



An
Coimisiún
Pleanála

Inspector's Report ABP-320123-24

Question

Whether the construction of a single-storey extension to the side of a house at Scart, Castlecove, Co. Kerry, is or is not development and is or is not exempted development.

Location

Scart, Castlecove, Co. Kerry

Declaration

Planning Authority

Kerry County Council

Planning Authority Reg. Ref.

EX1222

Applicant for Declaration

Michael O'Leary

Planning Authority Decision

Is not exempted development

Referral

Referred by

Michael O'Leary

Owner/ Occupier

Michael O'Leary

Observer(s)

None

Date of Site Inspection

4th August 2025

Inspector

Mary Crowley

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1.0 Site Location and Description

- 1.1. The site with a site area of 0.5 acres is located in an elevated rural location off the public local roadway to the north of the N70 and approximately c2km to the east of Castlecove. The site slopes southwards and consists of an existing uninhabited, single storey, corrugated galvanised pitched roof cottage. There is a storage shed of similar height and scale attached to the western gable of the dwelling. On the southern elevation of the dwelling there is a small single storey residential extension with a sloping roof and that provides the only access to the dwelling. The dwelling has render finished exterior while the adjoining storage shed has a natural stone finish. The existing house has a perpendicular orientation to the road whereby the gable is parallel to the public road, and the line of the pitch roof is perpendicular to the road.
- 1.2. I refer to the photos and photomontages available to view throughout the file. Together with a set of photographs of the site and its environs taken during the course of my site inspection serve to describe the site and location in further detail.

2.0 The Question

- 2.1. Whether the construction of a single-storey extension to the side of a house at Scart, Castlecove, Co. Kerry, is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. A declaration was sought from Kerry County Council by Michael O'Leary, Scart, Castlecove, Co Kerry on 27th May 2024 regarding the construction of *a new extension at side of existing dwelling*. The plans and particulars accompanying the application indicate a single storey pitched roof extension with an area "*not exceeding 40 sqm*" (floor area not provided with declaration application) on the northern elevation of the dwelling.
- 3.1.2. On the 11th June 2024 Kerry County Council issued a Notification of Declaration under the provisions of Section 5 of the Planning and Development Act 2000 (as amended)

in accordance with plans and particulars submitted on 27th May 2024 setting out the following:

The Planning Authority considers that the works, namely the construction of a single storey extension to the side of house at Scart, Castlecove, Co Kerry ***is development which does not constitute exempted development*** having regard to the following considerations:

- (a) *The proposed development would constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 (as amended)*
- (b) *That said works would constitute development that comes within the scope of Section 3(1) of the said Act*
- (c) *The nature and extent of the proposed works comprising the construction of a single storey extension to the houses would not fall for consideration under exemption at Class 1, Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended) as the proposed extension is located to the side of the house.*

Therefore, the proposed works would constitute development which is not exempted development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The Case Planner noted that *the proposed extension is located on the southern side of the house and not to the rear. Therefore, the proposed extension would not fall for consideration under the exemption provided under Class 1, Part 1, Schedule 2 of the Planning and Development Regulations 201 (as amended).*

3.2.2. Other Technical Reports

- None

4.0 Planning History

4.1.1. Previous Kerry County Council Referral:

EX1200 – A declaration was sought from Kerry County Council by Michael O’Leary, Scart, Castlecove, Co Kerry on 10th April 2024 regarding the construction of a *new extension at rear of existing dwelling and new porch extension at front of existing dwelling*. The plans and particulars accompanying the application indicate a single storey pitched roof extension with a stated area of 39.9 sqm and a porch with a stated area of 2sqm on the southern elevation of the dwelling.

Declaration – On 25th April 2024 Kerry County Council declared that (1) the construction of a single storey extension to the house **does not constitute exempted development** and (2) the construction of a new porch extension to the front of house does **constitute exempted development** having regard to the following considerations:

- (a) The proposed development would constitute works that would come within the scope of Section 2(1) of the Planning and Development Act 2000 (as amended)*
- (b) That said works would constitute development that comes within the scope of Section 3(1) of the said Act*
- (c) The nature and extent of the proposed works comprising the construction of a single storey extension to the house would not fall for consideration under exemption at Class 1, Part 1, Schedule 2 of the Planning and Development Regulations 2001 (as amended) as the proposed extension is located to the side of the house.*

Therefore, the proposed works would constitute development which is not exempted development.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative plan for the area is the Kerry County Development Plan 2022-2028. The site is within an area designated as “Other Rural Area” and has a Landscape Designation of a “Visually Sensitive Area”.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a European Site but the Kenmare River SAC (Site Code 002158) is c45m to the east of the site.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. A case on behalf of the referrer Micheal O'Leary was prepared and submitted by Reeks Consulting Engineers on the and may be summarised as follows:
- 6.1.2. EX1200 Previous Referral – The extension in this referral was located to what the Referrer considered to be the rear of the dwelling. The KCC Declaration stated this was not exempted development. KCC are calling the rear of the house, the side of the house.
- 6.1.3. EX1222 Current Referral – In light of the above Declaration the Referrer reapplied relocating the extension to the opposite end of the dwelling. The KCC Declaration stated that this was not exempted development on the basis that it was again to the side of the dwelling.
- 6.1.4. KCC are incorrect in their interpretation of the front and rear of the dwelling. The gable facing the road should be classed as the side of the house and that the proposed extension is to the rear of the dwelling. Therefore, the extension is exempted development.

