



Comhairle Contae Chill Mhantáin Wicklow County Council

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

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

William Doran

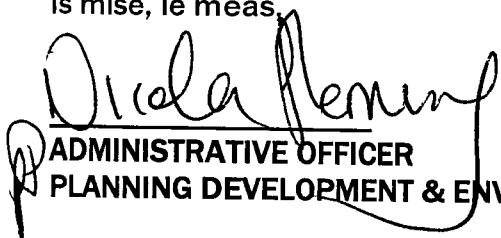
26th July 2023

**RE: Declaration in accordance with Section 5 of the Planning & Development Acts
2000 (As Amended) – EX45/2023**

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.

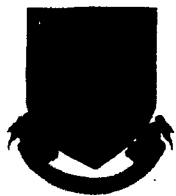
Is mise, le meas,


**ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.**

*Tá 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, Forbairt Pleanála agus Comhshaol.
All correspondence should be addressed to the Director of Services, Planning Development & Environment.





Comhairle Contae Chill Mhantáin Wicklow County Council

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

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

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

Applicant: William Doran

Location: 11 Oaklands Court, Greystones, Co. Wicklow

CHIEF EXECUTIVE ORDER NO. CE/PDE/1296/2023

A question has arisen as to whether "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" is or is not exempted development.

Having regard to:

- The details received with this section 5 application (EX45/2023) on the 11th July 2022.
- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).
- Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- the planning history of the site

Main Reasons with respect to Section 5 Declaration:

1. The proposal for "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" would be development having regard to Section 3 of the Planning and Development Act 2000 (as amended), as set out in the documents lodged.
2. The works would consist of or comprise the formation of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width and would not therefore be exempt having regard to Article 9(1)(a)(ii) of the Planning and Development Regulations 2001 (as amended).

The Planning Authority considers that "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" is development and is not exempted development.

Signed:


ADMINISTRATIVE OFFICER,
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 26th July 2023

Tá 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, Forbairt Pleanála agus Comhshaol.
All correspondence should be addressed to the Director of Services, Planning Development & Environment.



WICKLOW COUNTY COUNCIL

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

CHIEF EXECUTIVE ORDER NO. CE/PDE/1296/2023

Reference Number: EX 45/2023

Name of Applicant: William Doran

Nature of Application: Section 5 Referral as to whether "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" is or is not exempted development

Location of Subject Site: 11 Oaklands Court, Greystones, Co. Wicklow

Report from Suzanne White, SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- The details received with this section 5 application (EX45/2023) on the 11th July 2022.
- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).
- Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- the planning history of the site

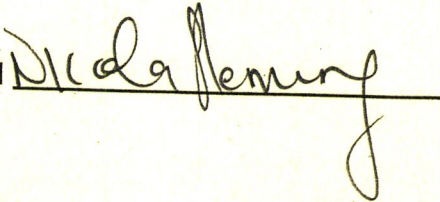
Main Reasons with respect to Section 5 Declaration:

1. The proposal for "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" would be development having regard to Section 3 of the Planning and Development Act 2000 (as amended), as set out in the documents lodged.
2. The works would consist of or comprise the formation of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width and would not therefore be exempt having regard to Article 9(1)(a)(ii) of the Planning and Development Regulations 2001 (as amended).

Recommendation

The Planning Authority considers that "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" is development and is not exempted development. as recommended in the report by the SEP.

Signed



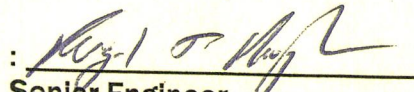
Dated 25th day of July 2023

ORDER:

I HEREBY DECLARE:

That "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" **is development and is not exempted development** within the meaning of the Planning & Development Acts 2000 (as amended).

Signed

: 
Senior Engineer
Planning Development & Environment

Dated 26th day of July 2023



**WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT**

Section 5 – Application for declaration of Exemption Certificate

REF:	EX45/2023
NAME:	WILLIAM DORAN
DEVELOPMENT:	VEHICULAR/PEDESTRIAN ACCESS THROUGH SIDE GARDEN/OPEN SPACE
LOCATION:	11 OAKLANDS COURT, GREYSTONES, CO. WICKLOW

The Site: A two storey detached dwelling and curtilage, located on the northern side of Oaklands Court.

Relevant Planning History: None.

Question:

The applicant has applied for a determination as to whether the following works to the existing dwelling is or is not development and is or is not exempted development:

“the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow A63 A314 as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow A63 N260, which is the dwelling to the north and rear of 11 Oaklands Court”

Legislative Context:

-Planning and Development Act 2000 (as amended)

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

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

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

“Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...”

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

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;*

Planning and Development Regulations, 2001 (as amended)

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

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

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 a permission under the Act or be inconsistent with any use specified in a 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,*

Part 1 (Classes 1-8) of Schedule 2 describes classes of development situated within the curtilage of a house which are exempted development, provided that such development complies with the associated conditions and limitations.

Part 1 (Classes 9-13) of Schedule 2 describes classes of development comprising of sundry works which are exempted development, provided that such development complies with the associated conditions and limitations.

Planning History

96/4648: planning permission granted for “14 no. two storey houses, 1 no. bungalow and ancillary site development works”

Condition G2:

“The rear gardens of sites No. 11 and 12 shall be increased in area to include the proposed open space adjoining to the west. The portion of open space to be included shall be in line with the front of these houses. The boundary walls, separating the increased garden from the open space area, shall be 2m high plastered and capped and all tree root systems shall be bridged. The trees within this expanded site shall be preserved and shall not be removed unless agreed in writing by Wicklow County Council”

REASON: To prevent narrow unsupervised open space areas and to preserve the sylvan character of this part of the site.”

Condition M4:

“All open space shall be levelled, drained, cultivated and topsoiled if necessary with vegetable topsoil. Planting with trees and shrubs appropriate to the area shall be carried out and the remaining areas shall be sown with grass seed to give a uniform pasture land condition. Open space areas shall be dedicated to the use of the residents on completion of the works of the development of the estate. Prior to the commencement of the development the developer shall enter into a licence to the satisfaction of Wicklow County Council in a form similar to that set out on the following page”

REASON: To ensure that the amenity open space shall be left in a satisfactory and useful condition on completion of the development and will be available for amenity and recreation purposes to the residents of the estate.”

97/6275: planning permission granted for “amendments to boundaries of site no.s 11&12 of approved housing development (Ref. 4648/96) together with construction of boundary walls”

Condition 2:

“All of the conditions attached to planning permission ref. 4648/96, under which permission was granted for the entire housing development, shall apply as far as they relate to the development.

REASON: For clarification and in the interests of proper planning and development."

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" include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

I am satisfied that the creation of a new vehicular access would comprise works to the existing property and therefore constitutes development.

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

I note relevant appeal reference ABP-308613-20.

With regard to this application, I note that:

- planning permission Ref. 97/6275 does not appear to have been implemented in full, specifically any paved access from Ampleforth;
- planning permission Ref. 4648/96, which was implemented, did not show the lands to the west of 11 Oaklands Court as forming a means of access and there has been no planning permission in respect of same since;
- the width of the surfaced carriageway of Oaklands Court directly adjacent to the subject lands exceeds 4 metres.

Consequently, it is considered that the use of the lands to the west of 11 Oaklands Court as a vehicular/pedestrian access/egress onto Oaklands Court would constitute the formation of a new means of access to a public road the width of which exceeds 4metres. The proposal would not therefore constitute exempted development having regard to Article 9(1)(a)(ii) of the Planning and Development Regulations 2001 (as amended).

Recommendation:

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

Whether or not *"the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow"* is or is not development, and is or is not exempted development.

The Planning Authority considers that:

The proposal for *"the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow"* is development, and is not exempted development.

Main Considerations with respect to Section 5 Declaration:

//

- The details received with this section 5 application (EX45/2023) on the 11th July 2022.
- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).
- Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- the planning history of the site.

Main Reasons with respect to Section 5 Declaration:

- 1) The proposal for "the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow" would be development having regard to Section 3 of the Planning and Development Act 2000 (as amended), as set out in the documents lodged.
- 2) The works would consist of or comprise the formation of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width and would not therefore be exempt having regard to Article 9(1)(a)(ii) of the Planning and Development Regulations 2001 (as amended).



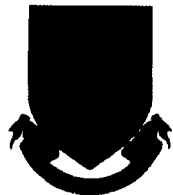
21/07/2023

Suzanne White

Senior Executive Planner

Declaration is detailed to issue.
The proposal may also materially contravene a condition attached to a permission and hence the provisions of Article 9(1)(a)(i) may also apply. However, based on the documents submitted I consider further information and investigation would be required to decide on this matter definitively. Given the substantive issue above relating to Article 9(1)(a)(ii) I consider declaration can issue as recommended.

Reg 1 T Mayhew SE
24/07/23



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

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

MEMORANDUM

WICKLOW COUNTY COUNCIL

TO: Suzanne White FROM: Nicola Fleming
Senior Executive Planner Staff Officer

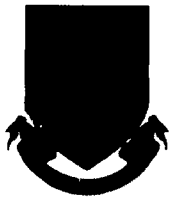
**RE:- Application for Certificate of Exemption under Section 5 of the
Planning and Development Acts 2000 (as amended).
Ex 45/2023 – William Doran**

I enclose herewith for your attention application for Section 5 Declaration
received 11th July 2023

The due date on this declaration is 7th August 2023.



