



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Registered Post**

**Rosaleen Hinchy  
c/o Michael Hehir  
McKenna Consulting Engineers  
Miltown Malbay  
Co. Clare**

**1st November 2022**

**Section 5 referral Reference R22-64 – Rosaleen Hinchy**

Is the construction of a 30m<sup>2</sup> single storey rear extension at Ennis Road, Miltown Malbay considered exempted development?

A Chara,

I refer to your application received on 10th October 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

The Planning Authority has considered the matter and I attach herewith the Council's findings in this matter.

Where a declaration is issued by the Planning Authority, any person issued with a declaration, may on payment to an Bord Pleanála of the required fee, refer a declaration for review by An Bord Pleanála within 4 weeks of the date of the issuing of the declaration. Details on making such appeal are available on the Board's website at [www.pleanala.ie](http://www.pleanala.ie)

Mise, le meas

  
**Anne O'Gorman  
Staff Officer  
Planning Department  
Economic Development Directorate**

**An Roinn Pleanála  
An Stiúrthóireacht Forbairt Gheilleagrach**  
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department  
Economic Development Directorate**  
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



**DECLARATION ISSUED UNDER SECTION 5 OF THE  
PLANNING & DEVELOPMENT ACT 2000 (AS AMENDED)**

**Reference No.: R22-64**



Comhairle Contae an Chláir  
Clare County Council

**Section 5 referral Reference R22-64**

**Is the construction of a 30m2 single storey rear extension at Ennis Road, Miltown Malbay considered exempted development?**

**AND WHEREAS**, Rosaleen Hinchy has requested a declaration from Clare County Council on the said question.

**AND WHEREAS** Clare County Council, in considering this referral, had regard in particular to –

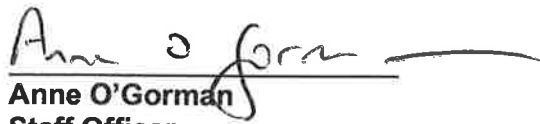
- (a) Sections 2 and 3 of the Planning and Development Act, 2000, as amended
- (b) Articles 6, and 9 of the Planning and Development Regulations, 2001, as amended
- (c) Class 2 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended

**And whereas Clare County Council has concluded:**

The **construction of single storey rear extension at Ennis Road, Miltown Malbay** is considered development which is exempted development, under Class 2 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 as amended:

**THEREFORE:** The Planning Authority in exercise of the powers conferred on it by Section 5 of the Planning and Development Act, 2000 (as amended), hereby decides that:

The proposed development consisting of a single storey rear extension at Ennis Road, Miltown Malbay, Co. Clare, V95 N5Y0 **constitutes development** which is **exempted development** as defined within the Planning & Development Acts, 2000 (as amended) and associated regulations.



**Anne O'Gorman**  
**Staff Officer**  
**Planning Department**  
**Economic Development Directorate**

**1st November 2022**

**CLARE COUNTY COUNCIL**

**SECTION 5 OF THE PLANNING AND DEVELOPMENT ACT 2000 AS AMENDED**

**DECLARATION ON DEVELOPMENT AND/OR EXEMPTED DEVELOPMENT**

Chief Executive's Order No:

80696

Reference Number:

R22-64

Date Referral Received:

10th October 2022

Name of Applicant:

Rosaleen Hinchy

Location of works in question:  
N5Y0

Ennis Road, Miltown Malbay, Co. Clare, V95

**Section 5 referral Reference R22-64 – Rosaleen Hinchy**

Is the construction of a 30m<sup>2</sup> single storey rear extension at Ennis Road, Miltown Malbay considered exempted development?

