Comhairle Contae Chill Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
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Adrian Tripp,
c/o BPS Planning & Development Consultants,
PO Box 13658,
Dublin 14,
D14NY27

21st of October 2026

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) -EX121/2026

A Chara,

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

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

Is mise, le meas,

pp Dawne Byrne.
ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.

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

Applicant: Adrian Tripp

Location: Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow

Reference Number: EX121/2026

CHIEF EXECUTIVE ORDER NO. CE/PERD/2026/1296

A question has arisen as to whether;

1. *The excavation, levelling and re-grading of the hillside.*
2. *The construction and surfacing of a new internal roadway.*
3. *The erection of a large shed on the excavated platform.*
4. *The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade.*
5. *The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way;* is or is not development and is or is not exempted development.

at Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow is or is not exempted development.

Having regard to:

a) The details submitted with the Section 5 Declaration Application
b) Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended)
c) Article 6, 8C, 9, and 10; Class 13 of Schedule 2: Part 1; Classes 6, 9, 18 of Schedule 2: Part 3; Class 4 of Schedule 4 of the Planning and Development Regulations 2001 (as amended).
d) Section 5(3)(b) of the Planning and Development Act 2000 (as amended)

Main Reasons with respect to Section 5 Declaration:

(i) The excavation, levelling and re-grading of the hillside is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(ii) The construction and surfacing of a new internal roadway is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended) and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(iii) The erection of a large shed on the excavated platform is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(iv) The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade is a material change of use and therefore development having regard to the definition set out in Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(v) It cannot be determined whether the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way is a material change of use and therefore development, having regard to the definition set out in Section 3(a) of the Planning and Development Act 2000 (as amended), due to insufficient quantification of the increase in traffic movements.

(vi) It cannot be established that the works/development do not require an Appropriate Assessment under the Habitats Directive

In relation to Item (v) "Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2)".

The Planning Authority considers that

1. The excavation, levelling and re-grading of the hillside **is development and is Not exempted development.**
2. The construction and surfacing of a new internal roadway **is development and is Not exempted development.**
3. The erection of a large shed for commercial use on the excavated platform **is development and is Not exempted development.**
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade **is development and is Not exempted development**
5. It cannot be determined whether the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way is or is not development and is or is not exempted development;

At Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow

Signed: Joanne Byrne. Date: 21/10/2026

pp ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2026/1296

Reference Number: EX121/2026

Name of Applicant: Adrian Tripp

Nature of Application: Section 5 Referral as to whether:

1. *The excavation, levelling and re-grading of the hillside.*
2. *The construction and surfacing of a new internal roadway.*
3. *The erection of a large shed on the excavated platform.*
4. *The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade.*
5. *The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way;* is or is not development and is or is not exempted development.

Location of Subject Site: Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow

Report from: Michael Woods O'Rourke E.P.

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

1. *The excavation, levelling and re-grading of the hillside.*
2. *The construction and surfacing of a new internal roadway.*
3. *The erection of a large shed on the excavated platform.*
4. *The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade.*
5. *The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way*

at Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

a) The details submitted with the Section 5 Declaration Application
b) Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended)
c) Article 6, 8C, 9, and 10; Class 13 of Schedule 2: Part 1; Classes 6, 9, 18 of Schedule 2: Part 3; Class 4 of Schedule 4 of the Planning and Development Regulations 2001 (as amended).
d) Section 5(3)(b) of the Planning and Development Act 2000 (as amended)

HO

Main Reasons with respect to Section 5 Declaration:

(i) The excavation, levelling and re-grading of the hillside is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(ii) The construction and surfacing of a new internal roadway is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended) and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(iii) The erection of a large shed on the excavated platform is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(iv) The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade is a material change of use and therefore development having regard to the definition set out in Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(v) It cannot be determined whether the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way is a material change of use and therefore development, having regard to the definition set out in Section 3(a) of the Planning and Development Act 2000 (as amended), due to insufficient quantification of the increase in traffic movements.

(vi) It cannot be established that the works/development do not require an Appropriate Assessment under the Habitats Directive

In relation to Item (v) "Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2)".

HD

Recommendation

The Planning Authority considers that

1. The excavation, levelling and re-grading of the hillside is development and is Not exempted development.
2. The construction and surfacing of a new internal roadway is development and is Not exempted development.
3. The erection of a large shed for commercial use on the excavated platform is development and is Not exempted development.
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade is development and is Not exempted development
5. It cannot be determined whether the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way is or is not development and is or is not exempted development;

At Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow ,as recommended in the planning reports.

Signed: Dianne Byrne. Date: 21/10/2026

ORDER:
I HEREBY DECLARE: That

1. The excavation, levelling and re-grading of the hillside is development and is Not exempted development.
2. The construction and surfacing of a new internal roadway is development and is Not exempted development.
3. The erection of a large shed for commercial use on the excavated platform is development and is Not exempted development.
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade is development and is Not exempted development
5. It cannot be determined whether the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way is or is not development and is or is not exempted development;

at Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow, within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: Helen Dondy Date: 21/10/26
Director of Services
Planning, Economic & Rural Development

WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT
Section 5 – Application for declaration of Exemption Certificate

TO:	Edel Bermingham SP
FROM:	Michael Woods O'Rourke EP
REF:	EX 121/2026
DECISION DUE DATE:	26/10/2026
APPLICANT:	ADRIAN TRIPP
DEVELOPMENT:	EXCAVATION/LEVELLING HILLSIDE, CONSTRUCTION OF NEW INTERNAL ROAD WITH FENCING & GATE, ERECTION OF LARGE METAL SHED FOR COMMERCIAL STORAGE & WORKSHOP
LOCATION:	REAR OF "TENLACH", DRUMBAWN, NEWTOWNMOUNTKENNEDY



Figure 1: Site Location (Source: Google Earth – 8th July 2026)

Section 5 Application

Whether or not:

1. The excavation, levelling and re-grading of the hillside, including works already recorded by WCC on inspection of PRR 21/740 and further extensive excavation carried out within approximately the last six months.
2. The construction and surfacing of a new internal roadway.
3. The erection of a large shed, first constructed in timber and subsequently clad in metal, on the excavated platform.
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade of Martin Hayes (including generators, power tools such as drills, jigsaws, grinders, and other workshop equipment, and associated noise during working hours, weekends, and evenings).
5. The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way;
6. Whether any of (1) to (5) can rely on Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2 to the Planning and Development Act 2000, to Articles 6, 8, 9 and 10 of the Planning and Development Regulations 2001, to the planner's reports and recommended refusal reasons on PRR 21/740, and to the site's location in the North East Mountain Lowlands Area of High Amenity.

at Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow.

constitutes exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

Section 5 Request

It is considered that the question as posed does not allow for itemised assessment, especially in relation to point (6), and also in relation to the degree of information provided for under each point, not all of which is material to a planning assessment. On this basis, it is recommended that the question be rephrased as follows for clarity:

Whether or not:

1. The excavation, levelling and re-grading of the hillside
2. The construction and surfacing of a new internal roadway.
3. The erection of a large shed on the excavated platform.
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade.
5. The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way;

at Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow.

constitutes development and exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

Relevant Planning History:

PRR 21/740 - (1) Construction of new single storey dwelling. (2) On-site effluent treatment system. (3) Bored well. (4) New entrance and continuation of existing access laneway to proposed site from public road & (5) associated works – Withdrawn.

Relevant legislation:

Planning and Development Act 2000 (as amended)

Section 2:

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and "agricultural" shall be construed accordingly;

"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, and—
(*a*) where the context so admits, includes the land on, in or under which the structure is situated, and
(*b*) in relation to a protected structure or proposed protected structure, includes—
(i) the interior of the structure,
(ii) the land lying within the curtilage of the structure,
(iii) any other structures lying within that curtilage and their interiors, and
(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in *subparagraph (i)* or *(iii)*;

"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, except where the context otherwise requires, "development"
means—
(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or
(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).

Section 4:

3) A reference in this Act to exempted development shall be construed as a reference 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.

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—
(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and
(b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.

Planning and Development Regulations 2001(as amended).

Article 6
(1) Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Article 8C
Land reclamation works (other than reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

Article 9(1) Note see Regulations for full Article
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—
< See Regulations for List>

Article 10(1)

Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—
(a) involve the carrying out of any works other than works which are exempted development,
(b) contravene a condition attached to a permission under the Act,
(c) be inconsistent with any use specified or included in such a permission, or
(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Schedule 2: Part 1

CLASS 13

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving.

Conditions/ Limitations

The width of any such private footpath or paving shall not exceed 3 metres.

Schedule 2: Part 3

CLASS 6

Works consisting of the provision of a roofed structure for the housing of cattle, sheep, goats, donkeys, horses, deer or rabbits, having a gross floor space not exceeding 300 square metres (whether or not by extension of an existing structure), and any ancillary provision for effluent storage.

Conditions/Limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture.

2. The gross floor space of such structure together with any other such structures situated within the same farmyard complex or within 100 metres of that complex shall not exceed 450 square metres gross floor space in aggregate.

3. Effluent storage facilities adequate to serve the structure having regard to its size, use and location shall be constructed in line with Department of Agriculture, Food and Rural Development and Department of the Environment and Local Government requirements and shall have regard to the need to avoid water pollution.

4. No such structure shall be situated, and no effluent from such structure shall be stored, within 10 metres of any public road.

5. No such structure within 100 metres of any public road shall exceed 8 metres in height.

6. No such structure shall be situated, and no effluent from such structure shall be stored, 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.

7. No such structure shall be constructed within a flood zone identified in statutory land use plans as Flood Zone A or Flood Zone B or where the probability of flooding is moderate to high or erosion control zone.

8. No such structure shall be within 60 metres of a public or private water source.

9. No such structure shall be situated, at the closest point, less than 50 metres from a water course or water body in the case of new farmyards, and not less than 10m in the case of extensions/modifications to an existing facility.

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

11. The use of this Class of exemption requires a declaration from the relevant Planning authority under section 5 of the Principal Act, declaring the exemption is applicable prior to commencement of construction.

12. Ancillary provision shall include as appropriate the installation of any signage, fencing or other safety infrastructure as recommended by the Health and Safety Authority regarding Slurry Safety.

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.

Conditions/Limitations

1. No such structure shall be used for any purpose other than the purpose of agriculture or forestry, but excluding the housing of animals or the storing of effluent.

2. The gross floor space of such structures together with any other such structures situated within the same farmyard complex or complex of such structures or within 100 metres of that complex shall not exceed 900 square metres gross floor space in aggregate.

3. No such structure shall be situated within 10 metres of any public road.

4. No such structure within 100 metres of any public road shall exceed 8 metres in height.

5. No such structure shall be situated within 100 metres of any house (other than the house of the person providing the structure) or other residential building or school, hospital, church or building used for public assembly, save with the consent in writing of the owner and, as may be appropriate, the occupier or person in charge thereof.

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

CLASS 18

The construction, erection or placing within an agricultural holding of a structure for the purposes of housing a (fully enclosed) Combined Heat and Power system.

The construction, erection or placing within an agricultural holding of a wind turbine.

The placing or erection on a roof or wall of an agricultural structure, or within the curtilage of an agricultural holding, or on a roof or wall of any ancillary buildings within the curtilage of an agricultural holding of a solar photo-voltaic and/or solar thermal collector installation.

The installation within an agricultural holding of a ground source heat pump system (horizontal and vertical) or air source heat pumps.

The provision as part of a heating system for an agricultural building of a biomass boiler, including a boiler house, flues mounted on the boiler house, and over-ground fuel storage tank or structure.

Conditions/Limitations

<See regulations for full list>

Schedule 2: Part 4

Class 4

Use as a light industrial building.

European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022

Article 4(1)

"agriculture" includes the breeding, keeping and sale of livestock (including cattle, horses, pigs, poultry, sheep and any creature kept for the production of food, wool, skins or fur), the making and storage of silage, the cultivation of land, and the growing of crops (including forestry and horticultural crops);

"holding" means an agricultural production unit and, in relation to an occupier, means all the agricultural production units managed by that occupier;

Assessment

As identified above the query to be addressed is whether or not

1. The excavation, levelling and re-grading of the hillside.
2. The construction and surfacing of a new internal roadway.
3. The erection of a large shed on the excavated platform.
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade.
5. The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way;

at Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow.

constitutes exempted development and exempted development within the meaning of the Planning and Development Acts, 2000(as amended).

The subject site is located in the open countryside c. 2.6km west of the Level 4 settlement of Newtownmountkennedy. This site is accessed from a private road, with the L-1041 being the nearest public road connecting to the private road/track. The site subject of the Section 5 request is a rough hilly site with a rocky outcrop peak, falling to the north, east, and south. It is evident that excavation has taken place, with a track/road leading circuitously across the north of the site to a large shed structure on a level section to the immediate east of the rocky outcrop. The shed is of an **appearance** that could be described as either agricultural or industrial, however this does not speak to the actual use of the structure. The site is registered on Tailte Éireann (landdirect.ie) in the names of Laura & Russell Gummerson. The submitted documentation (which has been submitted by a third party – this being a third party S.5 request) states that the shed structure and yard are used as commercial storage and as a joinery/carpentry workshop by Martin Hayes (Father of Laura Gummerson). No structure on the site is listed on the Record of Protected Structures, nor is it located within an Architectural Conservation Area. The site has no specific land use zoning in the open countryside. National Monuments WI00546 & WI00567, both ringforts/raths, are located to the east and west of the site, c. 400m distant on either side. There site lies outside each corresponding zone of notification. The site is not likely to be visible from any view or prospect set out in Wicklow County Development Plan 2022-2028. The site is not located in a County Geological Site. The site is located in the 'North East Mountain Lowlands' Area of High Amenity Landscape Category. The site is located in Flood Zone C.

