

**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 25-04  
**Referrer:** Jody Cox  
**Subject Matter** Declaration under Section 5 of the Planning and Development Act 2000 (as amended) as to whether the proposed construction of a conservatory of circa 38 square metres (less than 40 square metres) to the ~~back-side~~ of the existing dwelling is or is not Development and whether it is or is not Exempted Development.  
**Location** O’Hara’s Cottage, Lisnanorris, Drumkeeran, Co Leitrim, N41 X340  
**Date Received:** 16<sup>th</sup> January 2025

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**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 proposed construction of a conservatory of circa 38 square metres (less than 40 square metres) to the *‘back-side’* of the existing dwelling is or is not Development and whether it is or is not Exempted Development. This Section 5 application was submitted under the name of Jody Cox. A map and preliminary basic floor plans have also been submitted with this application. The subject site is located in a rural area approximately 5 kilometres northeast of Drumkeeran and 3 kilometres north of the Lough Allen and to the east side of the minor public road which serves this area. The subject site contains an existing single storey dwelling which runs parallel to the public road. This dwelling appears structurally sound and recently occupied and exhibits a number of outbuildings. Typically, the long axis of the house runs parallel to the public road. However, the location of the conservatory is described in this section 5 application as the *‘back-side’* of the house which is inaccurate. Notwithstanding this location/description, the proposed conservatory is sited on the roadside of this existing dwelling, and consequently, this proposed conservatory is considered to be located to the front and clearly visible from the public road. Having regard to the property orientation and to the public road, the proposed extension will be clearly visible from the public road. The subject structure is set back from the public road approximately 15 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. The site is 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 16<sup>th</sup> January 2025 on behalf of Jody Cox. The request seeks a determination as to whether the proposed construction of a conservatory of circa 38 square metres (less than 40 square metres) to the 'back side' of the existing dwelling is or is not Development and whether it is or is not Exempted Development.

## 3. PLANNING HISTORY

None stated

## 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.*

## **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 conservatory is described as to the rear or 'back-side' of the house. However, this description and location is inaccurate with the location being more accurately described as to the front and roadside of the site. Therefore, the proposal would not 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 40 square metres and will form an integral part of the house and will be physically annexed to same. However, having regard to the orientation of the dwelling house and proposed siting of the conservatory in relation to the fronts ~~and~~ public road side and side of the existing dwelling, this proposal ~~can not~~ cannot be considered as exempt under Class 1 of Schedule 2, Part 1 of the Planning & Development Regulations 2001 (as amended). It is considered that the long axis of the house which runs parallel with the public road to be the front side and not the 'back-side' as stated in the description.

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.*

***The proposed extension is less than 40 square metres and as such is under the 40sqm threshold as identified under 1(a) above.***

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.*

**NOT APPLICABLE**

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 Boleybrack Mountain Special Area of Conservation (SAC Site Code: 0002032), which is located approximately 800m 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 proposed construction of a conservatory of circa 38 square metres (less than 40 square metres) inaccurately described as the 'back-side'. The development description should be described as the front side of the existing dwelling is development and therefore, this is not exempted development. Notwithstanding this interpretation of the orientation of the existing dwelling, the proposal provides for the creation of additional floorspace to the side of the existing dwelling with any potential exemptions for this type of development restricted to the rear of the dwelling.

## 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 proposed construction of a conservatory of circa 38 square metres (less than 40 square metres) to the 'back side' of the existing dwelling is exempted development

**AND WHEREAS** the said question was referred to Leitrim County Council by the Jody Cox on the 16<sup>th</sup> of January 2025

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

- (a) Section 3(1) of the Planning and Development Act, 2000 (as amended)
- (b) Section 4(1) (h) of the Planning and Development Act, 2000 (as amended)
- (c) Class 1 of Schedule 2, Part 1 of Exempted Development *General*

**AND WHEREAS** Leitrim County Council has concluded that –

- a) The location of the proposed conservatory is inaccurately described as the ‘back side’ of the dwelling house.
- ~~b)~~ The development description should be more accurately described as the front side of the existing dwelling. Development of this nature to the front side is not exempted development.
- ~~b)c)~~ The proposal provides for the creation of additional floorspace to the side of the existing dwelling with any potential exemptions for this type of development restricted to the rear of the dwelling.

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**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 proposed construction of a conservatory of circa 38 square metres (less than 40 square metres) to the ‘~~back~~-side’ of the existing dwelling constitutes development which is **not** exempted development.



**Joe Duffy**  
Assistant Planner  
Date: 11<sup>th</sup> February 2025

**Liam Flynn**  
Senior Executive Planner  
Date: