

WICKLOW COUNTY COUNCIL

**PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5**

Director of Services Order No: 181/2023

Reference Number: EX 59/2022

Name of Applicant: Gerard Daly

Nature of Application: Section 5 Referral as to whether "The construction of a shed, fencing, a sensory room and a conservatory at Tigroney West (townland), Avoca, Co Wicklow" is or is not exempted development.

Location of Subject Site: Tigroney West (townland), Avoca, Co Wicklow

Report from Lyndsey Blackmore AP & Suzanne White SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "The construction of a shed, fencing, a sensory room and a conservatory at Tigroney West (townland), Avoca, Co Wicklow" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- The details submitted with this application 5th October 2022 and 24th January 2023.
- Sections 2 and 3 of the Planning & Development Act 2000(as amended).
- Article 6(1) Planning & Development Regulations, 2001 (as amended):
- Article 9 (1); Planning & Development Regulations, 2001 (as amended):
- Part 3 (Classes 4 & 9) of Schedule 2 Planning & Development Regulations, 2001 (as amended):

Main Reasons with respect to Section 5 Declaration:

The changes consisting of the construction of

- A shed,
- Fencing,
- A sensory room
- And a conservatory/greenhouse

The development would not come within the scope of section 4(1) of the Planning and Development Act 2000 (as amended) and would not, given the nature of development and proximity to the road, fall under the conditions and Limitations of Part 3 (Classes 4 & 9) of Schedule 2 Planning & Development Regulations, 2001 (as amended)

Recommendation

The Planning Authority considers that "The construction of a shed, fencing, a sensory room and a conservatory at Tigroney West (townland), Avoca, Co Wicklow" is development and is not exempted development as recommended in the planning reports.

Signed  Dated 9th day of February 2023

ORDER:

That a declaration to issue stating:

That "The construction of a shed, fencing, a sensory room and a conservatory at Tigroney West (townland), Avoca, Co Wicklow" is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: 
Director of Services
Planning Development & Environment

Dated 10 day of February 2023



Comhairle Contae Chill Mhantáin Wicklow County Council

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Planning Development and Environment**

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Gerard Daly

9th February 2023

RE: Declaration in accordance with Section 5
of the Planning & Development Acts 2000 (As Amended)

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the
Planning & Development Act 2000 in respect of the following:

Exemption Ref No: EX 59/2022

Applicant: Gerard Daly

Nature of Application: "The construction of a shed, fencing, a sensory room
and a conservatory at Tigroney West (townland),
Avoca, Co Wicklow"

Location: Tigroney West (townland), Avoca, Co Wicklow

Where a Declaration is used under this Section any person issued with a
Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of
such fee as may be prescribed, refer a declaration for review by the Board within
four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

**ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.**



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol Planning Development and Environment

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DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS AMENDED

Applicant: Gerard Daly

Location: Tigroney West (townland), Avoca, Co Wicklow

DIRECTOR OF SERVICES ORDER NO. 181/2023

A question has arisen as to whether "The construction of a shed, fencing, a sensory room and a conservatory at Tigroney West (townland), Avoca, Co Wicklow" is or is not exempted development.

Having regard to:

- The details submitted with this application 5th October 2022 and 24th January 2023.
- Sections 2 and 3 of the Planning & Development Act 2000(as amended).
- Article 6(1) Planning & Development Regulations, 2001 (as amended):
- Article 9 (1); Planning & Development Regulations, 2001 (as amended):
- Part 3 (Classes 4 & 9) of Schedule 2 Planning & Development Regulations, 2001 (as amended):

Main Reasons with respect to Section 5 Declaration:

The changes consisting of the construction of

- A shed,
- Fencing,
- A sensory room
- And a conservatory/greenhouse

The development would not come within the scope of section 4(1) of the Planning and Development Act 2000 (as amended) and would not, given the nature of development and proximity to the road, fall under the conditions and Limitations of Part 3 (Classes 4 & 9) of Schedule 2 Planning & Development Regulations, 2001 (as amended)

The Planning Authority considers that "The construction of a shed, fencing, a sensory room and a conservatory at Tigroney West (townland), Avoca, Co Wicklow" is development and is not exempted development.