Staff Officer
Planning Development & Environment



Comhairle Contae Chill Mhantáin Wicklow County Council

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

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

11th July 2023

William Doran

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

Ex 45/2023 – 11 Oaklands Court, Greystones, Co. Wicklow A63 A314

A Chara

I wish to acknowledge receipt on 11th July 2023 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 7th August 2023.

Mise, le meas

NICOLA FLEMING

STAFF OFFICER

PLANNING DEVELOPMENT AND ENVIRONMENT



William Doran

**Planning and Project Management Consultant,
Land and Property Surveys
Fire Services & Disability Access Consultant,**

**Planning Dept,
Wicklow County Council,
County Hall,
Wicklow,
Co. Wicklow.**

26th June 2023

JN 2583

SECTION 5 Application:

Dear Sir,

I hereunder set out a Section 5 application. I enclose the appropriate fee of €80.

SITE LOCATION

Part of the side garden of 11 Oaklands Court, Greystones, Co. Wicklow A63 A314, outlined in red on Map 1 is the **subject land** of this Section 5 Application. Map 1 shows the location of the **subject land**, Amplefort and 11 Oaklands Court.

QUESTION:

A question arises as to whether the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow A63 A314 as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow, A63 N260, which is the dwelling to the north and rear of 11 Oaklands Court, is or is not development and/or is or is not exempted development.

I hereunder set out the detail of the question.

AMPLEFORT, RATHDOWN ROAD, GREYSTONES, CO. WICKLOW, A63 N260:

Amplefort is a detached dwelling with an existing historic established direct access onto Rathdown Road, immediately to the west and abutting Saint Kevin's National School.

SUBJECT LAND:

The land the subject of this Section 5 application is outlined in red on Map 1, and forms part of the garden of 11 Oaklands Court, Greystones, Co. Wicklow A63 A314.

OWNERSHIP:

The subject land is in the ownership of No 11 Oaklands Court outlined in red on Map 1 with the balance of the land at 11 Oaklands Court outlined blue on Map 1.

RELEVANT PLANNING HISTORY OF THE SUBJECT SITE:

Fourteen two-storey dwellings and one bungalow dwelling now known as Oaklands Court was developed by Town Park Estates Limited on foot of a planning permission granted on the 14th December 1996 by Wicklow County Council under Planning Register Reference No 96/4648 subject to conditions.

Two planning conditions on the permission (96/4648) are relevant to the current Section 5 application in relation to the subject lands.

Condition M4 of that permission (96/4648) plainly stated.

“all open space shall be levelled, drained, cultivated and topsoiled if necessary with vegetable topsoil. Planting with trees and shrubs appropriate to the area shall be carried out and the remaining areas shall be sown with grass seed to give a uniform pasture land condition. Open space areas shall be dedicated to the use of the residents on completion of the works of the development of the estate. Prior to the commencement of the development the developer shall enter into a licence to the satisfaction of Wicklow County Council in a form similar to that set out on the following page” (APPENDIX I)

REASON: *To ensure that the amenity open space shall be left in a satisfactory and useful condition on completion of the development and will be available for amenity and recreation purposes to the residents of the estate.”*

AND

Condition G2 of that permission (96/4648) plainly states

“The rear gardens of sites No 11 and 12 shall be increased in area to include the proposed open space adjoining to the west. The portion of open space to be included shall be in line with the front of these houses. The boundary walls, separating the increased garden from the open space area, shall be 2m high plastered and capped and all tree root systems shall be bridged. The trees within this expanded site shall be preserved and shall not be removed unless agreed in writing by Wicklow County Council” (APPENDIX II)

REASON: *“To prevent narrow unsupervised open space areas and to preserve the sylvan character of this part of the site”*

Based on the foregoing Condition M4 a deed of dedication or dedication agreement was prepared on behalf of Town Park Estates Limited and submitted to the Planning Authority.

In a memo dated 2nd August 2001 from David Sweetman, Law Agent, Wicklow County Council to Helen Purcell, Staff Officer, Planning Section, Wicklow County Council, David Sweetman confirmed *"that the dedication agreement in favour of the residents, etc as amended and initialled is now in order and may be treated as having complied with the relevant planning condition."* (APPENDIX III).

The Local Authority was satisfied that Town Park Estates Limited in preparing and submitting the dedication agreement had satisfied the requirement of Condition M4 of planning register reference No 96/4648.

Based on the foregoing Condition G2 the open space to the west and to the rear of the front building line of No 11 Oaklands Court authorised use transferred from open space to private garden (Marked A shaded green on the attached Map 2). The balance of the land remains as open space (Marked B and shaded blue on the attached Map 2).

Both Plots A and B are now in the ownership of No 11 Oaklands Court.

Town Park Estates Limited lodged a second planning application under planning register reference No 97/6275 seeking amendments to boundaries of site no's 11 and 12 of approved housing development (ref 4648/96).

The proposed development (97/6275) is ambiguously described in the public notice as follows, *"amendments to boundaries of site no.'s 11 & 12 of approved housing development (Ref. 4648/96) together with construction of boundary walls"* It is not plain what changes are sought and it does not specify what conditions, if any, of the parent permission are to be impacted. The grant of permission (97/6275) plainly states at condition 2 *"All of the conditions attached to planning permission Ref 4648/96, under which permission was granted for the entire housing development, shall apply as far as they relate to the development"*

Reason: *"For clarification and in the interest of proper planning and development"*

In relation to planning Ref No 97/6275 it is plain from the public notices published that planning permission was not sought or obtained for an access road to serve the dwelling known as Amplefort, nor, was planning permission sought or obtained specifically for to alter condition G2 of Reg Ref 4648/96, and sever the attachment of the land to the west from the garden of No 11 Oaklands Court, or to alter Condition M4 to alter the planning permitted status of the land to the front of No 11 from open space.

Further, it is not plain what alteration, if any, was required in relation to site No 12, as no description was published in the public notices. Planning permission can be granted only for works described in the public notices.

Planning Ref No 96/6275 did not materially alter any of the conditions attached to Planning Ref No 4648/96, particularly conditions G2 and M4.

There is no evidence that planning permission reg ref no 97/6275 was ever carried out and it is now out of time.

While mention is made in the submitted documents on 97/6275 of a possible driveway from Oaklands Court to serve Amplefort no application was made in relation to that matter then or since.

The **subject land** is not in the ownership of Amplefort.

NEARBY PLANNING APPLICATIONS FOR VEHICULAR ACCESS DRIVEWAY OFF OAKLANDS COURT FROM ADJACENT PROPERTY:

The following relevant planning applications were made in relation to a dwelling known as Santos, Blacklion, Greystones, Co. Wicklow A63 T3C1, marked C on Map 2, shown also in photograph 5.

Santos, sometimes known as Santos Cottage, is adjacent to the subject lands. It was proposed to access the road in Oaklands Court from Santos.

Three similar planning applications were made between 2020 and 2021, as set out below.

20/979 REFUSED:

“new vehicular access via Oaklands Court, Church Lane, Greystones, Co. Wicklow, new timber gate and rear boundary wall”.

REASON FOR REFUSAL:

“Having regard to the location of the proposed entrance over lands which form part of the public amenity space of Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow this development in the absence of such evidence would be contrary to traffic safety and the proper planning and sustainable development of the area”.

21/855 REFUSED:

“new vehicular access via Oaklands Court, Church Lane, Greystones, Co. Wicklow, new timber gate and rear boundary wall”

REASON FOR REFUSAL:

“Having regard to the location of the proposed entrance over lands which form part of the public amenity space of Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow this development in the absence of such evidence would be contrary to traffic safety and the proper planning and sustainable development of the area”.

21/1177 REFUSED& REFUSED ON APPEAL ABP-312173-21 decided 08/04/2022.

“new vehicular access via Oaklands Court, Church Lane, Greystones, Co. Wicklow, new timber gate and rear boundary wall”

REASON FOR REFUSAL:

“Having regard to the location of the proposed entrance over lands which form part of the public amenity space of Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow this development in the absence of such evidence would be contrary to traffic safety and the proper planning and sustainable development of the area”.

I herewith attach the Planning Authority Planners Reports (**APPENDIX IV A, B, & C**), for each of the decisions together with the An Bord Pleanála Inspectors Report setting out the reasons for refusal (**APPENDIX V**).

It is plain from the foregoing that the refusal was for various related reasons.

The applicant did not have sufficient title to carry out the development and in the absence of such evidence would be contrary to traffic safety and the proper planning and development of the area.

OPEN SPACE TAKEN-IN-CHARGE BY WICKLOW COUNTY COUNCIL:

For clarity I attach **Map 3** showing the open space taken in charge by Wicklow County Council, marked OS 1 and OS 2. The open space shaded dark blue is under the control of the Oaklands Court residents and was not taken-in-charge.

ALLEGED RIGHT-OF-WAY:

In or about 8th December 1997, circa one year after the grant of planning permission 96/4648 Town Park Estates Limited purported to grant a right of way over the land the subject of planning conditions G2 and M4 (96/4648) to the owners of Amplefort, who were the former owners of the land now comprising Oaklands Court.

I attach the purported right-of-way document at **Appendix VI**.

The purported right-of-way by a Deed of Grant from the developer to the vendors of the site (Amplefort) in December 1997, is a serious contravention of the Grant of Planning Permission (96/4648) in December 1996.

The Deed purported to Grant a Right of Way to Amplefort to exit their dwelling onto the public roadway adjacent to 11 Oaklands Court despite the provisions of Planning Register Reference No 96/4648, condition G2 and in direct contravention thereof.

