

**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 25-27
Referrer:	Cathal & Cauline McGowan
Subject Matter	Declaration under Section 5 of the Planning and Development Act 2000 (as amended) as to whether the construction of a rear extension with a stated additional floor area of 36.25 sq.m is or is not Development and whether it is or is not Exempted Development.
Location	Duncarbry, Tullaghan, Co Leitrim
Date Received:	18/06/2025.

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 construction of a rear extension with a stated additional floor area of 36.25 sq.m is or is not development and whether it is or is not exempted development. This Section 5 application was submitted under the name of Cathal & Cauline McGowan. A map together with floor plans have also been submitted with this application. The subject site is located in a rural area approximately 0.5 kilometres southeast of Tullaghan settlement and 1 kilometre southeast of the N15 National Road and located to the south side of the L-2063 public road which links Tullaghan and Kinlough. The subject site contains an existing single storey dwelling which runs parallel to the public road together with a number of outbuildings to the rear of this. This dwelling appears structurally sound and includes pitched roof rear annex approximately 35 sq.m that appears to be a more recent addition and structurally sound. Having regard to the above, to the property orientation with the public road, the existing and proposed rear extension will not be visible from same. The subject structure is set back from the public road approximately 10 metres. Northwest of the subject site is an existing residential property.





- 1.1** The subject site falls in the open countryside and also lies within the visually sensitive '*B1 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 18/06/2025 by Cathal & Caoline McGowan.
- 2.2** The request seeks a determination as to whether the construction of a rear extension with a stated additional floor area of 36.25 sq.m 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.*
 - (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 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.

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 proposed extension, with an additional floor area of approximately 36 sq.m, is located to the rear of the house and would not be visible from the public road. As such, the proposal is considered to be at the rear and would be in accordance with one element of 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 also noted from the details submitted that this additional floor area extension is less than the 40 sq.m threshold permitted. However, this threshold calculation does not include the already existing rear extension that measures approximately 35 sq.m which includes bedroom no. 3, kitchen and dining room, utility and bathroom. Cumulatively, the existing and proposed rear extension elements would total approximately 75 sq.m and together this would exceed the 40sq.m threshold allowed. Furthermore, no evidence has been included or presented with this section 5 application that demonstrates this existing rear extension pre-dates the 1st October 1964 as cited and relating to the first Planning Act. Therefore, taken together and having regard to the aforementioned with the already existing rear extension, this additional floor area proposal would exceed the 40 sq.m threshold identified in the condition and limitation of 2(a) (see below) and is therefore not 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.

The condition & limitation of 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 from an inspection of relevant historical mapping if the existing rear extension was constructed before or after the 1st of October 1964.

Notwithstanding, taken together both the existing and proposed rear extension will have a stated floor area that exceeds the 40m² threshold and therefore, does not satisfy condition & limitation 2(a) of Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended.

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 Melvin SAC (Site Code: 000428), which is located approximately 0.35km north 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 construction of a rear extension with a stated additional floor area of 36.25 sq.m is development and is not 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 construction of a rear extension with a stated additional floor area of 36.25 sq.m at Duncarbry, Tullaghan, Co Leitrim 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 Cathal & Caoline McGowan on the 18th June 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, and
- (d) the documentation submitted as part of the referral;

AND WHEREAS Leitrim County Council has concluded that –

- (a) The condition & limitation of 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 from an inspection of relevant historical mapping if the existing rear extension was constructed before or after the 1st of October 1964.

Notwithstanding, taken together both the existing and proposed rear extension will have a stated floor area that exceeds the 40m² threshold and therefore, does not satisfy condition & limitation 2(a) of Class 1 of Part 1, Schedule 2 of the Planning and Development Regulations 2001, as amended.

- (b) The construction of a rear extension with a stated additional floor area of 36.25 sq.m constitutes development which is not exempted development with the provisions of Class 1 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 construction of a rear extension with a stated additional floor area of 36.25 sq.m at Duncarbry, Tullaghan, Co Leitrim is development that is not exempted development.



Joe Duffy
Assistant Planner
Date: 08th July 2025



Liam Flynn
Senior Executive Planner
Date: 09/07/2025



Appropriate Assessment Screening and Determination

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

(a) File Reference No:	ED25-27Error! 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
Lough Melvin SAC (000428)	https://www.npws.ie/protected-sites/sac/000428	350 metres	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/vibrationChanges to water/groundwater due to drainage or abstraction	No significant potential impacts.

<ul style="list-style-type: none"> • 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? ☐ Yes ☒ 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:

	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

Signature of Recommending Planner:



Date: 07/07/2025



Environmental Impact Assessment (EIA) Pre-Screening

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

File Reference No:

ED25-27 **Error! Reference source not found.**
Error! Reference source not found.

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:

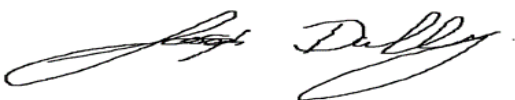
The Planning Authority shall carry out a preliminary examination of, at the least, the nature, size or location of the development.

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 a screening determination.</p> <p>Proceed to Screening Determination.</p>
<p>Signature of Recommending Planner:</p>		
	<p>Date: 07/07/2025</p>	