Signed: 

ADMINISTRATIVE OFFICER

PLANNING DEVELOPMENT & ENVIRONMENT

Dated 9th February 2023



WICKLOW COUNTY COUNCIL

Planning Department

Section 5 – Application for declaration of Exemption Certificate

Ref:	EX 59/2022
Name:	Gerard Daly
Development:	A shed & trailer on land and fencing off land along with Greenhouse for gardening and portable sensory room on a trailer to be stored when not used.
Location:	Tigroney West (townland), Avoca, Co. Wicklow.

With respect to the query under Section 5 of the Planning and Development Act 2000, as to whether:

Whether or not 'the construction of a shed, fencing, a sensory room and a conservatory at Tigroney West (townland), Avoca, Co. Wicklow' is or is not development; and is or is not exempted development.

Further information was required to fully assess the application.

Further information was requested as follows:

- 1) Please submit a scaled Site Layout Plan detailing the location and dimensions of the shed, fencing, conservatory and sensory room.
- 2) Please clarify what development currently exists on site, including groundworks.

No scaled site layout plan has been submitted

The sensory room will be 3m by 1m and will be 6m from the gate.

The conservatory will be 5m from the gate.

Details of a greenhouse of 17.5msq have been shown.

No information has been provided in relation to the shed or fencing or any groundworks on site.

Under Schedule 2 part 3 of the Planning and Development regulations Class 4 :

The construction, erection or maintenance of any wall or fence, other than a fence of sheet metal, or a wall or fence within or bounding the curtilage of a house

Conditions and Limitations

1. *The height of the wall or fence, other than a fence referred to in paragraph 2, shall not exceed 2 metres.*
2. *The height of any fence for the purposes of deer farming or conservation shall not exceed 3 metres.*

No details of the height of the proposed fence has been provided.

In the absence of this information it is not possible to make a full assessment on whether some elements the development is exempt development or not. As further information has already been requested on this matter and adequate information has not been submitted to be fully clear on the size and scale of the development an assessment is being made on the basis of the information provided.

Under Schedule 2 part 3 of the Planning and Development regulations Class 9 :

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

1. *No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent. 2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate. 3. No such structure shall be situated within 10 metres of any public road. 4. No such structure within 100 metres of any public road shall exceed 8 metres in height. 5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof. 6. No unpainted metal sheeting shall be used for roofing or on the external finish of the structure.*

No details provided regarding the proposed shed, and inadequate details provided regarding the greenhouse size. The details provided appear to show the structures approximately 6metres from the entrance.

Condition 3 states that *No such structure shall be situated within 10 metres of any public road.*

In addition the applicant has provided no evidence to show that these structures are to be used for agricultural purposes.

The proposed sensory building is not considered to be an agricultural structure and no exemption exists for such a structure on a rural site.

Recommendation:

With respect to the query under Section 5 of the Planning and Development Act 2000, as to whether:

Whether or not 'the construction of a shed, fencing , a sensory room and a conservatory at Tigroney West (townland), Avoca, Co. Wicklow' is or is not development; and is or is not exempted development.

The Planning Authority considers that:

The construction of a shed, fencing , a sensory room and a conservatory/greenhouse at Tigroney West (townland), Avoca, Co. Wicklow

Is development and is not exempt development

Main Considerations with respect to Section 5 Declaration:

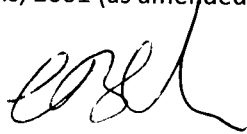
- The details submitted with this application 5th October 2022 and 24th January 2023
- Sections 2 and 3 of the Planning and Development Act 2000(as amended).
- Article 6(1) Planning and Development Regulations, 2001 (as amended):
- Article 9 (1); Planning and Development Regulations, 2001 (as amended):
- Part 3 (Classes 4 & 9) of Schedule 2 Planning and Development Regulations, 2001 (as amended):

Main Reasons with respect to Section 5 Declaration:

The changes consisting of the construction of

- a shed,
- fencing ,
- a sensory room
- and a conservatory/greenhouse

The development would not come within the scope of section 4(1) of the Planning and Development Act 2000 (as amended) and would not , given the nature of development and proximity to the road, fall under the conditions and Limitations of Part 3 (Classes 4 &9) of Schedule 2 Planning and Development Regulations, 2001 (as amended).



