

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



To:	Mary Quinn, Director of Services
From:	Joe Duffy – Assistant Planner
Reference No.:	ED 25-28
Referrer:	John Joe Byrne (Chairperson of the John McKenna Traditional Society)
Subject Matter	Declaration under Section 5 of the Planning and Development Act 2000 (as amended) as to whether the replacement of a boundary timber & post fence with a concrete fence of the same size is or is not Development and whether it is or is not Exempted Development.
Location	Tents, Tarmon, Spencer Harbour, Drumkeeran, Co. Leitrim, N41 K752
Date Received:	25/06/2025 with additional amended information received on the 14/07/2025.

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 the replacement of a boundary timber & post fence with a concrete fence of the same size is or is not development and whether it is or is not exempted development. This Section 5 application was submitted by the chairman John Joe Byrne on behalf of the John McKenna Traditional Society. An aerial satellite image together with a hand drawn sketch have also been submitted with this application. The subject site is located in a rural area approximately 1.5 kilometres west of the R280 Regional Road and 1.8 kilometre west of Lough Allen to the north side of an un-named road which lies adjacent to the Leitrim-Roscommon County boundary. The subject site contains an existing single storey house and roofless outbuilding that is set back approximately 20 metres from this public road. An existing timber fence is currently present along this roadside measuring approximately 1.2 metres in height and running for a distance of approximately 65 metres. Having regard to the above, the roadside boundary will be clearly visible from the public road.



- 1.1** The subject site falls in the open countryside and also lies within the visually sensitive 'B7 (AHVA) Area of High Visual Amenity' as designated in the Leitrim County Development Plan 2023-2029.

2. REFERRAL SUBMISSIONS

- 2.1** The subject application was received by the Planning Authority on the 25/06/2025 with updated details and documents via email on the 14/07/2025 by the chairman John Joe Byrne on behalf of the John McKenna Traditional Society.
- 2.2** The request seeks a determination as to whether the replacement of a boundary timber & post fence with a concrete fence of the same size is or is not development and whether it is or is not exempted development.

3. PLANNING HISTORY

P. 14069 (Granted) Permission for the change the use of dwelling to a Heritage Centre, reconstruct same, construct toilets, shower room and store room and provide a septic tank and percolation area at Tents, Lough Allen, Carrick-on-Shannon.

4. RELEVANT LEGISLATION

4.1 Planning and Development Act, 2000 (as amended)

S.2(1) defines structure as *'any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined'*.

S.3 (1) In this Act 'development' means, except where the context otherwise requires, the carrying out of any works on, in, or under land or the making of any material change in the use of any structures or other land.

S.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, or

(ii) the development is authorised, or is required to be authorised, by or under any enactment (whether the authorisation takes the form of the grant of a licence, consent, approval or any other type of authorisation) where the enactment concerned requires there to be consultation (howsoever described) with members of the public in relation to the proposed development prior to the granting of the authorisation (howsoever described).

(b) Regulations under paragraph (a) may be subject to conditions and be of general application or apply to such area or place as may be specified in the regulations.

(c) Regulations under this subsection may, in particular and without prejudice to the generality of paragraph (a), provide, in the case of structures or other land used for a purpose of any specified class, for the use thereof for any other purpose being exempted development for the purposes of this Act.

4.2 Planning and Development Regulations, 2001 (as amended)

Article 6(1) of the Planning and Development Regulations 2001, as amended, 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 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,

CLASS 5

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Conditions and Limitations as set out in column 2

- 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.*
- 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.*
- 3. No such structure shall be a metal palisade or other security fence.*

5. ASSESSMENT

- 5.1** It is considered that the proposed works constitute development as defined in Section 3 of the Planning and Development Act, 2000 (as amended).
- 5.2** 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).
- 5.3** Both the existing and the intended replacement fence are located along the front and roadside boundary of this subject site and as such will be clearly visible from this public road. As such, the conditions and limitations state that the height of an such boundary structure forward of the dwelling shall not exceed 1.2 metres in height. This proposal includes the replacement of the existing timber fence with a replacement concrete post and measures 1.2 metres. With this existing height, the proposed replacement height and the roadside location forward of the house, it is considered that this would be in accordance with the Planning and Development Regulations, 2001 (as amended) Class 5 of Schedule 2, Part 1 of Exempted Development as follows:

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Having regard to the aforementioned with the replacement of a boundary timber & post fence with a concrete fence of the same size is therefore considered exempt under Class 5 of Schedule 2, Part 1 of the Planning & Development Regulations 2001 (as amended).

Conditions and Limitations as set out in column 2

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.

YES

2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.

