



An
Coimisiún
Pleanála

Inspector's Report ACP-324037-26

Question

Whether the Re-build storm damaged flat roof to rear part of existing dwelling, essential roof structure repairs is or is not development and is or is not exempted development.

Location

Coast Road, Oranmore,
Carrowmoneash, Co. Galway

Declaration

Planning Authority

Galway County Council

Planning Authority Reg. Ref.

ED25/146

Applicant for Declaration

James G. and Agnes O'Connor

Planning Authority Decision

Is not exempted development

Referral

Referred by

James G. and Agnes O'Connor

Owner/ Occupier

James G. and Agnes O'Connor

Observer(s)

None

Date of Site Inspection

30th March 2026

Inspector

Emma Gosnell

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1.0 Site Location and Description

- 1.1. This referral relates to a 0.040ha site situated in the townland of Carrowmoneash on the north side of Oranmore in Co. Galway. It lies to the immediate south of the Coast Road (R338) and within c. 50m of the coastline at Oranmore Bay. It is adjoined on its east side by a number of detached bungalows and to its south and west by agricultural lands, with a gated single track access lane running to its rear. There is extensive residential development to the north of the site on the opposite side of the Coast Road.
- 1.2. The site itself comprises of a single storey vacant dwelling (c. 148sq.m) with hipped roof, front porch and single storey rear extension with a flat roof profile. The east side of the site features mounds of construction materials and the remainder of the site is overgrown with a mature hedgerow forming its rear boundary. The rear of the property is inaccessible on account of these site conditions.

2.0 The Question

- 2.1. On the 10th December 2025, James G. and Agnes O'Connor of Coast Road, Carrowmoneash, Oranmore, Co. Galway requested a declaration from Galway County Council on the following:

Re-build storm damaged flat roof to rear part of existing dwelling, essential roof structure repairs.

- 2.1.1. For clarity, I have rephrased the question for the Commission as follows:

Whether to Re-build storm damaged flat roof to rear part of existing dwelling and to carry out essential roof structure repairs is or is not development and is or is not exempted development?

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. The Planning Authority issued a declaration on the question on 18/12/2025, as follows:
 - That having regard to: Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,

- To re-build storm damaged flat roof to rear part of existing dwelling, essential roof structure repairs at Coast Road, Oranmore, Co. Galway **is development and is not exempted development.**

3.1.2. The basis for this decision was as follows:

- likely significant effects of the development cannot be screened out and an Appropriate Assessment is required for the development and therefore, the following restriction, as per Section 4(4) of the Planning and Development Act, 2000, as amended, applies:

Section 4(4) states that notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The determination of the PA was informed by an undated planning report prepared by a Planning Technician. I note the following points from this report:

- It considered a range of matters including planning history, the context and location of the site and the legislative context.
- It considered the proposal comprises works which comprise development.
- It considered that the development may fall within the provisions of Section 4(1)(h) of the Planning and Development Act, 2000, as amended.
- In noting the proximity of the site to the Galway Bay Complex SAC (Site Code 000268) and Galway Bay SPA (Site Code 004031); the potential hydrological connection to these European sites arising from this proximity and the potential flood risk to the site; and, the Natura Impact Statement submitted with the S.5 application (which puts forward a number of proposed mitigation measures in order to minimise risks to these sites), the PA considered that likely significant effects on the SAC and SPA could not be excluded and that Appropriate Assessment was required.

- Whilst the PA considered that the proposal would ordinarily fall under the description of what constitutes exempted development provided under Section 4(1)(h) of the Planning and Development Act, 2000, as amended, it was noted that Section 4(4) of the Act states that development shall not be exempted development if an Appropriate Assessment of the development is required.
- The development was screened out for the purposes of EIA.

3.2.2. Other Technical Reports

None on file.