**AND WHEREAS** Clare County Council, in considering this referral, had regard in particular to –

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

**AND WHEREAS** Clare County Council has concluded:

The **construction of single storey rear extension at Ennis Road, Miltown Malbay** is considered development which is exempted development, under Class 2 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 as amended:

**ORDER:** Whereas by Chief Executive's Order No. HR 152 dated 9<sup>th</sup> April 2021, Pat Dowling, Chief Executive for Clare County Council, did, pursuant to the powers conferred on him by Section 154 of the Local Government Act 2001, delegate to Gareth Ruane, Senior Executive Planner, the powers, functions and duties as set out herein,

**NOW THEREFORE** pursuant to the delegation of the said powers, functions and duties and under Section 5(2)(a) of the Planning & Development Act 2000 (as amended) and having considered the various submissions and reports in connection with the referral described above, I, Gareth Ruane, Senior Executive Planner, hereby declare that the construction of a single storey rear extension at Ennis

Road, Miltown Malbay, Co. Clare, V95 N5Y0 is considered development which is exempted development

**Signed:**

  
GARETH RUANE  
SENIOR EXECUTIVE PLANNER *A-6*

**Date:**

**1st November 2022**

**CLARE COUNTY COUNCIL**

**SECTION 5 REFERRAL**

**Reference No: R22-64**

**Applicant: Rosaleen Hinchy**

**Location: Ennis Rd . Miltown Malbay**

**Proposal: Whether the construction of a 30 sq.m. single storey extension at Ennis Rd. Miltown malbay is or is not development and is / is not exempted development.**

**Due Date: 4<sup>th</sup> November 22**

This proposal is a request for a declaration under Section 5 of the Planning and Development Act, 2000 as amended to determine whether or not the following constitutes exempted development.

Whether the construction of construction of a 30 sq.m. single storey extension at Ennis Rd, Miltown Malbay is or is not development and is or is not exempted development .

**Details Submitted**

- Site location map
- Photos of rear extension
- Details of extension as follows:
  - The house has not been previously extended
  - The original floor area has not been increased by more than 40 sq.m.
  - Th rear extension ( flat roof) is single storey and does not exceed the height of the house
  - The private garden space exceeds 25 sqm.
  - There are no windows facing adjoining properties. All windows face in to the rear garden
  - The flat roof is not used as a roof garden
  - The dwelling is within the ACA for Miltown

**Background**

**Planning and Development Act, 2000 (as amended)**

In order to assess this proposal, regard has to be had to the *Planning and Development Act 2000, as amended*.

## Section 2

'Works' are defined in Section 2 of the *Planning and Development Act 2000, as amended* as follows:

"works" includes 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.

## Section 3.

3.(1) In this 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.

## Planning & Development Regulations, 2001, as amended

Article 6 refers to Exempted Development and states that subject to Article 9, development of a class specified in column 1 of Part 3 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 3 opposite the mention of that class in the said column 1.

## Class 1

The extension of a house, by the construction or erection of an extension 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.

Schedule 2, Article 6, Part 1 of the Planning and Development Regulations 2001 (as amended) sets out the following classes of exempted development:

Column 1 Description of Development	Column 2 Conditions & Limitations
<i>Development within the curtilage of a house</i>  <b>Class 1</b> 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	1. (a) Where the house has not been extended previously, the floor area of any such extension shall not exceed 40 square metres.

<p>garage, store, shed or other similar structure attached to the rear or to the side of the house.</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 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.</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>
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	<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 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 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>

Under Article 9 (1) of the same Regulations, 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 –

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act
- (ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (iv) 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,
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.”
- (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,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified 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,
- (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,
- (xi) obstruct any public right of way,
- (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.*

## Considerations

### Class 1

The extension of a house, by the construction or erection of an extension 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.

## Assessment

Article 9 sets out restrictions on exemptions.