Lyndsey Blackmore
Assistant Planner
03/02/2023

Agreed
3/2/23

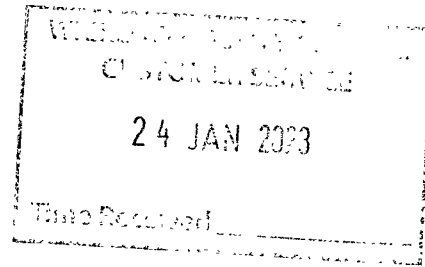
Agreed
bc
ds.
2/10/23

Rebecca Doyle

Unit 2 New Ireland road portmahon house

Rialto

Dublin 8



To whom it may concern

Re:EX 59/2022

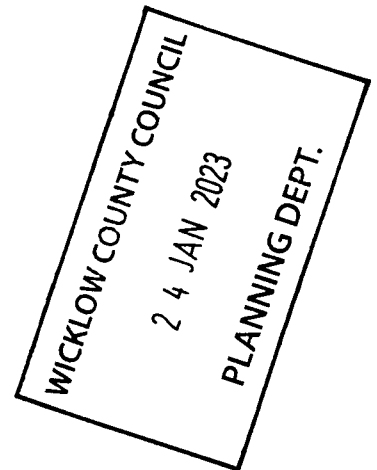
In request of the dominations and location of items stored temporarily on the land

And the green house

Sensory room will be measured at approximately 10 foot long x3.5 foot wide

And will be located 6 meters from the gate entrance to the land .