4.0 Planning History

4.1. Referral Site

Planning Applications

P.A. Ref. 24/61506 – application by James G. & Agnes O' Connor for the for the reconstruction of the storm damaged flat roof to the rear extension, to carry out all essential repairs to the existing dwelling and all associated site services. This application also includes a Natura Impact Statement (NIS). Gross floor area of proposed works: 148 sq.m, refused permission on 08/01/2025 for 3 no. reasons relating to 1. Potential flood risk, 2. Inability to rule out likely significant effects on European sites arising from coastal flood risk on basis of lack of adequate information submitted, 3. Perpetuation & intensification of existing unauthorised development [rear extension which exceeds 40sq.m and does not appear to have the benefit of planning permission] on the site.

P.A. Ref. 23/61430 – application by James G. & Agnes O'Connor for the remodelling, extension and refurbishment of an existing dwelling (accompanied by a Natura Impact Statement (NIS)). The proposed development will consist of demolition of part of original dwelling and existing extension, construction of a new two-storey extension to rear of existing dwelling (gross floor space of proposed works: 155.80 sq.m, gross floor space of any demolition: 94.66 sq.m), relocated vehicular site access, new landscaping, and all associated site services, refused permission on 01/02/2024 for 3 no. reasons relating to 1. Potential adverse impact on the integrity of a European site, 2. Coastal flood risk, 3. Overdevelopment of site.

P.A. Ref. Old43866 – application by G. O’Connor for the demolition of garage (on the north-east side of the property adjoining the existing rear extension) and replacement of same, granted permission on 20th October 1982 subject to 1 no. condition – that the proposed garage not to be used for human habitation.

Section 5 History

ED 24/98: Section 5 declaration sought by James G. & Agnes O’Connor regarding whether rebuild of storm damaged flat roof to rear extension and essential structure repairs at Coast Road, Oranmore, Carrowmoneash, Co. Galway is or is not development or is/ is not exempted development.

The PA determined that: *“Rebuilding storm damaged flat roof to existing extension at Coast Road, Oranmore, Co. Galway is development and is **not exempted development**, as per Section 4(4) of the Planning and development Act, 2000 (as amended) as the planning authority have determined that likely significant effects of the development cannot be screened out and an Appropriate Assessment is required for the development”.*

ED 24/117: Section 5 declaration sought by James G. & Agnes O’Connor regarding whether re-build of storm damaged flat roof to rear extension and essential structure repairs at Coast Road, Oranmore, Carrowmoneash, Co. Galway is or is not development or is/ is not exempted development.

The PA determined that: *“Rebuilding storm damaged flat roof to existing extension and essential structure repairs at Coast Road, Oranmore, Co. Galway is development and is **not exempted development**, as per Section 4(4) of the Planning and development Act, 2000 (as amended) as the planning authority have determined that likely significant effects of the development cannot be screened out and an Appropriate Assessment is required for the development”.*

5.0 Policy Context

5.1. Development Plan

The site is governed by the policies and provisions contained in the Galway County Development Plan 2022 – 2028 (GCDP).

The site comes within the designated area covered by the Galway County Transport and Planning Study (GCTPS) and the Metropolitan Area Strategic Plan (MASP) as per Maps 4.1 (Rural Area Types) and 4.2 (Rural Housing Policy Map).

The property is not a Protected Structure, nor is it located in an Architectural Conservation Area. There are no objectives for preservation of views, or objectives for the preservation of any sites or features of archaeological, geological, arboricultural, historical, scientific or ecological interest on the site.

The adjacent Coast Road (R338) is a designated scenic route.

The site is located within Flood Risk Zone A and within the CFRAM Coastal Flood Zone which extends to the north of the coastline and also includes lands further to the north, east and west of the subject site.

6.0 Natural Heritage Designations

The site is not located within a European Site.

The following European sites are located in proximity to the site:

European Site	Site Code	Distance
Inner Galway Bay SPA	004031	c. 50m
Galway Bay Complex SAC	000268	c. 50m
Cregganna Marsh SPA	004142	c. 1.9km

The following Natural Heritage Areas and proposed Natural Heritage Areas are also located in proximity to site:

- Cregganna Marsh NHA (Site Code 000253)
- Galway Bay Complex pNHA (Site Code 000268).

7.0 Environmental Impact Assessment

The proposal is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

8.0 The Referral

8.1. Referrer's Case

Background

- Existing dwelling is a pre-1963 development which was in residential use until a storm necessitated the vacating of the property a number of years ago.
- The refurbishment of the property to use as a family home is dependent on essential structural repairs/ the reconstruction of the damaged flat roof.