It is obvious that the parties to that Deed had full knowledge of the Terms and Conditions as set forth in Planning Permission (96/4648). Timing confirms these facts – See Photographs 1-7.

This Deed with Map outlined the stretch of land encompassed by the attached Map **APPENDIX VI**. I have overlaid the purported 1997 right-of-way on the modern site map.

The purported 1997 right-of-way was in fact fenced/gated at both ends by Amplefort but incapable of ever being used and in fact was never used. Problems were created from a practical point of view, in that the land concerned failed to provide for the finished construction of the development and did not reach the Amplefort site nor the roadway at Oaklands Court (See Map 4) and therefore was/is deficient. Amplefort have now in 2023 constructed a new road within the Amplefort garden (See photographs 1, 2 and 3), removing a 400mm high concrete block wall in the process to allow vehicular access to the **subject lands** to facilitate egress onto Oaklands Court.

The Burden Registered in 2013 uses a duplicate Deed executed in 2013, which as a consequence is of no effect given the earlier Grant in 1997.

CONDITION OF THE SUBJECT LAND:

Since the completion of the Oaklands Court Estate the **subject lands** at A & B (Map 2) were overgrown and unused See Photograph 4 - 7.

CONDITION OF LAND IN AMPLEFORT ABUTTING THE SUBJECT LANDS:

Photograph 1 shows the garden in Amplefort on the 11th July 2022, when viewed from the north end of the subject land – Point X shown on Map 4.

Photographs 2 and 3 show the same garden from the same viewpoint X in January 2023 and March 2023.

It is plain in Photograph 2 garden clearance is taking place. It is important to note in this photograph that a 400mm high concrete wall prevent vehicles entering the **subject land** from Amplefort.

In photograph 3 it is plain than hardcore is being laid to form a roadway through and from Amplefort into the subject land and thence onto the public road.

OWNERSHIP OF THE SUBJECT LANDS:

When the Owners of No 11 Oaklands Court became aware of the planning condition G2 (PP Reg Ref No 4648/96), they purchased the **subject land** off Town Park Estates Limited. The registration is pending in the Property Registration Authority. (Dealing No D2022LR009824A)

I attach photographs 5-7 showing the condition of the subject land prior to and about the time the subject land was acquired by the owners of No 11 Oaklands Court, and the condition of the Amplefort lands to the rear (Photo 1).

It has come to my attention that recent works are being undertaken on the Amplefort land immediately adjoining and to the rear of the subject land. The works appear to be preparation of a driveway to link up with the subject lands and exit onto Oaklands Court to the west of 11 Oaklands Court. See Photograph 1 before works and Photograph 2 and 3 during works.

OAKLANDS COURT:

The roadway known as Oaklands Court in front of the **subject land** has a metalled surface in excess of 4m wide (Circa 9m).

In making this submission I have had regard particularly to the following:

- (a) Section 3 (1) of the Planning and Development Act 2000 as amended,
- (b) Article 6 (1) and Article 9 (1) of the Planning and Development Regulations 2001, as amended,
- (c) Schedule 2 Part 1, Class 5 of the Planning and Development Regulations 2001, as amended,
- (d) The nature and scale of the development questioned.

IS OR IS NOT DEVELOPMENT:

The question relates to the change of use of land from private garden, in part and open space in part and the forming of a vehicular and pedestrian entrance onto a public road the metalled width of which is in excess of 4m wide.

Firstly, it is necessary to establish if the subject works constitutes development. Section 3 (1) of the Planning and Development Act, 2000, as amended defines 'development' as follows:

"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."

It is plain the works to change of use of land from private garden, in part and open space in part to a vehicular and pedestrian entrance onto a public road the metalled width of which is in excess of 4m wide is development as it requires the carrying out of works on, in, over or under the land and requires the material change of use of the land as set out above.

This is reinforced by the fact Article 9 (1) describes *Development to which article 6 relates shall not be exempted development for the purpose of the Act – (a) if the carrying out of such development would –*

- (i) *contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- (ii) *consist of or 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,*

The foregoing Article 9 (1) (a) (i), (ii) and (iii) specifically excludes the formation, laying out or materially widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width.

It is plain therefore the proposed forming of a means of access from the public road in Oaklands Court to the dwelling known as Amplefort, Rathdown Road, Greystones, Co. Wicklow, A63 N260, is development.

It is plain above the Planning Authority and An Bord Pleanala considered the forming of a vehicular access from Santos onto Oaklands Court, in three separate planning applications and one appeal to An Bord Pleanala and refused planning permission in all three cases, on grounds which included traffic hazard as a reason.

IS OR IS NOT EXEMPTED DEVELOPMENT:

Article 6 and Schedule 2 Part 1 Class 5 of the Planning and Development Regulations 2001 as amended defines exempted development in relation to a gate or gateway bounding the curtilage of a house thus *"The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete. Subject to conditions and limitations in Column 2 as follows:*

"1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.

2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.

3. No such structure shall be a metal palisade or other security fence".

All subject to Article 9 (1) of the Planning and Development Regulations 2001, as amended, and quoted above.

Amplefort does not own the **subject land** where it is proposed to place the gate near Oaklands Court public road and therefore it is not within the curtilage of the dwelling proposed to be served by the access roadway, as required by Class 5.

It is plain from the foregoing that the forming of a vehicular access to serve the dwelling known as Amplefort, Rathdown Road, Greystones, Co. Wicklow, A63 N260 onto the public Road in front of 11 Oaklands Court, is not exempted development.

CONCLUSION:

Based on the foregoing I ask the Wicklow County Council Planning Authority, to conclude the forming of a vehicular/pedestrian access over part of the garden and part of the open space to the side of 11 Oaklands Court, Greystones, Co Wicklow A63 A314 onto the public road in front of 11 Oaklands Court is development and is not exempted development.

I apologise for the length of this submission, but it was necessary to set out all the relevant facts in this matter. I look forward to receiving your response.

Yours Faithfully,



William Doran.

5

Wicklow County Council
County Buildings
Wicklow
0404-20100

11/07/2023 09 43 28

Receipt No 11/0/315799

WILLIAM DORAN
7 ST MARY'S ROAD
BALLSBRIDGE
DUBLIN 4
D04 X2R1

EXEMPTION CERTIFICATES	80 00
GOODS	80 00
VAT Exempt/Non-vatable	

Total	80 00 EUR
-------	-----------

Tendered	
Cheque	80 00

Change	0 00
--------	------

Issued By Cashier5MW
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 _____

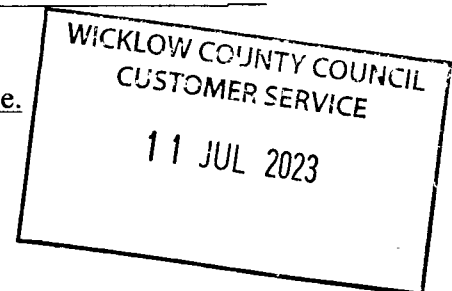
**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000(AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

(a) Name of applicant: William Doran (Statutory right) _____

Address of applicant: _____

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

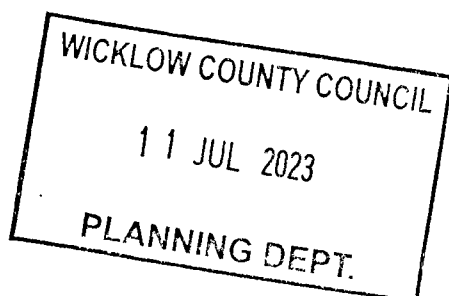


2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) See A ABOVE

Address of Agent : _____

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



3. Declaration Details

- i. Location of Development subject of Declaration _____
11 Oaklands Court, Greystones, Co. Wicklow A63 A314
- 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 occupier _____
Ronan & Deborah Nicholson,
11 Oaklands Court, Greystones, Co. Wicklow A63 A314

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 _____

*whether the use of part of the side garden/open space at 11 Oaklands Court, Greystones, Co. Wicklow A63 A314 as a vehicular/pedestrian access/egress onto Oaklands Court to serve Amplefort, Rathdown Road, Greystones, Co. Wicklow, A63 N260, which is the dwelling to the north and rear of 11 Oaklands Court, is or is not development and/or is or is not exempted development. **SEE ATTACHED REPORT FOR DETAILS.***

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 _____
P&DA 2000 as amended Section 3 (1)
P&DR 2001 as amended Article 6 (1) & 9 (1)
Schedule 2 Part 1 Class 5

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 _____
1. Report and photographs
2. Appendices I, II, III, IV A, IV B, IV C, V & VI
3. Maps 1, 2, 3, & 4
4. Section 5 Form
5. Planning OSI Location Map

viii. Fee of € 80 Attached ? YES

Signed :  Dated : 10/07/2023

PHOTOGRAPHS
AT AMPLEFORT AND 11 OAKLANDS COURT



AERIAL PHOTOGRAPH



1. VIEW FROM POINT X INTO THE GARDEN OF AMPLEFORT
TAKEN ON THE 11TH JULY 2022

THE CONSERVATORY IN THE DISTANCE ON THE RIGHT IS PART OF AMPLEFORT



2. VIEW FROM POINT X INTO THE GARDEN OF AMPLEFORT
TAKEN ON THE 12TH JANUARY 2023

NOTE 400MM HIGH CONCRETE WALL PREVENTING ANY VEHICULAR ACCESS
BETWEEN AMPLEFORT AND 11 OAKLANDS COURT.
THE CONSERVATORY IN THE DISTANCE ON THE RIGHT IS PART OF AMPLEFORT