Schedule 2, Article 6, Part 1 of the Planning and Development Regulations 2001 (as amended) sets out the following classes of exempted development:

Column 1 Description of Development	Column 2 Conditions & Limitations
<p><i>Development within the curtilage of a house</i></p> <p><b>Class 1</b> 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>The house has not been extended previously and the internal floor area is 30sq.m.</b></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><b>The house is terraced and there is no extension is at first floor level.</b></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><b>N/A The house is terraced.</b></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>The house has not been extended previously The internal floor area of the extension does not exceed 30 sq.m.</b></p> <p>(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.</p> <p><b>N/A The query does to relate to first floor extension.</b></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><b>N/A. The query does to relate to first floor extension.</b></p> <p>3. Any above ground floor extension shall be a distance of not less than 2 metres from any party boundary.</p> <p><b>N/A. The query does to relate to first floor extension.</b></p>
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	<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>The rear extension is single storey flat roof and does not exceed the height of the rear wall of the house. ( see photos)</b></p> <p>(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.</p> <p><b>N/A. The rear wall does not include a gable.</b></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><b>The height of the highest part of the roof of the extension does not exceed the height of the eaves or parapet . and does not exceed the height of the highest part of the roof of the dwelling</b></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><b>The area of private open space remaining exceeds 25 sq.m.</b></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>The windows of the extension faces the rear boundary which is 130m distance away.</b></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><b>N/A The extension is at ground level</b></p>
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	<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 shall not be less than 11 metres from the boundary it faces.</p> <p><b>N/A.</b></p> <p>7. The roof of any extension shall not be used as a balcony or roof garden.</p> <p><b>The roof is flat but is not used as a balcony or roof garden .</b></p>
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Under Article 9 (1) of the same Regulations, 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 –

(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act **Not applicable.**

(ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width, **Not applicable.**

(iii) endanger public safety by reason of traffic hazard or obstruction of road users, **Not applicable.**

(iv) 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. **Not applicable**

(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, **Not applicable.**

(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, **Not applicable.**

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site, **Not applicable.**

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000." **Not applicable.**

(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, **Not applicable.**

(ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified 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, **Not applicable.**

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility, **Not applicable**

(xi) obstruct any public right of way, **Not applicable.**

(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. **Not applicable.**

## Conclusion

With reference to the above assessment, and the stated restrictions on exempted development, and Article 9 of the Planning and Development Regulations 2001- 2015 that the proposed development can be considered exempted development as per Section 5.

## Recommendation

Having regard to Articles 6, and 9 of the Planning and Development Regulations, 2001-2011  
And Class 2 of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended

WHEREAS a question has arisen as to whether the construction of single storey rear extension is development and is or is not exempted development

AND WHEREAS Clare County Council in considering this referral, had regard particularly to -

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

(b) Articles 6, and 9 of the Planning and Development Regulations, 2001-2011 *as amended*

(c) Class 2 of Part 1 of Schedule 2 of the Planning and Development Regulations, as amended:  
*2021,*

AND WHEREAS Clare County Council has concluded that –

The **construction of single storey rear extension at Ennis Road, Miltown Malbay** is considered development which is exempted under Class 2 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001 as amended; *development*

**NOW THEREFORE** Clare County Council, in exercise of the powers conferred on it by section 5(2) (a) of the 2000 Act, hereby decides

The construction of a single storey rear extension is considered development which is exempted development.

Signed *Ellw Coey.*  
E.P.

Date *28/10/22.*

Signed *[Signature]*  
~~A~~ S.E.P.

Date *28/10/22.*

**Clare County Council**  
**Screening for Appropriate Assessment & Determination**

1. Table 1 to be filled in for all development applications.
2. Where proposed development is within a European site(s) site, go directly to table 3.
3. For all other development proposals, fill in table 2, and if required, table 3.
4. A Habitats Directive Screening Statement should be sought for all developments regardless of location which require an EIS

**Table 1: Project Details**

<b>Planning File Reference</b>	R22/ 64
<b>Applicant Name</b>	Rosaleen Hinchy
<b>Development Location</b>	Ennis Rd Miltown Malbay
<b>Application accompanied by an EIS</b>	
<b>Application accompanied by an NIS</b>	
<b>Description of the project (To include a site location map):</b>	
Section 5 referral	

**Table 2: Identification of European sites which may be impacted by the proposed development.**

This section identifies the European Sites within the likely zone of impact of the plan or project. For plans an initial 15km zone of influence (NPWS-DAHG)<sup>1</sup> is recommended. For projects, the distance could be much less than 15km, and in some cases less than 100m, but this must be evaluated on a case-by-case basis with reference to the nature, size and location of the project, and the sensitivities of the ecological receptors, and the potential for in combination effects. Qualifying Interests/Special conservation Interests for each site and the distance relevant to the proposal are listed (Table 2 (a)).