6.2. Planning Authority Response

- 6.2.1. None

6.3. Further Responses

- 6.3.1. None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

- 7.1.1. Section 2 (1) of the 2000 Planning and Development Act states as follows:

“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”

- 7.1.2. In Section 2 (1) of the Act “works” are interpreted as including “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.

- 7.1.3. Section 3 (1) of the 2000 Planning and Development Act states as follows:

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

- 7.1.4. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

7.2. Planning and Development Regulations, 2001

- 7.2.1. Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

“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.”

7.2.2. Schedule 2, Part 1 of the Planning & Development Regulations deal with Exempted Development – General and in terms of the subject referral, Class 5 and Class 9 are relevant, and state as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
<p><i>Development within the curtilage of a house</i></p> <p>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</p>	<p>1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.</p> <p>(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.</p> <p>(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.</p> <p>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.</p> <p>(b) Subject to paragraph (a), where the house is terraced or semidetached and has been extended previously, the floor area of any extension above ground level</p>

	<p>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.</p> <p>(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.</p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p>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.</p> <p>(b) Where the rear wall of the house includes a gable, the height of the walls</p>
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	<p>of any such extension shall not exceed the height of the side walls of the house.</p> <p>(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.</p> <p>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.</p> <p>6. (a) Any window proposed at ground level in any such extension shall not be less than 1 metre from the boundary it faces.</p> <p>(b) Any window proposed above ground level in any such extension shall not be less than 11 metres from the boundary it faces.</p> <p>(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</p>
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	<p>shall not be less than 11 metres from the boundary it faces.</p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p>
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7.2.3. Article 9 of the Planning & Development Regulations deal with restrictions on exemption for developments to which article 6 relates and sets out a number of restrictions which would render development not exempt for the purposes of the Act.

7.2.4. In terms of the planning history of the wider estate, the Board will note the submission by the referrer that the works are unauthorised and in this regard, Article 9(1)(a)(viii), which states,

(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(a) if the carrying out of such development would—

(viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,

may be considered applicable in this instance

7.3. Other – Precedent Referral Cases

7.3.1. Determining the rear of a house

7.3.2. Under case **ABP-315375-22** the Board considered whether the demolition of 2 no. single storey extension and construction of single-storey extension and garden room is or is not development or is or is not exempted development at St. Fintan's, Strand Road, Sutton, Dublin 13. The Board determined that the front of the existing house is the south west facing elevation (entrance door) (and not the south east facing elevation).

- 7.3.3. Under case ref. **RL3358**, the Board considered that the rear of the house is normally opposite to the front of the house and that, in this particular case, the location of the front and principal elevation of the house, having a front door and entrance hallway, is clear.
- 7.3.4. Under case ref. **RL2620**, the Inspector considered that the front elevation of a house is normally the elevation which includes the front door, and the rear elevation normally includes the rear door, although not always the case.

8.0 Assessment

- 8.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the construction of a single-storey extension to the side of a house in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

- 8.1.2. The question posed is as follows:

‘The question arising is whether the construction of a single-storey extension to the side of a house at Scart, Castlecove, Co. Kerry, is or is not development and is or is not exempted development.

8.2. Is or is not development

- 8.2.1. Section 2(1) of the Act defines ‘works’ as including *“any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”*.
- 8.2.2. I am satisfied that, in accordance with the above definition, the subject referral relates to ‘works’.
- 8.2.3. In terms of Section 3(1) of the Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land”.

8.2.4. I am satisfied that the said 'works', comprising the construction of a residential extension comprise 'development'. This determined, consideration is required as to whether the 'works' proposed would constitute 'exempted development'.

8.3. Is or is not exempted development

8.3.1. Having established that the 'works' undertaken amount to 'development', the issue to be considered is whether the development is exempted development or not. Section 4 of the Act defines certain types of development as being 'exempted development'. Section 4(2)(a)(i) of the Act provides that:

'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...'

8.3.2. Therefore, the works may be considered to be exempted development under the provisions of Section 4(2) of the Planning & Development Act, 2000-2013.

8.4. Restrictions on exempted development

8.4.1. In terms of the Planning & Development Regulations, Article 6 relates to Classes 1 of Part 1, Schedule 2.

8.4.2. Class 1 of Part 1 of Schedule 2 of the Planning & Development Regulations (as amended) exempts the extension of a house, by the construction of an extension to the rear of the house. The primary issue to be considered in this Referral is what is the "rear" of this dwelling for the purposes of Exempted Development.