3. VIEW FROM POINT X INTO THE GARDEN OF AMPLEFORT
TAKEN ON THE MARCH 2023
THE CONSERVATORY IN THE DISTANCE ON THE RIGHT IS PART OF
AMPLEFORT (See Maps)



4. VIEW OF OVERGROWN **SUBJECT LAND** FROM OAKLANDS COURT
August 2009.



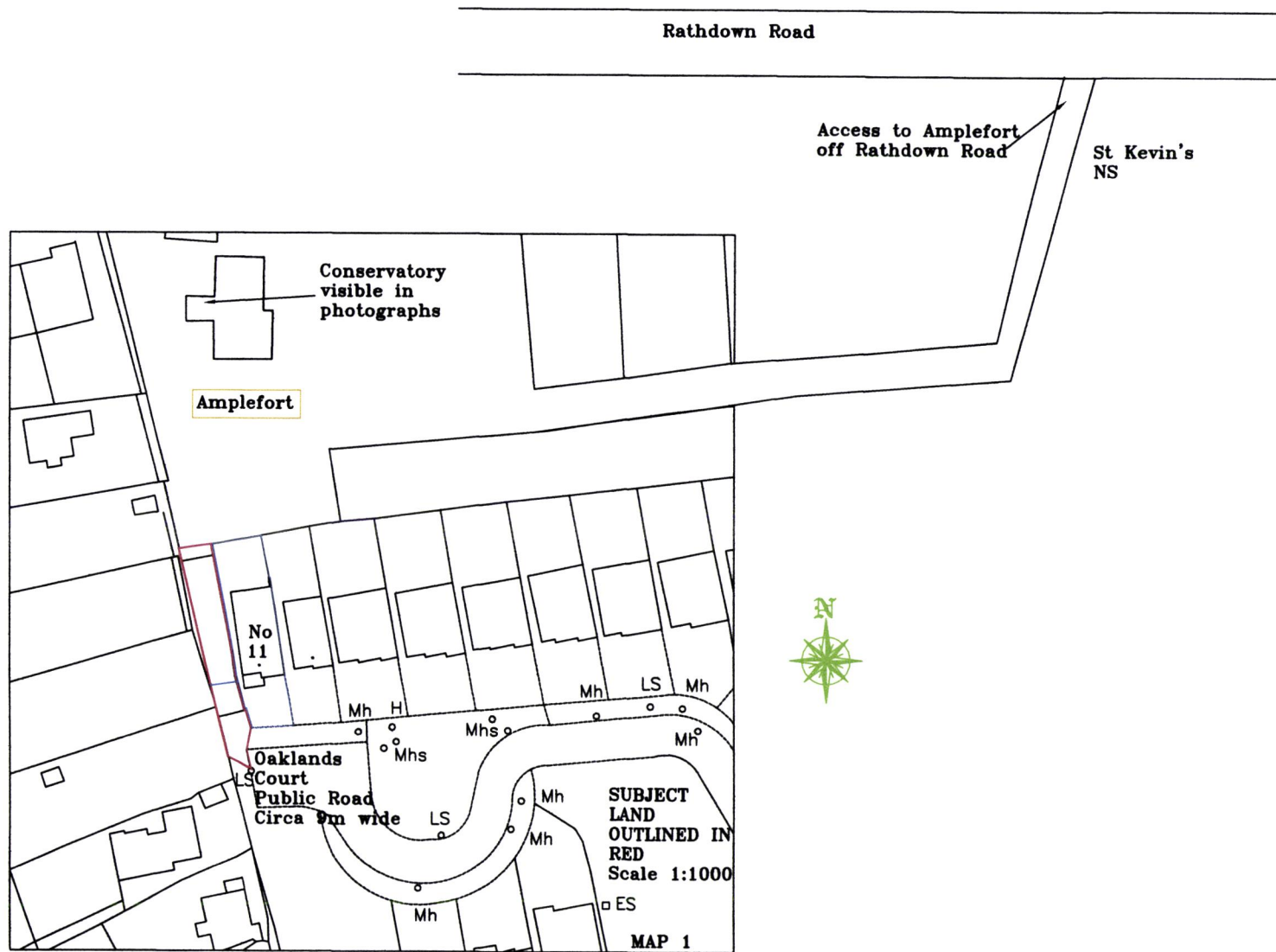
5. SANTOS IS THE LOW BUILDING TO THE LEFT OF THE LAMP POST,
THE **SUBJECT LAND** IS BEHIND THE GOAL POST AND 11 OAKLANDS
COURT IS THE DWELLING TO THE RIGHT.



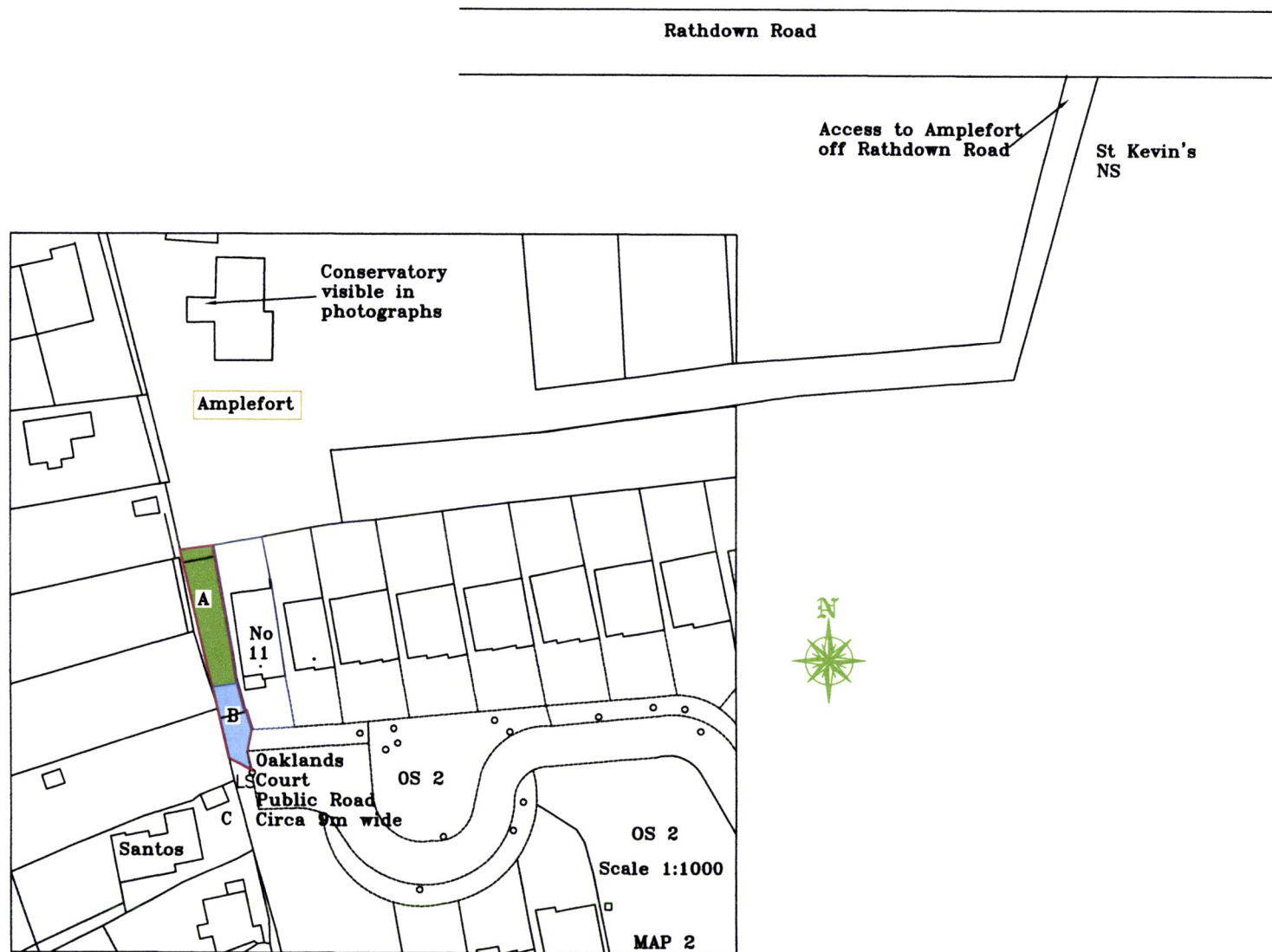
6.VIEW OF OVERGROWN **SUBJECT LAND** FROM OAKLANDS COURT July 2015.