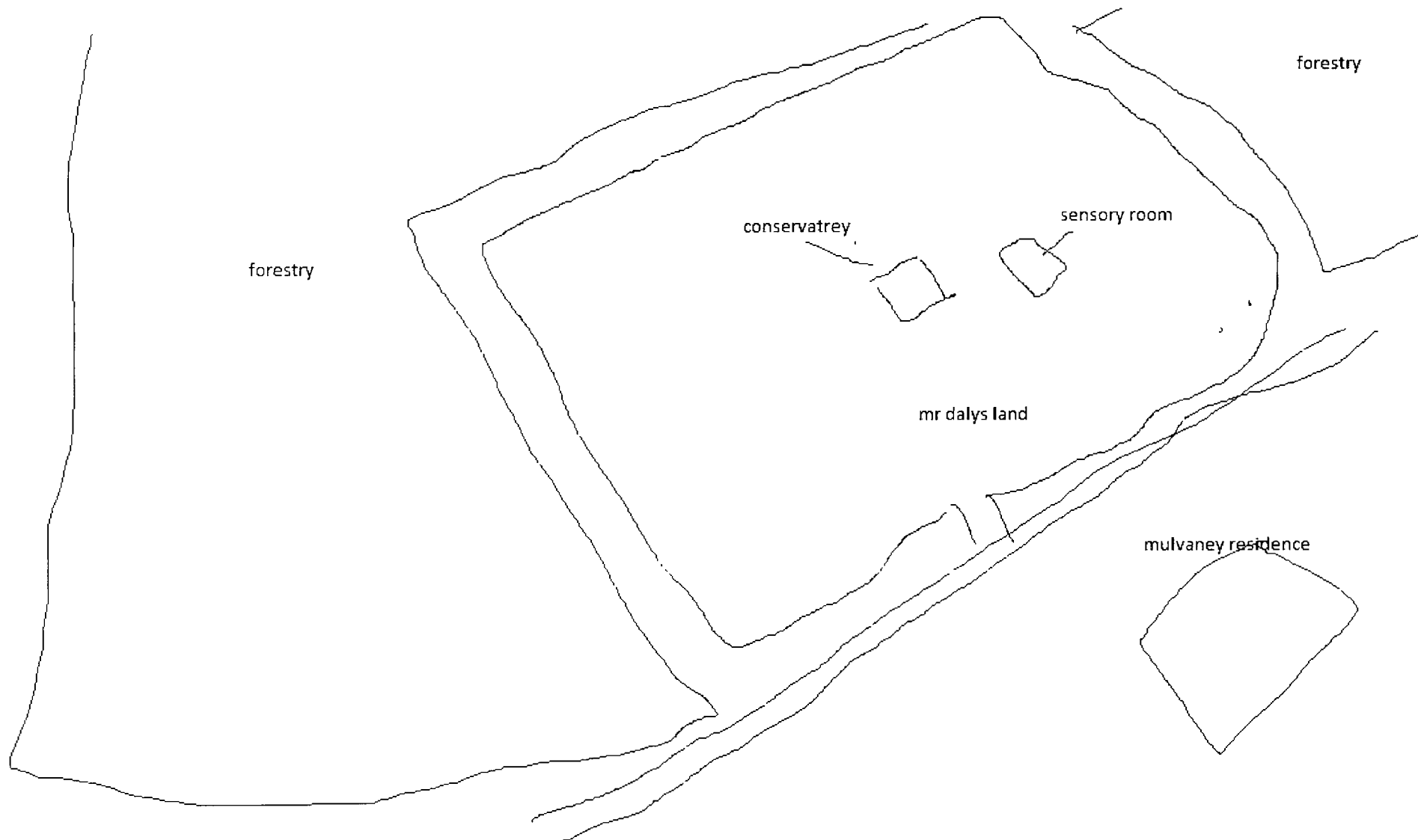
Sizes and pictures attached



Also the conservatory will be located 5 meters from the sensory room

Sizes and pictures attached

[Handwritten signature]



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0/02 / 1/59

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27/10/2022

Gerard Daly

RE: EX 59/2022

'The construction of a shed, the erection of fencing, a sensory room and conservatory at Tigroney West (townland), Avoca, Co. Wicklow.'

A Chara

I wish to acknowledge receipt of your application for a declaration in respect of Section 5 for the above proposal on 5th October 2022.

Further information is required to fully assess the application.

1. Please submit a scaled Site Layout Plan detailing the location and dimensions of the shed, fencing, greenhouse/conservatory & sensory room.
2. Please clarify what development currently exists on site, including groundworks.

Mise, le meas

SENIOR STAFF OFFICER

PLANNING DEVELOPMENT AND ENVIRONMENT





WICKLOW COUNTY COUNCIL

Planning Department

Section 5 – Application for declaration of Exemption Certificate

Ref:	EX 59/2022
Name:	Gerard Daly
Development:	A shed & trailer on land and fencing off land along with Greenhouse for gardening and portable sensory room on a trailer to be stored when not used.
Location:	Tigroney West (townland), Avoca, Co. Wicklow.

Application Site: The proposed site is located off a private laneway, approximately 1.8 Kilometres to the north of the Village of Avoca. The lands comprise of a recently cleared and levelled site. There is a shed on site.

Planning History:

UD5612 - Alleged unauthorised development at Spikes Lane, Tigroney, Avoca, Co. Wicklow. Consisting of installation of concrete base and shed without the benefit of planning permission.

Question:

The applicant has applied to see whether or not the following is or is not development; and is or is not exempted development:

‘The construction of a shed, the erection of fencing off land along with Greenhouse for gardening and portable sensory room on a trailer to be stored when not used at Tigroney West (townland), Avoca, Co. Wicklow.’

Legislative Context:

Planning and Development Act 2000 (as amended)

Section 3(1) of the Act states the following in respect of ‘development’:

“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.”

Section 2(1) of the Act states the following in respect of the following:

‘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 4 sets out the types of works that while considered ‘development’, can be considered ‘exempted development’ for the purposes of the Act.

Planning and Development Regulations 2001 (as amended).

Article 6(1) states that certain classes of development which are specified in Schedule 2 shall be exempted development for the purposes of the Act, subject to compliance with any associated conditions and limitations.

Article 9(1)(a) details a number of circumstances under which the development to which Article 6 relates shall not be exempted development for the purposes of the Act.

Assessment:

The Section 5 declaration application seeks an answer with respect to the following question i.e. whether or not *'the construction of a shed, the erection of fencing off land along with Greenhouse for gardening and portable sensory room on a trailer to be stored when not used at Tigroney West (townland), Avoca, Co. Wicklow'* is or is not development; and is or is not exempted development.

The first assessment must be whether or not the proposal outlined above constitutes development within the remit of Section 3 of the Planning and Development Act 2001. In this regard, Section 3 of the Planning and Development Act provides that:

"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.

