

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)  
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1044

Reference Number: EX31/2024

Name of Applicant: Ross Wilson

Nature of Application: Section 5 Referral as to whether "The erection of a agricultural entrance / gate onto a public road" is or is not development and is or is not exempted development.

Location of Subject Site: Ballintruer More, Stratford on Slaney, Co Wicklow.

Report from: Dara Keane (AP), Edel Bermingham (SEP)

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "The erection of a agricultural entrance / gate onto a public road" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- i. The details submitted on 15/07/2024;
- ii. Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended);
- iii. Articles 6 & 9 of the Planning and Development Regulations 2001 (as amended);
- iv. Schedule 2, Pt.1 Class 9 of the Planning and Development Regulations 2001 (as amended).

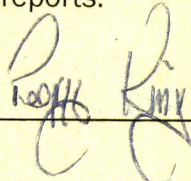
Main Reasons with respect to Section 5 Declaration:

1. The provision of an agricultural shed is works and therefore development having regard to Section 3 of the Planning and Development Act 2000 (as amended).
2. The construction of an agricultural entrance would come within the description under class 9: Part 1: Schedule of the Planning and Development Regulations 2001 (as amended).
3. The erection of an agricultural entrance would contravene the restrictions on exempted development as outlined in Article 9, (1) (a) (ii) and (1) (a) (iii) of the Planning and Development Regulations 2001 (as amended) as it would result in an entrance onto a public road which exceeds 4M in width, and would result in a traffic hazard given location in proximity to an existing junction, and is therefore not exempted development.



Recommendation

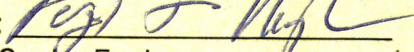
The Planning Authority considers that "The erection of a agricultural entrance / gate onto a public road" is development and is not exempted development as recommended in the planning reports.

Signed  Dated 15<sup>th</sup> day of August 2024

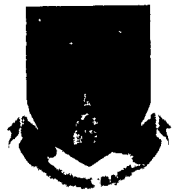
ORDER:

I HEREBY DECLARE:

That "The erection of a agricultural entrance / gate onto a public road" is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed:   
Senior Engineer  
Planning, Economic & Rural Development

Dated 15<sup>th</sup> day of August 2024



# Comhairle Contae Chill Mhantáin Wicklow County Council

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

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Suíomh / Website: [www.wicklow.ie](http://www.wicklow.ie)

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

Applicant: Ross Wilson

Location: Ballintruer More, Stratford on Slaney, Co Wicklow.

**CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1044**

A question has arisen as to whether "The erection of a agricultural entrance / gate onto a public road" is or is not exempted development.

### Having regard to:

- i. The details submitted on 15/07/2024;
- ii. Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended);
- iii. Articles 6 & 9 of the Planning and Development Regulations 2001 (as amended);
- iv. Schedule 2, Pt.1 Class 9 of the Planning and Development Regulations 2001 (as amended).

### Main Reasons with respect to Section 5 Declaration:

1. The provision of an agricultural shed is works and therefore development having regard to Section 3 of the Planning and Development Act 2000 (as amended).
2. The construction of an agricultural entrance would come within the description under class 9: Part 1: Schedule of the Planning and Development Regulations 2001 (as amended).
3. The erection of an agricultural entrance would contravene the restrictions on exempted development as outlined in Article 9, (1) (a) (ii) and (1) (a) (iii) of the Planning and Development Regulations 2001 (as amended) as it would result in an entrance onto a public road which exceeds 4M in width, and would result in a traffic hazard given location in proximity to an existing junction, and is therefore not exempted development.

**The Planning Authority considers that "The erection of a agricultural entrance / gate onto a public road" is development and is not exempted development.**

Signed: 

ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT

Dated: 15<sup>th</sup> day of August 2024





# Comhairle Contae Chill Mhantáin Wicklow County Council

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Suíomh / Website [www.wicklow.ie](http://www.wicklow.ie)

Mr. Ross Wilson

15<sup>th</sup> August 2024

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) – EX31/2024 – Ross Wilson - Ballintruer More, Stratford on Slaney, Co Wicklow.