**Table 2 (a): European Sites within 15km of Applicant Site**

European Sites <sup>2</sup>	Qualifying Interests (QIs)/Special Conservation Interests (SCIs) and conservation objectives (either generic or detailed) (available on <a href="http://www.npws.ie/protectedsites">www.npws.ie/protectedsites</a> ) or through Intranet.	Distance to Applicant Site (km)
Carrowmore point to Spanish point and the islands SAC	Annex I habitats: • *Coastal lagoons [1150] • Perennial vegetation of stony banks [1220] • *Petrifying springs with tufa formation (Cratoneurion) [7220] • Reefs [1170]	3km
Mid Clare Coast SPA 0004182	Cormorant ( <i>Phalacrocorax carbo</i> ) [A017] • Barnacle Goose ( <i>Branta leucopsis</i> ) [A045] • Ringed Plover ( <i>Charadrius hiaticula</i> ) [A137] • Sanderling ( <i>Calidris alba</i> ) [A144] • Purple Sandpiper ( <i>Calidris maritima</i> ) [A148] • Dunlin ( <i>Calidris alpina</i> ) [A149] • Turnstone ( <i>Arenaria interpres</i> ) [A169] • Wetland and Waterbirds [A999]	3km

1	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b>	<i>Is the development in the catchment of or immediately upstream of a watercourse that has been designated as a European site?</i>	No
2	<b>Impacts on terrestrial habitats &amp; species.</b>	<i>Is the development within 1km of a European site with terrestrial based habitats or species?</i>	No
3	<b>Impacts on designated marine habitats &amp; species.</b>	<i>Is the development located within marine or intertidal areas and within 5 km of a European site whose qualifying habitats or species include the following: Mudflats, sandflats, saltmarsh, shingle, reefs, sea cliffs</i>	No

<sup>1</sup> European Sites that are more than 15km from the proposal may have to be considered. For example in the case of sites with water dependent habitats or species and where a proposal could affect water quality or quantity it may be necessary to consider the full extent of the upstream and/or downstream catchment.

<sup>2</sup> European Site details are available on <http://webgis.npws.ie/npwsvviewer/> or maybe obtained from internal mapping systems.

<b>4</b>	<b>Impacts on birds in SPAs</b>	<i>Is the development within 1km of a Special Protection Area</i>	No
<b>5</b>	<b>Indirect effects</b>	<i>Is the development, in combination with other existing or proposed developments likely to impact on an adjacent European site?</i> <i>Is any emission from the development (including noise) likely to impact on an adjacent habitat or species?</i>	No

**Conclusion:**

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer is *unknown* or *yes* proceed to Table 3 and refer to the relevant sections of Table 3.

**Table 3: Identification of potential impacts.**

<b>1</b>	<b>Impacts on designated rivers, streams, lakes and fresh water dependant habitats and species.</b> <i>Please answer the following if the answer to question 1 in table 2 was "yes" or "unknown". Does the development involve any of the following:</i>	
<b>1.1</b>	Removal of or interference with habitat within a European site. This may include any element of a project liable to interfere with breeding, nesting or roosting sites of birds, bats, water based species	NA
<b>1.2</b>	Discharges either directly (via pipe from the development) or indirectly (via sewer) to surfacewater or groundwater What is the likely volume of the discharge?	To public main
<b>1.3</b>	Abstraction from surfacewater or groundwater in or adjacent to a European site, where hydrology is a critical element in the protection of habitat and species at the site? What is the likely volume of the abstraction?	NA
<b>1.4</b>	Is removal of topsoil proposed within 500m of watercourses? What transportation requirements are provided? Does the removal involve reduction in area, population density or fragmentation of area of any habitat or species?	NA
<b>1.5</b>	Infilling or raising of ground levels within 500m of watercourses? What transportation requirements are provided? Does the infilling or raising involve interference with area, population density or fragmentation of area of any habitat or species?	NA
<b>1.6</b>	Construction of drainage ditches - (scale?) Where the run off is directed to? Is the drainage run off directed to a European site where species are identified and whose conservation status may be impacted by this drainage?	NA
<b>1.7</b>	Installation of waste water treatment systems; percolation areas; septic tanks within 500m of watercourses?	NA
<b>1.8</b>	Construction within a floodplain or within an area liable to flood (See <a href="http://www.floodmaps.ie">www.floodmaps.ie</a> , internal flood risk maps, County Development Plan SFRA and <a href="http://www.cframes.ie">www.cframes.ie</a> )	NA
<b>1.9</b>	Crossing or culverting of rivers or streams, installation of weirs, temporary watercourse crossings or any interference with a watercourse.	NA

