

Leitrim County Council
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 24-45
Referrer: Damien Comiskey
Subject Matter Declaration under Section 5 of the Planning and Development Act 2000 (as amended) as to whether the construction of 2 no. sheds with a stated floor area of 290m² and 160m² respectively, each with a height of less than 8m and an aggregate total floor area of less than 900m², is or is not development and whether it is or is not exempted development.

Location Donaghmore, Manorhamilton, Co. Leitrim
Date Received: 6th December 2024

1. INTRODUCTION

This is a request for a Declaration under Part 1, Section 5 of the Planning and Development Act 2000, as amended. This referral case concerns the question as to whether the construction of 2 no. sheds with a stated floor area of 290m² and 160m² respectively, each with a height of less than 8m and an aggregate total floor area of less than 900m², is development or is not development and whether it is or is not exempted development.

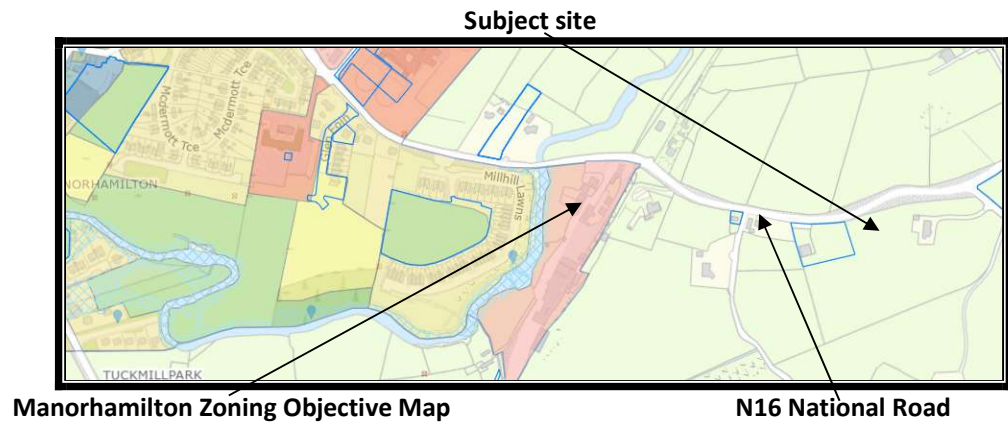
The subject site is located in the townland of Donagh More approximately 0.5km east of Manorhamilton and outside of the settlement envelope boundary and fronts directly onto and is adjacent to the N16 National primary road which connects Manorhamilton to Blacklion (Cavan) and beyond.

Both of the 2 no. proposed structures are located adjacent to each other and on the south side of the N16. It is noted that an existing storage structure is sited nearby and already provides an existing recessed vehicular access/entrance that serves a gravel yard. Access onto the N16 is not stated with this Section 5 application. Notwithstanding the presence of this existing storage structure, which itself presents as a typical agricultural structure, the subject site does not appear to be an existing operating farm complex.

It is noted that the named applicant also submitted a recent planning application which coincided with this subject site (see reference below), for the proposed construction of an agricultural storage shed under ref. no. 24-60182, as well as a separate planning application (under ref. P. 24-60185) for a similar development at a site nearby and along the N16. Both applications were refused, principally in relation to traffic safety concerns on the national primary route and its users.

It should also be noted that an arctic truck was parked at this site on a previous site inspection on the day the site visit was conducted (see photos below) for this previous planning application. Examination of recent Google Streetview imagery (taken from August 2024) also shows two arctic trucks parked in this existing structure. The subject site is located outside the 60kmph speed restricted zones and the road along this stretch is characterised by a

continuous white centre line at a point where both traffic speeds (within an 80kmph zone) and indeed volumes are very high with poor road alignment in both directions.



Subject Site



Existing sheds/structures



Google Streetview imagery of subject site from August 2024

1.1 The nearest Natura 2000 site is Lough Gill SAC which is located 280 metres west of the subject site. The site is not located within a designated visually sensitive area.

2. REFERRAL SUBMISSIONS

2.1 The subject application was received by the Planning Authority on the 6th of December 2024 from Robert Spratt STAC Studio on behalf of the owner Damien Comiskey.

2.2 The application seeks a declaration as to whether the construction of 2 no. sheds with a stated floor area of 290m² and 160m² respectively, each with a height of less than 8m and an aggregate floor area of less than 900m², is or is not development and whether it is or is not exempted development.