Not applicable

3. No such structure shall be a metal palisade or other security fence.

YES

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 Cuilcagh - Anierin Uplands SAC (Site Code: 000584), which is located approximately 6 km east 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

Having examined the proposal and reviewed all of the documents relating to this development, along with the relevant legislation, I conclude that the replacement of a boundary timber & post fence with a concrete fence of the same size is development and is exempted development.

RECOMMENDATION

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

WHEREAS a question has arisen as to whether the replacement of a boundary timber & post fence with a concrete fence of the same size at Tents, Tarmon, Spencer Harbour, Drumkeeran, Co. Leitrim, N41 K752 and whether it is or is not development and whether it is or is not exempted development;

AND WHEREAS the said question was referred to Leitrim County Council by the John Joe Byrne (Chairperson of the John McKenna Traditional Society) on the 25th June 2025 and on the 14th July 2025;

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

- (a) Sections 2(1), 3(1) and 4(1) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6(1) and 9(1) of the Planning and Development Regulations 2001, as amended,
- (c) Class 5 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- (d) the documentation submitted as part of the referral;

AND WHEREAS Leitrim County Council has concluded that –

- (a) The condition & limitation of Class 5 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, is relevant and the replacement fence would accord with same.
- (b) The replacement of a boundary timber & post fence with a concrete fence of the same size constitutes development which is exempted development with the provisions of Class 5 of Part 1,

Schedule 2 of the Planning and Development Regulations 2001, as amended, applying in this instance.

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

The replacement of a boundary timber & post fence with a concrete fence of the same size at Tents, Tarmon, Spencer Harbour, Drumkeeran, Co. Leitrim, N41 K752 is development that is exempted development.



Joe Duffy
Assistant Planner
Date: 16th July 2025



Liam Flynn
Senior Executive Planner
Date: 16/07/2025



Appropriate Assessment Screening and Determination

STEP 1. Description of the project/proposal and local site characteristics:

(a) File Reference No:	ED25-28Error! Reference source not found.Error! Reference source not found.
(b) Brief description of the project or plan:	As per planning report
(c) Brief description of site characteristics:	As per planning report
(d) Relevant prescribed bodies consulted: e.g. DHLGH (NPWS), EPA, OPW	No
(e) Response to consultation:	N/A

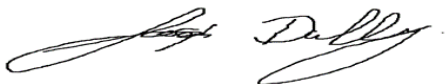
STEP 2. Identification of relevant Natura 2000 sites using Source-Pathway-Receptor model and compilation of information on Qualifying Interests and conservation objectives.

European Site (code)	List of Qualifying Interest/Special Conservation Interest	Distance from proposed development (km)	Connections (Source- Pathway- Receptor)	Considered further in screening Y/N
Cuillcagh-Anierin Uplands SAC (000584)	https://www.npws.ie/protected-sites/sac/000584	6.5 km	None	No
Please Select				

STEP 3. Assessment of Likely Significant Effects

(a) Identify all potential direct and indirect impacts that may have an effect on the conservation objectives of a European site, taking into account the size and scale of the project under the following headings:

Impacts:	Possible Significance of Impacts: (duration/magnitude etc.)
Construction phase e.g. <ul style="list-style-type: none">Vegetation clearanceDemolitionSurface water runoff from soil excavation/infill/landscaping (including borrow pits)Dust, noise, vibrationLighting disturbanceImpact on groundwater/dewateringStorage of excavated/construction materialsAccess to sitePests	No significant potential impacts.
Operational phase e.g. <ul style="list-style-type: none">Direct emission to air and waterSurface water runoff containing contaminant or sedimentLighting disturbanceNoise/vibration	No significant potential impacts.