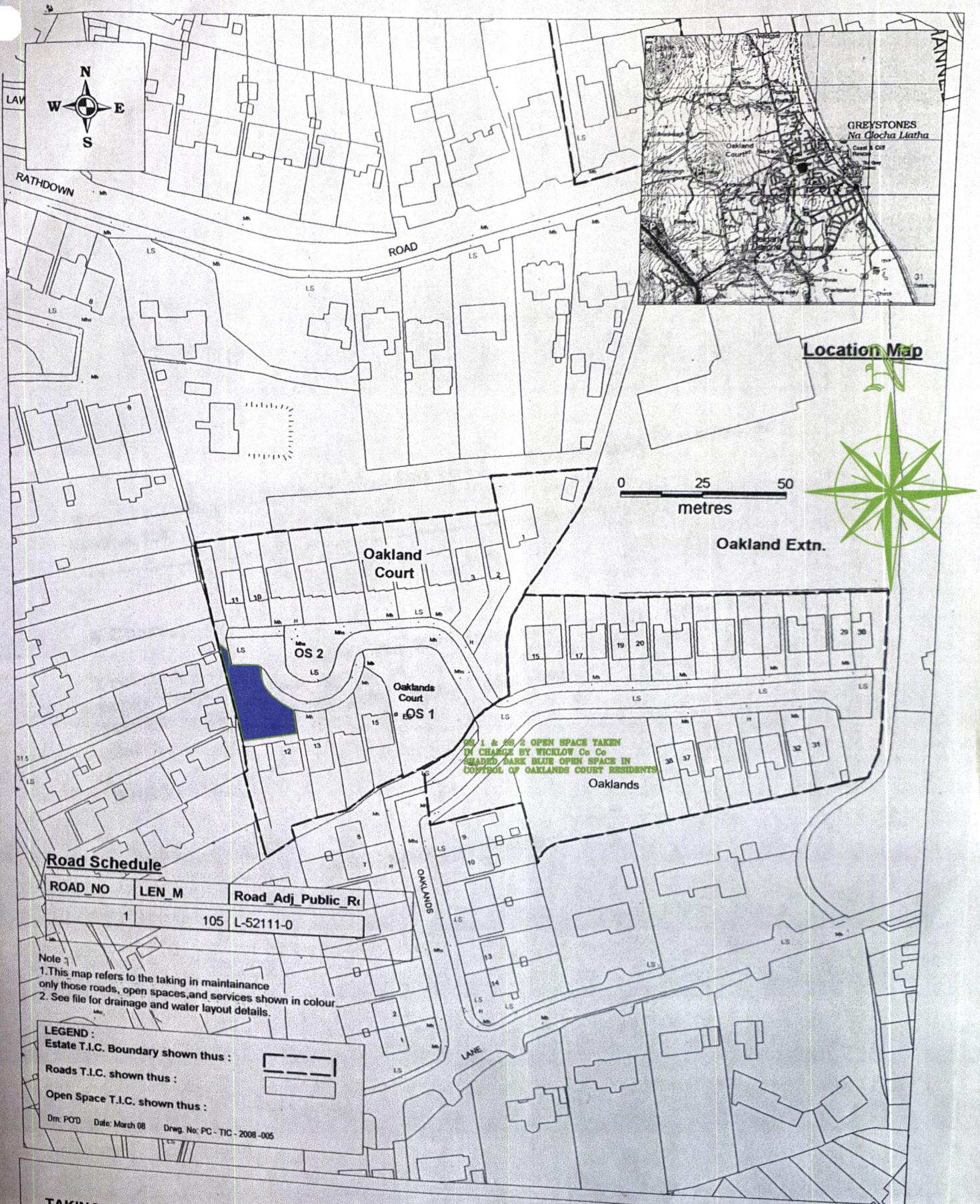
7.VIEW OF **SUBJECT LAND** APRIL 2021, AMPLEFORT IS BEHIND TIMBER FENCE



MAP 1



MAP 2



Road Schedule

ROAD NO	LEN M	Road Adj Public R
1	105	L-52111-0

Note

1. This map refers to the taking in maintenance only those roads, open spaces, and services shown in colour.
2. See file for drainage and water layout details.

LEGEND:

Estate T.I.C. Boundary shown thus :

Roads T.I.C. shown thus :

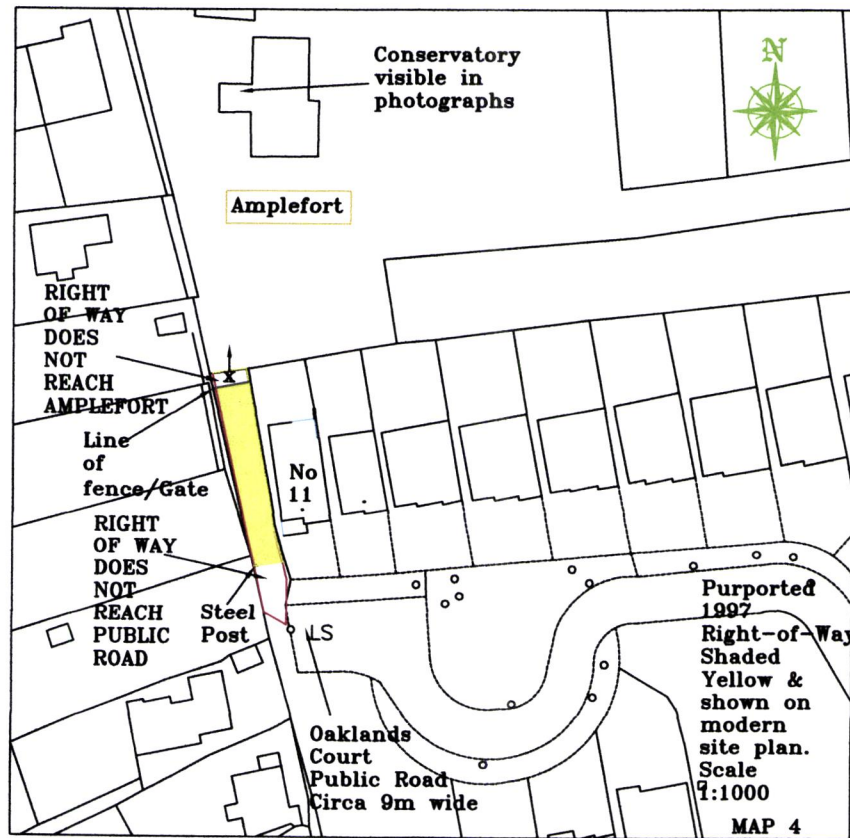
Open Space T.I.C. shown thus :

Dm: POD Date: March 08 Dwg. No: PC - TIC - 2008 - 005

TAKING IN CHARGE ROADS, OPEN SPACES & SERVICES- SITE LAYOUT PLAN
Oakland Court, Rathdown Lower, Greystones

ECONOMIC PLANNING
& DEVELOPMENT
DIRECTOR OF SERVICES
BRYAN DOYLE





- R2 At the junction of the estate with the public road a "Yield Right of Way" shall be provided, together with the necessary road markings, and advance advisory 'T' junction sign.

REASON: In the interests of traffic safety.

MISCELLANEOUS

- M1 Privacy walls shall be provided, 1.8m in height, cement rendered and capped, and shall extend 4m along the dividing boundary from the rear building line of dwellings.

REASON: In the interests of residential amenity and privacy.

- M2 Where existing hedges are to be retained and used as garden or estate boundaries, these should be reinforced with additional planting, or if required, be replaced by screen walls to the satisfaction of the Planning Authority. Details of such works shall be submitted to and agreed acceptable in writing by the Planning Authority prior to the commencement of development.

REASON: In the interests of residential amenity and privacy.

- M3 The existing trees and bushes forming the rear (southern) boundary of sites 12, 13, 14 and 15 and the open space to the southern and south eastern boundary shall be retained and used as garden and estate boundaries which shall be reinforced with additional planting. Details shall be submitted to and agreed acceptable in writing by the Planning Authority prior to the commencement of development.

REASON: In the interests of residential amenity, privacy and the visual amenity of the residents of Oaklands.

- M4 All open space shall be levelled, drained, cultivated and topsoiled if necessary with vegetable soil. Planting with trees and shrubs appropriate to the area shall be carried out and the remaining areas shall be sown with grass seed to give a uniform pasture land condition. Open space areas shall be dedicated to the use of the residents on completion of the works of the development on the estate. Prior to the commencement of development the developer shall enter into a licence to the satisfaction of Wicklow County Council in a form similar to that set out on the following page.

Reference Number in Register: 4648/96

S C H E D U L E

APPENDIX II

GENERAL

G1 This permission refers to the documents lodged and in particular:-

- (a) Site layout plan, drawing no. W-44-10 received on the 15th October, 1996,
- (b) Services layout, drawing no. W-44-11 received on the 15th October, 1996,
- (c) Sewer sections, drawing no. W-44-12 received on the 15th October, 1996,
- (d) House plans, drawing nos. W-44-6 and W-44-7 received on the 16th July, 1996.

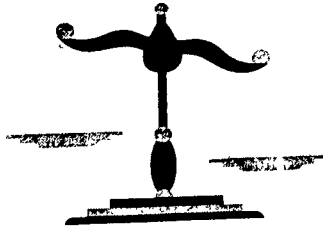
REASON: In the interests of proper planning and development and clarification.

G2 The rear gardens of sites no. 11 and 12 shall be increased in area to include the proposed open space adjoining to the west. The portion of open space to be included shall be in line with the front of these houses. The boundary walls, separating the increased garden from the open space area, shall be 2m high plastered and capped and all tree root systems shall be bridged. The trees within this expanded site shall be preserved and shall not be removed unless agreed in writing by Wicklow County Council.

REASON: To prevent narrow unsupervised open space areas and to preserve the sylvan character of this part of the site.

G3 Prior to the commencement of development, revised layout plans showing all trees on the site and boundaries to be retained and removed, particularly the large eucalyptus tree in the area opposite sites 9 and 13, shall be submitted to and agreed acceptable in writing by the Planning Authority.

REASON: In the interests of proper planning and development and visual amenity.



APPENDIX III

MEMORANDUM LAW DEPARTMENT

FROM: David Sweetman,
LAW AGENT.

TO: Helen Purcell,
Staff Officer,
PLANNING SECTION.

REF: DS/1/200/1

REF: HP/FS

DATE: 2nd August, 2001.

