i></p>	
4a	Removal of or interference with habitats within an SPA. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	No – the Site Synopsis for the Slieve Aughty Mountains SPA indicates that new and second rotation conifer plantations together with bogs, heaths and moorlands are the most important habitat types for the qualifying interest species. Such areas will be unaffected by the current felling and replanting proposals
4b	Erection of wind turbines within 1km of an SPA.	No
4c	All construction works within 100m of intertidal areas – Coastal SPAs, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	No
4d	Infilling of coastal habitats within 500m of SPA, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	No
4e	Discharges to coastal SPA, including any element of a discharge liable to give rise to disturbance of this habitat, either by direct, indirect, or in combination effects	No
4f	Development of cycleways or walking routes within 100m of intertidal areas. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	No
4g	Development within 1km of SPA of a scale or type which involves the production of an EIS. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	No

### Conclusion:

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer to any of the above is *yes*, or *unknown* effects on the European sites need to be assessed and a Natura Impact Statement will be required.



## Appropriate Assessment Screening Determination

<b>Planning File Reference</b>	R22-24
<b>Proposed Development</b>	Whether the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch is or is not development and is or is not exempted development.
<b>Development Location</b>	at Rathclooney, Tulla, Co. Clare
<b>European sites within impact zone</b>	Slieve Aughty Mountains SPA Old Domestic Buildings, Rylane SAC Newgrove House SAC

### Description of the project:

the removal of Ash trees in a diseased Ash plantation, and the replanting of same plantation with Sitka Spruce and Birch.

### Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site

#### Slieve Aughty Mountains SPA

- Hen Harrier *Circus cyaneus* [A082] breeding
- Merlin *Falco columbarius* [A098] breeding

#### Old Domestic Buildings, Rylane SAC

Annex II species

Lesser Horseshoe Bat *Rhinolophus hipposideros* [1303]

#### Newgrove House SAC

Annex II species

Lesser Horseshoe Bat *Rhinolophus hipposideros* [1303]

### Describe how the project or plan (alone or in combination) is likely to affect the European site(s).

The proposal site is located within the Slieve Aughty Mountains SPA. In relation to the Hen Harriers, the Site Synopsis for the SPA states: *The mix of forestry and open areas provides optimum habitat conditions for this rare bird, which is listed on Annex I of the E.U. Birds Directive. The early stages of new and second-rotation conifer plantations are the most frequently used nesting sites, though some pairs may still nest in tall heather of unplanted bogs and heath. Hen Harriers will forage up to c. 5 km from the nest site, utilising open bog and moorland, young conifer plantations and hill farmland that is not too rank.*

The SPA also supports a breeding population of Merlin.

The proposed felling of diseased semi-mature ash trees and replacement with Sitka Spruce and hardwood species will not impact upon the key nesting and foraging habitats for qualifying interest species of the SPA.

The proposal site will not directly or indirectly effect the Newgrove House SAC. It is outside the identified foraging range associated with the site.

The proposed development location is c.1km from the Old Domestic Buildings (Rylane) SAC and is within the foraging area associated with same. The supporting documentation associated with the protected bat species (available on npws.ie) states *the target is that there is no significant decline in foraging habitat within 2.5km of*

<p><i>qualifying roosts</i>. The proposal site forms a small part of the foraging area (1.04ha) and the proposal relates replacement planting. There will not no overall reduction or fragmentation of foraging habitat as a result of the proposal.</p>	
<p><b>If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?</b></p>	
<p>N/A – no likely significant effects</p>	
<p><b>Documentation reviewed for making this statement</b></p>	
<ul style="list-style-type: none"> <li>- County Development Plan (including Flood Maps, SEA &amp; AA)</li> <li>- NPWS website</li> <li>- Documents received as part of the referral</li> </ul>	
<p><b>Conclusion of assessment (a, b, c or d)</b></p>	
<p><b>(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s)<sup>3</sup></b></p>	
<p><b>(b) There is no potential for significant effects to European Sites<sup>3</sup></b></p>	Yes
<p><b>(c) The potential for significant effects to European Site(s) cannot be ruled out<sup>4</sup></b></p>	
<p><b>(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010<sup>5</sup></b></p>	
<p><b>Completed By</b></p>	Caroline Balfe, Executive Planner
<p><b>Date</b></p>	11 <sup>th</sup> April 2022

<sup>3</sup> Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no material changes may be made to the proposed development after this conclusion has been reached as this would invalidate the findings of the screening exercise.