1.10	Storage of chemicals or hydrocarbons (including oils and fuels) within 500m of a watercourse	NA
1.11	Development within catchment of a European site of a scale or type which involves the production of an EIS	NA
1.12	Consideration of effects in combination with existing development?	NA
2	<b>Impacts on terrestrial habitats and species.</b> <i>Please answer the following if the answer to question 2 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
2a	Removal of or interference with habitat within the European site. This includes reduction in habitat area or fragmentation of habitat. Is the timing of this interference liable to impact on the nesting or breeding period of any protected species?	NA
2b	Construction of roads or other infrastructure on peat habitats within 1km of bog, marsh, fen or heath habitat within a European site	NA
2c	Is the development liable to impact on water quality in the European site, or liable to give rise to any change in a key indicator of water quality, including salinity. If yes, is the site designated for any bird species or other plant species whose feeding ground or life cycle may be affected by changes in water quality?	NA
2d	Development within 1km of terrestrial European site of a scale or type which involves the production of an EIS.	NA
3	<b>Impacts on designated marine habitats and species.</b> <i>Please answer the following if the answer to question 3 in table 2 was yes.</i> <i>Does the development involve any of the following:</i>	
3a	Removal of or interference with habitat within the European site. This includes timing of the project if there is potential to interfere with nesting or breeding periods, either directly or indirectly (e.g. by noise emission) or any aspect of the life cycle of a protected species. This also includes potential fragmentation, size reduction of habitat, or reduction in species density.	NA
3b	Coastal protection works on intertidal or marine habitats within 5km of a European site supporting coastal or marine habitats or	NA

	species. This includes any works which may give rise to potential changes in hydrology or salinity of these areas.	
3c	Development of piers, slipways, marinas, pontoons or any other infrastructure within 5km of a European site that was designated because it supports marine habitats and/or species.	NA
3d	Dredging within 5km of a European site supporting coastal or marine habitats or species.	NA
3e	Removal of topsoil or infilling within 100m of marine habitats within the designated site.	NA
3f	Land based development within 1km of a European site of a scale or type which involves the production of an EIS.	NA
3g	Marine or intertidal based development within 5km of a European site of a scale or type which involves the production of an EIS.	NA

4	<p align="center"><b>Impacts on birds in SPAs</b></p> <p align="center"><i>Please answer the following if the answer to question 5 in table 2 was yes.</i></p> <p align="center"><i>Does the development involve any of the following:</i></p>	
4a	Removal of or interference with habitats within an SPA. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4b	Erection of wind turbines within 1km of an SPA.	NA
4c	All construction works within 100m of intertidal areas – Coastal SPAs, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4d	Infilling of coastal habitats within 500m of SPA, including indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4e	Discharges to coastal SPA, including any element of a discharge liable to give rise to disturbance of this habitat, either by direct, indirect, or in combination effects	NA
4f	Development of cycleways or walking routes within 100m of intertidal areas. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA
4g	Development within 1km of SPA of a scale or type which involves the production of an EIS. This includes consideration of indirect and in combination effects on the feeding, breeding and nesting grounds of Annex 1 birds	NA

