

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

To: Justin Fannon – A/Director of Services
From: Deirdre Lardner – Executive Planner
Reference No.: ED 25-09
Referrer: Gary Bohan
Subject Matter Declaration under Section 5 of the Planning and Development Act 2000 (as amended) as to whether, the construction of a single storey extension with a floor area less than 40m² to the rear of the existing dwelling, is exempted development under the said Act.

Location 19 Errew Drive, Lough Rynn, Mohill, Co. Leitrim N41 HH02

Date Received: 18 March 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 construction of a single storey extension with a floor area less than 40m² to the rear of the existing dwelling is development and is exempted development.

- 1.1** The subject site is located in the Errew Drive Estate in the townland of Rinn in Mohill. The land is designated as within an Area of High Visual Amenity as per the Leitrim County Development Plan 2023-2029. The land contains a two-storey detached dwelling. The dwelling is well established at this location.
- 1.2** There are no Natura 2000 sites proximate to the subject site. There are no protected national monuments affected by the proposal.

2. REFERRAL SUBMISSIONS

- 2.1** The subject application was received by the Planning Authority on the 18 March 2025 from the owner Gary Bohan.
- 2.2** The proposed single storey dwelling extension will be sited to the rear of the existing dwelling and will comprise a floor area less than 40m².



Existing dwelling – front and rear

3. PLANNING HISTORY

- The housing estate development was permitted in June 2005 under planning Ref P.04/1829.

4. RELEVANT LEGISLATION

4.1 Planning and Development Act, 2000 (as amended)

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.(1) The following shall be exempted developments for the purposes of this Act—
(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;*

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.*
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area 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*
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area 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 and the development would materially affect the character of the area*

Class 1 of Schedule 2 Part 1 of the *Exempted Development –General* allows for the following exemption:

Description of Development:

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:

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 The subject dwelling extension will be located fully to the rear of the existing dwelling and comprises of a single storey addition with a floor area less than 40m². This is within the condition limitations of Class 1 of Schedule 2 Part 1 of the *Exempted Development –General*.

5.2 The property is within an Area of High Visual Amenity associated with Lough Rynn, Lough Errew and Environs. No changes are proposed to the front elevation and the overall scale and form will be maintained. The development will not have an adverse impact on the landscape and is in keeping with the character and form of the wider estate.

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 Clooneen Bog SAC (Site Code 002348) which is located c.9km south of the subject site.

I note the following guidance from the publication '*Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities*' that provides for exceptions to pre-screening or screening for Appropriate Assessment.

Applications for permission where, from the description of the development, it is clear that an AA is not required whether or not the proposal is located within or without a Natura 2000 site. Examples of this would be involving changes to the external appearance of buildings, (such as shop fronts, change of house design/appearance, domestic extensions) or changes of use that do not involve any extra loading on waste water, water systems or erosion of habitats.

Having regard to the nature and scale of the development, to the nature of the receiving environment and the proximity to the nearest European site, no Appropriate Assessment issues are considered likely to arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site. The Planning Authority is satisfied that the project does not require Stage II Appropriate Assessment under the Habitats Directive.

7. CONCLUSION

Having examined the submission and reviewed all of the documents relating to this development, along with the relevant legislation and the history of the site, I conclude that the construction of a single storey extension with a floor area less than 40m² to the rear of the existing dwelling at 19 Errew Drive, Lough Rynn, Mohill, Co. Leitrim N41HH02 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 construction of a single storey extension with a floor area less than 40m² to the rear of the existing dwelling at 19 Errew Drive, Lough Rynn, Mohill, Co. Leitrim N41HH02 constitutes development which is exempted development

AND WHEREAS the said question was referred to Leitrim County Council by Gary Bohan on 18 March 2025

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

- (a) Section 3(1) and 4(2) of the Planning and Development Act, 2000 (as amended)
- (b) Article 6 (1) and Article 9 (1)(a) of the Planning and Development Regulations 2001 (as amended)
- (c) Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended)

AND WHEREAS Leitrim County Council has concluded that –

- (a) the construction of a single storey dwelling extension constitutes development within the meaning of Section 3 of the Planning and Development Act 2000 (as amended)
- (b) the construction of a single storey extension with a floor area less than 40m² to the rear of the existing dwelling at 19 Errew Drive, Lough Rynn, Mohill, Co. Leitrim N41HH02 constitutes development within the meaning of Section 3 of the Planning and Development Act 2000 (as amended) and satisfies the exemption at Class 1 of Schedule 2 Part 1 of the *Exempted Development –General*
- (c) the proposed development will not materially affect the character of the area and the Area of High Visual Amenity in which it is situated and is considered exempted development

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, as amended, hereby declares that:

The construction of a single storey extension with a floor area less than 40m² to the rear of the existing dwelling at 19 Errew Drive, Lough Rynn, Mohill, Co. Leitrim N41HH02 constitutes development which is exempted development.

As a separate addendum to the above declaration, I recommend that the referrer be advised of the following:

The following limitations as set out in Schedule 2, Part 1, Class 1 of the Planning and Development Regulations 2001 (as amended) are applicable to the exemption issued in respect of the provision of the extension to the rear of the dwelling:

- Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.
- The height of the walls of any such extension shall not exceed the height of the rear wall of the house.
- 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.
- 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.
- Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.
- Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.
- 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.
- The roof of any extension shall not be used as a balcony or roof garden.



Deirdre Lardner
Executive Planner
Date: 04/04/2025



Liam Flynn
Senior Executive Planner
Date: 04/04/2025