It should be noted that Section 2 of the Act defines works as:

"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.

I am satisfied that the proposal involves works to the existing land and therefore constitutes development.

The second stage of the assessment is to determine whether or not the proposal would be exempted development under the Planning and Development Act 2000 (as amended) or its associated Regulations.

The information submitted as part of this Section 5 application is extremely limited. It is unclear from the documents what currently exists on site and what is proposed. No details regarding the size and scale of any of the proposed works has been submitted. It would also appear that the site has been largely cleared of vegetation and resurfaced and no details of this have been provided.

The applicant has stated that he wishes to store the shed on site as he has nowhere to put it and wishes to know how long he can store the shed for. The applicant's home address as Walkinstown, Dublin 12. The applicant states that the shed will be used for nothing. The applicant wishes to also store a trailer on the site.

The applicant has also queried putting a conservatory on the land for gardening purposes and to store a portable sensory room on the site when not being used by the Autism charity 'break the barrier'.

No details have been submitted to show the location and dimensions of the shed, trailer, conservatory or portable sensory room, and no fencing details have been submitted.

A scaled Site Layout Plan should be submitted along with drawings (including measurements), photographs, and details of materials should be submitted for all the proposed works.


Recommendation:

With respect to the query under Section 5 of the Planning and Development Act 2000, as to whether:

Whether or not 'the construction of a shed, fencing, a sensory room and a conservatory at Tigroney West (townland), Avoca, Co. Wicklow' is or is not development; and is or is not exempted development.

Further information is required to fully assess the application.

- 1) Please submit a scaled Site Layout Plan detailing the location and dimensions of the shed, fencing, *greenhouse/*conservatory and sensory room.
- 2) Please clarify what development currently exists on site, including groundworks.


Lyndsey Blackmore
Assistant Planner

27/10/2022

Agreed as amended
ShWhite SEP
27/10/22



MEMORANDUM

WICKLOW COUNTY COUNCIL

**TO: Lyndsey Blackmore
Assistant Planner**

**FROM: Crystal White
Assistant Staff Officer**

**RE:- EX 59/2022 - Declaration in accordance with Section 5 of the
Planning & Development Acts 2000 (as amended)
Storing shed & trailer on land & fencing off land along with queries
relating to break barrier for autism**

I enclose herewith for your attention application for Section 5 Declaration
received 5th of October 2022.

The due date on this declaration is the 1st November 2022.



**Senior Staff Officer
Planning Development & Environment**



Comhairle Contae Chill Mhantáin Wicklow County Council

**Forbairt Pleanála agus Comhshaol
Planning Development and Environment**

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12/10/2022

Gerard Daly

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). Ex 59/2022
Storing shed & trailer on land & fencing off land along with queries relating to break barrier for autism

A Chara

I wish to acknowledge receipt on the 05th of October 2022 details supplied by you in respect of the above section 5 application. A decision is due in respect of this application by 01/11/2022.

Mise, le meas


**SENIOR EXECUTIVE OFFICER
PLANNING DEVELOPMENT AND ENVIRONMENT**



Wicklow County Council
County Buildings
Wicklow
0404-20100

03/10/2022 15 52 51

Receipt No L1/0/302430
***** REPRINT *****

GERARD DALY
6 ESPOSITO RD
WALKINSTOWN
DUBLIN 12

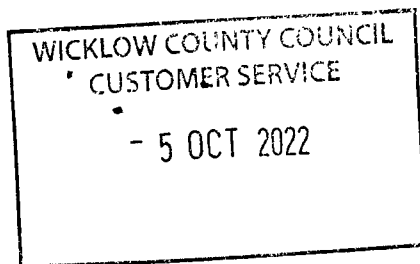
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GOODS	80 00
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Fee Received _____

**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

- (a) Name of applicant: _____ Gerard Daly _____
Address of applicant: 6 Esposito road walkinstown Dublin12

Note Phone number and email to be filled in on separate page.