It is necessary to consider in turn whether each element of the Section 5 request is or is not
a) development and b) exempted development.

<u>Element (1):</u>

'*The excavation, levelling and re-grading of the hillside*'

(a) This element would consist of an act of excavation and would therefore constitute 'works' as defined under Section 2 of the Planning and Development Act 2000 (as amended). As the carrying out of works constitutes development under Section 3(1)(a) of the said Act, **it is therefore considered that this element is development**.

(b) There is no exemption set out in the Act or Regulations for the general excavation, levelling and re-grading of lands. There is an exemption set out under Article 8C of the Planning and Development Regulations 2001 (as amended) as follows: *Land reclamation works (other than*

reclamation of wetlands) consisting of re-contouring of land, including infilling of soil (but not waste material) within a farm holding, shall be exempted development.

While these lands appear to have been 're-contoured', this was for the purpose of creating a traversable roadway and a flat area upon which to construct a structure and associated yard / hard standing surrounding same, not for the purpose of 'reclaiming' lands. In addition, I have considered whether these works could be considered to be 'within an agricultural holding'.

No definition of 'farm holding' is provided for in the Planning & Development Act/Legislation. However, definitions from other legislation may provide clarity.

Article 4 of the European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022 defines 'holding' as *'an agricultural production unit and, in relation to an occupier, means all the agricultural production units managed by that occupier'*. The definitions of 'agriculture' in both these regulations and Section 2 of the Planning & Development Act 2000 (as amended) are substantially similar, with the later being slightly more expansive.

Having examined information from Tailte Éireann (landdirect.ie), it appears that the owners of this site do not own any other adjoining land. However, it can be presumed that they also own their newly constructed dwelling to the immediate northwest across the private road (as per the documents submitted). These are two closely located, but non-contiguous, small sites, one of which is the curtilage of a dwelling. The other, the subject site, is heavily modified and largely consists of uneven, rocky outcrops and excavated/infilled rock and soil, with the large shed located in the centre of the site. It does not seem plausible that these non-contiguous small landholdings could reasonably be used for agriculture of any kind.

Therefore, based on:
- The limited scope for agriculture on the small, non-contiguous sites in the same ownership;
- The use by separate parties of each site (one of which is the curtilage of a dwelling), as deemed relevant in ACP Reg. Ref. 306103-19;

I consider that the subject site is not an agricultural production unit and therefore is not a farm holding. Therefore, it is considered that Article 8C could **not** apply to these works.

Additionally, the Section 5 request explicitly requests that it be stated whether each element can rely on the following classes/articles:

Schedule 2 Part 3:

Class 6 – not relevant.

Class 9 – not relevant.

Class 18 – not relevant.

Any other class in Part 3 – not relevant.

Article 9 – As no exemption applies to these works, Article 9 is not relevant.

Based on the documents submitted, **it can be determined that Element (1) does not constitute exempted development.**

Element (2):

'The construction and surfacing of a new internal roadway.'

(a) This element would consist of an act of construction/excavation and would therefore constitute 'works' as defined under Section 2 of the Planning and Development Act 2000 (as amended). As the carrying out of works constitutes development under Section 3(1)(a) of the said Act, it is therefore considered that this element is development.

(b) I am satisfied that no provision of the relevant Act or Regulations provides an exemption for the construction of a new internal roadway.

It is considered that Class 13 of Schedule 2 Part 1 is not relevant to this element, as the definition of that class refers to the 'repair or improvement of any private street, road, or way' and not the construction of a new private road.

It is considered that Article 8G is not relevant to this element as the development is not licenced under the Forestry Act 2014.

The Section 5 request explicitly requests that it be stated whether each element can rely on the following classes/articles:

Schedule 2 Part 3:

Class 6 – not relevant.

Class 9 – not relevant.

Class 18 – not relevant.

Any other class in Part 3 – not relevant.

Article 9 - It is considered that Article 9(1)(a)(ii) does not apply in this case, as the new internal roadway connects to an existing private road and not a public road.

Based on the documents submitted, **it can be determined that Element (1) does not constitute exempted development.**

Element (3):

'The erection of a large shed on the excavated platform.'

(a) This element would consist of an act of construction and would therefore constitute 'works' as defined under Section 2 of the Planning and Development Act 2000 (as amended). As the carrying out of works constitutes development under Section 3(1)(a) of the said Act, it is therefore considered that this element is development.

(b) There are a range of exemptions under '*Agricultural Structures*' in Schedule 2 Part 3 that could apply to these works, including Classes 6, 6A, 7, 9, 12. I am satisfied that Schedule 2 Part 3 can be referenced in relation to this site, as it is located outside of the boundary of a settlement in the rural area, as per Article 6(3). All of these classes provide only for agricultural use as a condition / limitation of applicability.

The submitted documentation states that the structure is in use as a commercial carpentry/joinery business. Assuming that the question as posed is the case, it would therefore not satisfy this limitation, and none of these classes of exemption is available. There is no exemption available in the Act or Regulation for the construction of such a commercial / non agricultural building. This assessment is based solely of the information provided that the structure is not in agricultural use.

The Section 5 request explicitly requests that it be stated whether each element can rely on the following classes/articles:

Schedule 2 Part 3:

Class 6 – as above.

Class 9 – as above.

Class 18 – not relevant.

Any other class in Part 3 – not relevant.

Article 9 - As no exemption applies to these works, Article 9 is not relevant.

Based on the documents submitted, this element does not come within the scope of any exempted development provision, therefore **it can be determined that Element (3) does not constitute exempted development.**

Element (4):

'*The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade.*'

(a) The outlined change of use would not be in relation to a change of use of the structure (which had no previous use), but rather a change of use of the land. This change of use would be best described as being from 'agricultural' (noting the rough nature of the land as part of a wider agricultural landscape) to 'commercial/light industrial' use.

To determine whether this change of use is material, changes to the (i) character and (ii) impact of the use of the structure can be considered in turn:

- The change of use from agricultural use to commercial/light industrial use would render the land a heavily modified business/workspace/light industrial site, rather than a vegetated rocky outcrop. It is clear that the character of the site has substantially changed in undergoing this change of use.

- The change of use from an agricultural rocky outcrop to a commercial/light industrial use could result in additional traffic movements, noise disturbance, light pollution, and the generation of waste.

On the basis of the above, it is considered that if the site is been used for commercial/light industrial use, then a change of use has occurred and the change of use is material.

As the making of a material change in the use of any land constitutes development under Section 3(1)(a) of the Planning and Development Act 2000 (as amended), it is therefore considered that this is development.

While Article 10(1) of the Planning and Development Regulations 2001 (as amended), set out exemption that apply to the change of use of any buildings from one class to another, this does not apply to a change of use of land and therefore is not relevant to consider any further.

In the interest of clarity however it is worth pointing out that <u>according to the submitted documents</u>, there has been no change of use of the structure on the land, it having been built allegedly for commercial purposes at the outset. In any event Article 10(1) does not provide for an exemption from a change of use from agriculture use to 'light industry' use. This assessment is based solely of the information provided i.e that the structure is in cmmerical use and not in agricultural use.

The Section 5 request explicitly requests that it be stated whether each element can rely on the following classes/articles

<u>Schedule 2 Part 3:</u>

Class 6 – not relevant.

Class 9 – not relevant.

Class 18 – not relevant.

Any other class in Part 3 – not relevant.

<u>Article 9</u> – not relevant

Based on the documents submitted, this element does not come within the scope of any exempted development provision, therefore **it can be determined that Element (4) does <u>not</u> constitute exempted development.**

<u>Element (5):</u>

'The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way'

(a) Whether an intensification of an existing use amounts to development depends (i) whether a change of use has occurred and (ii) whether that change, if it has occurred, can be described as a material change. Based on the information provided i.e. that a lane used lightly to access a small parcel of rocky land is now used more intensively to access a commercial building and associated

yard, I am satisfied that a 'change of use' has occurred but whether this change is material and may constitute 'development' depends on the degree of intensification, noting that there is a significant amount of case law in this regard (e.g. Molumby vs. Kearns 1999, regarding an intensification of use of an industrial estate by large commercial vehicles). The private road turns into a farm track immediately south of the subject site, which eventually leads to a substantial number of agricultural and other structures centred around Hilltop Sporting Club (although this is not the primary access route to Hilltop Club; it having a more substantial access road on its eastern side). The track leads through a number of private landholdings between the L-1041 and the R765 via Hilltop Sporting Club. The submitted documentation mentions a 'commercial' land rover, a flatbed truck, and a loader using the private road to access the subject site. Images in the submitted documentation, and the Google Earth excerpt in Figure 1 above, both show only 1 No. white van parked at the subject site. While these vehicles could easily represent a degree of intensification, it could equally be the case that the large farm complex to the south would reasonably have used this private road for access by vehicles of various size and at various times in the course of carrying out agricultural activities. Ultimately, without traffic surveys quantifying the intensification, it is not possible to state whether the intensification of use of this roadway is a material change of use.

As there is insufficient information to determine whether this element constitutes a material change of use, it cannot be determined whether this element constitutes development under Section 3(1)(a) of the Planning and Development Act 2000 (as amended).

(b) As it cannot be determined whether this element constitutes development, it equally cannot be determined whether this element constitutes exempted development.

The Section 5 request explicitly requests that it be stated whether each element can rely on the following classes/articles

Schedule 2 Part 3:

Class 6 – not relevant.

Class 9 – not relevant.

Class 18 – not relevant.

Any other class in Part 3 – not relevant.

Article 9 – It is not possible to determine whether Article 9(1)(a)(iii) applies without a quantification of the intensification of traffic movements. I therefore refer to Section 5(3)(b) of the Planning and Development Act 2000 (as amended) which states;

"Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2)".

Based on the documents submitted, there is insufficient information to determine whether this element comes within the scope of any exempted development provision, therefore **it can be determined that Element (5) does <u>not</u> constitute exempted development.**

Appropriate Assessment

The nearest European site is the Carrigower Bog SAC, located c. 250m directly north of the site. Though the wider landscape falls to the north, directly towards the European site, the rocky outcrop on the site indicates that the the lands to fall to the east and south, with the excavation and soil infilling having taken place on the eastern side of the rocky outcrop. However, Prime2 basemapping indicates a watercourse immediately east of the subject site, which leads directly into the Carrigower Bog SAC. Therefore, it is possible that a hydrological source-receptor pathway exists. Considering the considerable excavation and soil infilling and possible sediment run-off, adverse impacts on the qualifying interests and conservation objectives of the European site cannot be ruled out.

<u>Article 9</u>

Separate to the individual commentary on each element above, it is considered that Article 9(1)(a)(viiB) is relevant, as the Planning Authority is the competent authority in relation to Appropriate Assessment and it cannot be ruled out that the works/development may require an Appropriate Assessment.

Recommendation:

With respect to the query under Section 5 of the Planning and Development Act 2000(as amended), as to whether or not:

1. The excavation, levelling and re-grading of the hillside.
2. The construction and surfacing of a new internal roadway.
3. The erection of a large shed on the excavated platform.
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade.
5. The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way;

at Rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow.

constitutes exempted development and exempted development within the meaning of the Planning and Development Acts, 2000 (as amended).

The Planning Authority considers that

1. The excavation, levelling and re-grading of the hillside **is** development and is **not** exempted development.
2. The construction and surfacing of a new internal roadway **is** development and is **not** exempted development.
3. The erection of a large shed for commercial use on the excavated platform **is** development and is **not** exempted development.
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade **is** development and is **not** exempted development
5. It cannot be determined whether the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way is or is not development and is or is not exempted development;

at rear of "Tenlach", Drumbawn, Newtownmountkennedy, Co. Wicklow.

Main Considerations with respect to Section 5 Declaration:

a) The details submitted with the Section 5 Declaration Application
b) Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended)
c) Article 6, 8C, 9, and 10; Class 13 of Schedule 2: Part 1; Classes 6, 9, 18 of Schedule 2: Part 3; Class 4 of Schedule 4 of the Planning and Development Regulations 2001 (as amended).
d) Section 5(3)(b) of the Planning and Development Act 2000 (as amended)

Main Reasons with respect to Section 5 Declaration:

(i) The excavation, levelling and re-grading of the hillside is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(ii) The construction and surfacing of a new internal roadway is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended) and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(iii) The erection of a large shed on the excavated platform is works and therefore development having regard to the definition set out in Section 2 and Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(iv) The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry/joinery trade is a material change of use and therefore development having regard to the definition set out in Section 3(a) of the Planning and Development Act 2000 (as amended), and does not come within the scope of any exemptions the Planning and Development Act 2000 (as amended), or the Planning and Development Regulations 2011 (as amended);

(v) It cannot be determined whether the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way is a material change of use and therefore development, having regard to the definition set out in Section 3(a) of the Planning and Development Act 2000 (as amended), due to insufficient quantification of the increase in traffic movements.

(vi) It cannot be established that the works/development do not require an Appropriate Assessment under the Habitats Directive.

In relation to Item (v) "Without prejudice to subsection (2), in the event that no declaration is issued by the planning authority, any person who made a request under subsection (1) may, on payment to the Board of such fee as may be prescribed, refer the question for decision to the Board within 4 weeks of the date that a declaration was due to be issued under subsection (2)".

Michael Woods O'Rourke

Michael Woods O'Rourke EP
21/10/26

Agreed Patrice Ryan SEP
21/10/2026

H Doherty
DOS
21/10/26

MEMORANDUM

WICKLOW COUNTY COUNCIL

TO: Michael Woods O'Rourke
Executive planner

FROM: Joanne Byrne
A/ Staff Officer

RE:- EX121/2026 - Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (as amended)

I enclose herewith for your attention application for Section 5 Declaration received 29/09/2026.

The due date on this declaration is the **26/10/2026.**

Joanne Byrne.