The referrer is of the opinion that the proposed works, subject of this referral, constitute exempted development for the following reasons:

Design

- Proposed roof repair works are a like-for-like reconstruction that will not materially affect the external appearance of the structure on the basis they are consistent with original character of the dwelling.

Layout & Use

- The proposal would not increase the built footprint, introduce new impermeable surfaces or change the nature of the land use on the site.

Flood Risk

- The Flood Risk report submitted with the referral determines that the proposed works are minor in nature, would not remove any floodplain storage or increase the flood risk to the site or elsewhere, and do not therefore require a full Flood Risk Assessment.

Construction Impacts

- The Construction and Environmental Management Plan submitted demonstrates that the proposal would not give rise to soil excavations, storage of hazardous substances, temporary drainage measures or alteration of watercourses or natural flow paths.

European Sites

- The submitted Natura Impact Statement (NIS) identifies potential likely risks to European sites in close proximity to the site arising from the proposal on account of hydrological and ex-situ pathways.
- NIS concludes that the works, either alone or in combination with other plans or projects, would not significantly affect the ecological integrity of any European site.

The referral to the Commission is accompanied by a copy of the PA's Section referral determination document.

8.2. **Planning Authority Response**

No response received within the appropriate period.

8.3. **Further Responses**

None received.

9.0 **Statutory Provisions**

9.1. **Planning and Development Act, 2000, as amended**

9.1.1. **Section 2(1)** of the Act provides the following definitions of relevance:

'development' has the meaning assigned to it by Section 3,

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

'structure' means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined...

9.1.2. **Section 3(1)** of the Act provides the following definitions of relevance:

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 over land.

9.1.3. **Section 4(1)** sets out various forms and circumstances in which development is exempted development for the purposes of the Act. Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act, and this includes:

(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.

9.1.4. **Section 4(2)(a)(i)** states that: *'The Minister may by regulations provide 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'*

9.1.5. **Section 4(3)** states that: *'A reference in this Act to exempted development shall be construed as a referred to development which is-*

(a) Any of the developments specified in subsection (1), or

(b) Development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.'

9.1.6. **Section 4(4)** states that *'notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required''*.

9.1.7. **Section 177U(9)** states that: *'In deciding upon a declaration or a referral under section 5 of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.*

9.1.8. **Section 138. Board may dismiss appeals or referrals if vexatious, etc.**

(1) The Board shall have an absolute discretion to dismiss an appeal or referral—

(a) where, having considered the grounds of appeal or referral or any other matter to which, by virtue of this Act, the Board may have regard in dealing with or determining the appeal or referral, the Board is of the opinion that the appeal or referral—

(i) is vexatious, frivolous or without substance or foundation, or

(ii) is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person,

Or

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral),

or

(ii) any previous permission which in its opinion is relevant.

10.0 **Relevant Referrals and Case Law**

10.1. **Relevant Referrals**

I have examined the An Coimisiún Pleanála referrals database. The following referrals subject of declarations by the Board are considered relevant:

ABP-321707-25 – The Board determined that, the construction of 2 no. dry store farm sheds which consist of steel frames with roof and side walls to be box cladded to match existing farm sheds, at Moyle Moss, Newtowncunningham, Co. Donegal, was development and was not exempted development on the basis that, inter alia, the development must be subject to an Appropriate Assessment and therefore cannot be considered exempted development under Section 4(4) of the Planning and Development Act, 2000, as amended.

ABP-309500-21 – The Board determined that, roof repair works comprising re-slating the side aisle of the Church of the Assumption (a protected structure), Booterstown Avenue, Blackrock, Co. Dublin is development and is exempted development under Section 4(1)(h) of the Planning and Development Act, 2000, as amended, as the works undertaken would not materially affect the external appearance of the Church so as to render its appearance inconsistent with the character of the structure or of neighbouring structures, and would not materially affect the character of the Church.

