



Comhairle Contae Liatroma Leitrim County Council

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N41 PF67

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Rob Mac Giollarnáth,
Executive Officer,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

Our Ref: E.D. 19/25
Your Ref: ABP – 307371-20

21st July 2020

Re: Whether or not the repair and improvement of a private road and the creation of a private road to access agricultural structures under construction is or is not development and is or is not exempted development – Drummans Lower, Drumkeeran, Co. Leitrim.

A Chara,

The Planning Authority acknowledges notification of an appeal against the determination made by this Authority with respect to a Section 5 Declaration of Exemption, Planning Register ref. no. E-19-25 refers. The Planning Authority would direct the Board to consider the report prepared by the Senior Planner on this application for a Declaration of Exemption which has been forwarded under separate cover. The Planning Authority would also ask the Board to consider the following matters in their further consideration of this matter.

The subject application was one of four number separate applications seeking a determination on the exempted development status on property owned by Mr. Matt Fisher and Ms. Maria Carey by the appellant. The Planning Authority were also in receipt of allegations of unauthorised development having occurred for the same subject matters. The actual question in each instance was not clearly stated on the application forms and a degree of interpretation was required by the Planning Authority as to what the substantive question being asked was on each application. In the subject application, the Planning Authority determined that the pertinent question was as to whether **the repair and improvement of a private road and the creation of a private road to access agricultural structures under construction** constitutes development and if so, whether it is or is not exempted development. The Planning Authority has no difficulty should the Board consider that this question excluded some other element which Leitrim County Council did not determine.

The Planning Authority are satisfied that the report prepared on the subject application by the assigned planner clearly explains the rationale in distinguishing between the works to the existing 'way' and those relating to the creation of a new road. The Planning Authority relied on 'Sundry Works', Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001-2020 which provides for *'the repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving'*, subject to

the limitation that the width of any such private footpath or paving shall not exceed 3 metres. The Planning Authority at no time indicated that there was a road at this location previously but did consider that a 'way' existed supported by a right of way being registered on the subject land and which way is and was clearly visible from aerial photography. The works were considered to constitute improvement to this 'way'. The term 'way' is not defined in the Planning and Development Regulations. The appeal submission does appear to acknowledge that such a 'way' existed which supports the rationale of the Planning Authority in this regard.

The Planning Authority as part of the consideration of matters arising from this Section 5 Declaration of Exemption application sent a query to the Regional Inspector of the National Parks and Wildlife Service. This enquiry related to the purported presence of the subject site of Fritillary Butterfly. The Planning Authority considers that the response from the Regional Inspector to be important in relation to the protection afforded to such species outside of designated Special Areas of Conservation. A section of the e-mails between the Senior Planner and Regional Inspector have been redacted as it contains other information not pertinent to this appeal.

The Planning Authority are not commenting on issues of a civil matter which are not relevant to the planning matter under consideration.

The Planning Authority would respectfully request that the Board take this submission into account in their determination of the appeal.

Is mise le meas,

A handwritten signature in cursive script, reading "Bernard Greene", written in black ink on a white background. The signature is positioned above a horizontal line.

Bernard Greene,
Senior Planner.

From: [Emmett Johnston](#)
To: [Bernard Greene](#)
Cc: [Sarah Malone](#)
Subject: Re: Query on impact of Annex II species on development proposals
Date: Friday 1 May 2020 14:26:12

Bernard,

Apologies for the slow response,

Many thanks for your email and I hope Sarah and you are keeping well. It is unfortunate that the Corvid 19 situation prevented our meeting to discuss how NPWS and I can work with you and the planning team in Leitrim County Council. .

In the absence of specific case details, for instance the nature of the development and or the historic links, or otherwise, to Marsh Fritillary (*Euphydryas aurinia*) at the site. I will endeavour to answer your question in a more general sense.

Q: What protection do Annex II species occurring outside the boundaries of Natura 2000 sites have?

The Habitats Directive contains a list of habitats (Annex I) and species (Annex II) that member states are obliged to implement protection for through the Natura 2000 network of protected sites. Protection for Annex I habitats and Annex II species is provided by the designation of Special Areas of Conservation (SAC) for specific Annex I habitat types and/or Annex II species. The designations are typically, but not always, located in areas where the better examples of Annex I habitats or most abundant populations of Annex II species occur. Thus, when a species is listed on Annex II there is a requirement for individual member states to designate protected areas through the Natura 2000 network for that species.