**Conclusion:**

- If the answer to all of the above is *no*, significant impacts on European sites are unlikely. No further assessment is required; go directly to the conclusion statement.
- If the answer to any of the above is *yes*, or *unknown* effects on the European sites need to be assessed and a Natura Impact Statement will be required

Appropriate Assessment Screening Determination	
Planning File Reference	R22/ 64
Proposed Development	Section 5 referral for rear extension
Development Location	Ennis Rd Miltown Malbay
European sites within impact zone	Carrowmore point to Spanish Point and the islands SAC Mid Clare coast SPA
Description of the project:	
Whether the construction of construction of a 30 sq.m. single storey extension at Ennis Rd, Miltown Malbay is or is not development and is or is not exempted development	
Qualifying Interests (QIs)/Special Conservation Interests (SCIs) of European site	
As above	
Describe how the project or plan (alone or in combination) is likely to affect the European site(s).	
Not likely- development s connected to public services	
If there are potential negative impacts, explain whether you consider if these are likely to be significant, and if not, why not?	
Not significant	
Documentation reviewed for making this statement	
<ul style="list-style-type: none"> <li>- County Development Plan (including Flood Maps, SEA &amp; AA)</li> <li>- NPWS website</li> <li>- Documents received as part of the planning application</li> <li>- EPA Code of Practice</li> </ul>	
Conclusion of assessment (a, b, c or d)	
(a) The proposed development is directly connected with or necessary to the nature conservation management of a European Site(s) <sup>3</sup>	No

<sup>3</sup> Appropriate Assessment is not required and therefore Planning permission may be granted at this stage subject to all other planning considerations. However, no material changes may be made to the proposed development after this conclusion has been reached as this would invalidate the findings of the screening exercise.

<b>(b) There is no potential for significant effects to European Sites<sup>3</sup></b>	<b>There is potential for significant effects to European Sites</b>
<b>(c) The potential for significant effects to European Site(s) cannot be ruled out<sup>4</sup></b>	<b>The potential for significant effects to European Site(s) can be ruled out</b>
<b>(d) Significant effects to European sites are certain or likely or where potential for significant effects to European sites remains following receipt of Further Information requested under S177U of the Planning and Development (Amendment) Act 2010<sup>5</sup></b>	<b>N/A</b>
<b>Completed By</b>	Ellen Carey
<b>Date</b>	28 <sup>th</sup> October 22

<sup>4</sup> In accordance with S177U of the Planning and Development (Amendment) Act 2010, the applicant should be requested to submit an 'Appropriate Assessment Screening Matrix' completed by a suitably qualified ecologist, by way of Further Information. Following receipt of this information a new Appropriate Screening Report should be completed. The requested 'Appropriate Assessment Screening Matrix' should be in accordance with the template outlined in Annex 2, Figure 1 of the EU (2001) guidance document 'Assessment of plans and projects significantly affecting European Sites – Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. This guidance document is available from [http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura\\_2000\\_assess\\_en.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/natura_2000_assess_en.pdf) Alternatively, where other planning concerns arise the proposal could be refused planning permission.

<sup>5</sup> The proposed development must either by refused planning permission or alternatively an 'Appropriate Assessment' (AA) should be carried out by the Planning Authority. In order to facilitate the preparation of an AA the applicant should be requested to submit a Natura Impact Statement (NIS) in accordance with S177 (T) of the Planning and Development (Amendment) Act 2010. However, in the case of an application to retain unauthorised development of land and where the authority decides that an 'appropriate assessment' should have been carried out prior to the commencement of development, the application is required to be invalidated by the Planning Authority as per S34 (12) of the Planning and Development (Amendment) Act 2010 and accordingly an NIS should not be requested in such instances.