ABP-300975-18 – The Board determined that, inter alia, the removal of an existing roof and gutter and the replacement of roof and gutter and associated works at Ballycumber, Co. Offaly is development and is not exempted development on the basis that the extent of demolition and structural work carried out has resulted in a materially different physical structure on the site compared with the original building, in terms of scale, form and height and, therefore, the refurbishment carried out is considered not to fall within the scope of exemption under section 4(1)(h) of the Act.

ABP-301518-18 – The Board determined that, inter alia, replacement of a decayed profiled metal roof with profiled metal roofing on a house at Ballagh, Newtownforbes, Co. Longford is development and is not exempted development on the basis that such works had the potential to materially affect the external appearance of the structure so as to render it inconsistent with the character of the structure and are, therefore, not exempted development under section 4(1)(h) of the Planning and Development Act, 2000, as amended.

10.2. **Relevant Case Law**

Narconon Trust v An Bord Pleanála IECA 307 (2021). Court of Appeal Judgement following 2019/16/JR – Heslin J concluded that the Board was precluded from determining a section 5 referral in circumstance where a planning authority has previously determined the same, or substantially the same, question in respect of the same land where there is no evidence that there has been a change in planning facts and circumstance since the planning authority's determination. It had jurisdiction to receive the referral and to commence its determination. Once it became apparent that the question referred was the same, or substantially the same and in respect of the same land, and that there was no evidence of change in the planning facts or circumstances, it ought to have concluded that: the referral by the notice parties

amounted to an impermissible attack on the 2016 declaration, which, in substance, amounted to questioning the validity of the section 5 declaration other than by way of s.50; that such a challenge is prohibited by s.50(2) and that for the Board to proceed further to determine the referral on the merits amounted to facilitating a breach of s.50(2) and was, accordingly, ultra vires.

11.0 Assessment

It should be noted that the purpose of this referral is not to determine the acceptability or otherwise of the proposal 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.

At the outset, I consider it prudent to draw the Commission's attention to Section 138(1) which provides that the Board (Commission) shall have an absolute discretion to dismiss an appeal or referral-

(b) where, the Board is satisfied that, in the particular circumstances, the appeal or referral should not be further considered by it having regard to—

(i) the nature of the appeal (including any question which in the Board's opinion is raised by the appeal or referral), or

(ii) any previous permission which in its opinion is relevant.

11.1. The Commission's Jurisdiction to Determine the Question

11.1.1. Having reviewed the documentation submitted by the applicant and by the planning authority and also the site's Section 5 referral history, it is my view that a key issue to be addressed at the outset is the Commission's jurisdiction to make a decision on this referral with reference to *Narconon Trust v An Bord Pleanála* Court of Appeal judgement, where Galway County Council made determinations on similarly worded Section 5 applications under P.A. Ref. ED 24/98 in August 2024 and under P.A. Ref. ED 24/117 in October 2024.

11.1.2. In *Narconon Trust v An Bord Pleanála* (2021, IECA 307), the Court of Appeal granted an Order of Certiorari quashing two decisions by the Board under Section 5 of the Planning and Development Act 2000 (as amended), whereby the Board decided that

a change of use from a nursing home development to a residential drug rehabilitation facility is development and is not exempted development. The conclusion of the court is set out in Section 10.2 of this report above.

This judgement is relevant to the current referral as it requires two issues to be addressed by the Commission prior to a determination being made:

- 1) Is the question referred the same, or substantially the same, and in respect of the same land and,
- 2) Has there been a change in the planning facts or circumstances since the previous determination was made.

I address these questions in turn below:

Is the question referred the same, or substantially the same, and in respect of the same land;

There are 2 no. previous Section 5 declarations which relate to the same lands at Coast Road, Oranmore, Carrowmoneash, Co. Galway (P.A. Refs. ED 24/98 and ED 24/117). I have set out the previous questions below;

“whether rebuild of storm damaged flat roof to rear extension and essential structure repairs at Coast Road, Oranmore, Carrowmoneash, Co. Galway is or is not development or is/ is not exempted development”

And

“whether re-build of storm damaged flat roof to rear extension and essential structure repairs at Coast Road, Oranmore, Carrowmoneash, Co. Galway is or is not development or is/ is not exempted development”

The current referral by James G. and Agnes O’Connor before the Commission reads as follows;

“whether re-build storm damaged flat roof to rear part of existing dwelling, essential roof structure repairs at Coast Road, Oranmore, Carrowmoneash, Co. Galway is or is not development or is/ is not exempted development”.