A/Staff Officer
Planning, Development & Environment

Comhairle Contae Chill Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel (0404) 20148
Faics / Fax (0404) 69462
Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

Adrian Tripp,
c/o BPS Planning & Development Consultants,
PO Box 13658,
Dublin 14,
D14 NY27

29th of September 2026

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended) – EX121/2026

A Chara

I wish to acknowledge receipt on 29/09/2026 full details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 26/10/2026.

Mise, le meas

Joanne Byrne.

Joanne Byrne
A/ Staff Officer
Planning, Economic & Rural Development

BPS
Planning & Development
Consultants

M 087 261 5871
T 01 539 4960
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PO Box 13656
Dublin 14

BY HAND

The Secretary,
Planning Department,
Wicklow County Council,
County Buildings, Station Road,
Whitegates, A67FW96,
Wicklow Town, County Wicklow.

WICKLOW COUNTY COUNCIL
29 SEP 2026
PLANNING DEPT.

29 September 2026

Dear Sir/Madam,

Re: Section 5 referral / exemption declaration – lands to the rear of Tenlach, Drumbawn, Newtownmountkennedy, Co. Wicklow, A63 T651 (lands forming part of Folio WW41470F the subject of withdrawn PRR 21/740). A question arises as to whether the following, taken separately and together, constitute development and are or are not exempted development: (1) the excavation, levelling and re-grading of the hillside, including works already recorded by Wicklow County Council on inspection of PRR 21/740 and further extensive excavation carried out within approximately the last six months; (2) the construction and surfacing of a new internal roadway / track of crushed concrete leading from the shared laneway up to and across the subject lands, together with fencing and a locked gate; (3) the erection of a large shed, first constructed in timber and subsequently clad in metal, on the excavated platform; (4) the use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry / joinery trade of Martin Hayes (including generators, power tools such as drills, jigsaws, grinders and other workshop equipment, and associated noise during working hours, weekends and evenings); (5) the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way; and (6) whether any of (1) to (5) can rely on Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2 to the Planning and Development Regulations 2001, having regard to the limitations in those classes and to Article 9. Each item is asked having regard to sections 2, 3, 4 and 5 of the Planning and Development Act 2000, to Articles 6, 8, 9 and 10 of the Planning and Development Regulations 2001, to the planner's reports and recommended refusal reasons on PRR 21/740, and to the site's location in the North East Mountain Lowlands Area of High Amenity.

BPS Planning & Development Consultants Ltd, a firm of Irish Planning Institute accredited town planning consultants, has been retained by Adrian Tripp of Tenlach, Drumbawn, Newtownmountkennedy, Co Wicklow, A63 T651 (hereafter "the client") to prepare and lodge this section 5 referral with Wicklow County Council (hereafter "WCC").

The referral relates to works carried out, and a use now operating, on elevated lands immediately to the rear of the client's dwelling. The lands have no specific postal address. Access is from the L1041 via the shared private laneway that runs along the side of Tenlach and turns left to the rear. The client holds a residential right of way over that laneway. The laneway is understood to be in the ownership of Pat Cooke. Russell and Laura Gummerson hold, or claim, a residential right of way. The client has been informed that the lands were sold by Mr Cooke to Russell and Laura Gummerson; Mr Hayes (father of Laura Gummerson) is the person observed to be operating from the shed.

Our client asks WCC to determine whether the works and use set out in the question constitute development and are or are not exempted development. No enforcement file is understood to have been opened. A letter is being lodged concurrently with the Enforcement Section. This referral asks for a declaration of status. The enforcement letter puts the WCC on notice of the same works and use. A declaration is necessary because nothing on the lands has the benefit of a grant of permission. PRR 21/740 was withdrawn after a recommendation to refuse, and the works and commercial use have continued and intensified.

No enforcement file is understood to have been opened. A letter is being lodged concurrently with the Enforcement Section. This referral asks for a declaration of status.

1.0 Validation

Section 5(1) of the Planning and Development Act 2000 provides that if any question arises as to what, in any particular case, is or is not development or is or is not exempted development, any person may, on payment of the prescribed fee, request a declaration on that question.

A cheque for €80, being the statutory fee, is attached Our client is not the owner of the subject lands. Section 5 does not require the requester to be the owner The name and address of the persons believed to own and occupy the lands are given on the accompanying form Russell and Laura Gummerson (owners, as understood from Mr Cooke) and Martin Hayes (occupier / operator of the shed).

To support this referral, BPS has.

- provided a completed WCC section 5 form,
- set out in this letter the question which has arisen,
- set out the facts relevant to that question, including PRR 21/740, the two planner's reports of Solomon Aroboto E/P dated 4 August 2021 and 25 January 2022, the recommended refusal reasons, and the client's account of subsequent works and use,
- attached an OS-based site location map with the subject lands outlined in red and the client's dwelling identified, extracts from the 21/740 drawings (site outlined in red, right of way shown yellow), copies of the 21/740 planner's reports, and photographs of the excavated platform, crushed-concrete roadway, shed, fencing and laneway

WCC may require more detail Section 5(2)(b) allows the planning authority to request further information. Any such request can be met promptly

The completed section 5 form, this letter and the accompanying BPS Section 5 Report are lodged together so that the question is framed and the statutory tests are set out in one submission.

2.0 The lands and planning history

The lands sit in the townland of Drumbawn, on the elevated side of a substandard laneway off the L1041 Carrigower SAC/NHA lies c 230 m downhill The 4 August 2021 report records a site of 0.48 ha, elevated above the lane and surrounding area and exposed in views; "the land on which the application site located has been excavated" The same report places the site in the North East Mountain Lowlands Area of High Amenity under the (then) County Development Plan 2016–2022

PRR 21/740 (Russell and Laura Gummerson) sought permission for a single-storey dwelling of 179 sq.m, effluent treatment, bored well, new entrance and continuation of the existing access laneway. The application was received on 4 June 2021. Unsolicited further information was lodged on 11 November 2021 and 18 January 2022 The application was withdrawn on 31 January 2022. No permission issued. No subsequent application for the shed, roadway, excavation or commercial use appears on the public register.

The first planner's report recommended refusal for three reasons In summary

- ***Reason 1:*** exposed site in an Area of High Amenity; the development would form an intrusive feature; "the scale of excavation works already carried out on site including additional works that would be required" would result in a serious deterioration of landscape quality
- ***Reason 2:*** the laneway was inadequate in width, alignment and structural condition and was "only suitable to cater for traffic movements generated by existing permanent native residents"; additional traffic would endanger public safety by reason of traffic hazard
- ***Reason 3:*** insufficient information to support further backland development; permission would support further encroachment of an unjustified backland pattern.

On further information the planner accepted that an upgrade of the shared laneway (then described as 4.5 m wide, crushed-concrete base, tar shavings, two pull-ins) was "acceptable" as a surface, but maintained refusal on landscape / excavation and on backland pattern The 25 January 2022 recommendation restated Reason 1 in full and substituted a backland reason development wholly to the rear of existing houses would support further encroachment and an undesirable pattern The application was then withdrawn.

WCC has therefore already recorded, on a formal inspection, that excavation of this hillside had taken place by July 2021, that the site is prominent and exposed in an Area of High Amenity, and that the laneway is not suited to additional non-local traffic Those findings are material to whether later excavation, a new crushed-concrete road up the hill, a large shed and a commercial workshop can be exempted development

3.0 What is on the ground now

The client's evidence, which can be verified on inspection from the laneway and the perimeter fence, is as follows

- ***Excavation:*** Works recorded in 2021 have been followed, within approximately the last six months, by further extensive excavation. The hill has been flattened to form a working platform. Commercial trucks have delivered substantial volumes

of crushed concrete The "before / after" photographs submitted with 21/740 already show a stripped and re-graded hillside; the current platform and roadway go well beyond that

- ***Roadway, gate and fencing:*** A new internal road of crushed concrete has been built from the shared laneway up to the platform A locked gate and perimeter fencing have been erected These are not agricultural tracks of a kind contemplated by Class 9 or Class 18; they serve the shed and the commercial use

- ***The shed:*** A large shed has been erected on the platform It was first built in timber and has since been clad in metal No permission exists for it. It is not an agricultural structure serving a farm on these lands. It is occupied as a store and workshop

- ***Use:*** Russell Gummerson told the client that Martin Hayes[1] had to leave a workshop unit in Newtownmountkennedy and is using the shed for "storage" of work equipment and machines The activity and noise are those of a working carpentry / workshop use generators, power tools and a mechanical / mill saw Traffic on the laneway is now daily, including at night That is commercial use of land and of a structure in the open countryside, not incidental domestic storage and not agriculture.

- ***The laneway:*** The client's right of way, and the Gummersons' right of way as understood, are residential The laneway is not a public road Commercial HGV and van movements associated with a workshop are not movements generated by existing permanent native residents They reproduce, in a more intensive form, the traffic concern that underpinned recommended refusal reason 2 on 21/740.

4.0 The legal tests – summary (these points are developed in the attached report)

Section 3(1) of the 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 Section 2 defines "works" as including any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal

Excavation and re-grading of a hillside, construction of a crushed-concrete roadway, erection of a shed, fencing and a gate are works and are therefore development unless they are exempted development. The change from agricultural / undeveloped hillside (the condition recorded in the 21/740 photographs) to a metal-clad workshop with commercial traffic is a material change of use and is therefore development unless exempted.

Exempted development is confined to what section 4 of the Act and the Regulations actually confer The classes most often invoked for rural sheds and tracks do not assist here

- Part 1, Class 3 (a shed or similar structure within the curtilage of a house) cannot apply The shed and platform are not within the curtilage of Tenlach They are not within the curtilage of the Gummerson house opposite Tenlach. PRR 21/740 was withdrawn. A house on a different plot does not make this hillside its curtilage.

- Part 3, Class 6 and the store / barn / shed class are for agricultural structures on a holding, used for agriculture, subject to floor-area and height limitations A workshop and store associated with the trade of Martin Hayes, including generators, power tools and a mechanical / mill saw, is not agriculture.

- Part 3, Class 9 (gate / gateway, and any private-way class relied upon with it) does not authorise a crushed-concrete roadway built to take commercial trucks to an unauthorised workshop, or a locked gate that controls that access across a shared residential laneway

- Part 3, Class 18 and allied land-improvement / private-road classes do not authorise the flattening of a hillside in an Area of High Amenity to form a commercial yard

Even if a class were capable of being read onto a modest agricultural store, Article 9 would take the exemption away on this site WCC has already found the hillside to be an exposed site in an Area of High Amenity where excavation seriously deteriorates landscape quality, and has already found the laneway unsuitable for additional traffic. Those are planning judgments on this exact land, made after inspection

A material change of use from agriculture (or from vacant excavated land) to commercial workshop / storage is not exempted by Article 10 save in the narrow cases in Part 4 of Schedule 2, none of which apply. There is no authorised use from which a change could be exempted.

5.0 Why the question is framed in six parts

The six parts are asked separately and together so that WCC can declare on each element. It is the client's position that

1. the excavation is works and is not exempted development — it was already a concern on 21/740 and has since been enlarged;
2. the crushed-concrete roadway, fencing and locked gate are works and are not exempted development,
3. the shed is works and is not exempted development;

[1] https://www.linkedin.com/in/martin-hayes-81857216/

4. the commercial storage / workshop use is a material change of use and is not exempted development,
5. the commercial use of the shared laneway is development as part of that change of use and/or as works, and is not exempted, and
6. no class in Part 3 of Schedule 2, read with Article 9, saves any of the above

A single composite declaration that the development is not exempted would also answer the question. The limbs are listed so that nothing is left outside the determination.

6.0 Conclusion and request

Nothing on these lands has planning permission. The only application that touched the hillside was withdrawn after WCC recommended refusal because of excavation, visual harm in an Area of High Amenity, the condition of the laneway, and backland pattern. The works and the workshop use have continued regardless.

The client asks WCC to declare that each of items (1) to (5), taken separately and together, is development and is not exempted development.

Please direct all correspondence to this office. If you have any questions, please call BPS on 01 539 4960 or 087 261 5871.

Best wishes,

Brendan Byrne Buck

Brendan Byrne Buck MIPI
Managing Director
BPS Planning & Development Consultants LTD
Chartered Member of the Irish Planning Institute

Encl:

- Completed WCC section 5 form
- OS site location map (subject lands in red; client's dwelling identified, right of way indicated)
- BPS Section 5 Report containing, *inter alia* (1) extracts from PRR 21/740 drawings and site notice, and (2) Photographs of excavation, roadway, shed and laneway (including 21/740 inspection photographs
- Planner's reports on PRR 21/740 (4 August 2021 and 25 January 2022) and withdrawal acknowledgement.
- Cheque for €80

Wicklow County Council
County Buildings
Wicklow
0404-20100

29/09/2026 14 08 24

Receipt No. L1/0/370260
***** REPRINT *****

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WICKLOW COUNTY COUNCIL
29 SEP 2026
PLANNING DEPT.