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 Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

**ADMINISTRATIVE OFFICER  
PLANNING DEVELOPMENT & ENVIRONMENT.**







**WICKLOW COUNTY COUNCIL  
PLANNING DEPARTMENT**

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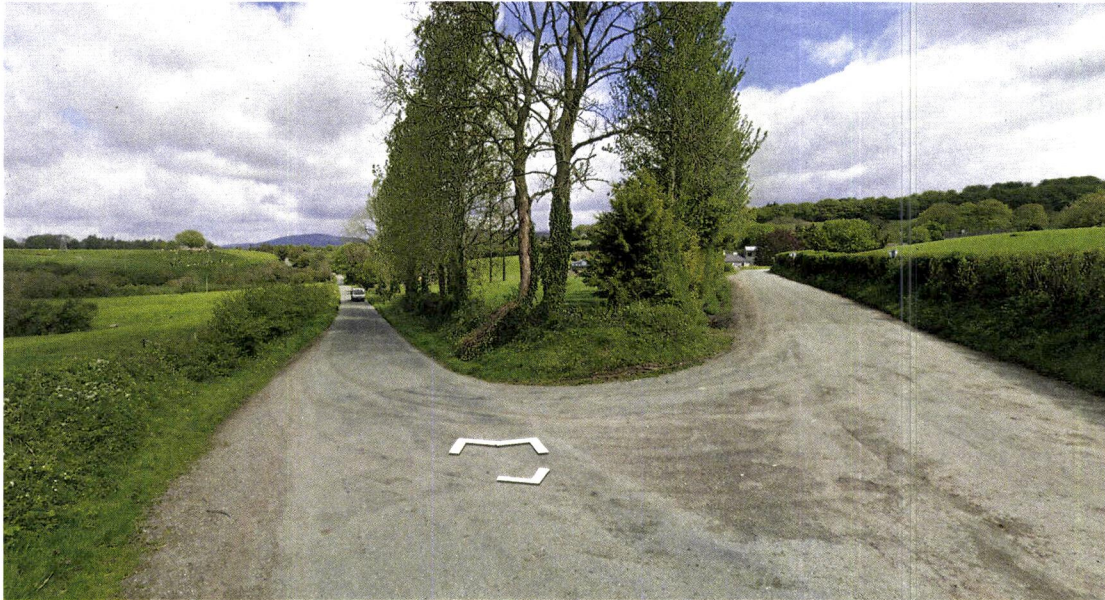
**To:** Fergal Keogh S.E / Edel Bermingham S.E.P. / Suzanne White S.E.P.  
**From:** Dara Keane A.P.  
**Type:** Section 5 Application  
**REF:** EX 31/2024  
**Applicant:** Ross Wilson  
**Date of Application:** 15/07/2024  
**Decision Due Date:** 18/08/2024  
**Address:** Ballintruer More, Stratford on Slaney Co. Wicklow W91 K03D  
**Exemption Query:** I wish to open a new field gateway onto a public road to prevent having to hunt cows on a section of the public road. I wish to just cross the road instead, through new gateway.

**Application Site:** The subject site is located in the rural townland of Ballintruer More, c.6km to the north of Baltinglass town and 1km east of Stratford on Slaney on the eastern side of the N81. The lands are accessed via the L-8296-0 Local Road whilst the proposed entrance will access directly onto the L-8299-0 Local Road. The subject site is an agricultural field which is part of a larger agricultural landholding.

**Google Maps Image and Site Image**







### **Section 5 Referral**

From examining the submitted particulars, it is noted that the section 5 query should be re-worded as follows;

'The erection of an agricultural entrance/ gateway onto public road  
at Ballintruer More, Stratford on Slaney Co. Wicklow.'

### **Planning History**

None noted onsite.

### **Question:**

With respect to the query under Section 5 of the Planning and Development Act 2000 (as amended), as to whether;

*'The erection of agricultural entrance/ gateway onto public road.  
at Ballintruer More, Stratford on Slaney Co. Wicklow.'*

is or is not development and is or is not exempted development.

### **Legislative Context**

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

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

*"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

*"works" includes Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."*



**Section 3(1)** of the Act states the following in respect of 'development':

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

**Section 4** sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act.

**Planning and Development Regulations 2001(as amended)**

**Article 6 (1):**

*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 9 (1):**

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

*(a) If the carrying out of such development would—*

- (i) Contravene a condition attached to permission under Act or be inconsistent with any use specified in permission under the Act,*
  - (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,*
- And so on.*

**Schedule 2: Part 1**

**CLASS 9**

*The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.*

*The height of any such structure shall not exceed 2 metres.*

**Assessment**

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

*"development" means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

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

*"works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.*

I am satisfied that the proposal would involve works and therefore the proposal does constitute development.