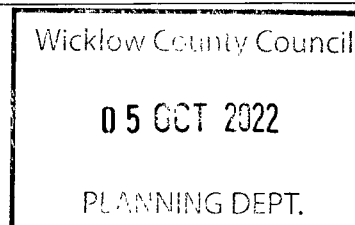
2. Agents Details (Where Applicable)

- (b) Name of Agent (where applicable) _____
Address of Agent : _____

Note Phone number and email to be filled in on separate page.

3. Declaration Details

- i. Location of Development subject of Declaration:: tigroney west Avoca minors
cross coordinates 52.8743050,-6.2135510



ii. Are you ~~you~~ the owner and/or occupier of these lands at the location under i. above ?
Yes ✓

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier _____

iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, an payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration _____

_____ we want to make sure we are complying with all planning regulations and not in breach _____

_____ Additional details may be submitted by way of separate submission.

v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration _____
Additional details may be submitted by way of separate submission.

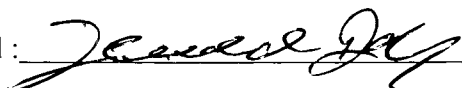
vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure) ? no _____

vii. List of Plans, Drawings submitted with this Declaration Application _____
_____ site map and location . _____

C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure
- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.

viii. Fee of € 80 Attached ? _____ pre payed over the phone _____

Signed :  Dated : 30-9-2022 ,

Additional Notes :

As a guide the minimum information requirements for the most common types of referrals under Section 5 are listed below :

A. Extension to dwelling - Class 1 Part 1 of Schedule 2

- Site Location Map
- Floor area of structure in question - whether proposed or existing.
- Floor area of all relevant structures e.g. previous extensions.
- Floor plans and elevations of relevant structures.
- Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 S.I. 456 of 2011. You should therefore seek advice from the Department of Agriculture, Fisheries and Food.

Any Section 5 Declaration should include a location map delineating the location of and exact area of lands to be reclaimed, and an indication of the character of the land.



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<http://www.osi.ie>;
 search 'Large Scale Legend'



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The map objects are only accurate to the resolution at which they were captured. Output scale is not indicative of data capture scale. Further information is available at: [http://www.osi.ie/search/Capture Resolution](http://www.osi.ie/search/Capture%20Resolution)



Gerard daly

I have granted the use of the land to break the barrier for autism a non-profit organisation

They have attached a document of questions that I have looked over .

Upon my request of an exemption

I have a small shed I have no proper storage for this shed as of yet so I am asking can I store the shed on my land until I find a place to store it off the land I will not be using the shed for storage . it will just be on the land until I find a more appropriate place to store it I am wondering if I can store it on the land . if so for how long? All sizes have already been given to you from my architect Michel Connolly

I also have a trailer that I use to move items around so im wondering if I can store the trailer on the land as I do not have a good place to store it and it would be good use of my land to be able to store it on my land as t is only a 35 minute it drive from my home ,

Also I would like to know if I can fence off my land between my land and the private road as I am worried about trespassers on my land .

Gerard Daly 0851229768

break the barrier for autism

Query1

i would like to know if it possible to put a green house or a small conservatory on the land for gardening purposes as it would be a huge benefit to the children and there familys effected by autism it is well know to reduce stress and helps them connect with nature also we aim to introduce young chldre to nature in a calming way as chldren with autism benefit from connecting with nature in a natural outdoor environment it has been proven to reduce stress to reduce stress and enhance their emotional resilience and concentration and help balance behaviour issues

Query2

i would also like to ask if it is possible to store a portable sensore room on the land it is on a trailer during the time we are not using it as our non profit plans on covering the leinster area as we will be traveling to diffrent locations offering supports and services also we are not limited to one location so it will only be stored on the land when it is not in use for some days

the sensory room helps children improve their visual and auuditory processing by providing a sense of calm and focus as well as tactcaile skills

we are very greatfull for mr daly generosity offering us use of his land this will be a tremendous support for familys effected by autism

ceo and founder

unit 2 port mahon house

rialto dublin 8

rebecca doyle 0892283141

breaking the barrier on social injustice and inequality for familys suffering with autism

Planning Pack Map

CENTRE COORDINATES:
ITM 720264,681856

PUBLISHED: 16/06/2022
ORDER NO.: 50274808_1

MAP SERIES: 1:5,000
MAP SHEETS: 4253

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