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: **Adrian Tripp.**

(b) Address of applicant: **'Tenlach', Drumbawn, Newtownmountkennedy, Co. Wicklow, A63 T651**

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

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable): **Brendan Byrne Buck MIPI.**

Address of Agent: **BPS Planning & Development Consultants LTD, PO Box 13658, Dublin 14, D14NY27.**

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

3. Declaration Details

i. Location of Development subject of Declaration: **Lands to the rear of Tenlach, Drumbawn, Newtownmountkennedy, Co. Wicklow, A63 T651 (part of Folio WW41470F, the subject of withdrawn PRR 21/740).**

ii. Are you the owner and/or occupier of these lands at the location under i. above? **No. Adrian Tripp is not the property owner.**

iv. If 'No' to ii above, please supply the Name and Address of the Owner, and or occupier: **Russell and Laura Gummerson or Martin Hayes - lands to the rear of Tenlach, Drumbawn, Newtownmountkennedy, Co. Wicklow, A63 T651 (lands forming Folio WW41470F which were the subject of withdrawn PRR**

21/740).

v. 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:

A question arises as to whether the following, taken separately and together, constitute development and are or are not exempted development: (1) the excavation, levelling and re-grading of the hillside, including works already recorded by Wicklow County Council on inspection of PRR 21/740 and further extensive excavation carried out within approximately the last six months; (2) the construction and surfacing of a new internal roadway / track of crushed concrete leading from the shared laneway up to and across the subject lands, together with fencing and a locked gate; (3) the erection of a large shed, first constructed in timber and subsequently clad in metal, on the excavated platform; (4) the use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry / joinery trade of Martin Hayes (including generators, power tools such as drills, jigsaws, grinders and other workshop equipment, and associated noise during working hours, weekends and evenings); (5) the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way; and (6) whether any of (1) to (5) can rely on Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2 to the Planning and Development Regulations 2001, having regard to the limitations in those classes and to Article 9. Each item is asked having regard to sections 2, 3, 4 and 5 of the Planning and Development Act 2000, to Articles 6, 8, 9 and 10 of the Planning and Development Regulations 2001, to the planner's reports and recommended refusal reasons on PRR 21/740, and to the site's location in the North East Mountain Lowlands Area of High Amenity.

Additional details may be submitted by way of separate submission.

Please find a covering letter attached which has been prepared by BPS Planning & Development Consultants LTD.

v. Indication of the Sections of the Planning and Development Act or Planning Regulations you consider relevant to the Declaration:

Sections 2, 3, 4 and 5 of the Planning and Development Act 2000, as amended; Articles 6, 8, 9 and 10 of, and Classes 6, 9 and 18 of Part 3 of Schedule 2 to, the Planning and Development Regulations 2001, as amended. Please refer also to the attached covering letter and BPS Section 5 Report.

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:

- **New OS map with the subject site/lands outlined in red.**
- **Copy of an OS based site location map with the subject lands outlined in red which has been submitted to WCC under planning application reg. ref. 21740.**
- **Copies of details and drawings are attached which have previously been submitted by the property owner in respect of planning application reg. ref. 21740.**

viii. Fee of € 80 Attached? ~~Fee of~~ **Cheque for €80 attached.** Cash dk receipt.

Signed: [signature] Dated: 29/9/2021.

Invoice / Receipt

Tailte Éireann

Tailte Éireann
Surveying
Smithfield Hall,
Smithfield, Dublin 7
D07 AEF4.
VAT No. IE 4102063GH
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Invoice #: 50561092
Invoice Date: 24 Sept 2026, 11:36:16
Order Date: 24 Sept 2026, 11:34:05

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Payment Method
Pay by Credit or Debit Card

Product	SKU	Price	Qty	VAT %	Tax	Subtotal
Planning Pack 722990,707047, A4, 1:2,500, Portrait, PDF X/1-A, ITM	471006	€48.50	1	23.0 %	€11.16	€59.66

Subtotal:	€48.50
Tax:	€11.16
Grand Total:	**€59.66**

Planning Pack Map



OUTPUT SCALE: 1:2,500

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PUBLISHED
24/09/2026

ORDER NO.
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Section 5 Report

Section 5 referral / exemption declaration – lands to the rear of Tenlach, Drumbawn, Newtownmountkennedy, Co. Wicklow, A63 T651 (lands forming part Folio WW41470F the subject of withdrawn PRR 21/740).

This report has been produced by BPS Planning & Development Consultants Ltd. for and on behalf of Adrian Tripp of Tenlach, Drumbawn, Newtownmountkennedy, Co. Wicklow, A63 T651.

Document Control Sheet

Project	Section 5 referral / exemption declaration – lands to the rear of Tenlach, Drumbawn, Newtownmountkennedy, Co. Wicklow, A63 T651 (lands forming part of Folio WW41470F the subject of withdrawn PRR 21/740). ref. 2560749.
Project No.	2026 - 583.
Document title	Section 5 Report at Drumbawn

Contents	No. of pages
Cover page	1
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Table of contents	1
Text	26
Total No. of Pages	29 (excluding Appendix 1)

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Date: 29 September 2026

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1.0 Introduction

This report is submitted with a referral under section 5 of the Planning and Development Act 2000, as amended ("the Act"), to Wicklow County Council ("WCC"). It is prepared by BPS Planning & Development Consultants Ltd on behalf of Adrian Tripp of Tenlach, Drumbawn, Newtownmountkennedy, Co Wicklow, A63 T651 ("the client").

The referral asks the Planning Authority to declare whether specified works on elevated lands immediately to the rear of the client's dwelling, and a use now operating on those lands, constitute development and are or are not exempted development. The lands form part of Folio WW41470F. They are the same hillside that was the subject of planning application PRR 21/740, which was withdrawn on 31 January 2022 after WCC recommended refusal. No permission has ever issued for the works or the use now on the ground.

The works and use in issue are, in summary:

- extensive excavation, levelling and re-grading of the hillside (including works already recorded by WCC on inspection of PRR 21/740 and further excavation carried out within approximately the last six months);
- construction and surfacing of a new internal roadway of crushed concrete from the shared laneway up onto the excavated platform, together with fencing and a locked gate; erection of a large shed, first built in timber and later clad in metal;
- use of that shed and yard for commercial storage and as a workshop associated with the carpentry / joinery trade of Martin Hayes (father of Laura Gummerson), including generators, power tools and a mechanical saw(s) and other workshop equipment; and
- intensification of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way.

The full question, in six parts, is set out on the completed section 5 form and in the covering letter. Each part is asked separately and together, having regard to sections 2, 3, 4 and 5 of the Act, Articles 6, 8, 9 and 10 of the Planning and Development Regulations 2001, as amended ("the Regulations"); Classes 6, 9 and 18 of Part 3 of Schedule 2 to the Regulations; the planner's reports of 4 August 2021 and 25 January 2022 on PRR 21/740; and the site's location in the North East Mountain Lowlands Area of High Amenity. This is a section 5 referral. It is not itself an enforcement complaint. No enforcement file is understood to have been opened. A letter is being lodged concurrently with the Enforcement Section. The purpose of this referral, and of this report, is to obtain a binding declaration on the legal status of the works and the use.

1.1 The client, the lands and occupation

Our client lives at Tenlach, on the shared laneway at Drumbawn. The subject lands lie immediately to the rear of that house, elevated above the laneway and exposed in views from parts of the surrounding area. The Carrigower SAC / NHA lies approximately 230 m downhill, on the opposite side of the L1041. Russell and Laura Gummerson are understood to be the owners of the subject lands, following a sale from Pat Cooke. Martin Hayes, father of Laura Gummerson, occupies and operates the shed and yard. The Gummerson dwelling opposite Tenlach is a separate plot. The shed and excavated platform do not lie within the curtilage of that dwelling. The client's right of way over the shared laneway is understood to be residential.

1.2 Scope of this report

The report describes the works and the use as they now stand; sets those facts against WCC's own inspection findings and recommended refusal reasons on PRR 21/740, and applies the statutory tests for "development" and "exempted development". It addresses whether any of the usual rural exemptions in Part 3 of Schedule 2 can be relied upon, and whether Article 9 takes those exemptions away on this site.

The remainder of the report is arranged as follows. Section numbering may be adjusted as figures and appendices are finalised.

- Section 2 - Location and description of the lands
- Section 3 - Section 5 question arising
- Section 4 - Background to the Section 5 (planning and enforcement history, policy context)
- Section 5 - Statutory provisions
- Section 6 - Assessment

- Section 7 - Conclusion
- Section 8 - Recommendation

Photographs of the excavation, roadway, shed and laneway (including the 21/740 inspection photographs) are included with this report, together with an OS site location map identifying Tenlach, the subject lands and the shared right of way, extracts from the 21/740 drawings and site notice, the planner's reports of 4 August 2021 and 25 January 2022, and the withdrawal acknowledgement Figure numbering will be confirmed as the report is completed

It is the client's position, developed in the sections that follow, that each of the works and the use described above is development and is not exempted development

2.0 Location and description of the lands

2.1 Location

The lands the subject of this referral ("the subject lands") lie in the townland of Drumbawn, in the rural hinterland of Newtownmountkennedy, County Wicklow. They sit immediately to the rear of the client's dwelling, Tenlach, Drumbawn, Newtownmountkennedy, A63 T651 Access from the public road is solely by a shared private laneway which leaves the L1041 and serves a small number of existing houses, including Tenlach

The subject lands form part of Folio WW41470F They are the same hillside that was the application site under PRR 21/740 (Russell and Laura Gummerson) That application described a site of 0 48 ha The red line on the Ordnance Survey map submitted with this referral identifies the excavated platform, the internal roadway, the shed and yard, and the length of shared laneway over which commercial traffic now passes Tenlach is marked on the same map.

In landscape terms the lands lie in the North East Mountain Lowlands Area of High Amenity, as applied by the reporting planner on PRR 21/740 under the County Development Plan then in force and as carried forward in substance in the current Plan The site is elevated above the laneway - the reg ref. 21/740 reports record a difference in level of the order of 10 m - and is exposed in views from parts of the surrounding area The Carrigower SAC / NHA (site code 000716) lies approximately 230 m downhill, on the opposite side of the L1041. No part of this referral turns on an appropriate-assessment point, the SAC is recorded only as part of the receiving environment

The pattern of development along the laneway is a small number of houses served by a substandard rural access The Gummerson dwelling stands opposite Tenlach, on a separate plot The excavated platform and shed do not lie within the curtilage of that dwelling They lie uphill and to the rear, on land that was agricultural hillside when PRR 21/740 was made and that WCC then treated as a proposed backland house site.

2.2 The shared laneway

The laneway leaves the L1041 and climbs to the cluster of houses The planner's report of 4 August 2021 recorded it as substandard in width, surface and alignment, and suitable only for traffic generated by existing permanent native residents local to this particular area who are already served by the route. Sightlines at the junction with the L1041 were considered capable of being achieved; the objection was to the lane itself

Unsolicited further information on 21/740 stated that the laneway had been widened to about 4 5 m, that pull-ins had been formed, and that the surface was a crushed-concrete base dressed in tar shavings and rolled. The planner recorded that upgrade as acceptable for the purposes of that application That finding did not authorise a commercial workshop, did not authorise a new internal road up the hillside, and did not convert a residential right of way into a commercial access

The client's right of way is understood to be residential Commercial vehicles associated with the shed now use the laneway by day and by night.

These commercial vehicle movements on the shared laneway and onto the crushed-concrete internal roadway are ongoing. Video evidence of a flatbed truck using the laneway and turning onto the unauthorised roadway is available and can be supplied Martin Hayes regularly uses a commercial two-seater Land Rover Discovery (registration 191 WW 923) An activity log of vehicle movements and workshop noise (from late May 2026 onwards) has been maintained by the referrer and is available if required A camera has now been installed to record ongoing activity

2.3 Condition of the hillside as recorded in 2021

WCC inspected the lands on 28 July 2021. The planner's report of 4 August 2021 is WCC's own record of what was then on the ground:

- the site was elevated above the lane and surrounding area and exposed in views from the surrounding area in parts;
- the land on which the application site was located had already been excavated,
- the lane had been extended and covered in loose stones; and
- an access / track had been created into the application site

Those findings were made on this exact land, after inspection. They pre-date the further excavation, the crushed-concrete internal road, the shed and the workshop use that are now referred.

Separate video evidence also exists of significant volumes of subsoil and excavated material being moved from the construction site of the Gummerson dwelling onto the subject hillside in earlier years. This material contributed to the alteration of the natural topography now visible on the platform

2.4 Works now on the ground

Since the withdrawal of PRR 21/740 on 31 January 2022, and in particular within approximately the last six months, the following works have been carried out on the subject lands. Dimensions can be confirmed from the photographs and, where helpful, from scaling on the OS map and current aerial imagery:

- ***Excavation and re-grading:*** A substantial further cut has been taken from the hillside. The slope has been reduced to an excavated platform of made ground. The reg. ref. 21/740 reports already treated the excavation then visible as a reason why a house would seriously deteriorate landscape quality in an Area of High Amenity. The works since then have enlarged that cut. Soil and rock have been moved; the original pastoral profile of the hill, as it appears on historic aerial photography and on the older OS mapping, is no longer present across the platform.

  As noted above, separate video evidence also exists of significant volumes of subsoil and excavated material being moved from the construction site of the Gummerson dwelling onto the subject hillside in earlier years. This material contributed to the alteration of the natural topography now visible on the platform."

- ***Internal roadway:*** A new internal road or track has been built from the shared laneway up onto and across the excavated platform. The running surface is crushed concrete. This is a different work from any "upgrade" of the shared laneway discussed on reg. ref. 21/740. It is a new engineered access into the hillside.

- ***Gate and fencing:*** The entrance to the internal road is controlled by a locked gate. Fencing has been erected around or along the works. Together with the gate, the fencing physically separates the platform from the shared laneway and from Tenlach.

- ***Shed:*** A large shed has been erected on the excavated platform. It was first constructed in timber and has since been clad in metal. It is not a small domestic store within the curtilage of an existing house. It is a standalone building on a newly formed yard, of a scale consistent with commercial storage and workshop use.

2.5 Current use

The shed and the surrounding yard are used for commercial storage and as a workshop associated with the carpentry / joinery trade of Martin Hayes.

Martin Hayes operates a carpentry and joinery business. Supporting material (LinkedIn[1] profile reference is included with this referral).

Activity on the lands includes the use of a generator, power tools, mechanical saw(s), and other workshop equipment. Traffic to and from the shed uses the shared laneway at unsocial hours as well as during the day. The use is not incidental to agriculture on the holding, and it is not incidental to the occupation of the Gummerson house opposite Tenlach.