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

The erection / construction of gate / gateway would come within the description of exempted development set out under Class 9: Part 1: Schedule 2 Planning and Development Regulations 2001(as amended). Whilst no details of the height of the gateway is submitted given it is a farm entrance, it is reasonable to assume it would not breach the 2m height limitation associated with Class 9.

This exemption would be further limited by the restriction set out under Article 9, and the main relevant restrictions are assessed below;

Article 9(1) (a) 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—

Part (ii)

(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,

From examination, the public road would exceed 4 metres in width at the proposed junction of the new gateway and public road and therefore the new entrance would not be in accordance with article 9(1) (a) (ii).

Part (iii)

(iii) endanger public safety by reason of a traffic hazard or obstruction of road users.

The proposed entrance is located on an existing junction with 2 no. public roads which would be considered a traffic hazard and could endanger public safety at this junction. Therefore, the proposed entrance would not be considered in accordance with article 9(1) (a) (iii).

Part (viiB)

(viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site

It is considered that due to the nature and scale of the proposed development, and the distance to the nearest European site, no Appropriate Assessment issues arise and that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

Part (viiC)

(viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.

Based on the information submitted it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.



## Conclusion:

With respect to the query under Section 5 of the Planning and Development Act 2000 (as amended), as to whether or not the proposal for the 'The removal of existing boundary and erection of agricultural entrance/ gateway at Ballintruer More, Stratford on Slaney Co. Wicklow' is or is not exempted development.

The Planning Authority considers that:

The proposal for 'the erection of agricultural entrance/ gateway at Ballintruer More, Stratford on Slaney Co. Wicklow' is **Development but is not Exempt Development**.

## Main Considerations with respect to Section 5 Declaration:

- i. The details submitted on 15/07/2024;
- ii. Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended);
- iii. Articles 6 & 9 of the Planning and Development Regulations 2001 (as amended);
- iv. Schedule 2, Pt.1 Class 9 of the Planning and Development Regulations 2001 (as amended).

## Main Reasons with respect to Section 5 Declaration:

- 1) The provision of an agricultural shed is works and therefore development having regard to Section 3 of the Planning and Development Act 2000 (as amended).

- 2) The construction of an agricultural entrance would come within the description under Class 9: Part 1 Schedule 2 of the Planning and Development Regulations 2001 (as amended) and is therefore not exempted development.

*Dara Keane*

Dara Keane A.P.  
15/08/2024

*As modified*

*Su N A*

*15/08/2024*

*Issue declaration is recommended.*

*15/08/24*

*Class 9:  
Part 1  
Schedule 2  
of the  
Planning and  
Development  
Regulations  
2001  
(as amended)*



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## MEMORANDUM

### WICKLOW COUNTY COUNCIL

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**TO: Dara Keane**  
**Assistant Planner**

**FROM: Nicola Fleming**  
**Staff Officer**

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**RE:- Application for Certificate of Exemption under Section 5 of the  
Planning and Development Acts 2000 (as amended).  
EX31/2024**

I enclose herewith application for Section 5 Declaration received in full on  
15/07/2024.

The due date on this declaration is 18<sup>th</sup> August 2024.

  
\_\_\_\_\_  
**Staff Officer**

**Planning, Economic & Rural Development**



*Ta an doiciméad seo ar fáil i bhformáidí eile ar iarratas  
This document is available in alternative formats on request*

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe  
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development





## Nicola Fleming

---

**From:** Nicola Fleming  
**Sent:** Tuesday 23 July 2024 12:25  
**To:** 'Ross Wilson'  
**Subject:** RE: FW: Section 5 map

Hi Ross,

I acknowledge receipt of the further details and to advise that a decision is due on your application on 18/08/2024.

