

**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 25-19
Referrer:	Stephen Comiskey
Subject Matter	Declaration under Section 5 of the Planning and Development Act 2000 (as amended) as to whether the demolition of a rear extension to the existing property (approx 25m²) and the construction of a replacement single storey flat roofed extension with a total floor area of less than 40m² is or is not Development and whether it is or is not Exempted Development.
Location	Gortnaskeagh, Leckaun, Co. Leitrim F91 W022
Date Received:	29th April 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 demolition of a rear extension to the existing property (approx. 25m²) and the construction of a replacement single storey flat roofed extension with a total floor area of less than 40m² is or is not Development and whether it is or is not Exempted Development. This Section 5 application was submitted under the name of Stephen Comiskey. A map and floor plans have also been submitted with this application. The subject site is located in a rural area approximately 4 kilometres southwest of Manorhamilton and 1.5 kilometres south of the N16 National Road which connects Manorhamilton to Sligo and beyond. The subject site contains an existing single storey dwelling which runs parallel to the public road together with some outbuildings. This dwelling appears structurally sound. However, the rear annex of same appears neglected and run down. Having regard to the above, to the property orientation to the public road, the proposed rear extension will not be visible from the public road. The subject structure is set back from the public road approximately 10 metres. The nearest residential property other than the applicant's subject site, lies a significant distance away.





- 1.1 The subject site falls in the open countryside and lies adjacent but not located within the visually sensitive 'Area of Outstanding Natural Beauty' 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 29th of April 2025 on behalf of Stephen Comiskey. The request seeks a determination as to whether the construction of a replacement single storey flat roofed extension with a total floor area of less than 40m² is or is not Development and whether it is or is not Exempted Development.

3. PLANNING HISTORY

None

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.*

Class 1 of Schedule 2, Part 1 of Exempted Development of the Planning and Development Regulations 2001, as amended allows for the following exemption subject to conditions and limitations as set out in column 2:

Development within the curtilage of a house

CLASS 1

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

Conditions and limitations as set out in column 2;

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

7. The roof of any extension shall not be used as a balcony or roof garden.

Item (b) of Class 50 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, allows for the "*demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act*".

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 The development and location of the proposed replacement extension is located to the rear of the existing dwelling house. The proposed extension with a stated floor area of less than 40m² is located on the opposite side of the house to that of the public road and not visible from same. As such, the proposal would be in accordance with the Planning and Development Regulations, 2001 (as amended) Class 1 of Schedule 2, Part 1 of Exempted Development as follows:

The extension of a house, by the construction or erection of an extension (including a conservatory) to the rear of the house or by the conversion for use as part of the house of any garage, store, shed or other similar structure attached to the rear or to the side of the house.

It is noted from the details submitted that the proposed extension is less than 40m² and will form an integral part of the house and will be physically annexed to same. Having regard to the orientation of the dwelling house and proposed siting of the replacement extension with a total floor area of less than 40m², this proposal is considered as exempt under Class 1 of Schedule 2, Part 1 of the Planning & Development Regulations 2001 (as amended).

1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached, the floor area of any extension above ground level shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached, the floor area of any extension above ground level shall not exceed 20 square metres.

NOT APPLICABLE

2. (a) Where the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres.

(b) Subject to paragraph (a), where the house is terraced or semi-detached and has been extended previously, the floor area of any extension above ground level taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 12 square metres.

(c) Subject to paragraph (a), where the house is detached and has been extended previously, the floor area of any extension above ground level, taken together with the floor area of any previous extension or extensions above ground level constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 20 square metres.

Regarding the demolition of the existing extension to the rear of the property and its replacement with a single-storey rear extension with a gross internal floor area of less than 40m², the Planning Authority notes condition/limitation 1(a) of Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, which sets out that where "the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres". This is not the case in this situation, as taken from the application documentation, the house has been extended previously. Accordingly, condition/limitation 2(a) of Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, is relevant and sets out that where "the house has been extended previously, the floor area of any such extension, taken together with the floor area of any previous extension or extensions constructed or erected after 1 October 1964, including those for which planning permission has been obtained, shall not exceed 40 square metres."

It is unclear from the submitted application documentation and inspection of relevant historical mapping if the existing rear extension was constructed before or after the 1st of October 1964.

Notwithstanding, the proposed replacement single storey rear extension will have a stated floor area of less than 40m² and therefore satisfies condition/limitation 2(a)

of Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended. Similarly, the subject rear extension is not less than 2m from any party boundary nor does it give rise to a reduction in private open space serving the dwelling to less than 25m². Furthermore, the subject rear extension does not give rise to any overlooking impacts on any neighbouring property. Accordingly, it is considered that the subject rear extension meets the applicable conditions and limitations set out in Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended.

Moreover, the demolition of the existing rear extension is also considered to be exempted development having regard to the provisions of item (b) of Class 50 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, which allows for the "demolition of part of a habitable house in connection with the provision of an extension or porch in accordance with Class 1 or 7, respectively, of this Part of this Schedule or in accordance with a permission for an extension or porch under the Act".

3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.

NOT APPLICABLE

4. (a) Where the rear wall of the house does not include a gable, the height of the walls of any such extension shall not exceed the height of the rear wall of the house.

(b) Where the rear wall of the house includes a gable, the height of the walls of any such extension shall not exceed the height of the side walls of the house.

(c) The height of the highest part of the roof of any such extension shall not exceed, in the case of a flat roofed extension, the height of the eaves or parapet, as may be appropriate, or, in any other case, shall not exceed the height of the highest part of the roof of the dwelling.

NOT APPLICABLE

5. The construction or erection of any such extension to the rear of the house shall not reduce the area of private open space, reserved exclusively for the use of the occupants of the house, to the rear of the house to less than 25 square metres.

A map was included with this application. From the details submitted and my site inspection, the rear garden space is substantial and exceeds the minimum 25sqm requirement.

6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.

(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.

(c) Where the house is detached and the floor area of the extension above ground level exceeds 12 square metres, any window proposed at above ground level shall not be less than 11 metres from the boundary it faces.

NOT APPLICABLE

7. The roof of any extension shall not be used as a balcony or roof garden.

NOT APPLICABLE

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 Gill SAC (Site Code: 001976), which is located approximately 3km 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 demolition of a rear extension to the existing property (approx. 25m²) and the construction of a replacement single storey flat roofed extension with a total floor area of less than 40m² is located to the rear 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 demolition of a rear extension to the existing property (approx. 25m²) and the construction of a replacement single storey flat roofed extension with a total floor area of less than 40m² at Gortnaskeagh, Leckaun, Co. Leitrim F91 W022 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 Stephen Comiskey on the 29th of April 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 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (d) Class 50 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended, and
- (e) the documentation submitted as part of the referral;

AND WHEREAS Leitrim County Council has concluded that –

- (a) The demolition of a rear extension to the existing property (approx. 25m²) and the construction of a replacement single storey flat roofed extension with a total floor area of less than 40m² constitutes development which is exempted development with the provisions of Class 1 and Class 50 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 demolition of a rear extension to the existing property (approx. 25m²) and the construction of a replacement single storey flat roofed extension with a total floor area of less than 40m² at Gortnaskeagh, Leckaun, Co. Leitrim F91 W022 is development that is exempted development.



Joe Duffy
Assistant Planner
Date: 20th May 2025



Liam Flynn
Senior Executive Planner
Date: 21/05/2025