[1] https://www.linkedin.com/in/martin-hayes-81857216/

Following erection of the shed, a flatbed truck was observed delivering office furniture, a desk and computer equipment to the site.

Commercial vehicle movements on the shared laneway and onto the crushed-concrete internal roadway are ongoing. Video evidence of a flatbed truck using the laneway and turning onto the unauthorised roadway is available and can be supplied. Martin Hayes regularly uses a commercial two-seater Land Rover Discovery (registration 191 WW 923). An activity log of vehicle movements and workshop noise (from late May 2026 onwards) has been maintained by the referrer and is available if required. A camera has now been installed to record ongoing activity.

There is no planning permission for this use. There was no authorised commercial use on the hillside when PRR 21/740 was made. The only use then contemplated by the applicant was a dwelling, which was never permitted.

2.6 Figures

The figures in this section are identification and comparison material. They are not offered as a formal landscape and visual impact assessment. Visual impact and Article 9 are addressed later in this report.

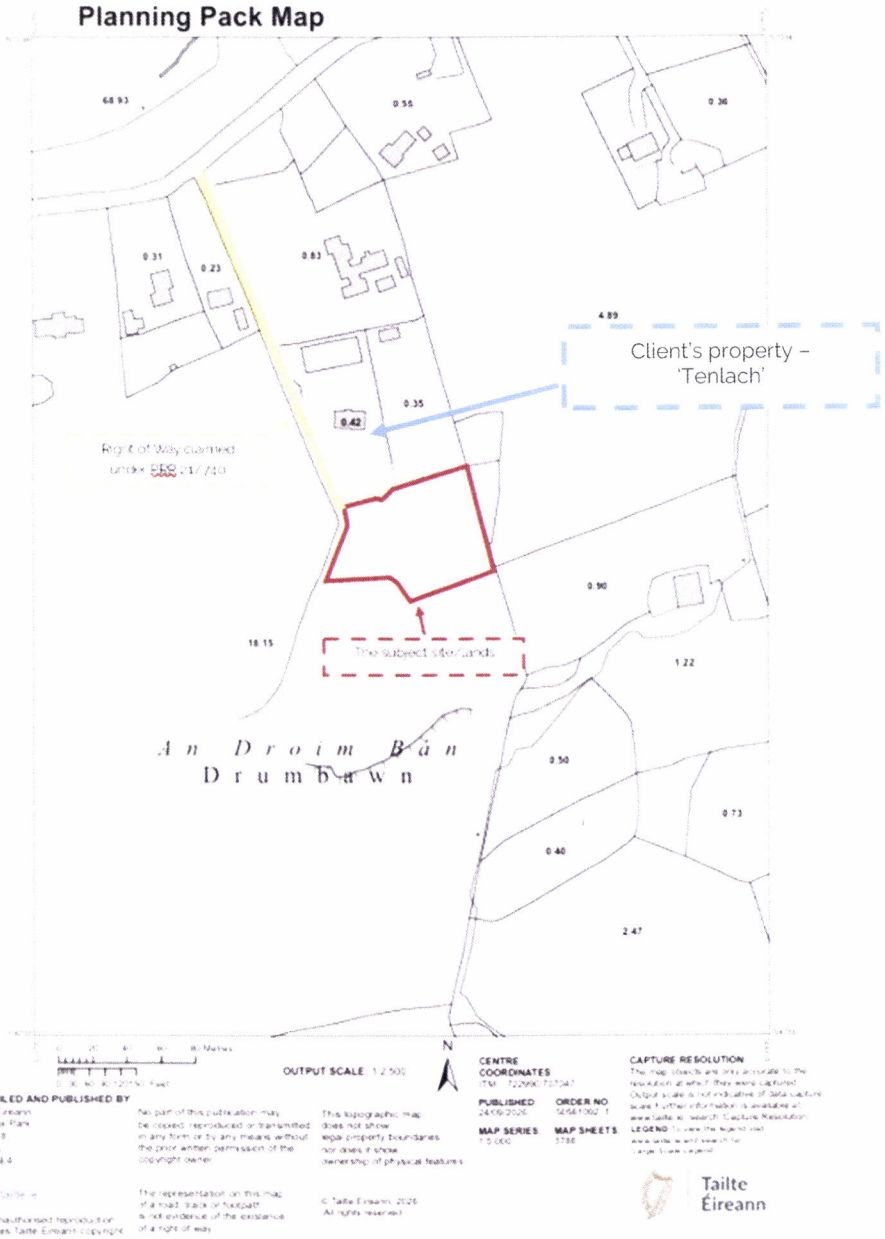


Fig. 1: OS site location map (purchased sheet), subject lands edged red (Tenlach identified, shared laneway / right of way marked from the L1041 in yellow)



Fig. 2: Google Earth site location aerial photo



Fig. 3 - Photograph: junction of the shared laneway with the L1041

WICKLOW COUNTY COUNCIL
SITE NOTICE

We, **RUSSELL AND LAURA GUMMERSON**

Intend to apply for **PERMISSION**

For development at **Drumbawn, Newtownmountkennedy, Co. Wicklow.**

The development consists of:

(1). Construction of new single storey dwelling, (2). On-site effluent treatment system, (3). Bored well, (4). New entrance and continuation of existing access laneway to proposed site from public road, (5) Associated Works.

The planning application may be inspected or purchased at a fee not exceeding the reasonable cost of making a copy, at the offices of the planning authority during its public opening hours. The planning application may be viewed online at www.wicklow.ie under planning online enquiries.
A submission or observation in relation to the application may be made in writing to the planning authority on payment of the prescribed fee, €20, within the period of 5 weeks beginning on the date of receipt by the authority of the application, and such submissions or observations will be considered by the planning authority in making a decision on the application. The planning authority may grant permission subject to or without conditions, or may refuse to grant permission.

Signed: Russell Gummerson Laura Gummerson
Russell Gummerson Laura Gummerson

Date of erection of site notice: 15th Sept 21

Fig. 4: PRR 21/740 site notice



Fig. 5: PRR 21/740 site notice and planning application photographs showing the hillside before the later cut and development works (1)



Fig. 6: PRR 21/740 site notice and planning application photographs showing the hillside before the later cut and development works (2)

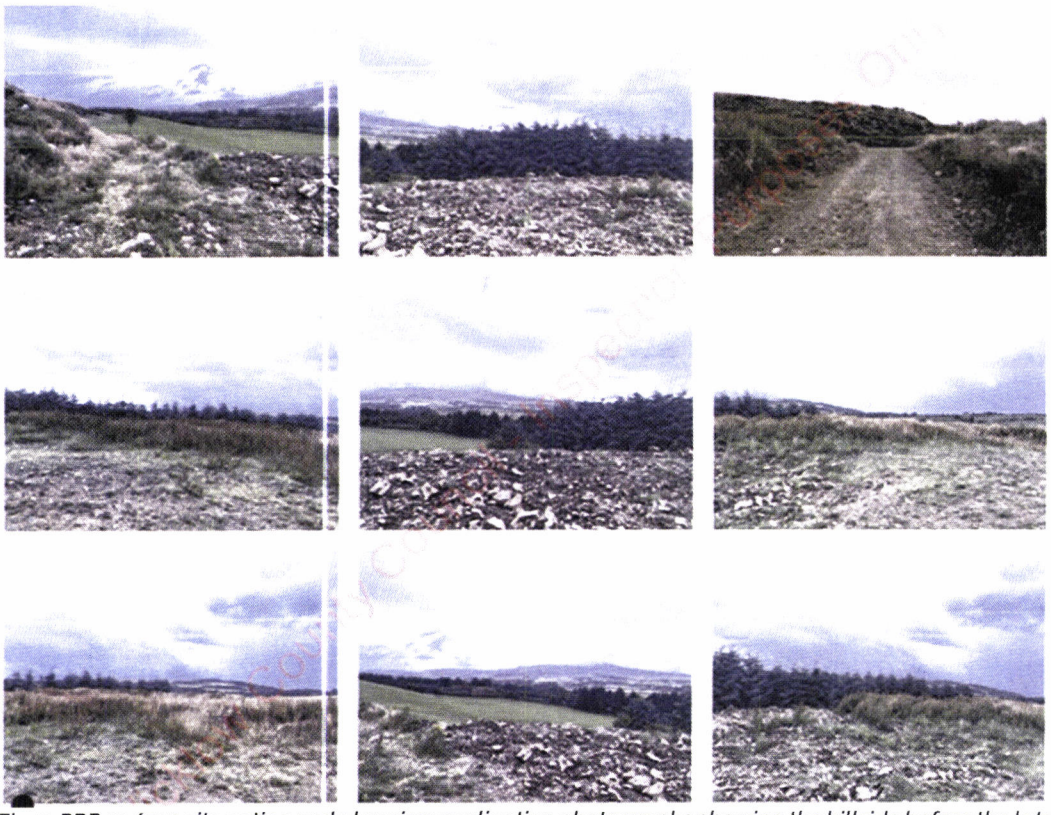


Fig. 7: PRR 21/740 site notice and planning application photographs showing the hillside before the later cut and development works (3)



Fig. 8: Client photo of the site at the time of the 2021 planning application



Fig. 9: Client photo of the site at the present time (2026)



Fig. 10: Recent view across the valley showing the shed and excavated platform as a conspicuous feature in the North East Mountain Lowlands Area of High Amenity (client photograph, 2026)

Site location/Description:

The site measures 0.48ha and is located in the townland of Drumbawn on substandard laneway off the L1041 road. The site is elevated above the lane and surrounding area and exposed in views from the surrounding area in parts. On site inspection, it is noted the noted that the land on which the application site located has been excavated. To the north are some tree and a newly constructed dwelling. The other adjoin lands are in agricultural use. The Carrigower SAC/NHA is located C.230m downhill of the site.

Fig. 11: Extract from the WCC Planner's inspection description (28 July 2021 / report 4 August 2021)



Fig. 12: Still photos from the client's video clips which show the laneway



Fig. 13: Still photo from the client's video clips which show a flatbed truck passing up the laneway (1)

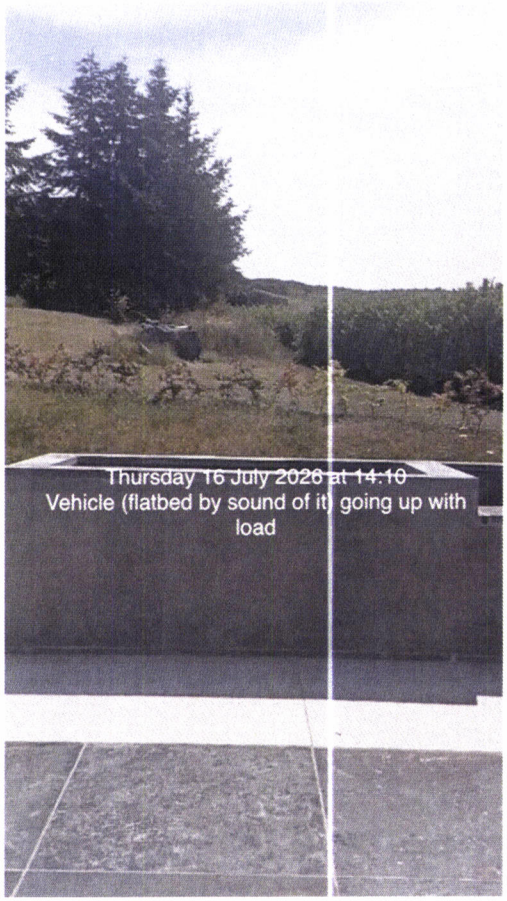


Fig. 14: Still photos from the client's video clips which show a flatbed truck passing up the laneway in a noisy manner (2)



Fig. 15: Still photos from the client's video clips which show a flatbed truck passing up the laneway in a noisy manner (3)



Fig. 16: Still photos from the client's video clips which show vehicles passing up the laneway in a noisy manner

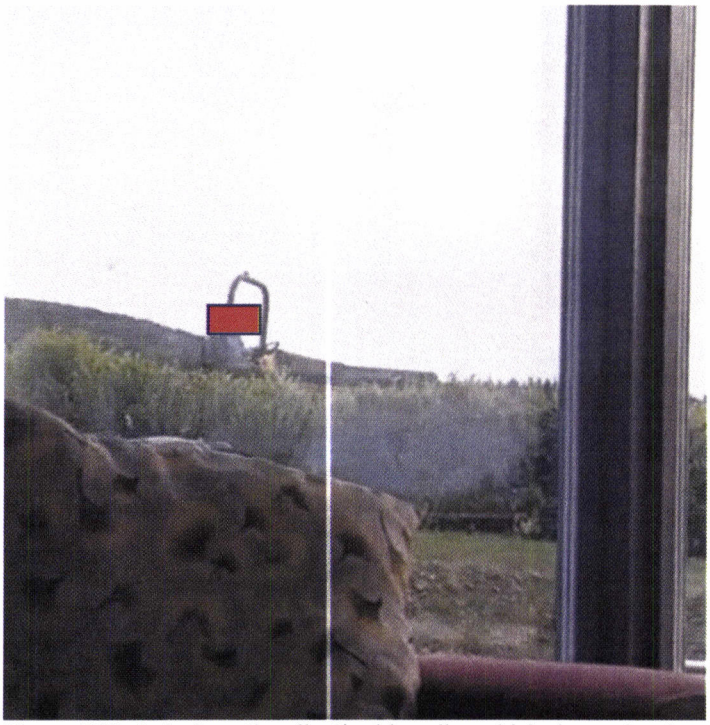


Fig. 17: Still photo from the client's video clips which show a loader passing up the laneway (b)



Fig. 18: Still photo from the client's video clips which show a loader passing up the laneway (b)

3.0 Section 5 question arising

The question referred to the planning authority pursuant to section 5(1) of the Planning and Development Act 2000, as amended ("the Act") for review is as follows:

A question arises as to whether the following, taken separately and together, constitute development and are or are not exempted development:

1. The excavation, levelling and re-grading of the hillside to the rear of Tenlach, Drumbawn, Newtownmountkennedy, Co. Wicklow, including works already recorded by Wicklow County Council on inspection of PRR 21/740 and further extensive excavation carried out within approximately the last six months;
2. The construction and surfacing of a new internal roadway / track of crushed concrete leading from the shared laneway off the L1041 up to and across the subject lands, together with fencing and a locked gate;
3. The erection of a large shed, first constructed in timber and subsequently clad in metal, on the excavated platform;
4. The use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry / joinery trade of Martin Hayes (including generators, power tools

such as drills, jigsaws, grinders and other workshop equipment, and associated noise during working hours, weekends and evenings),

5 The intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way; and

6 Whether any of (1) to (5) can rely on Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2, having regard to the limitations in those classes and to Article 9.