RE: PLANNING REGISTER REFERENCE 4648/96 - TOWN PARK ESTATES
LIMITED - DEVELOPMENT AT OAKLANDS COURT, RATHDOWN LOWER,
GREYSTONES

I refer to the above matter and to yours of the 15th September, 2000 which I have only now come across and apologise for the delay in coming back to you.

I can confirm that the Dedication Agreement in favour of the residents, etc., as amended and initialled, is now in order and may be treated as having complied with the relevant planning condition. You should ask Messrs. Margetson & Greene to register same in the Land Registry in due course so that the Deed of Dedication appears as a burden on the Folio of the developer. That, however, is a matter for Messrs. Margetson & Greene and the developer concerned.



DAVID SWEETMAN,
LAW AGENT.

DS/DT

Encl.



WICKLOW COUNTY COUNCIL
Planning Department

TO:	FERGAL KEOGH SE, EDEL BERMINGHAM, SEP
FROM:	MICHAEL LYNCH, GRADUATE PLANNER
REF:	20/979
NAME:	MICHELE CONNOLLY
DEVELOPMENT:	NEW VEHICULAR ACCESS VIA OAKLANDS COURT, CHURCH LANE, GREYSTONES, NEW TIMBER GATE AND REAR BOUNDARY WALL
DATE DUE:	30/11/2020
SITE VISIT:	21/10/2020
SITE NOTICE:	PRESENT AND IN ORDER

Site Location: Santos Cottage, Blacklion, Greystones. A6S T3C1

Site Details: The site consists of a single bungalow in an area of 0.043ha in total size. The site is set back from the Kindlestown Road and is accessible by a 55m long laneway which is too narrow to be accessible by car. The western site boundary is shared with Oaklands Court estate, which is where the proposed development is located.

Planning History: None on file

Adjacent Site

96/4648

Town Park Estates Ltd.

14 no. 2 storey houses, 1 no. bungalow and ancillary site development works

Decision: Grant

97/6275

Town Park Estates Ltd.

Amendments to boundaries of site no.'s 11 & 12 of approved housing development (Ref. 96/4648) together with construction of boundary walls

Decision: Grant

97/6461

Town Park Estates Ltd.

Optional kitchen extension to rear of approved houses on site nos. 2, 10 & 11 & alternative house type on site nos. 3 to 9 incl. and 12 to 15 incl.

Decision: Grant

Relevant Plans/Policies

Greystones/Delgany & Kilcoole Local Area Plan 2013-2019

Section 11: Zoning: RE Existing Residential

Objective: To protect, provide for and improve residential amenities of adjoining properties and areas while allowing for infill residential development that reflects the established character of an area in which it is located.

SOC9: Public open space within residential housing estates shall be preserved and enhanced. No development shall be permitted that would compromise the integrity of these spaces. In particular, residential development shall not be permitted on designated public open space within these areas.

Third Party Submissions: Received

D & R Nicholson

Summary:

- Applicant does not have sufficient title in the proposed site to apply for planning permission.
- Drawings submitted do not conform to requirement, lacking land owned by applicant in blue and wayleaves in yellow.
- Full extent and dimensions of right-of-way to the west of the site are not shown.
- Ambiguity regarding ownership of the property.
- Drawings mark some public land within red boundary, marking ownership.
- Public open space registered to Town Park Estates Ltd., no record of Wicklow County Council applying to take the state in charge.
- Town Park Estates Ltd. are unsure whether they have the right to grant access over public lands and do not in effect grant such access, acknowledging residents of Oaklands Court in this issue.
- Wicklow County Council are not in possession of Oaklands Court open space and do not have authority to grant access to subject site irrespective of possession as the public open space in question.
- There is turning space within the curtilage of Buffana, applicant has no need to reverse out onto Kindlestown Road.
- It is not believable applicant has reversed onto Kindlestown Road for years and years, and has a moral and legal responsibility not to do so if it is unsafe.
- There is open space to both the East and West of the dwelling to turn.
- There is no requirement or need for an ambulance to access to subject site.
- Hammerhead in front of proposed entrance is used in part of overflow resident and guest parking, the loss of which would negatively impact residential amenity.
- The loss of residential parking and addition of vehicular access would create a traffic hazard.

R & A Clarke

Summary:

- Applicant states she has to reverse onto Kindlestown Road according to site map there seems to be ample space on her property to turn.
- Applicant states her drive is too narrow for an ambulance to pass through. In an emergency situation it is likely to take an ambulance a lengthy amount of time to navigate its way through a normally congested area to reach the proposed site entrance. The submission also refers to a case where an ambulance was unable to reach to top of the estate in icy

conditions and the patient had to be brought down to it. This was also mentioned in the previous submission.

- Eircode details can be changed to direct traffic to the front of Santos cottage
- Proposed entrance would create a traffic hazard and make the area less safe for young children.
- Turning area is used for overflow/guest parking, the loss of which is undesirable for residents.
- Opening this entrance may set an undesirable precedent for other houses on Kindlestown Road.

Oaklands Court Residents' Association

Summary:

- The proposed entrance would contravene conditions of planning permission (Ref. 96/4648 & 97/6461) already granted, and would be contrary to the proper planning and sustainable development of the area.
- The proposed development would be contrary to the proper planning and sustainable development of the area, setting undesirable precedent for other Kindlestown Road residents to apply for access through Oaklands Court.
- The loss of overflow residential and guest parking would create a traffic hazard and negatively impact on the residential amenity of the estate as a whole.
- The existing layout of the estate limits peripheral vision while driving and requires total concentration. Children who live in the estate often play in the open areas and the proposed access would put them at risk.
- The drawings accompanying the application are inaccurate and misrepresent the land owned by the applicant, by not accurately depicting land under control of the applicant, wayleaves, and claiming open space in Oaklands Court is within the site boundary of land owned by the applicant. There is also some ambiguity as to ownership of the dwelling, and inaccuracy regarding the full extent and dimensions of the existing rights of way serving the site.
- Town Park Estates Ltd. are unsure whether they have the right to grant access over public lands and do not in effect grant such access, acknowledging residents of Oaklands Court in this matter.
- The loss of overflow residential and guest parking is unacceptable to residents as it would result in a loss of residential amenity and constitute a traffic hazard.
- There is open space to both the East and West of the dwelling to turn and accessing the rights-of-way along the curtilage of Santos Cottage is likely to be within the rights established
- There is no requirement or need for an ambulance to have access to the dwelling.
- Eircode details can be changed to direct traffic to the front of Santos Cottage.

Comment:

The planning issues raised in the submission, specific and relevant to the consideration of this planning application are to be considered in the assessment and making of a planning recommendation.

Reports:

Greystones Area Engineer: No objection.

Assessment

The application in question is for a new vehicular access to Santos Cottage via Oaklands Court, Church Lane, Greystones. The works on site would include the replacement of the rear boundary wall and addition of a new timber gate.

The turning area immediately east of the site boundary where the new site entrance is to be located has been marked in yellow as a wayleave of the site on the submitted drawings. Oaklands Court was taken in charge by Wicklow County Council on 07/07/2008 however the grass verge forms part of the area dedicated as open space to the residents of Oaklands Court since original permission was granted for the estate (PRR. 96/4648). Further documentation included in the original planning file confirms that the right to develop the open space is held by the residents. Consent has not been given from the residents for the proposed development and so it must be refused on this basis. As insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development, allowing this development in the absence of same would be contrary to traffic safety and proper planning and sustainable development.

It has also been noted that the granting of permission for the proposed development would be in conflict with Objective SOC9 of the Greystones/Delgany & Kilcoole Local Area Plan 2013-2019 which states "Public open space within residential housing estates shall be preserved and enhanced. No development shall be permitted that would compromise the integrity of these spaces". The public open space in question comprises of a narrow grass verge that is not considered as meaningful open space.

Objections were raised regarding the possible increased traffic hazard if the proposed development were to go ahead. There has been no objection to the development from the Greystones Area Engineer in this regard though it was noted that if permission were to be granted the applicant would need to acquire a road opening license from the road authority. It is the view of the Planning Authority that the increase in traffic through the estate would be minimal and so traffic hazard would not be significantly increased.

Objections were also raised on the grounds that the turning area of Oaklands Court was used for overflow residential and guest parking and that the removal of said would negatively impact residential amenity. The area in question is not considered a parking area and so on these grounds the proposal is considered acceptable.

On the basis of the above it is considered that the development be refused accordingly.

Recommendation: Refusal

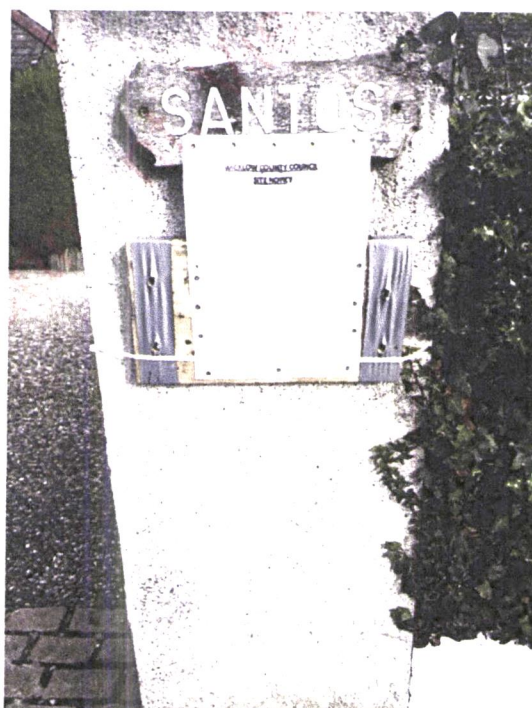
1. Insufficient evidence has been shown that the applicant has the right to carry out the proposed development on the area in question. It is also noted that the proposed development would be contrary to Objective SOC9 of the Greystones/Delgany & Kilcoole Local Area Plan 2013-2019 and therefore it is the view of the Planning Authority that this development would not be compatible with the sustainable planning and development of the area.

owner will
appeal recommendation - reason to be considered as follows:

Having regard to the location of the proposed entrance over lands which form part of the public amenity space of Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development, and therefore to allow this development in the absence of such evidence would be contrary to traffic safety and proper planning and sustainable development.