Regards,

*Nicola Fleming*

Staff Officer

Planning, Economic & Rural Development

WICKLOW COUNTY COUNCIL, COUNTY BUILDINGS, WICKLOW TOWN, A67 FW96

Ph ☎: +353 (0404) 20148 | ✉: [nfleming@wicklowcoco.ie](mailto:nfleming@wicklowcoco.ie)

Website: <http://www.wicklow.ie>



**From:** Ross Wilson [1]  
**Sent:** Monday 22 July 2024 13:41  
**To:** Nicola Fleming  
**Subject:** Re: FW: Section 5 map

**CAUTION** This email originated from outside Wicklow County Council. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Yes thats it. Tks

On Mon 22 Jul 2024, 12:30 Nicola Fleming, <[NFleming@wicklowcoco.ie](mailto:NFleming@wicklowcoco.ie)> wrote:

**Ross can you confirm that this is where you are proposing the field gate way.**

Regards,

*Nicola Fleming*

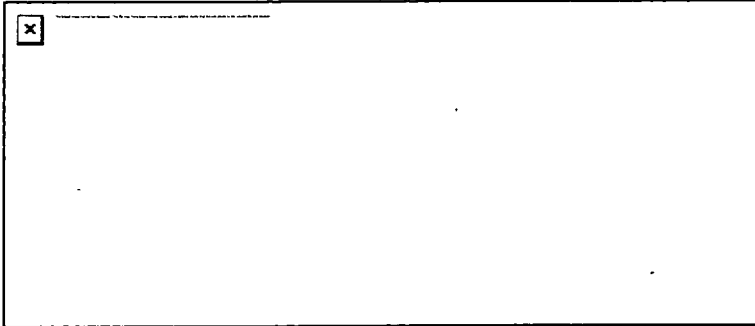
Staff Officer

Planning, Economic & Rural Development

WICKLOW COUNTY COUNCIL, COUNTY BUILDINGS, WICKLOW TOWN, A67 FW96

Ph☎: +353 (0404) 20148 | ✉: [nfleming@wicklowcoco.ie](mailto:nfleming@wicklowcoco.ie)

Website: <http://www.wicklow.ie>





## Nicola Fleming

---

**From:** Ross Wilson  
**Sent:** Monday 15 July 2024 20:23  
**To:** Nicola Fleming  
**Subject:** Re: Application For Planning Section 5  
**Attachments:** image001.jpg; Screenshot\_20240715\_200218\_Chrome.jpg; 20240715\_200638.jpg

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**External Sender - From: (Ross Wilson)**  
This message came from outside your organisation.

Hi Nicola

Apologies only getting back to you now with further information.

Please see attached map and measurements below.

I feel this new proposed entrance would be very beneficial from a health and safety perspective as my cows would only have to cross road and would not be walking on a long section of the road which would be safer for other road users. Also from an animal welfare perspective my cows would be safer and easier on there feet to be on softer roadway.

Let me know if you need any further details or if map is not a good enough drawing.

Many thanks

Ross Wilson

On Fri 12 Apr 2024, 11:12 Nicola Fleming, <[NFleming@wicklowcoco.ie](mailto:NFleming@wicklowcoco.ie)> wrote:

Hi Ross I require some additional information in order to process your application.

I would need a site location map showing us where this site actually is.

We also require a proper scaled map with measurements. You could go too google maps for this is you wanted but we require to know the width of the entrance.

Regards,

Nicola Fleming

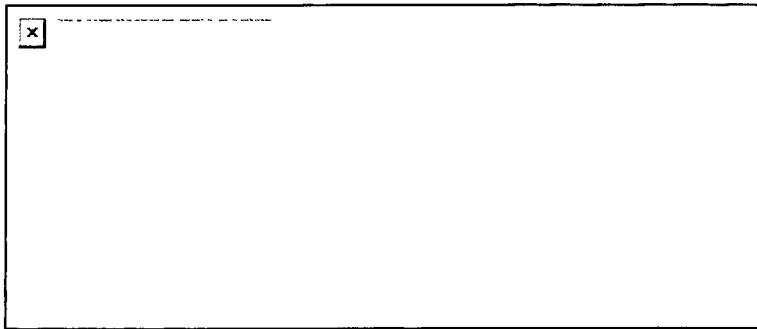
Staff Officer

Planning Department

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Ph ☎: +353 (0404) 20148 | ✉: [nfleming@wicklowcoco.ie](mailto:nfleming@wicklowcoco.ie)

Website: <http://www.wicklow.ie>



**From:** Ross Wilson [mailto:[ross.wilson@wicklowcoco.ie](mailto:ross.wilson@wicklowcoco.ie)] ]  
**Sent:** Thursday 11 April 2024 12:28  
**To:** Planning - Planning and Development Secretariat  
**Subject:** Application For Planning Section 5

Hi

Please find attached forms and small map with details of proposed opening of gate entrance.