Each item is asked having regard to sections 2, 3, 4 and 5 of the Planning and Development Act 2000, to Articles 6, 8, 9 and 10 of the Planning and Development Regulations 2001, to the planner's reports and recommended refusal reasons on PRR 21/740, and to the site's location in the North East Mountain Lowlands Area of High Amenity

4.0 Background to the Section 5

4.1 Planning and enforcement history

4.1.1 Applications on the subject lands

The planning history that matters to this referral is short There is no grant of permission for a house, a shed, an internal road, excavation or a commercial use on the hillside to the rear of Tenlach

The only application that has addressed these lands is PRR 21/740

4.1.1.1 PRR 21/740 - the application

On 4 June 2021 Russell and Laura Gummerson applied to Wicklow County Council for permission for construction of a single storey dwelling, on-site effluent treatment system, bored well, new entrance, continuation of the existing access laneway to the proposed site from the public road and associated works at Drumbawn, Newtownmountkennedy, Co. Wicklow

The application site was given as 0.48 ha It is the same elevated hillside that is now the subject of this referral The proposed house was a four-bedroom single-storey dwelling of 179 m^2, 4.975 m high, with a stated finished floor level of 265.15. External finishes were plaster and slates Access was to be by a new entrance and by continuation of the existing laneway from the L1041

The reporting planner was Solomon Aroboto, Executive Planner. The site was inspected on 28 July 2021 The first planner's report is dated 4 August 2021. An extension of time was later sought and granted Unsolicited further information was submitted on 11 November 2021 and 18 January 2022 A second planner's report, to be read with the first, is dated 25 January 2022

What WCC recorded on inspection

The report of 4 August 2021 is the Planning Authority's own record of the lands in July 2021 It is relied upon in this referral because it describes this exact hillside, after inspection, before the later cut, the crushed-concrete internal road and the shed.

The WCC planner recorded that

- the site is located on a substandard laneway off the L1041,
- the site is elevated above the lane and surrounding area and exposed in views from the surrounding area in parts,
- the land on which the application site is located had already been excavated,
- the lane had been extended and covered in loose stones, and
- an access / track had been created into the application site

The site was identified as lying in the North East Mountain Lowlands Area of High Amenity Carrigower SAC / NHA (site code 000716) was recorded as approximately 230 m downhill, on the opposite side of the L1041.

Rural housing qualification under objective HD 23 of the 2016–2022 County Development Plan was accepted on the papers then submitted. That finding has no bearing on this referral. Qualification to apply for a house is not permission to excavate a hillside, build a road and shed, or operate a workshop

Recommended refusal - August 2021

The application was recommended for refusal. The reasons that remain material to the present question were as follows.

- ***Reason 1 - landscape, amenity and excavation***

  The site is an exposed site, prominent in views from the surrounding area, in a landscape identified in the County Development Plan 2016-2022 as an Area of High Amenity North East Mountain Lowlands, where it is an objective to ensure that the siting and design of development, in particular those bordering the Mountain Uplands AONB, will not be conspicuous or have a disproportionate or dominating visual impact on the surrounding environment as seen from the local scenic routes and settlements The proposed development by virtue of its location would form an intrusive feature in views from the surrounding area, and the scale of excavation works already carried out on site, including additional works that would be required to carry out the proposed development, would result in a serious deterioration of the landscape quality of the area, would be contrary to the visual amenities of the area and to the objectives of the County Development Plan, and would therefore be contrary to the proper planning and sustainable development of the area

- ***Reason 2 - laneway***

  Having regard to the inadequacy of the laneway serving the site in terms of width, alignment and structural condition, it was considered that the laneway is only suitable to cater for traffic movements generated by existing permanent native residents who are local to this particular area and who are served by the existing route, and that to allow the development would increase traffic movement on this substandard lane and endanger public safety by reason of traffic hazard.

- ***Reason 3 - backland pattern***

  Insufficient information has been submitted to support the further development of the backland area served by an existing laneway To permit the development in the absence of such information would support the further encroachment of further development of the backland area in the absence of a justified development pattern and would therefore be contrary to the proper planning and sustainable development of the area.

Those are planning judgments on this land, made after inspection They are not re-argued here as if reg ref. 21/740 were still being assessed. They are included because the works now referred are the same excavation, on the same exposed hillside, served by the same laneway, in the same backland location.

Unsolicited further information and the January 2022 report

The applicants submitted unsolicited further information on 11 November 2021 and 18 January 2022

- On Reason 1, photographs and Google mapping were offered to argue that the house would be screened from four viewpoints. The WCC planner examined that material and maintained the visual and landscape objection. He recorded again that significant further excavation would be required to carry out the development.

- On Reason 2, it was stated that the laneway had been upgraded: width of about 4 5 m, two pull-in areas, crushed-concrete base dressed in tar shavings and rolled The planner's assessment on 25 January 2022 was that "the upgrade of the laneway is acceptable " That sentence is confined to the house application then before WCC It is not a grant of permission for a commercial workshop, for a new internal road up the hillside, or for commercial use of the shared lane The application was still recommended for refusal.

- On Reason 3, a list of other rural permissions was submitted as alleged precedent for backland development. The WCC planner distinguished those files Dwellings along an existing access serving existing houses, or dwellings in a cluster, were not accepted as precedent for a house on land some 10 m above the adjoining laneway, wholly to the rear of existing houses, that would not form a cluster and would form an incongruous feature on the landscape. WCC recorded that it was "seriously concerned about the historic backland development in the County and such precedent should not be further encouraged "

The 25 January 2022 recommendation was again refuse, on two reasons:

- the same landscape / amenity / excavation reason as before; and
- that, having regard to the location of the development on lands wholly to the rear of existing houses / structures, the development would support the further encroachment of further development of the backland and undesirable patterns of development in this area and would be contrary to the proper planning and sustainable development of the area

Withdrawal

PRR 21/740 was withdrawn on 31 January 2022. No decision to grant issued. No permission attaches to the hillside. Nothing in the withdrawal regularises the excavation already recorded in July 2021, or the further excavation, internal road, shed or workshop use that have been carried out since.

4.1.1.2 Other files noted in the 21/740 reports

The WCC planner recorded no relevant planning history on the application site itself.

PRR 18/114 was noted as a dwelling granted on the same laneway. The WCC planner's explanation was that permission issued in that case because the site was located behind the applicant's parents' house. That grant does not authorise works on the Gummerson / Hayes hillside and does not make the lane suitable for commercial traffic.

No other application on the subject lands has been identified from the papers provided.

4.1.2 Enforcement

No enforcement file is understood to have been opened in respect of the works or the use described in this report.

A letter is being lodged concurrently with Wicklow County Council's enforcement section, at the same time as this section 5 referral. That letter puts the Planning Authority on notice of the unauthorised excavation, internal roadway, gate and fencing, shed, and commercial workshop / storage use, and of the commercial use of the shared laneway. It does not replace this referral. The section 5 asks for a declaration of legal status. The enforcement letter asks WCC to consider its powers under Part VIII of the Act.

The two steps are lodged together so that the file is complete: a question as to what the works and use are, and a request that WCC consider what should follow if they are development and are not exempted development.

4.2 Policy context

4.2.1 Land use plan

Settlement: Level 10 - the rural area (open countryside). Newtownmountkennedy is the nearest designated settlement. It is a Level 4 Self-Sustaining Town under Chapter 3 / Chapter 4 of the Wicklow County Development Plan 2022–2028. The subject lands at Drumbawn sit outside the Town Plan boundary and are not zoned. They are open countryside.

Operative plans

Wicklow County Development Plan 2022–2028 (adopted 12 September 2022, in effect 23 October 2022), as varied, including Volume 1 Written Statement, Volume 2 Level 4 Newtownmountkennedy Town Plan 2022–2028, Appendix 1 Development and Design Standards, Appendix 2 Single Rural House Design Guidelines, and the Landscape Assessment carried forward from the 2016 Plan (Volume 3 of that Plan, subsumed into this Plan and applied through CPO 17.35).

The 2016–2022 Plan was the plan against which PRR 21/740 was assessed. The landscape designation applied on that file - North East Mountain Lowlands Area of High Amenity - is carried forward in the current Plan.

There is no zoning objective on the subject lands. Level 10 policy is set out in Chapter 4. The rural area includes all lands outside designated settlement boundaries. The key development parameter is to facilitate only appropriate and necessary activities and to protect the natural environment within which those activities are undertaken. Development in the rural area should be strictly limited to proposals where a social or economic need to locate in the area is proven. Protection of scenic value, heritage value and environmental / ecological quality is of paramount importance.

We note the following Development Plan policies and objectives:

- CPO 4.1 implements the Core Strategy and Settlement Strategy and directs growth into the designated settlements. CPO 4.14 / CPO 4.15 require key rural assets — water quality, natural and cultural heritage, and the quality, character and distinctiveness of the rural landscape — to be protected.

- CPO 6.1 requires new housing to locate on suitably zoned or designated land in settlements and to be considered in the open countryside only where there is a demonstrable social or economic need. That objective framed 21/740. It is recited here only as context. This referral is not a housing application. It is a question as to whether excavation, an internal road, a shed and a commercial workshop on this hillside are development and are or are not exempted development.

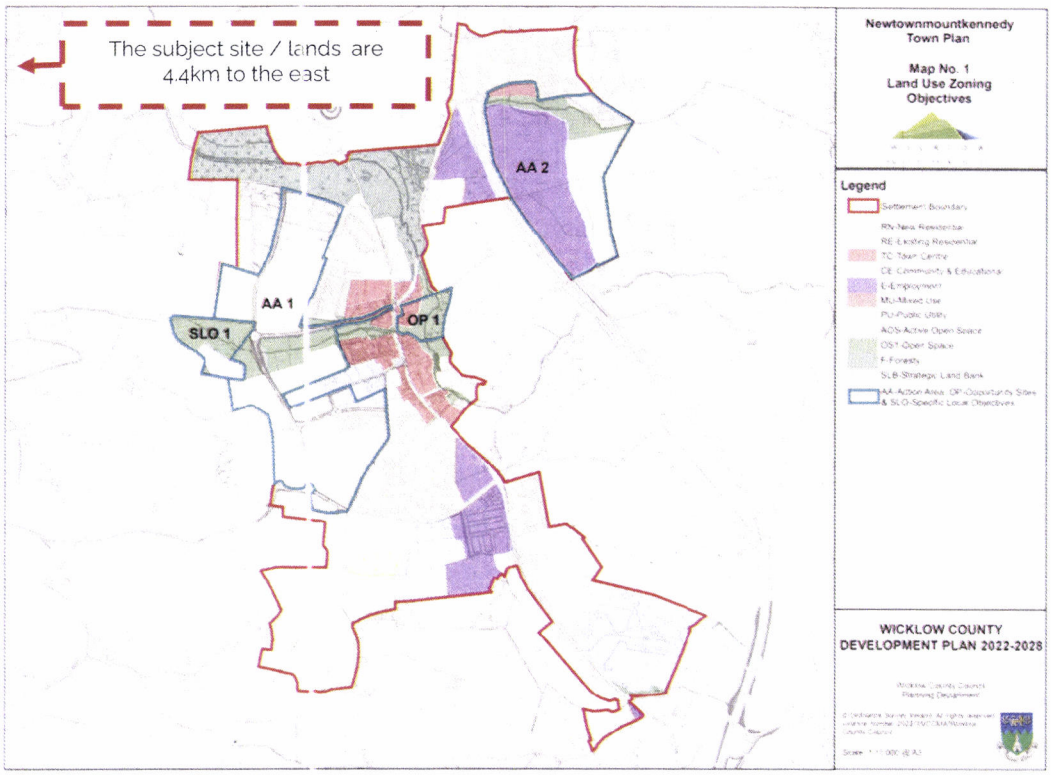


Fig. 19: Extract from the County settlement hierarchy / Newtownmountkennedy Town Plan map 2022-2028 showing the subject lands outside the Level 4 boundary, in Level 10 open countryside

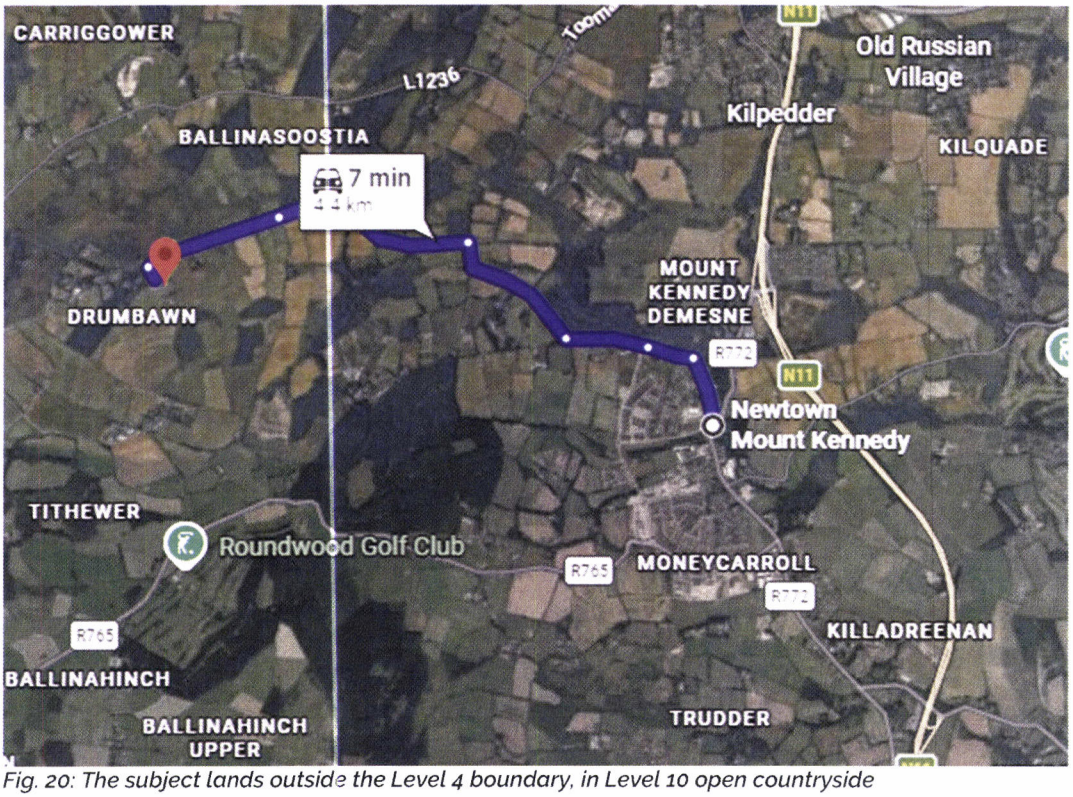


Fig. 20: The subject lands outside the Level 4 boundary, in Level 10 open countryside

4.2.2 Landscape and natural heritage

Chapter 17 and the Wicklow Landscape Assessment apply.