With regard to species that are mobile (e.g. Otter) or for which the habitat only supports part of the life cycle (e.g. Salmon or Marsh Fritillary) an SAC designation is typically sited to contain the habitat that supports the population at a particularly vulnerable period in their lifecycle. Ireland has designated a number of SACs for the Marsh fritillary and the appropriate shapefiles and datasets can be found on our website <https://www.npws.ie/maps-and-data>.

It is also important to note that some animal species (e.g. Otter, bats) are listed on Annex II and Annex IV of the Directive. Strict protection via Article 12 of the Directive applies to these Annex IV species wherever they occur. Marsh Fritillary is not listed on Annex IV of the Directive.

Consequently, populations of Marsh Fritillary occurring within SACs that are a qualifying interest for the site, or populations occurring outside SACs, impacts to which would affect the conservation objectives of a European site [1], must be considered when an appropriate assessment in relation to a plan or project is being undertaken. Populations of Marsh Fritillary which occur outside SACs and which are not in any way linked to populations within SAC sites for which they are a Qualifying Interest, have limited legal protection through the provisions of the Wildlife Acts and the Environmental Liability Directive. However, the fact that species are on Annex II of the Directive means that they are endangered, rare or vulnerable across the EU and therefore any loss of Annex II species or their habitats is undesirable and to be avoided wherever possible.

As you stated, Marsh Fritillary typically inhabits a range of habitat types in Europe, but is mainly associated with wet grassland and heath habitat in Ireland. More specifically, Devil's Bit Scabious (*Succisa pratensis*) which occurs in wet grassland and heath habitats is an important food source and is also associated with the static egg, larvae and pupae stages. Devil's Bit Scabious occurring in the wider countryside, including when associated with historic Marsh Fritillary sites that are not within or connected to a Natura 2000 site (i.e. support a Marsh Fritillary population for which a Natura 2000 designation was made)

has no additional protection beyond that provided under the Wildlife Acts.

In relation to exempted development status this is a matter for determination by the relevant planning authority in the first instance. As you will be aware development may become de-exempted in a number of ways (as set out in the Planning and Development Acts and the associated Regulations) including in cases where there is a requirement for either EIA or Appropriate Assessment, or where a site is protected by law (e.g. Natural Heritage Area) or because particular features of the landscape (e.g. historic or ecological) are the subject of policy protection in a relevant city/county development plan or local area plan, for example.

[REDACTED]

Regards

Emmett

[1] This includes impacts to the habitats of such species

Emmett Johnston
Divisional Ecologist – Northern Division
National Parks & Wildlife Service

Glenveagh National Park
Co. Donegal, Ireland / www.npws.ie

[REDACTED]

From: Bernard Greene <bgreene@leitrimcoco.ie>
Sent: Thursday 26 March 2020 11:09:43
To: Emmett Johnston
Cc: Sarah Malone
Subject: Query on impact of Annex II species on development proposals

Emmett,

Good morning,

[REDACTED]

In the meantime, can I seek your opinion on a matter please?

[REDACTED]

On the subject land is the presence of Devil's Bit Scabious and the submitter has indicated photographs of same. I am aware that the Marsh Fritillary butterfly is protected under Annex II of the European Union Habitats and Species Directive. It is found in wet or marshy areas and rely on Devil's Bit Scabious, for their lifecycle. However, I have examined the Planning and Development Acts, 2000-2019, and the Planning and Development Regulations, 2001-2020, and can find no reference to a restriction on exempted developments (i.e. not requiring planning permission) arising from the presence of Devil's Bit Scabious or suggestions of Marsh Fritillary Butterflies being present. I am fully aware of the requirements to undertake Appropriate Assessment to consider the impact of a proposed development on the qualifying interest of a European site but the protection afforded to Annex II species is not clear to me from reading the Planning legislation. Perhaps you could enlighten me.

Kind regards,

Bernard Greene,

Senior Planner

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Leitrim County Council | Aras an Chontae, Carrick-on-Shannon, Co. Leitrim



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