

**Declaration under Section 5 of
Planning & Development Act, 2000 (as amended)**



To:	Justin Fannon, A/Director of Services
From:	Joe Duffy – Assistant Planner
Reference No.:	ED 23-06
Referrer:	Tullaghan Development Association.
Subject Matter:	Declaration under Section 5 of the Planning and Development Act 2000 (as amended) as to whether the provision of play equipment in a field is Development or is not Development and whether it is or is not Exempted Development.
Location	Tullaghan Development Association, Coast Road, Tullaghan, Co. Leitrim
Date originally Received:	22 nd June 2023
Date FI response received:	12 th December 2024 and on the 08 th January 2025

1. INTRODUCTION

This is a request for a Declaration under Part 1, Section 5 of the Planning and Development Act 2000 (as amended), as to whether a development is or is not exempted development. This referral case concerns the question as to whether the provision of play equipment in a field constitutes development and if so, whether it is or is not exempted development. The subject site is located along the Coast Road, Tullaghan, Co. Leitrim

1.1 FILE HISTORY

I refer to my earlier report dated 22nd June 2023 and the following request for further information as issued to the applicant on the 27th June 2023. The further information request and the applicant's subsequent response, received on the 12th December 2024 and further received on the 8th January 2025 is detailed hereunder.

In accordance with the provisions of Section 5(2)(b) of the Planning & Development Act 2000 (As Amended), the following further information is required to enable the Planning Authority to issue a declaration:

- 1. You are requested to submit details of proposed boundary treatments associated with the proposal on a site layout plan drawn to a scale, of not less than 1:500 (which should be indicated thereon), with the site boundary clearly outlined in red, including location of the proposed playground equipment, and proposed access to the amenity space including the boundary treatment of same.*

Response

The response to item 1 includes a google aerial map with both a red and yellow line boundary drawn on same as received on the 12th December 2024. The response states that Tullaghan Development Association pertain to lands inside the red line with a yellow line boundary indicating where the proposed playground is intended to be located. The response also states that only half this subject site is to be used for the proposed playground. However, this map appears clipped and cut and not entirely visible. As such a further map was submitted to clarify the aforementioned. The additional submitted map and email as received on the 8th January 2025 also identifies the boundary treatment proposed with this development. The submitted

map also identifies the site access, coming from car park at sea access. A second sketch map is also included as received on the 12th December 2024 with this response also provides a rough layout of the intended playground. This is acceptable. No issues arise with this.

2. *Having regard to the provisions contained within Section 4 (1)(f) of the Planning and Development Act 2000, as amended, and the exempted development provisions contained therein for development carried out in on behalf of, or jointly or in partnership with, a local authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity, and in recognition of previous partnership works conducted between Leitrim County Council and Tullaghan Development Association in respect of the constructed car park and access to sea project, you are requested to submit a statement to confirm whether the proposed development is an extension of this partnership and provide confirmation that the proposed playground will be open to the members of the public without any restrictions on accessibility being applied.*

Response

The response to item 2 of the Further Information request includes a letter from Leitrim County Council, received on the 08th January 2025, which confirms that the Community and Integration Department of Leitrim County Council are working in partnership with Tullaghan Development Association on the development of a new playground at Tullaghan's Access to the Sea point. Further to this, Clár funding has been secured for this project and the procurement process is now commenced. It is envisaged that this playground will be taken in charge by Leitrim County Council upon completion. The Planning Authority are now satisfied that the provisions contained within Section 4 (1)(f) of the Planning and Development Act 2000, as amended, have been fully complied with. The further information response, received on the 12th December 2024, confirms that the proposed playground will be open to the members of the public without any restrictions on accessibility being applied.

2. REFERRAL SUBMISSIONS

- 2.1 In the application received by the Planning Authority on the 31st May 2023, Tullaghan Development Association, C/O Louise Collins (Secretary) with the Further Information received on 12th December 2024 with additional supplemental information received on the 08th January 2025. The proposal seeks a determination under Section 5 of the Planning and Development Act 2000 (as amended) as to whether the provision of play equipment in a field is Development or is not Development and whether it is or is not Exempted Development.

3. PLANNING HISTORY

- 3.1 There are no relevant planning applications on the subject site. However, on an adjacent nearby site, a part 8 application was permitted under reference 21-C-04 for the following;

'Proposed public car park and public access to the coastline from Tullaghan Village'

4. RELEVANT LEGISLATION

- 4.1 **Planning and Development Act 2000, as amended:**

Section 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 under Section 2 of the Act to include any Act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

"Structure" is defined under Section 2 of the Act means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.

Section 4 (2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations, 2001.

Section 4 (1) of the Act identifies what may be considered as exempted development for the purposes of the Act and Section 4(1)(f) states *'development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity.'*

4.2 Planning and Development Regulations 2001, as amended:

Article 6(1) of the Regulations states as follows: - *"(a) Subject to article 9, development consisting 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(1) of the Planning and Development Regulations 2001, as amended, identifies restrictions on exemptions. Of relevance in this case would be the following:

(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

(iii) endanger public safety by reason of traffic hazard or obstruction or road users

(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.

(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,

Schedule 2 Part 1 Exempted Development – General

Class 33 Development for amenity or recreational purposes

Development consisting of the laying out and use of the land-

(a) as a park, private open space or ornamental garden,

(b) as a roadside shrine, or

(c) *for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.*

Conditions and Limitations

The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated.

5. REVISED ASSESSMENT

5.1 The proposed works constitutes development as defined in Section 3 of the Planning and Development Act, 2000 (as amended). I have considered all relevant exemptions available under the Planning and Development Act 2000 (as amended) and the Planning and Development Regulations 2001 (as amended).