3. PLANNING HISTORY

The named applicant submitted 2 no. recent, similar planning applications, including one which coincides with the subject site, as follows:

Site no. 1 (Coinciding with Subject Site)

P. 24/60182 - Planning permission to construct an agricultural storage shed and associated yard together with all ancillary site development works. Application was refused permission on the 5th of November 2024 for the following reasons:

1. *The existing and intended vehicular access is located along the N16 National Primary Road at a point where there is a continuous white centre line and where traffic operational speeds and volumes are very high. The intensification in traffic movements to and from the subject site arising from the proposed development at this substandard section of the national primary route, together with substandard sightlines at the existing access, is considered to constitute a very serious and unacceptable traffic hazard onto the N16 national primary road and granting permission at this location would result in traffic movements endangering the safety of other road users. The proposed development would materially contravene policies TRAN POL 1 and TRAN POL 2 of the Leitrim County Development Plan 2023-2029 and would therefore be contrary to the proper planning and sustainable development of the area.*

2. *Having regard to the location of the subject site adjacent to the N16 National Primary Road, the Planning Authority considers that the intended and future use of this subject site*

together with the intensification of traffic movements using its existing access onto the N16 would, if granted, be at variance with DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012). In particular, section 2.7 of the aforementioned which relates to control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the proposed development by itself, or by the precedent which a grant of permission for it would set would adversely affect the operation and safety of the national road network.

3. Having regard to its design and overall scale and massing, as well as its finishes and materials, and in the absence of a robust and comprehensive rationale for the proposed development, it is considered that the proposed shed structure is intended for commercially related uses rather than for agricultural uses. Set within this context, and having regard to the rural location, established character and pattern of development in the vicinity of the site, it is considered that the proposed development would set an undesirable precedent for similar developments in the vicinity of the site and therefore would be contrary to the proper planning and sustainable development of the area.

Site no. 2

P. 24/60185 - Planning permission to demolish an existing agricultural shed and replace with a new storage shed together with all ancillary site development works. Application was refused permission on the 5th of November 2024 for the following reasons:

1. *The existing and intended vehicular access and junction is located adjacent to the N16 National Primary Road at a point where there is a continuous white centre line and where traffic operational speeds and volumes are very high. The intensification in traffic movements to and from the subject site arising from the proposed development at this substandard section of the national primary route, together with substandard sightlines at the existing junction, is considered to constitute a very serious and unacceptable traffic hazard onto the N16 national primary road and granting permission at this location would result in traffic movements endangering the safety of other road users. The proposed development would materially contravene policies TRAN POL 1 and TRAN POL 2 of the Leitrim County Development Plan 2023-2029 and would therefore be contrary to the proper planning and sustainable development of the area.*

2. *Having regard to the location of the subject site adjacent to the N16 National Primary Road, the Planning Authority considers that the intended and future use of this subject site together with the intensification of traffic movements using the access which is adjacent to the existing junction onto the N16 would, if granted, be at variance with DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (January 2012). In particular, section 2.7 of the aforementioned which relates to control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012), as the proposed development by itself, or by the precedent which a grant of permission for it would set would adversely affect the operation and safety of the national road network.*

3. *Having regard to its design and overall scale and massing, as well as its finishes and materials, and in the absence of a robust and comprehensive rationale for the proposed development, it is considered that the proposed shed structure is intended for commercially related uses rather than for agricultural uses. Set within this context, and having regard to the rural location, established character and pattern of development in the vicinity of the site, it is considered that the proposed development would set an undesirable*

precedent for similar developments in the vicinity of the site and therefore would be contrary to the proper planning and sustainable development of the area.

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 (1) The following shall be exempted developments for the purposes of this Act- (a) development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used;

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 –*
- (iii) endanger public safety by reason of traffic hazard or obstruction or road users,*

Class 9 of Part 3, Schedule 2 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:

Works consisting of the provision of any store, barn, shed, glass-house or other structure, not being of a type specified in class 6, 7 or 8 of this Part of this Schedule, and having a gross floor space not exceeding 300 square metres

Conditions and limitations:

- 1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.*
- 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.*
- 3. No such structure shall be situated within 10 metres of any public road.*
- 4. No such structure within 100 metres of any public road shall exceed 8 metres in height.*
- 5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.*

6. *No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.*

5. ASSESSMENT

5.1 The proposed works constitutes 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 development provides for the construction of 2 no. sheds with a stated floor area of 290m² and 160m² respectively, each with a height of less than 8m and an aggregate total floor area of less than 900m². A Site Layout drawing is also included which identifies the location of the 2 no. sheds with regard to their set back distances from the public road and their separation distances from the nearby dwelling houses. Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended, apply in relation to this proposal. The proposed 2 no. sheds are set back and do not appear to be within 10 metres of the N16 public road. The separation distances appear to exceed 100 metres from nearby dwelling houses. No plans or elevation drawings have been included but the development description states that the height will not exceed 8 metres in height. The aggregate gross floor space of the existing structures within the 'Extent of Family Landholding', as identified in the submitted 'Constraints Plan', does not exceed 900 square metres gross floor space. The proposed development would appear to be under the aggregate gross floor space threshold under Class 9 and in accordance with the other conditions and limitations prescribed for development under Class 9.

Notwithstanding, the provisions of Article 9(1) of the Planning and Development Regulations 2001, as amended, in placing restrictions on available exemptions apply in this instance. apply. Of particular relevance in this case is Article 9(1)(a)(iii) which states that:

*"Development to which article 6 (Exempted Development) relates shall not be exempted development for the purposes of the Act – (a) if the carrying out of such development would –
–
(iii) endanger public safety by reason of traffic hazard or obstruction of road users".*

The subject site is adjacent to and fronts onto the N16 National Primary Road at a location outside the 60kmph speed restricted zone. The road along this stretch is characterised by a continuous white centre line at a point where both traffic speeds and volumes are significant with poor road alignment in both directions from the subject site.