COMHAIRLE | CLARE  
CONTAE AN CHLÁIR | COUNTY COUNCIL

**Rosaleen Hinchy**  
c/o Michael Hehir  
McKenna Consulting Engineers  
Miltown Malbay  
Co. Clare

**10/10/2022**

**Section 5 referral Reference R22-64 – Rosaleen Hinchy**

Is the construction of a 30m<sup>2</sup> single storey rear extension at Ennis Road, Miltown Malbay considered exempted development?

A Chara,

I refer to your application received on 10th October 2022 under Section 5 of the Planning & Development Act 2000 (as amended) in relation to the above.

Please note that the Planning Authority is considering the matter and a reply will issue to you in due course.

Mise, le meas

**Brian Fahy**  
Planning Department  
Economic Development Directorate

**An Roinn Pleanála**  
**An Stiúthóireacht Forbairt Gheilleagrach**  
Áras Contae an Chláir, Bóthar Nua, Inis, Co. an Chláir, V95 DXP2

**Planning Department**  
**Economic Development Directorate**  
Áras Contae an Chláir, New Road, Ennis, Co. Clare, V95 DXP2



Clare County Council  
Aras Contae an Chláir  
New Road  
Ennis  
Co Clare

10/10/2022 13:10:42

Receipt No. : L1CASH/0/339620  
\*\*\*\*\* REPRINT \*\*\*\*\*

ROSALEEN HINCHY  
C/O MICHAEL HEHIR  
MCTENNA CONSULTING ENGINEERS  
MILTOWN MALBAY  
CO. CLARE

R22-64

SECTION 5 REFERENCES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total : 80.00 EUR

Tendered :	
CREDIT CARDS	80.00

Change :	0.00
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Issued By : L1CASH - DEIRDRE FRENCH  
From : MAIN CASH OFFICE LODGEMENT AF  
Vat reg No 0033043E

P07

**CLARE COUNTY COUNCIL  
COMHAIRLE CONTAE AN CHLÁIR**

Planning Department,  
Economic Development Directorate,  
Clare County Council,  
New Road, Ennis,  
Co. Clare.  
V95DXP2

Telephone No. (065) 6821616  
Fax No. (065) 6892071  
Email: [planoff@clarecoco.ie](mailto:planoff@clarecoco.ie)  
Website: [www.clarecoco.ie](http://www.clarecoco.ie)



**REQUEST FOR A DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT  
(Section 5 of the Planning & Development Act 2000 (as amended))**

**FEE: €80**

*This following form is a non-statutory form which has been prepared by Clare County Council for the purpose of obtaining the necessary information required for a declaration to be made under Section 5 by the Planning Authority*

1. CORRESPONDENCE DETAILS.	
(a) Name and Address of person seeking the declaration	Rosaleen Hinchy
	Ennis Rd,
	Miltown Malbay
	Co. Clare
	V95 N5Y0
(b) Telephone No.:	085 7580101 (Michael Hehir - Agent)
(c) Email Address:	michael@mckennace.com
(d) Agent's Name and address:	Michael Hehir
	McKenna Consulting Engineers
	Miltown Malbay
	Co. Clare



## 2. DETAILS REGARDING DECLARATION BEING SOUGHT

- (a) PLEASE STATE THE SPECIFIC QUESTION FOR WHICH A DECLARATION IS SOUGHT  
*Note: only works listed and described under this section will be assessed.*

**Sample Question:** *Is the construction of a shed at 1 Main St., Ennis development and if so is it exempted development?*

Is the construction of a 30m<sup>2</sup> single storey rear extension at Ennis Rd, Miltown  
 Malbay considered exempted development?

- (b) Provide a full description of the question/matter/subject which arises wherein a declaration of the question is sought.