The subject lands lie in the North East Mountain Lowlands Area of High Amenity, as recorded on PRR 21/740 and as shown on the landscape category maps of the current Plan (Maps 17.09 A–E). The 2016 Landscape Assessment, carried forward, sets Key Development Considerations for that area. Consideration 4, quoted by the reporting planner on 21/740 and still the test, is:

> *Through appropriate siting and design to ensure that developments along local/regional roads in particular those bordering the Mountain Uplands AONB will not be conspicuous or have a disproportionate or dominating visual impact on the surrounding environment as seen from the local scenic routes and settlements.*

The current Plan restates that hierarchy in binding objectives:

- CPO 17.35 - All development proposals shall have regard to the County landscape classification hierarchy, in particular the key landscape features and characteristics identified in the Wicklow Landscape Assessment and the Key Development Considerations set out for each landscape area.

- CPO 17.37 - To resist development that would significantly or unnecessarily alter the natural landscape and topography, including land infilling / reclamation projects or projects involving significant landscape remodelling, unless it can be demonstrated that the development would enhance the landscape and / or not give rise to adverse impacts.

- CPO 17.38 - To protect listed views and prospects from development that would either obstruct the view / prospect from the identified vantage point or form an obtrusive or incongruous feature in that view / prospect.

- CPO 17.37 is directly engaged by the excavation and re-grading of this hillside. WCC has already found, on inspection of these lands, that excavation then visible would seriously deteriorate landscape quality. The cut has since been enlarged. That is the topography alteration CPO 17.37 is written to resist.

- CPO 17.1 requires the natural heritage, biodiversity, landscape and environment of the County to be protected, sustainably managed and enhanced. CPO 17.4 / related Natura objectives require development not to adversely affect European sites. Carrigower SAC / NHA (site code 000716) lies approximately 230 m downhill, on the opposite side of the L1041. This referral does not turn on appropriate assessment; the SAC is part of the receiving environment against which exemption under Article 9 is tested.

Table 17.1 Wicklow Landscape categories

HIERARCHY	1	2	3	4	5	6
LANDSCAPE CATEGORY	Mountain and Lakeshore AONB	Coastal Areas AONB	Areas of High Amenity	Corridor Area	Lowlands	Urban Area
LANDSCAPE AREA	The Mountain Uplands The Blessington Lakes Area The Bray Mountains Group The North Eastern Valley / Glencree	Northern Coastal Area Southern Coastal Area	North East Mountain Lowlands South East Mountain Lowlands Southern Hills Baltinglass Hills Transitional Lands	N11 Corridor N81 corridor	Rolling Lowland Areas 1-6	All towns ranging from Levels 1-6 of the Wicklow Settlement Hierarchy

3. Area of High Amenity

3(a) - The North East Mountain Lowlands
Transitional lands located between the corridor zone and the AONB, comprising of Trooperstown Hill, large tracts of forestry lands, including Devil's Glen (a listed County Geological site) and a number of views and prospects in particular those surrounding the Vartry Reservoir.

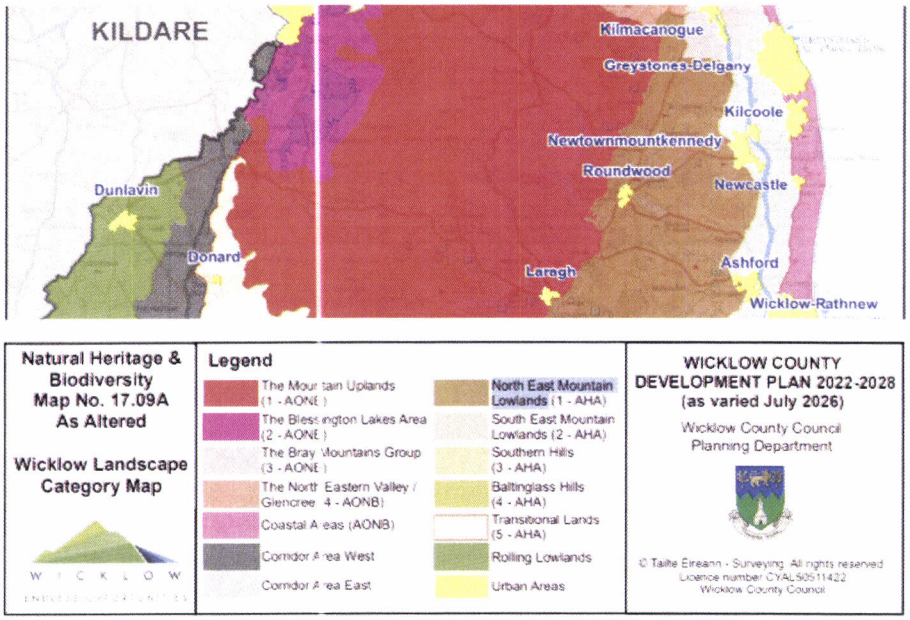


Fig. 21: North East Mountain Lowlands Area of High Amenity Landscape Area within the CDP

5.3.11 North East Mountain Lowlands KDC (see Appendix 4 Map 10.13(c))

1. To protect and facilitate the conservation of structures, sites and objects within the north east Mt. lowlands which are part of the County's cultural heritage, whether or not such structures, sites and objects are included on the Record of Protect Structures.

2. To encourage the preservation and enhancement of native species within and surrounding the Devil's Glen area and the Vale of Clara.

3. To support and facilitate the provision of amenity routes, in a manner which does not detract from the scenic nature of the area and ensure that new development is sited such that any impacts on the recreational amenity of any such route is minimised.

4. Through appropriate siting and design to ensure that developments along local/regional roads in particular those bordering the Mountain Uplands AONB will not be conspicuous or have a disproportionate or dominating visual impact on the surrounding environment as seen from the local scenic routes and settlements.

Fig. 22: Key Development Considerations for the North East Mountain Lowlands (Landscape Assessment s. 5.3.11 of the 2026-2022 CDP) - see especially Consideration 4 highlighted.

4.2.3 Rural economy, agricultural buildings and amenity

Chapter 9 deals with the rural economy. The strategic objective is to encourage farming where it already exists and to facilitate appropriate farm diversification. It is not an objective to introduce an unauthorised commercial workshop onto an excavated hillside in an Area of High Amenity, served by a substandard shared laneway.

- CPO 9.37 - To facilitate environmentally sustainable agricultural activities whereby watercourses, wildlife habitats, areas of ecological importance and other environmental assets are protected from pollution, and where development does not impinge on the visual amenity of the countryside.

- CPO 9 41 - To permit new, appropriately located and designed agricultural buildings which are necessary for the efficient and environmentally sound use of the agricultural practice New buildings will generally only be permitted where there are no suitable redundant buildings on the holding and where WCC is satisfied that the proposal is necessary for the efficient operation of the farm Developments shall be compatible with the protection of rural amenities, and should not create a visual intrusion in the landscape or be the cause of an environmental nuisance

The shed and yard are not a farm building necessary for the holding. They are used for commercial storage and as a workshop associated with the trade of Martin Hayes, with a generator, power tools, mechanical saw(s), and other workshop equipment That is not the use CPO 9.41 contemplates Even if it were, CPO 9 41 is a permission objective It is not an exemption A building that would fail CPO 9 41 on visual intrusion and environmental nuisance cannot be saved by a rural class in Part 3 of Schedule 2 where Article 9 applies

Appendix 1, section 4.3, addresses commercial / employment development in rural areas, including agriculture Such development is to be tailored to the locality Access onto rural local roads is to protect the natural environment, in particular mature trees and hedgerows Buildings in rural areas are expected to sit back from the public road and not appear as a scar on a hillside. The internal crushed-concrete road climbing the excavated face, the metal-clad shed on the platform, and commercial traffic on the shared lane are the opposite of that standard

4.2.4 Roads and the shared laneway

Chapter 12 and Appendix 1 apply to rural local roads and new means of access The design of improvements to existing rural local roads and new accesses is to be tailored to the locality in width, design speed, alignment and sightlines, with specific regard to the natural environment.

On PRR 21/740 the Planning Authority found that this laneway, off the L1041, was only suitable for traffic generated by existing permanent native residents already served by the route, and that additional traffic would endanger public safety by reason of traffic hazard. A later finding that a surface upgrade was "acceptable" for that withdrawn house application did not reclassify the lane as a commercial access and did not authorise a new internal road up the hillside.

Article 9 of the Regulations takes specified exemptions away where works would endanger public safety by reason of traffic hazard. That restriction is applied to the facts of this lane in the legal assessment later in this report

4.2.5 Residential amenity

Tenlach stands on the shared laneway immediately below the excavated platform The Gummerson house stands opposite, on a separate plot Development on the hillside is capable of injuring the residential amenity of those houses by reason of visual intrusion, noise (generator, saw, workshop activity), lighting, and commercial traffic at unsocial hours on a residential lane

The County Plan requires rural development to protect amenity and not to cause environmental nuisance (CPO 9.37, CPO 9.41, CPO 17 35, CPO 17 37, Appendix 1) That is the policy setting against which a claim to exemption must be read Exemption is a statutory test, not a policy test, but Article 9 expressly turns on landscape character, views and traffic hazard, which are the same matters the Plan protects on this site.

Policy does not decide the section 5 question It describes the land against which sections 2, 3 and 4 of the Act and Articles 6, 8, 9 and 10 of the Regulations are applied in the sections that follow.

5.0 Statutory provisions

5.1 PDA - Planning and Development Act 2000 (as amended)

References are to the Planning and Development Act 2000 as revised (Law Reform Commission consolidated text)

Section 2(1) – definitions

"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, and—
(a) where the context so admits, includes the land on, in or under which the structure is situate, and
(b) in relation to a protected structure or proposed protected structure, includes the interior the curtilage, other structures within that curtilage, and fixtures and features forming part of the interior or exterior.

The definition is material here because an excavation is itself a structure. The cut and platform on this hillside are not merely a change in ground level. They are a structure within section 2

"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.

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon. "house" means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied

"unauthorised structure" and 'unauthorised use" take their meaning from the Act: a structure or use other than one that is neither development nor exempted development, or that is development authorised by a permission which has not expired or been revoked

The subject lands are not a protected structure and are not a proposed protected structure Sections 51, 57 and 58 are recited only to record that they do not arise.

Section 3 - development

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

Both development and works arise on this referral. works (excavation, road, gate, fence, shed) and a material change of use (commercial storage and workshop)

Section 4 - exempted development

Section 4(1) lists classes of development that are exempted development for the purposes of the Act Those that can be mentioned, and discarded, on these lands are

- Section 4(1)(a) - development consisting of the use of any land for the purpose of agriculture and development consisting of the use for that purpose of any building occupied together with land so used This exempts agricultural use of land. It does not exempt the construction of a shed, the making of a road, or a commercial workshop

- Section 4(1)(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. This does not describe a new excavated platform, a new internal road, a new shed or a new commercial use.

- Section 4(1)(i) - development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such. The shed and platform do not lie within the curtilage of Tenlach. They do not lie within the curtilage of the Gummerson house opposite Tenlach. A commercial workshop is not incidental to the enjoyment of either house as a house

- Section 4(2) - the Minister may by regulations provide for any class of development to be exempted development Those regulations are the Planning and Development Regulations 2001. They are set out in section 5 2 They are subject to Article 9

- Section 4(4) - a development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required. That is not the primary issue on this hillside, but the subsection shows that section 4 is not an open door

Section 5

5 —(1) If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question.

That is the jurisdiction invoked by this referral.

5.2 PDR — Planning and Development Regulations 2001 (as amended)

Article 5

Article 5 contains interpretation provisions for the Regulations, including the meaning of "house" for specified classes in Part 1 of Schedule 2. Those Part 1 domestic classes are not the classes relied upon for a standalone rural shed on an excavated hillside outside the curtilage of a house They are recorded so that Class 3 of Part 1 (a shed, glasshouse, aviary or other structure within the curtilage of a house) is closed off. The shed is not within the curtilage of a house.