<ul style="list-style-type: none"> • Changes to water/groundwater due to drainage or abstraction • Presence of people, vehicles and activities • Physical presence of structures (e.g. collision risks) • Potential for accidents or incidents 													
In-combination/Other	No significant potential impacts.												
(b) Describe any likely changes to the European site:													
<ul style="list-style-type: none"> • Examples of the type of changes to give consideration to include: • Reduction or fragmentation of habitat area • Disturbance to QI species • Habitat or species fragmentation • Reduction or fragmentation in species density • Changes in key indicators of conservation status value (water or air quality etc.) • Changes to areas of sensitivity or threats to QI • Interference with the key relationships that define the structure or ecological function of the site 	No significant potential impacts.												
(c) Are ‘mitigation’ measures necessary to reach a conclusion that likely significant effects can be ruled out at screening? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No													
Step 4. Screening Determination Statement													
The assessment of significance of effects: Describe how the proposed development (alone or in-combination) is/is not likely to have significant effects on European site(s) in view of its conservation objectives.													
Having regard to the information on file, the nature and scale of the subject development, its distance from European sites, the lack of direct connections with regard to the Source-Pathway-Receptor model, it is concluded that the proposed development, either alone or in-combination with other developments, is not likely to have any significant effects on any European site in view of its conservation objectives.													
Conclusion:													
	<table border="1"> <thead> <tr> <th></th> <th>Tick as Appropriate:</th> <th>Recommendation:</th> </tr> </thead> <tbody> <tr> <td>(i) It is clear that there is no likelihood of significant effects on a European site.</td> <td><input checked="" type="checkbox"/></td> <td>The proposal can be screened out: Appropriate assessment not required.</td> </tr> <tr> <td>(ii) It is uncertain whether the proposal will have a significant effect on a European site.</td> <td><input type="checkbox"/></td> <td> <input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission </td> </tr> <tr> <td>(iii) Significant effects are likely.</td> <td><input type="checkbox"/></td> <td> <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission </td> </tr> </tbody> </table>		Tick as Appropriate:	Recommendation:	(i) It is clear that there is no likelihood of significant effects on a European site.	<input checked="" type="checkbox"/>	The proposal can be screened out: Appropriate assessment not required.	(ii) It is uncertain whether the proposal will have a significant effect on a European site.	<input type="checkbox"/>	<input type="checkbox"/> Request further information to complete screening <input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission	(iii) Significant effects are likely.	<input type="checkbox"/>	<input type="checkbox"/> Request NIS <input type="checkbox"/> Refuse planning permission
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Signature of Recommending Planner:	<div>  </div>												
Date:	16/07/2025												



Environmental Impact Assessment (EIA) Pre-Screening

Establishing if the proposal is a 'sub-threshold development'

File Reference No:

ED25-28 **Error! Reference source not found.**
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Development Summary:

As per Planning Report

Was a Screening Determination carried out under Section 176A-C?:

- ☐ Yes – No further action required
☒ No – Proceed to Part A

Part A - Schedule 5 Part 1 - Does the development comprise a project listed in Schedule 5, Part 1, of the Planning and Development Regulations 2001 (as amended)? (Tick as appropriate)

☐ Yes – specify class:

EIA is mandatory
No screening required

☒ No

Proceed to Part B

Part B - Schedule 5 Part 2 - Does the development comprise a project listed in Schedule 5, Part 2, of the Planning and Development Regulations 2001 (as amended) and does it meet/exceed the thresholds? (Tick as appropriate)

☒ No, the development is not a project listed in Schedule 5, Part 2

No screening required

☐ Yes, the project is listed in Schedule 5, Part 2 **and** meets/exceeds the threshold, specify class (including threshold):

EIA is mandatory
No screening required

☐ Yes, the project is of a type listed **but** is *sub-threshold*:

Proceed to Part C

Part C – If yes, has Schedule 7A information/screening report been submitted?

☐ Yes, Schedule 7A information/screening report has been submitted by the applicant

Screening Determination required

☐ No, Schedule 7A information/screening report has not been submitted by the applicant

Preliminary Examination required

EIA Preliminary Examination:

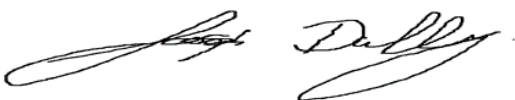
The Planning Authority shall carry out a preliminary examination of, at the least, the nature, size or location of the development.

Comment:

Yes/No/Uncertain:

Nature of the development:

Is the nature of the proposed development exceptional in the context of the existing environment?

<p><i>Will the development result in the production of any significant waste, or result in significant emissions or pollutants?</i></p>		
<p>Size of the development:</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there cumulative considerations having regard to other existing and/or permitted projects?</p>		
<p>Location:</p> <p><i>Is the proposed development located on, in, adjoining or does it have the potential to impact on an ecologically sensitive site or location?</i></p> <p><i>Does the proposed development have the potential to affect other significant environmental sensitivities in the area?</i></p>		
<p>Preliminary Examination Conclusion:</p>		
<p>Based on a preliminary examination of the nature, size or location of the development. (Tick as appropriate)</p>		
<p><input checked="" type="checkbox"/> There is no real likelihood of significant effects on the environment.</p> <p>EIA is not required.</p>	<p><input type="checkbox"/> There is real likelihood of significant effects on the environment.</p> <p>An EIAR is required.</p>	<p><input type="checkbox"/> There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</p> <p>Request the applicant to submit the Information specified in Schedule 7A for the purposes of screening determination.</p> <p>Proceed to Screening Determination.</p>
<p>Signature of Recommending Planner:</p>		
	<p>Date: 16/07/2025</p>	