My mobile is [redacted] if you need to contact me when viewing land, i can explain my proposal in more detail.

I have paid fee by card at cash desk.



# Comhairle Contae Chill Mhantáin Wicklow County Council

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30<sup>th</sup> April 2024

Mr. Ross Wilson

**RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX31/2024**

A Chara

I wish to acknowledge receipt on 11/04/2024 details supplied by you in respect of the above Section 5 application. I sent an email on 12/04/2024 in relation to additional details required and I have not received a reply. The following details are required in order for us to process your application: -

- A site location map (eircode map will suffice).
- A scaled map with measurements. We require the width of the entrance.

Mise, le meas

NICOLA FLEMING  
STAFF OFFICER  
PLANNING ECONOMIC & RURAL DEVELOPMENT





## Nicola Fleming

---

**From:** Nicola Fleming  
**Sent:** Friday 12 April 2024 11:06  
**To:** 'Ross Wilson'  
**Subject:** RE: Application For Planning Section 5

Hi Ross I require some additional information in order to process your application.

I would need a site location map showing us where this site actually is.

We also require a proper scaled map with measurements. You could go too google maps for this is you wanted but we require to know the width of the entrance.

Regards,

*Nicola Fleming*

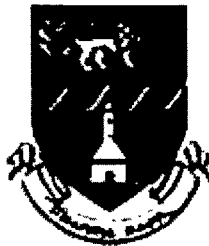
Staff Officer

Planning Department

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**From:** Ross Wilson [mailto:[ross.wilson@wicklowcoco.ie](mailto:ross.wilson@wicklowcoco.ie)]  
**Sent:** Thursday 11 April 2024 12:28  
**To:** Planning - Planning and Development Secretariat  
**Subject:** Application For Planning Section 5

Hi

Please find attached forms and small map with details of proposed opening of gate entrance.

My mobile is [redacted] you need to contact me when viewing land, i can explain my proposal in more detail.

I have paid fee by card at cash desk.

Many thanks

Wicklow County Council  
County Buildings  
Wick  
0404 20100

11/04/2024 12:35:47

Receipt No: 11/0/327813

ROSS WILSON  
OLG GRAZING  
BALLINTURER  
BALTINGLASS

PLANNING APPLICATION FEES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total	80.00 EUR
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Tendered	
Credit Card	80.00
SECTION 5	

Change	0.00
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Issued By: Cindy Driver  
From: Customer Service Hub  
vat reg No 0015233H





Wicklow County Council  
County Buildings  
Wicklow  
Co Wicklow  
Telephone 0404 20148  
Fax 0404 69462

Office Use Only

Date Received \_\_\_\_\_

Fee Received \_\_\_\_\_

RECEIVED  
11 APR 2024

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: ROSS WILSON

Address of applicant: THE OLD GRAZING

BALLINTAUER MORE BALTINGLASS CO WICKLOW

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

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) \_\_\_\_\_

Address of Agent : \_\_\_\_\_

\_\_\_\_\_

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

RECEIVED  
11 APR 2024



### 3. Declaration Details

i. Location of Development subject of Declaration BALLINTRUER MIRE

ii. Are you the owner and/or occupier of these lands at the location under i. above ?  
Yes/ No.

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

iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, on 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 I WISH TO OPEN A  
NEW FIELD GATEWAY ONTO A  
PUBLIC ROAD TO PREVENT HAVING  
TO HUNT COWS ON A SECTION OF  
THE PUBLIC ROAD, I WISH TO JUST CROSS THE  
ROAD INSTEAD THROUGH NEW GATEWAY

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

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

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



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

vii. List of Plans, Drawings submitted with this Declaration Application \_\_\_\_\_

A SMALL MAP ATTACHED

viii. Fee of € 80 Attached ? PAID BY PHONE / CARD PAYMENT

Signed : RS M

Dated : 4/4/24

**Additional Notes :**

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

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

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

B. Land Reclamation -

The provisions of Article 8 of the Planning and Development Regulations 2001 (as amended) now applies to land reclamation, other than works to wetlands which are still