5.2 Having reviewed all of the documents relating to this referral, I consider the question to be based simply on whether or not the provision of play equipment in a field constitutes development and whether such development is or is not exempted development.

I am satisfied that the proposal constitutes “works” and therefore development in accordance with the provisions of Section 3 of the Planning and Development Acts 2000, as amended. However, I am also satisfied that the development will involve the erection of “structures” within the provisions of the same section.

The question which then arises is whether the proposal to provide play equipment is or is not exempted development. There is no specific class of exemption contained in Schedule 2 of the Planning & Development Regulations 2001, as amended, which refers specifically to play equipment or playgrounds.

In An Bord Pleanála register ref. no. RL3417, the question of whether the erection of playground climbing frame structure and the erection of a Perspex roof over an existing play area is or is not development or is or is not exempted development was referred to the Board. This particular case referred to development within the back garden of a permitted childcare facility in Ballycurren, Frankfield, Cork which was a commercial operation. The decision in this case was that the proposal constituted development and was not exempted development. The inspector noted in her assessment that “*there are no exemptions for a children’s climbing frame within a commercial property nor is there any exemption for a Perspex roof over play equipment.*”

The Planning Authority also has regard to An Bord Pleanála ref. no. RL3423 where the question of whether the relocation of a playing pitch was or was not development or was or was not exempt development was referred to the Board. In this regard, the Board determined that the proposal was exempted development under the provisions of Section 4 (1) (f) of the Act citing previous and ongoing works in partnership with a local authority in the development of the subject site as evidence of the provisions of Section 4 (1) (f) being fulfilled.

The subject site of the proposed playground is located adjacent and abuts the recently developed public car park and Tullaghan Access to the Sea project which is open to the public and not a commercial operation. This proposal was the subject of approval under Part 8 of the Planning and Development Regulations 2001, as amended. This project was the subject of a partnership approach between Leitrim County Council and Tullaghan Development Association as landowners. Following receipt of the Further Information response, the Planning Authority is now satisfied that the proposal, which is the subject of this application for declaration of exempted development, is an extension of works under this partnership. With this the works associated

with this proposal are works carried in partnership with a local authority. This is sufficient as evidence of the provisions of Section 4 (1) (f) being fulfilled in this case.

Further to the above, the proposed access to this playground site is now stated with boundary proposals provided. It is also now clear that the recreational facility is to be open to visiting members of the public. Details on the proposed boundary treatments associated with the proposal have now been furnished with the Further Information response documentation received on the 12th December 2024 which is considered to be exempt from requiring planning permission.

6. ENVIRONMENTAL IMPACT ASSESSMENT AND APPROPRIATE ASSESSMENT

Section 4(4) of the Act sets out that development shall not be exempted development if an Environmental Impact Assessment (EIA) or an Appropriate Assessment (AA) of the development is required.

The Planning Authority is satisfied that the subject development would not give rise to significant environmental effects and would therefore not require EIA.

The nearest Natura 2000 site is Lough Melvin Special Area of Conservation (SAC Site Code: 0000428), which is located approximately 300m northeast of the subject site. Given the nature of the project, it is considered that the subject development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7. CONCLUSION

- 7.1 Having examined the submission in relation to this development along with the relevant legislation, having reviewed the history on the site, my conclusions on the matter, to be decided, is that the provision of play equipment in a field at Coast Road, Tullaghan, Co. Leitrim, constitutes development and is exempted development.

8. RECOMMENDATION

Having regard to the foregoing I recommend that the Planning Authority issue the following Declaration under Section 5 of the Planning and Development Acts 2000, as amended:

WHEREAS a question has arisen as to whether the provision of play equipment in a field at Coast Road, Tullaghan, Co. Leitrim, constitutes development and, if so, whether such development is or is not exempted development;

AND WHEREAS the said question was referred to Leitrim County Council by on the 31st May 2023, Tullaghan Development Association, C/O Louise Collins (Secretary) with the additional Further Information as received on the 12th December 2024 and the 8th January 2025;

AND WHEREAS Leitrim County Council, in considering this referral, had regard particularly to -

- (a) Sections 2 and 3 of the Planning and Development Act, 2000 as amended;
- (b) Section 4(1)(f) of the Planning and Development Act, 2000 as amended
- (c) Article 6 (1) of the Planning and Development Regulations 2001 as amended;
- (d) Schedule 2 Part 1 Classes 33 of the Planning and Development Regulations 2001 as amended;
- (e) The potential effects of the project, either alone or in combination with other projects or plans would not undermine any Natura 2000 sites, conservation objectives or have any significant adverse impact on same;

- (f) the documentation submitted as part of the referral including the further information response;

AND WHEREAS Leitrim County Council has concluded that -

- (a) the proposed provision of play equipment in a field at Coast Road, Tullaghan, Co. Leitrim is considered to be works and is, therefore, development within the meaning of the Planning and Development Act 2000, as amended;
- (b) the proposed development is to be carried out in partnership with Leitrim County Council and therefore, the provisions of Section 4(1)(f) of the Planning and Development Act 2000, as amended, wherein 'development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity' can be considered exempted development, apply in the context of the proposed development.

NOW THEREFORE Leitrim County Council, in exercise of the powers conferred on it by Section 5(2)(b) of the Planning and Development Act, 2000 as amended, hereby declares that:

the proposed provision of play equipment in a field at Coast Road, Tullaghan, Co. Leitrim, is development and is exempted development.



Joe Duffy

Assistant Planner

Date: 08th January 2025



Liam Flynn

Senior Executive Planner

Date: 09/01/2025