Agreed
as per
Amended
BCR
23/11/2020.
- Amended.

Michael Lynch





WICKLOW COUNTY COUNCIL**Planning Department**

To: Breege Kilkenny, Director Of Services
From: Lyndsey Blackmore, Assistant Planner
Ref: 21/855
Name: Michele Connolly
Proposal: New vehicular access via Oaklands Court, Church Lane, Greystones, Co. Wicklow, new timber gate and rear boundary wall.
Location: Co. Wicklow
Date Received: 16/07/2021
Submissions By: 19/08/2021
Date Due: 09/09/2021
Site Notice: Present and in Order 09/08/2021

Relevant Planning History:

Ref 20/979

New vehicular access, timber gate and boundary wall.

Reason

1. Having regard to the location of the proposed entrance over lands which form part of the public amenity space of Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow this development in the absence of such evidence would be contrary to traffic safety and proper planning and sustainable development. *KS -*

Ref 96/4848

Permission granted for 15 Houses at Oaklands Court

Policy and Landscape Designations:

Greystones/Delgany & Kilcoole Local Area Plan 2013-2019

Zoning RE Existing Residential

Objective: To protect, provide for and improve residential amenities of adjoining properties and areas while allowing for infill residential development that reflects the established character of an area in which it is located.

SOC9: Public open space within residential housing estates shall be preserved and enhanced. No development shall be permitted that would compromise the integrity of these spaces. In particular, residential development shall not be permitted on designated public open space within these areas.

Reports:

MD Engineer No objections

Third Parties:**R & A Clarke****Summary:**

- The right to develop open space is held by the residents and the applicant does not have permission to develop the open space
- Applicant states she has to reverse onto Kindlestown Road according to site map there seems to be ample space on her property to turn.
- Applicant states her drive is too narrow for an ambulance to pass through. In an emergency situation it is likely to take an ambulance a lengthy amount of time to navigate its way through a normally congested area to reach the proposed site entrance. The submission also refers to a case where an ambulance was unable to reach to top of the estate in icy conditions and the patient had to be brought down to it. This was also mentioned in the previous submission.
- Eircode details can be changed to direct traffic to the front of Santos cottage
- Proposed entrance would create a traffic hazard and make the area less safe for young children.
- Turning area is used for overflow/guest parking, the loss of which is undesirable for residents.
- Opening this entrance may set an undesirable precedent for other houses on Kindlestown Road.

D & R Nicholson Summary:

- Applicant does not have sufficient title in the proposed site to apply for planning permission.
- Drawings submitted do not conform to requirement, lacking land owned by applicant in blue and wayleaves in yellow.
- Full extent and dimensions of right-of-way to the west of the site are not shown.
- Ambiguity regarding ownership of the property.
- Drawings mark some public land within red boundary, marking ownership.
- Public open space registered to Town Park Estates Ltd., no record of Wicklow County Council applying to take the state in charge.
- Town Park Estates Ltd. have no right to grant access over public lands and do not in effect grant such access, acknowledging residents of Oaklands Court in this issue.
- Wicklow County Council are not in possession of Oaklands Court open space and do not have authority to grant access to subject site irrespective of possession as the public open space in question.

- There is turning space within the curtilage of Buffana, applicant has no need to reverse out onto Kindlestown Road.
- It is not believable applicant has reversed onto Kindlestown Road for years and years, and has a moral and legal responsibility not to do so if it is unsafe.
- There is open space to both the East and West of the dwelling to turn.
- There is no requirement or need for an ambulance to access to subject site.
- Eircode can be easily changed.
- Hammerhead in front of proposed entrance is used in part of overflow resident and guest parking, the loss of which would negatively impact residential amenity.
- The loss of residential parking and addition of vehicular access would create a traffic hazard.
- Applicant does not have owners consent to make the application.

Oaklands Court Summary:

**Residents
association**

- The right to develop open space is held by the residents and residents do not give consent for the proposals
- The proposed entrance would contravene conditions of planning permission (Ref. 96/4648 & 97/6461) already granted, and would be contrary to the proper planning and sustainable development of the area.
- The proposed development would be contrary to the proper planning and sustainable development of the area, setting undesirable precedent for other Kindlestown Road residents to apply for access through Oaklands Court.
- The loss of overflow residential and guest parking would create a traffic hazard and negatively impact on the residential amenity of the estate as a whole.
- The existing layout of the estate limits peripheral vision while driving and requires total concentration. Children who live in the estate often play in the open areas and the proposed access would put them at risk.
- The drawings accompanying the application are inaccurate and misrepresent the land owned by the applicant, by not accurately depicting land under control of the applicant, wayleaves, and claiming open space in Oaklands Court is within the site boundary of land owned by the applicant. There is also some ambiguity as to ownership of the dwelling, and inaccuracy regarding the full extent and dimensions of the existing rights of way serving the site.

- Town Park Estates Ltd. are unsure whether they have the right to grant access over public lands and do not in effect grant such access, acknowledging residents of Oaklands Court in this matter.
- The loss of overflow residential and guest parking is unacceptable to residents as it would result in a loss of residential amenity and constitute a traffic hazard.
- There is open space to both the East and West of the dwelling to turn and accessing the rights-of-way along the curtilage of Santos Cottage is likely to be within the rights established
- There is no requirement or need for an ambulance to have access to the dwelling.
- Eircode details can be changed to direct traffic to the front of Santos Cottage.

Details of Proposed Development:

Site Area	0.043ha
Features	The site consists of a single bungalow. The site is set back from the Kindlestown Road and is accessible by a 55m long laneway which is too narrow to be accessible by car. The western site boundary is shared with Oaklands Court estate, which is where the proposed development is located.
Proposal:	The applicants are seeking permission to create a new vehicular entrance into Oaklands court.

Assessment

The application in question is for a new vehicular access to Santos Cottage via Oaklands Court, Church Lane, Greystones. The works on site would include the replacement of the rear boundary wall and addition of a new timber gate.

The applicant has stated that the existing entrance onto Rathdown road is unsuitable as the applicant has to reverse down a narrow laneway.

Having regard to the site boundary shown it would appear that there is ample room within the applicants site to provide a turning area so that no reversing would be required.

It would appear from the details submitted that the portion of the site shown bordering Oaklands Court where the new entrance is proposed is owned by Townpark estates but has been taken in charge by Wicklow County Council in 2008.

This is a narrow strip of grass and is part of the open space of the estate dedicated open space for the residents of Oaklands Court since the original permission prr 96/4648. Documentation included in the original planning file confirms that the right to develop the open space is held by the residents. Consent has not been given from the residents for the proposed development and so it must be refused on this basis.

It has also been noted that the granting of permission for the proposed development would be in conflict with Objective SOC9 of the Greystones/Delgany & Kilcoole Local Area Plan 2013-2019 which states *"Public open space within residential housing estates shall be preserved and enhanced. No development shall be permitted that would compromise the integrity of these spaces"*. The public open space in question comprises of a narrow grass verge that is not considered as meaningful open space.

Objections were raised regarding the possible increased traffic hazard if the proposed development were to go ahead. There has been no objection to the development from the Greystones Area Engineer in this regard though it was noted that if permission were to be granted the applicant would need to acquire a road opening license from the road authority. It is the view of the Planning Authority that the increase in traffic through the estate would be minimal and so traffic hazard would not be significantly increased.

Objections were also raised on the grounds that the turning area of Oaklands Court was used for overflow residential and guest parking and that the removal of said would negatively impact residential amenity. The area in question is not considered a parking area it is a hammerhead which is being used as a parking area for residents, however the purpose of the hammerhead is to provide a turning area for large/emergency vehicles.

Environmental Assessment:

Appropriate Assessment: The subject site is not located on or within close proximity to a designated site.

Having regard to the nature and scale of the proposed development, its location on zoned and serviced lands within a permitted residential scheme and its distance from designated Natura 2000 sites, it not considered that the proposed development would give rise to any adverse impacts on the qualifying interests and conservation objectives of any natura site and therefore the proposed development would not necessitate the carrying out of an Appropriate Assessment in accordance with the requirements of Article 6(3) of the EU Habitats Directive

Environmental Impact Assessment: Having regard to the nature and scale of the proposed development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

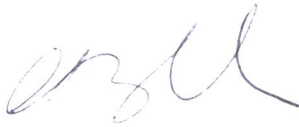
Conclusions and Recommendation

Conclusion From the information provided it would appear that the applicant does not have adequate consent to carry out the proposed works. It would also appear that the applicant has adequate space to provide a turning area on the site to stop vehicles having to reverse onto a public road.

Recommendation

Refuse Planning Permission

1. Having regard to the location of the proposed entrance over lands which form part of the public amenity space at Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow the development, in the absence of such evidence would be contrary to traffic safety and proper planning and development.