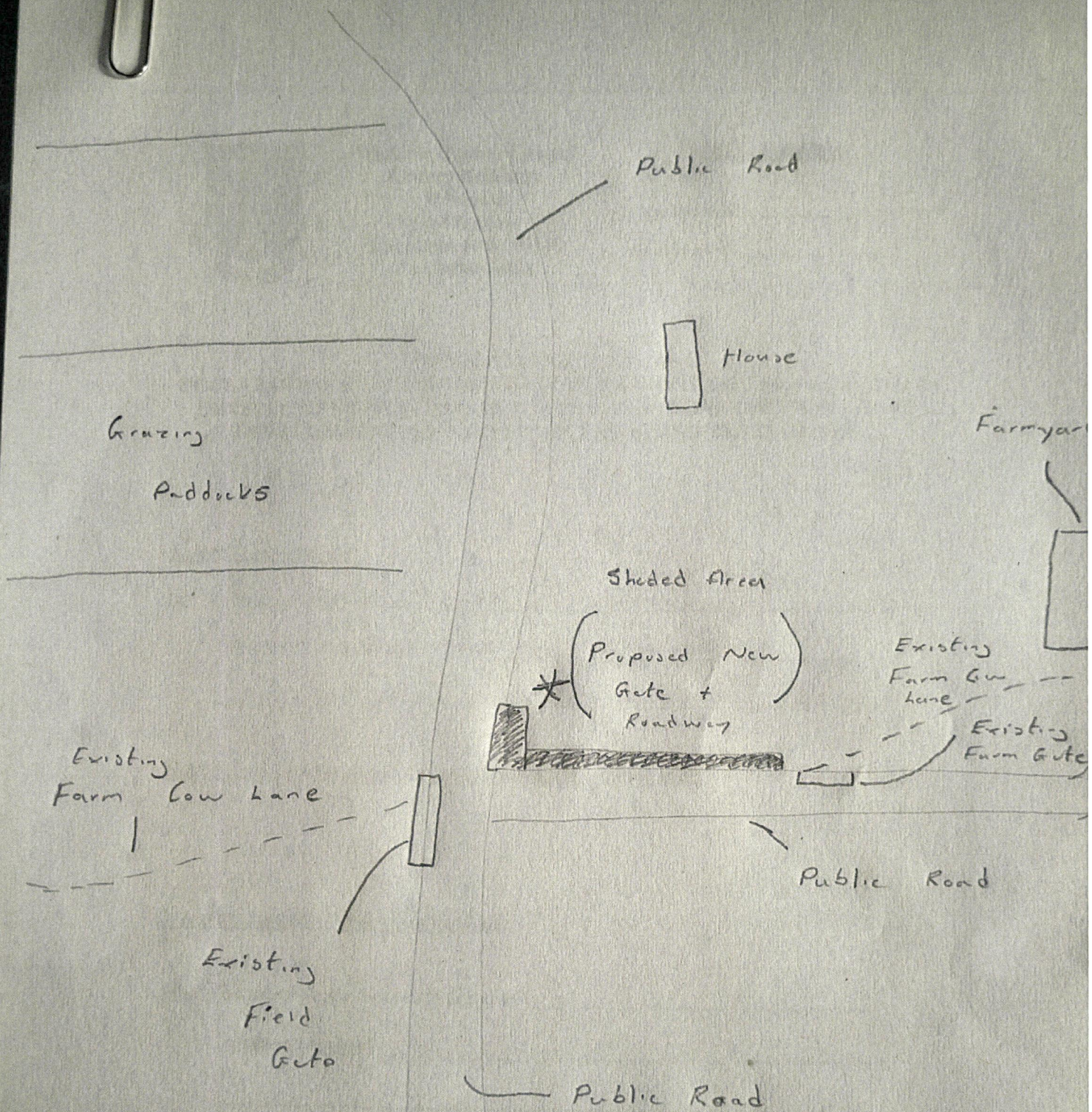


**From:** [Ed-Ed Birmingham](#)  
**To:** [Nicola Fleming](#)  
**Subject:** Section 5 map  
**Date:** Monday 27 July 2024 12:28:36  
**Attachments:** [image033.png](#)  
[image034.png](#)



Edel Birmingham Sept  
Middle County Council  
0464-72112





Cows are currently walking on a small section of the public road twice a day. I would like to put in new roadway on my land and open gate so that cows would only have to cross road in one place.



(4.12 m)

→ 14 Ft Gate Proposed





Geographic Address

Postal Address

English | Gaeilge

THE OLD GRAZING

BALLINTRUER MORE

BALTINGLASS

CO. WICKLOW

W91 K03D

[Address Query ?](#)



BALLINTRUER  
MORE