- the house has not been previously extended
- the original floor has not been increased by more than 40m<sup>2</sup>
- the rear extension is a single storey and does not exceed the height  
 of the house. The rear extension has a flat roof.
- the private rear open space exceeds 25m<sup>2</sup>
- there are no windows facing any adjoining properties. All windows are  
 at the rear and face into the private rear open space
- the flat roof extension IS NOT used as a roof garden or
- it is within the architectural conservation area for Miltown

- (c) List of plans, drawings etc. submitted with this request for a declaration:  
*(Note: Please provide a site location map to a scale of not less than 1:2500 based on Ordnance Survey map for the areas, to identify the lands in question)*

- 1:1000 OSI Site Location Map
- Photos of rear extension

3. DETAILS RE: PROPERTY/SITE/BUILDING FOR WHICH DECLARATION IS SOUGHT	
(a) Postal Address of the Property/Site/Building for which the declaration sought:	Ennis Rd, Miltown Malbay Co. Clare V95 N5Y0
(b) Do the works in question affect a Protected Structure or are within the curtilage of a Protected Structure? If yes, has a Declaration under Section 57 of the Planning & Development Act 2000 (as amended) been requested or issued for the property by the Planning Authority?	No
(c) Legal interest in the land or structure in question of the person requesting the declaration (Give Details):	Owner
(d) If the person in (c) above is not the owner and/or occupier, state the name and address of the owner of the property in question:  <i>Note: Observations in relation to a referral may be requested from the owner/occupier where appropriate.</i>	
(e) Is the owner aware of the current request for a Declaration under Section 5 of the Planning & Development Act 2000 (as amended)?:	Yes
(f) Are you aware of any enforcement proceedings connected to this site? <i>If so please supply details:</i>	No
(g) Were there previous planning application/s on this site? <i>If so please supply details:</i>	No
(h) Date on which 'works' in question were completed/are likely to take place:	Circa. 2005

SIGNED: 

(Agent - Michael Hehir)

DATE: 20/09/2022

### **GUIDANCE NOTES**

*This following are non-statutory advice notes prepared by Clare County Council for the purpose of advising people what information is required for a decision to be made under Section 5 by the Planning Authority*

- (i) The request for a declaration under Section 5 must be accompanied by 2 copies of site location map based on the Ordnance Survey map for the area of a scale not less than 1:1000 in urban areas and 1:2500 in rural areas and should clearly identify the site in question.
- (ii) The request for a declaration under Section 5 must be accompanied by the required fee of €80.00.
- (iii) If submitting any additional plans/reports etc. as part of the request for a declaration, please submit 2 copies.
- (iv) The request for a declaration should be sent to the following address:

Planning Department,  
Economic Development Directorate,  
Clare County Council  
Aras Contae an Chlair,  
New Road,  
Ennis,  
Co. Clare  
V95DXP2

- (v) Notwithstanding the completion of the above form, the Planning Authority may require the submission of further information with regard to the request in order to enable the Authority to issue a declaration on the question.
- (vi) The Planning Authority may also request other persons to submit information on the question which has arisen and on which the declaration is sought

### **FOR OFFICE USE ONLY**

Date Received:	.....	Fee Paid:	.....
Date Acknowledged:	.....	Reference No.:	.....
Date Declaration made:	.....	CEO No.:	.....
Decision:.....			

**Photographic Survey – Ennis Road, Miltown Malbay, Co. Clare**



Photo 1 – Single storey extension at rear. The only window and door, on the ground floor, are facing into the rear garden



Photo 2 – View from halfway down the garden of the rear extension



Photo 3 – This is the flat roof of the rear extension taken from the first floor bedroom. It is not used as roof garden or balcony area



Photo 1 – The view of the open space at the rear of the property

## Photographic Survey – Ennis Road, Miltown Malbay, Co. Clare



Photo 1 – Single storey extension at rear. The only window and door, on the ground floor, are facing into the rear garden



Photo 2 – View from halfway down the garden of the rear extension



Photo 3 – This is the flat roof of the rear extension taken from the first floor bedroom. It is not used as roof garden or balcony area



Photo 1 – The view of the open space at the rear of the property

# Land Registry Compliant Map



National Mapping Agency

**CENTRE COORDINATES:**  
ITM 505673,679026

**ORDER NO.:**  
50286698\_4

**PUBLISHED:**  
31/08/2022

**MAP SERIES:**  
1:2,500

**MAP SHEETS:**  
4257-C

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**OUTPUT SCALE: 1:1,000**