Article 6

Article 6(1) provides that, subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development provided it complies with the conditions and limitations in column 2

Article 6(3) provides that, subject to Article 9, development of a class specified in column 1 of Part 3 of Schedule 2 shall be exempted development provided it complies with the conditions and limitations in column 2. Part 3 is the rural schedule It is the only schedule that could conceivably be argued on these lands

Schedule 2, Part 3 - classes that can be argued, and why they fail

The classes most often put forward for rural sheds, farm works, fences and private ways, and the classes named in the question referred, are.

- Class 6 - provision of a roofed structure for the housing of animals / related agricultural structures, subject to floor-area, height and use limitations and to the structure being used for agriculture
- Class 8 / store-barn-shed class (Part 3) - provision of a store, barn, shed, glasshouse or other structure, subject to floor-area and height limitations and to agricultural use on the holding
- Class 9 - construction, erection, renewal or replacement of a gate or gateway, or (as commonly relied upon in rural referrals) works for a private way, subject to the limitations in column 2
- Class 18 (and allied land-improvement / private-road classes in Part 3) - works for the provision or improvement of a private road or for specified agricultural land works, subject to column 2

None of those classes describes a commercial workshop. Each is limited by use, size, height and siting Each is subject to Article 9 The limitations and Article 9 are applied in section 6.2

Article 8

Article 8 exempts specified drainage and land-improvement works of a limited kind It does not exempt the flattening of a hillside in an Area of High Amenity, the construction of a crushed-concrete internal road, or the erection of a commercial shed

Article 9(1)(a) - restrictions on Article 6 exemptions

Development to which Article 6 relates shall not be exempted development if the carrying out of such development would—

Development to which Article 6 relates shall not be exempted development 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 There is no permission on this hillside PRR 21/740 was withdrawn.

(ii) consist of or comprise 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.

(vi) 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 or local area plan

(viiB) require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site

(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.

The live headings on this referral are (iii) traffic hazard on the shared laneway; (vi) landscape character and views in an Area of High Amenity, having regard to CPO 17.35, CPO 17.37, CPO 17.38 and Key Development Consideration 4 for the North East Mountain Lowlands, and (viii) works to or continuation of unauthorised excavation already recorded in July 2021 (viiB) is recited for completeness. Carrigower SAC / NHA lies approximately 230 m downhill. This referral does not turn on appropriate assessment (Note: Views stay under (vi) only; (viiB) is AA only.)

Article 10 - change of use

Article 10 exempts only changes of use within the classes in Part 4 of Schedule 2, subject to stated limitations. A change from agriculture, or from vacant excavated land, or from no authorised use, to commercial storage and workshop is not a Part 4 change. There is no authorised use from which a change could be exempted.

6.0 Assessment

The purpose of this assessment is not to determine the acceptability or otherwise of the matters raised 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 within the meaning of the relevant legislation.

6.1 Assessment under the PDA

6.1.1 Is or is not development

Section 3(1) defines development as 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) defines works as including construction, excavation, demolition, extension, alteration, repair or renewal, and defines a structure as including an excavation.

The questions are about works and about use, as follows.

1 Excavation, levelling and re-grading of the hillside, including works recorded on inspection of PRR 21/740 and further extensive excavation within approximately the last six months

Assessment: Excavation is named in the definition of works. An excavation is named in the definition of structure. The cut, the platform and the re-grading are works on land. They are development.

2 Construction and surfacing of a new internal roadway / track of crushed concrete, together with fencing and a locked gate.

Assessment: Construction of a road, a fence and a gate is works. It is development

3. Erection of a large shed, first constructed in timber and subsequently clad in metal, on the excavated platform

Assessment: Erection of a building is construction of a structure. Cladding is alteration of that structure. Both are works. They are development.

4 Use of the shed and yard for commercial storage and as a workshop associated with the trade of Martin Hayes, including generators, power tools, mechanical saw(s), and other workshop equipment

Assessment: This is not the carrying out of works. It is a use. A change from agriculture, or from vacant excavated land, or from no authorised use, to commercial storage and workshop is a material change in the use of structures and land. It is development under the second part of section 3(1).

5 Intensification of use of the shared private laneway by commercial traffic, day and night, beyond any residential right of way.

Assessment: Where that traffic is the access serving the workshop, it is part of the material change of use at (4). Works to the lane itself, if and so far as they have been carried out to serve the hillside, are works under section 3(1). Either way the commercial use of the lane is development

7 Whether any of (1) to (5) can rely on Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2, having regard to the limitations in those classes and to Article 9.

Assessment: This is not a section 3 question. It is the exemption question. It is answered in section 6 2. Items (1) to (5) remain development whether or not a class applies

6.1.2 Conclusion re. "development"

It is the professional opinion of BPS that each of items (1) to (5) is development within the meaning of section 3 Item (6) does not change that finding Whether any of those items is exempted development is a separate question under section 4 and the 2001 Regulations

6.2 Is or is not exempted development

6.2.1 Section 4(1)(a), (h) and (i)

Section 4(1)(a) exempts agricultural use of land and of a building occupied together with land so used It does not exempt the making of the cut, the road or the shed. The use now on the land is not agriculture.

Section 4(1)(h) does not apply Items (1) to (3) are new works. They do not affect only an interior. They materially affect external appearance - a flattened hillside, a crushed-concrete road, a metal-clad shed - and render that appearance inconsistent with the character of the hillside and of neighbouring dwellings, including Tenlach

Section 4(1)(i) does not apply The shed and platform are not within the curtilage of a house The use is not incidental to the enjoyment of a house as such.

6.2.2 Part 3 classes - Class 6, Class 9, Class 18 and related classes

Article 6(3) exempts a Part 3 class only if every limitation in column 2 is met and Article 9 does not remove the exemption.

Class 6 and the store / barn / shed class Those classes are for agricultural structures on a holding, used for agriculture, within stated floor-area and height limits The shed is used for commercial storage and as a workshop associated with the trade of Martin Hayes. That is not agricultural use The classes do not apply Even if they did, column 2 limitations on floor area, height and siting would have to be proved by the person claiming exemption. No such proof is before WCC. The building sits on an excavated, exposed platform in an Area of High Amenity That siting is the opposite of the "not a visual intrusion / not an environmental nuisance" test in CPO 9 41, which, while a permission objective, describes why a rural shed class cannot be stretched to this building

Class 9 / private way and gate classes A private way class, if relied upon, is limited to a way serving the holding for agricultural or domestic purposes within column 2. It does not authorise a crushed-concrete road built to serve a commercial workshop, nor a locked gate that controls commercial access across a shared residential laneway A gate class does not authorise the road behind the gate

Class 18 and land-improvement / private-road classes Those classes, if relied upon for the cut or the road, are limited to specified agricultural land works or to a private road of a stated kind Flattening a hillside in an Area of High Amenity so as to form a commercial yard is not land improvement for agriculture. CPO 17 37 is the Development Plan's expression of that point development that significantly or unnecessarily alters natural landscape and topography is to be resisted

Part 1 Class 3 (domestic shed) The shed is not within the curtilage of Tenlach or of the Gummerson house Class 3 does not apply

No other class in Schedule 2 describes a commercial workshop, a generator, saw(s), and other workshop equipment and/or commercial traffic on a shared residential lane

6.2.3 Article 9(1)(a)

Even if a Part 3 class were otherwise met, Article 9 takes the exemption away:

(iii) Traffic hazard. The Planning Authority has already found, on this laneway, that the lane is only suitable for traffic generated by existing permanent native residents already served by the route, and that additional traffic would endanger public safety by reason of traffic hazard Commercial traffic associated with the shed is additional traffic Article 9(1)(a)(iii) is engaged.

(vi) / views — landscape. The lands are in the North East Mountain Lowlands Area of High Amenity CPO 17 35, CPO 17 37 and CPO 17 38, and Key Development Consideration 4 for that landscape, are objectives for the preservation of landscape character and for resisting significant alteration of topography. WCC has already found that excavation on this site would seriously deteriorate landscape quality The cut has since been enlarged A metal-clad shed on the resulting platform interferes with the character of that landscape. Article 9(1)(a)(vi) is engaged

(viii) Unauthorised structure. Excavation was already on the land in July 2021. No permission issued Further excavation, the internal road and the shed are extension, alteration or renewal of that unauthorised excavation / unauthorised works, or are themselves unauthorised structures Article 9(1)(a)(viii) is engaged

6.2.4 Article 10 and item (4)

The workshop / storage use is a material change of use It is not within any class in Part 4 of Schedule 2 Article 10 does not apply. There is no authorised use from which a change could be exempted PRR 21/740 contemplated a dwelling. That application was withdrawn

6.2.5 Item (6)

No class in Part 3, read with Article 9, saves items (1) to (5). Item (6) is answered in the negative

6.2.6 Exempted development - conclusion

It is the professional opinion of BPS that

- items (1) to (5) are development;
- none of items (1) to (5) is exempted development under section 4(1)(a), (h) or (i),
- none of items (1) to (5) comes within Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2, having regard to the use of the shed, the purpose of the road and the nature of the excavation,
- if any such class were otherwise available, Article 9(1)(a)(iii), (vi) and (viii) would remove the exemption; and
- the commercial workshop / storage use is not exempted under Article 10

WCC is asked to declare accordingly.

7.0 Conclusion

It is the professional opinion of BPS that

- the excavation, levelling and re-grading of the hillside to the rear of Tenlach, including works recorded on PRR 21/740 and further excavation within approximately the last six months, is development and is not exempted development,
- the construction and surfacing of the internal crushed-concrete roadway, together with fencing and a locked gate, is development and is not exempted development,
- the erection of the large shed, first constructed in timber and subsequently clad in metal, is development and is not exempted development;
- the use of that shed and yard for commercial storage and as a workshop associated with the trade of Martin Hayes is development and is not exempted development,
- the intensification of the shared private laneway by commercial traffic beyond any residential right of way is development and is not exempted development; and
- none of those items can rely on Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2, having regard to the limitations in those classes and to Article 9.

These conclusions follow from sections 2, 3, 4 and 5 of the Act, Articles 6, 8, 9 and 10 of, and Part 3 of Schedule 2 to, the 2001 Regulations, the planner's reports and recommended refusal reasons on PRR 21/740; and the site's location in the North East Mountain Lowlands Area of High Amenity

8.0 Recommendation

BPS asks Wicklow County Council to decide this referral in the following terms.

WHEREAS a question has arisen as to whether the following on lands to the rear of Tenlach, Drumbawn, Newtownmountkennedy, Co. Wicklow, A63 T651, taken separately and together, is or is not development and is or is not exempted development:

- the excavation, levelling and re-grading of the hillside, including works already recorded by Wicklow County Council on inspection of PRR 21/740 and further extensive excavation carried out within approximately the last six months,

- the construction and surfacing of a new internal roadway / track of crushed concrete leading from the shared laneway off the L1041 up to and across the subject lands, together with fencing and a locked gate,
- the erection of a large shed, first constructed in timber and subsequently clad in metal, on the excavated platform,
- the use of that shed and the surrounding yard for commercial storage and as a workshop associated with the carpentry / joinery trade of Martin Hayes (including generators, power tools such as drills, jigsaws, grinders and other workshop equipment, and associated noise during working hours, weekends and evenings);
- the intensification of use of the shared private laneway off the L1041 by commercial traffic, day and night, beyond any residential right of way; and
- whether any of (1) to (5) can rely on Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2 to the Planning and Development Regulations 2001, as amended, having regard to the limitations in those classes and to Article 9.

AND WHEREAS Wicklow County Council, in considering this referral, has had regard particularly to

(a) sections 2(1), 3(1), 4(1), 4(2), 4(4) and 5 of the Planning and Development Act 2000, as amended,
(b) Articles 5, 6, 8, 9 and 10 of, and Classes 6, 9 and 18 and kindred classes of Part 3 of Schedule 2 to, the Planning and Development Regulations 2001, as amended;
(c) the Wicklow County Development Plan 2022-2028, including Chapter 4 (Level 10 open countryside), Chapter 9 (CPO 9.37, CPO 9 41), Chapter 17 (CPO 17.35, CPO 17 37, CPO 17.38), the North East Mountain Lowlands Area of High Amenity and Key Development Consideration 4 of the Wicklow Landscape Assessment, and Appendix 1 Development and Design Standards;
(d) PRR 21/740, the planner's reports dated 4 August 2021 and 25 January 2022, the recommended refusal reasons on that file, and the withdrawal of that application on 31 January 2022, and
(e) the submissions of the referrer and the documents, maps and photographs attached to this request

AND WHEREAS the planning authority has concluded that:

(a) each of items (1) to (5) is development within the meaning of section 3(1) of the Act,
(b) items (1) to (3) and (5), so far as they comprise works, do not come within section 4(1)(a), (h) or (i) of the Act,
(c) item (4) is a material change of use and does not come within Article 10 of the Regulations or within any class in Part 4 of Schedule 2;
(d) none of items (1) to (5) comes within Class 6, Class 9, Class 18 or any other class in Part 3 of Schedule 2 to the Regulations;
(e) if any such class were otherwise available, Article 9(1)(a)(iii), (vi) and (viii) of the Regulations would provide that Article 6 shall not apply, and
(f) item (6) is therefore answered in the negative.

NOW THEREFORE Wicklow County Council, in exercise of the powers conferred on it by section 5 of the Planning and Development Act 2000, as amended, hereby decides that the said works and the said use are development and are not exempted development

9.0 Finally

We trust that sufficient information has been provided to allow this section 5 to be fully assessed

Signed

Brendan Byrne Buck

BPS Planning & Development Consultants LTD
Chartered Members of the Irish Planning Institute
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