In my view the question posed to Galway County Council, on which it made the declaration that the works are development and are not exempted development (as detailed in Section 3.0 of this report) which forms the basis of this referral, is

substantially the same as the questions adjudicated on under P.A. Refs. ED 24/98 and ED 24/117.

I have viewed the documentation on file, inspected the site and taken careful note of the planning history as noted in the history section above, including in relation to previous Section 5 applications on site, and on this basis I consider that the question currently posed presents a case/ scenario that is substantially the same to that already considered and determined by Galway County Council under P.A. Refs. ED 24/98 and ED 24/117.

Has there been a change in the planning facts or circumstances since the previous determination was made.

Having visited the site and having reviewed the documents submitted by the applicant and planning authority, it is my view that there has been no substantial change to the planning facts or circumstances in the interim period since the previous determinations were made on 16th August 2024 and 9th October 2024.

Therefore, in the context of *Narconon Trust v An Bord Pleanála* judgement, it is my opinion that the Commission is precluded from making a Determination on the question which is the subject of the referral by James G. and Agnes O'Connor, as Galway County Council has previously made determinations that it is development which is not exempted development and it is not within the Commission's jurisdiction to revisit this decision, where there has been no material change in the planning facts or circumstances.

11.2. Appropriate Assessment

Having regard to the reasoning set out above and my recommendation that the referral could be dismissed by reference to Section 138 of the Planning & Development Act, 2000 (as amended) an AA Screening has not been carried out. In the event the Commission is of a mind not to dismiss this referral and proceed with a Declaration, I note that Galway County Council under its previous Declarations on this question carried out AA Screening and made a Determination on this matter. Therefore, in my opinion, it is prudent to consider this matter also in the context of *Narconon Trust v An Bord Pleanála*.

12.0 Recommendation

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

WHEREAS a question has arisen as to whether to Re-build storm damaged flat roof to rear part of existing dwelling and to carry out essential roof structure repairs at Coast Road, Oranmore, Carrowmoneash, Co. Galway is or is not development or is or is not exempted development:

AND WHEREAS James G. and Agnes O'Connor of Coast Road, Oranmore, Carrowmoneash, Co. Galway requested a declaration on this question from Galway County Council, and the Council issued a declaration on the 18th day of December 2025 stating that the matter is development and is not exempted development:

AND WHEREAS James G. and Agnes O'Connor referred this declaration for review to An Coimisiún Pleanála on the 15th day of January 2026:

AND WHEREAS An Coimisiún Pleanála, in considering the nature of the question is satisfied that the referral should not be considered by it,

NOW THEREFORE An Coimisiún Pleanála, in exercise of the powers conferred on it by section 138(1) of the Planning and Development Act, 2000, as amended, hereby dismiss the said referral under subsection (1)(b)(ii) of Section 138 of the said Act, based on the reasons and considerations set out below.

Reasons and Considerations

Under Section 138(1) of the Planning and Development Act 2000 (as amended), the Commission has absolute discretion to dismiss a referral where the Commission is satisfied that, in the particular circumstances, the referral should not be considered having regard to the nature of any referral or any previous

Section 5 declaration/referral in its opinion is relevant. The referral relates to the re-build of a storm damaged flat roof to rear part of existing dwelling, essential roof structure repairs at Coast Road, Oranmore, Carrowmoneash, Co. Galway which was previously deemed not to be exempted development under Planning Authority References ED 24/98 and ED 24/117. The Commission note that the previous determinations of Galway County Council in relation to substantially the same question and in respect of the same land has been declared as development which is not exempted development and there has been no change in the planning facts or circumstances since the previous determination was made that would have relevance to the referral case now before the Commission. The Commission is, therefore, satisfied that, in these particular circumstances, the referral should not be further considered by it.

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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.

Emma Gosnell
Planning Inspector
15th May 2026