Further to, and in support of this traffic concern, the two recent referenced planning applications, including the application which coincides with the subject site of this referral, which were both refused planning permission principally on account of traffic concerns, were referred to both Transport Infrastructure Ireland (TII) and the North Leitrim District Engineer for comment. The submission/report received from the TII considered that access onto the N16 at this location would be at variance with official policy in relation to control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012).

Similar traffic safety concerns were expressed by the North Leitrim District Engineer in their report on the application under P. 24-60182 which recommended refusal based on potential

increased turning movements at a substandard section of the national primary route with substandard sightlines at the existing access.

Set within this context, the Planning Authority considers that the proposed development would constitute a serious traffic hazard as a result of traffic movements associated with the proposed development at this substandard section of the national primary route and at a location where traffic volumes and traffic speeds are significant, resulting in a very serious and unacceptable traffic hazard onto a N16 national primary road and its users.

Accordingly, the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations 2001, as amended, in removing any available exemptions that the proposed development could otherwise avail of, are warranted in this instance.

Moreover, having regard to the provisions of Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended, and to the conditions and limitations of same, the Planning Authority cannot determine if the proposed structures are related to an existing farm enterprise given the apparent use of the existing structure on the subject site as a storage or parking facility for articulated trucks.

6. Screening for Appropriate Assessment (AA) under Natura 2000 Sites

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 Special Area of Conservation (SAC Site Code: 0001976), which is located approximately 280m west 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 the proposal, along with the relevant legislation, I conclude that the construction of 2 no. sheds with a stated floor area of 290m² and 160m² respectively, each with a height of less than 8m and a total aggregate floor area of less than 900m², is development and is not exempted development.

Having regard to the location of the subject site adjacent to the N16 national primary road, the Planning Authority considers that the proposed development would constitute a serious traffic hazard as a result of traffic movements associated with the proposed development at this substandard section of the national primary route and at a location where traffic volumes and traffic speeds are significant, resulting in a very serious and unacceptable traffic hazard onto a N16 national primary road and its users.

Accordingly, the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations 2001, as amended, in removing any available exemptions that the proposed development could otherwise avail of, apply in this instance.

8. RECOMMENDATION

Having regard to the foregoing, it is recommended 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 2 no. sheds with a stated floor area of 290m² and 160m² respectively, each with a height of less than 8m and a total aggregate floor area of less than 900m², at Donaghmore, Manorhamilton, Co. Leitrim is development 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 Damien Comiskey on the 6th of December 2024;

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)(a) of the Planning and Development Act 2000, as amended,
- (c) Article 9(1)(a)(iii) of the Planning and Development Regulations 2001, as amended, restrictions on exemptions.
- (d) Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended,
- (e) the documentation submitted as part of the referral;

AND WHEREAS Leitrim County Council has concluded that:

- (a) the construction of 2 no. sheds with a stated floor area of 290m² and 160m² respectively, each with a height of less than 8m and a total aggregate floor area of less than 900m², at Donaghmore, Manorhamilton, Co. Leitrim is considered to be works and is, therefore, development within the meaning of the Planning and Development Act 2000, as amended;
- (b) the proposed development comes within the scope of Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended;
- (c) having regard to the location of the subject site adjacent to the N16 national primary road, the Planning Authority considers that the proposed development would constitute a serious traffic hazard as a result of traffic movements associated with the proposed development at this substandard section of the national primary route and at a location where traffic volumes and traffic speeds are significant, resulting in a very serious and unacceptable traffic hazard onto a N16 national primary road and its users;
- (d) accordingly, the provisions of Article 9(1)(a)(iii) of the Planning and Development Regulations 2001, as amended, in removing any available exemptions that the proposed development could otherwise avail of, apply 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 2000 Act, as amended, hereby declares that:

the construction of 2 no. sheds with a stated floor area of 290m² and 160m² respectively, each with a height of less than 8m and a total aggregate floor area of less than 900m², at Donaghmore, Manorhamilton, Co. Leitrim constitutes development which is **not exempted development**.



Joe Duffy
Assistant Planner
Date: 07th Jan 2025



Liam Flynn
Senior Executive Planner
Date: 08/01/2025

Advice Note to applicant:

You are advised that the TII previously considered that access onto the N16 at this location would be at variance with official policy in relation to control of development on/affecting national roads, as outlined in the DoECLG Spatial Planning and National Roads Guidelines for Planning Authorities (2012). With regard to Class 9 of Part 3, Schedule 2 of the Planning and Development Regulations 2001, as amended, and to the conditions and limitation of same, the Planning Authority cannot determine if the proposed structures are related to an existing farm enterprise with no evidence apparent or submitted to support this section 5 application.