8.4.3. The existing dwelling has a perpendicular orientation to the road whereby the gable is parallel to the public road, and the line of the pitch roof is perpendicular to the road. Having regard to the plans and particulars submitted with the Referral together with my site inspection it is evident that the front doors, albeit the only door serving the dwelling is on the southern elevation. This is important as the Commission has

determined previously that the front elevation of a house is normally the elevation which includes the front door (RL2620 refers) and that the rear of the house is normally opposite to the front of the house (RL3358 refers). Therefore, in this case the front of the dwelling is south facing, and the rear of the dwelling is north facing and the proposed extension is to the rear of the existing dwelling.

- 8.4.4. In relation to the extension, the works come within the scope of Class 1, Schedule 2, Part 1 of the Regulations, being an extension to the rear of the house, and the following conditions and limitations are relevant. The detail of this class is provided above at Section 7 of this report above.

Conditions and Limitations	Comment
1 (a)	The floor area of the extension does not exceed 40 square metres.
1 (b)	N/A – single storey extension only
1 (c)	N/A
2 (a)	N/A
2 (b)	N/A
2 (c)	N/A
3	N/A – single storey extension only
4 (a)	The height of the walls of the extension do not exceed the height of the rear wall of the house.
4 (b)	N/A
4 (c)	The height of the highest part of the roof of the extension does not exceed the height of the highest part of the roof of the dwelling

5	The construction of the extension to the rear of the house does 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)	Windows in the extension are not less than 1 metre from the boundary it faces N/A
6 (b)	N/A
6 (c)	N/A
7	

8.4.5. I am satisfied that the proposed extension to the rear of the dwelling a complies with the above conditions and limitations.

8.4.6. In light of the above, I am satisfied that the single storey extension is development and is exempted development.

9.0 Environmental Impact Assessment

9.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

10.0 Appropriate Assessment Screening Determination

- 10.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended. The site is not located within a European Site but the Kenmare River SAC (Site Code 002158) is c45m to the east of the site. The proposed development comprises a single storey pitched roof extension with an area “not exceeding 40 sqm”. No nature conservation concerns were raised in the planning appeal
- 10.2. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Site in view of the conservation objectives of this site and is therefore excluded from further consideration. Appropriate Assessment is not required.

This determination is based on:

- The relatively minor scale of the development and lack of impact mechanisms that could significantly affect a European site
- The buffer zone between the proposed development and the European site
- The lack of direct connections between the site of the development and the European site

11.0 Water Framework Directive

- 11.1.1. I have assessed the proposed development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.
- 11.1.2. The reason for this conclusion is as follows:

- The relatively small-scale nature of the proposed development.
- The location of the subject appeal site, distance to the nearest water body and lack of direct hydrological connections.

11.1.3. On the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

12.0 Recommendation

12.1. I recommend that the Commission should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the construction of a single-storey extension to the side of a house at Scart, Castlecove, Co. Kerry, is or is not development and is or is not exempted development

AND WHEREAS Mr Michael O'Leary requested a declaration on this question from Kerry County Council, and the Council issued a declaration on the 11th June 2024 stating that the works, namely the construction of a single storey extension to the side of house at Scart, Castlecove, Co Kerry ***is development which does not constitute exempted development***

AND WHEREAS Mr Michael O'Leary referred this declaration for review to An Comisiun Pleanála on the 8th July 2024

AND WHEREAS An Comisiun Pleanála, in considering this referral, had regard particularly to –

- a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,

- b) Article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- c) Class 1 and Class 6, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- d) the provisions of the Kerry County Development Plan 2022-2028 as they apply to the referral site,
- e) the documentation on file, including submissions from the referrer and the Planning Authority;
- f) the planning history of the referral site;
- g) relevant precedent referrals and judgements; and
- h) the pattern of development in the area:

AND WHEREAS An Bord Pleanála has concluded as follows:

- a) the front of the dwelling is south facing, and the rear of the dwelling is north facing, and the proposed extension is to the rear of the existing dwelling
- b) the construction of the extension to the rear of the house:
 - 1) Would constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000
 - 2) Would come within the scope of Class 1, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and
 - 3) Would accord with the conditions and limitations of Class 1, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001

NOW THEREFORE An Comisiun Pleanála, in exercise of the powers conferred on it by section 5(3)(a) of the 2000 Act, hereby decides that:

- 1) the development of the residential extension to the rear of dwelling at Scart, Castlecove, Co. Kerry, is development and is exempted development,

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Mary Crowley

Senior Planning Inspector

26th September 2025

13.0 Appendix 1 - Form 1 - EIA Pre-Screening

Case Reference	ABP-320123-24
Proposed Development Summary	Single storey extension
Development Address	Scart, Castlecove, Co. Kerry
	In all cases check box /or leave blank
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input type="checkbox"/> No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
<input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.	

EIA is Mandatory. No Screening Required	
<input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	

4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes <input type="checkbox"/>	Screening Determination required (Complete Form 3)
No <input checked="" type="checkbox"/>	

Inspector _____ **Date** _____

DP/ADP _____ **Date** _____

(only where Schedule 7A information or EIAR required)