<sup>4</sup> In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf)

Alternatively, where other planning concerns arise the proposal could be refused planning permission.

<sup>5</sup> The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.



Clare County Council  
Aras Contae an Chláir  
New Road  
Ennis  
Co Clare

05/04/2022 11:18:55

Receipt No. : L1CASH 0/330738  
REPRINT

SEAN & FRANCES EARLS,  
C/O DEEL FORESTRY LTD.,  
ARDNAVEAGH,  
RATHKEALE,  
CO. LIMERICK,  
R22/24

SECTION 5 REFERENCES 80.00  
GOODS 80.00  
VAT Exempt/Non-vatable

Total : 80.00 EUR

Tendered  
CHEQUES 80.00

Change : 0.00

Issued By : L1CASH - Noelette Barry  
From : MAIN CASH OFFICE LODGEMENT AREA  
Vat reg No.0033043E

P07

**CLARE COUNTY COUNCIL  
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,  
Economic Development Directorate,  
Clare County Council,  
New Road, Ennis,  
Co. Clare.  
V95DXP2

Telephone No. (065) 6821616  
Fax No. (065) 6892071  
Email: [planoff@clarecoco.ie](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://www.clarecoco.ie)



Comhairle Contae an Chláir  
Clare County Council

**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT  
(Section 5 of the Planning & Development Act 2000 (as amended))**

**FEE: €80**

*This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority*

**1. CORRESPONDENCE DETAILS.**

(a) Name and Address of person seeking the declaration	SEAN & FRANCES EARLS RATHCLOONEY TULLA CO CLARE
(b) Telephone No.:	
(c) Email Address:	
(d) Agent's Name and address:	DEEL FORESTRY LTD ARDNAVEAGH RATHKEALE CO LIMERICK

**2. DETAILS REGARDING DECLARATION BEING SOUGHT**

- (a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT  
*Note: only works listed and described under this section will be assessed.*

Sample Question: *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

Is the removal of Ash diseased Ash Plantation replanted with SS & BI an exempt development

- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

My plantation at Rathclooney, Co Clare has been inspected by the Forest Service and has been deemed to be infected with Ash Die Back disease, and is currently dying. I am currently applying for Ash Die Back replanting Scheme and this scheme requires me to remove the infected Ash and replant that area.

I wish to replant the area with SS & BI on foot of advice I recieved from my Forestry Advisor

- (c) List of plans, drawings etc. submitted with this request for a declaration:

*(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)*


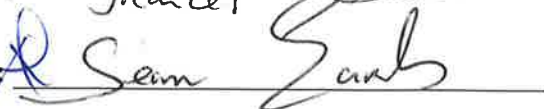
Location Map



**3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT**

(a) Postal Address of the Property/Site/Building for which the declaration sought:	Rathclooney Co Clare   
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	NO   
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	OWNER  
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	N/A  
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	OWNER 
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	N/A 
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	no 
(h) Date on which 'works' in question were completed/are likely to take place:	2022 

SIGNED:

DATE: 1/4/22

### **GUIDANCE NOTES**

*This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority*

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,  
Economic Development Directorate,  
Clare County Council  
Aras Contae an Chlair,  
New Road,  
Ennis,  
Co. Clare  
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

### **FOR OFFICE USE ONLY**

Date Received: .....	Fee Paid: .....
Date Acknowledged: .....	Reference No.: .....
Date Declaration made: .....	CEO No.: .....
Decision: .....	



FELLING LICENCE (GFL) APPLICATION

FRANCES EARLS, RATHCLOONEY, TULLA,  
Co. DUBLIN

<u>PLOT NO.</u>	<u>AREA (ha)</u>	<u>SPECIES</u>	<u>P.YR</u>	<u>TREATMENT</u>
1.	0.54	ASH	2003	1 <sup>ST</sup> THIN
2.	0.54	ASH	2003	1 <sup>ST</sup> THIN
	1.08			

*John A. Forester*  
12/5/16