Lyndsey Blackmore
Assistant Planner
27/08/2021

Agreed to Refuse
28/8/21

Agreed
B&W
D.C.S.
7/9/21



WICKLOW COUNTY COUNCIL
Planning Department

To: Fergal Keogh, Senior Engineer
 Edel Bermingham Senior Executive Planner
From Patrice Ryan, Executive Planner
Ref: 21/1177
Name: Michele Connolly.
Type: Permission
Proposal: New vehicular access via Oaklands Court, Church Lane, Greystones, Co. Wicklow, new timber gate and rear boundary wall
Location: Santos Cottage, Blacklion, Greystones, Co. Wicklow.
Date Received: 30/09/2021
Submissions By: 03/11/2021
Date Due: 24/11/2021
Site Notice: Checked, in place and acceptable on the 22/10/2021

SITE LOCATION AND DESCRIPTION

The application site is located to the rear of a dwelling known as Buffana which fronts onto Kindlestown Lwr. Road. The dwelling on site, known as Santos Cottage, was built on the former rear garden of Buffana. The dwelling currently utilises parking to the side of Buffana and a narrow pedestrian laneway then leads to the front garden of the dwelling.

The applicant is seeking planning permission to open up a new vehicular entrance to the rear of the dwelling, leading onto a mature residential area known as Oaklands Court.

PLANNING HISTORY

Application Site

21/855: Planning permission REFUSED to Michele Connolly for new vehicular access via Oaklands Court, Church Lane, Greystones, Co. Wicklow, new timber gate and rear boundary wall.

Reason for Refusal:

Having regard to the location of the proposed entrance over lands which form part of the public amenity space at Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow the development, in the absence of such evidence would be contrary to traffic safety and proper planning and development.

20/979: Planning permission REFUSED to Michele Connolly for new vehicular access via Oaklands Court, Church Lane, Greystones, Co. Wicklow, new timber gate and rear boundary wall.

Reason for Refusal:

Having regard to the location of the proposed entrance over lands which form part of the public amenity space of Oatlands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow this development in the absence of such evidence would be contrary to traffic safety and proper planning and sustainable development.

Parent Permission – Oaklands Estate

96/4648: Planning permission was GRANTED for 14 no. two storey houses, 1 no. bungalow and ancillary site development work.

Condition M4 of this Grant of Permission Required the following:

"All open space shall be levelled, drained, cultivated and top soiled if necessary with vegetable soil. Planting with trees shrubs appropriate to the area shall be carried out and the remaining areas shall be sown with grass seed to give a uniform pasture land condition. Open space areas shall be dedicated to the use of the residents on completion of the works of the development on the estate. Prior to the commence of the development the developer shall enter into a license to the satisfaction of Wicklow County Council in a form similar to that set out on the following page." (copy of form included on document).

RELEVANT POLICY

Policy and Landscape Designations: Greystones/Delgany & Kilcoole Local Area Plan 2013-2019

Zoning: RE Existing Residential

Objective: To protect, provide for and improve residential amenities of adjoining properties and areas while allowing for infill residential development that reflects the established character of an area in which it is located.

SOC9: Public open space within residential housing estates shall be preserved and enhanced. No development shall be permitted that would compromise the integrity of these spaces. In particular, residential development shall not be permitted on designated public open space within these areas.

INTERDEPARTMENTAL REPORTS

Email received from the MD Engineer on the 4th of November. No objection.

EXTERNAL REPORTS

None received at time of writing this report on the 16/11/2021.

THIRD PARTY OBSERVATIONS

2 No. Third Party submissions were received during the prescribed period. The following planning concerns are noted in these submissions.

- The applicant does not have sufficient title in the subject site outlined in red on the submitted planning application drawings to apply for planning permission for the proposed development.
- The public open space, serving the fifteen dwellings forming Oaklands Court cul de sac are held within Land Registry Folio WWI81 15F, registered to Town Park Estates Limited. However, it is submitted that Town Park Estates Limited by Deed of Dedication irrevocably granted to the residents of Oaklands Estate all rights over the public open space and cannot now grant permission for the change of use of the land from public open space to driveway access, as they do not have the authority or

right to do so. A copy of these Deed of Dedication as been included as part of these submissions.

- A taking in charge map of the Oaklands Estate has been submitted. The verge over which the drive way access will cross has not been taken in charge by Wicklow County Council. It is therefore submitted that this section of land remains in the control of the residents of Oaklands Court.
- The applicant has not clearly shown the full extent and dimensions of the existing right-of-way through the garden of the dwelling known as Buffana, from Kindlestown Lower Road to the subject dwelling known as Santos Cottage, on the submitted drawings, part of the right-of-way only is shown on the site layout.
- The applicant includes within the red line, outlining the boundaries of the subject site part of the lands comprising the public open space in planning permission Register Reference No. 964648 and 4648976461 and contained in Land Registry Folio WWI81 ISF.
- Noted that an ambulance crew would still be able to access the house in its current layout as stretchers and wheelchairs are fitting with wheels to move over many surface types.
- Submitted that there is ample space on site for a car to turn and avoid having to reverse onto the public road.
- With regard to the applicants Eircode, the Eircode co-ordinates of the dwelling can simply be changed to the co-ordinates at the front gate on Kindlestown Road Lower thereby resolving the difficulty of deliveries to the back wall.
- The proposed entrance would result in the removal of parking area used by the residents of Oakland Court.
- The proposed entrance would contravene a condition of the planning permission of the parent permission and set an undesirable precedent for others on Kindlestown Road to seek planning permission for access through Oaklands Court.
- The proposal would result in a traffic hazard due to the loss of resident overflow and visitor parking spaces and the additional traffic it would generate. The proposal would therefore impact negatively on the residential amenity of Oaklands Court.

ASSESSMENT OF THE PROPOSED DEVELOPMENT

It is noted that there are 2 no. previous refusals on this site relating to a similar development under Reg. Refs: 20/979 and 21/1177.

The applicant has submitted that this current planning application differs to the previously refused planning application s, Reg. Refs: 20/979 and 21/855, for the following reasons:

- MPA Architects have stated in their Supporting Letter, that they have undertaken a review of the parent permission for Oaklands Court, Planning Reg. Ref. 96/4648, to establish the status of the lands over which the applicant wishes to gain access.
- They are of the opinion that the applicant has sufficient right to carry of the development subject to planning permission as they found no documentation on the 96/4648 planning file that confirms that the right to develop the open space is held by the residents of Oaklands Estate.

The proposal seeks permission for the opening of a vehicular entrance onto Oaklands Court to serve a dwelling which was constructed on the former rear garden of a dwelling known as Buffana. Both Buffana and Santos currently use a shared vehicular access onto Kindlestown Lwr Road.

The applicant can currently drive their car to the side of Buffana, where it is circa 35 metres from the front door of the dwelling known as Santos. It is noted that the car would need to be reverse back up the lane to the side of Buffana, but that there is space to the front of Buffana to turn the car, allowing them to exit onto the public road in forward gear.

The question with regard to this planning application is as to whether the applicant has a right to create a new vehicular entrance which involves crossing an existing grass verge located within the Oaklands Estate.

The applicant has submitted the same letter of consent as that submitted under previously refusal 21/855 from Margetson and Greene Solicitors on behalf of Town Park Estates Ltd. stating the following:

"We act for Town Park Estates Ltd. We confirm on our clients' behalf, as the registered legal owner of the Oakland roads comprised in Folio 181 15F, it consents to Michele Connolly. making a planning application to vehicular access to Santos Cottage via the roads within Oaklands Court, in so far as our client is only the legal registered owner., having no longer any control or responsibility for the said lands in-question".

This letter clearly states that while Town Park Estates Ltd, are the registered legal owner of the Oaklands Roads comprised in Folio WW18115F, they no longer have any control or responsibly for the said lands in question.

The Residents Association of Oaklands Court have submitted by way of a Third Party Observation, that Town Park Estates Limited, by Deed of Dedication, irrevocably granted to the residents of Oaklands Estate, all rights over the public open space. The area, across which the applicant is proposing to cross in order to gain access to the proposed Vehicular Entrance, is identified as part of the said open space over which the residents of Oaklands Estates have rights over.

It is therefore considered that the applicant has not addressed the reason for refusal under Reg. Refs. 20/979 and 21/855 which stated:

"Having regard to the location of the proposed entrance over lands which form part of the public amenity space at Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow the development, in the absence of such evidence would be contrary to traffic safety and proper planning and development".

Environmental Assessment:

Appropriate Assessment:	Having regard to the nature and scale of the proposed development and its distance from designated Natura 2000 sites, it is considered that the proposed development would be unlikely to give rise to any significant adverse impacts on the qualifying interests or conservation objectives of any natura site and therefore the proposed development would not necessitate the carrying out of an Appropriate Assessment in
--------------------------------	--

accordance with the requirements of Article 6(3) of the EU Habitats Directive.

**Environmental
Impact**

Assessment:

Having regard to nature and scale of the development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Conclusion and Recommendation

From an assessment of the information provided to the Planning Authority, it would appear that the applicant does not have adequate consent to carry out the proposed works. It is therefore considered that the applicant has not adequately addressed the reason for refusal under Reg. Ref: 20/979 and 21/1177. It is therefore recommended that planning permission is refused for the proposed development.

Recommendation: Refuse

1. Having regard to the location of the proposed entrance over lands which form part of the public amenity space at Oaklands Court, insufficient evidence has been submitted to show that the applicant has sufficient right to carry out the development and therefore to allow the development, in the absence of such evidence would be contrary to traffic safety and the proper planning and development of the area.



Patrice Ryan
Executive Planner
16/11/2021

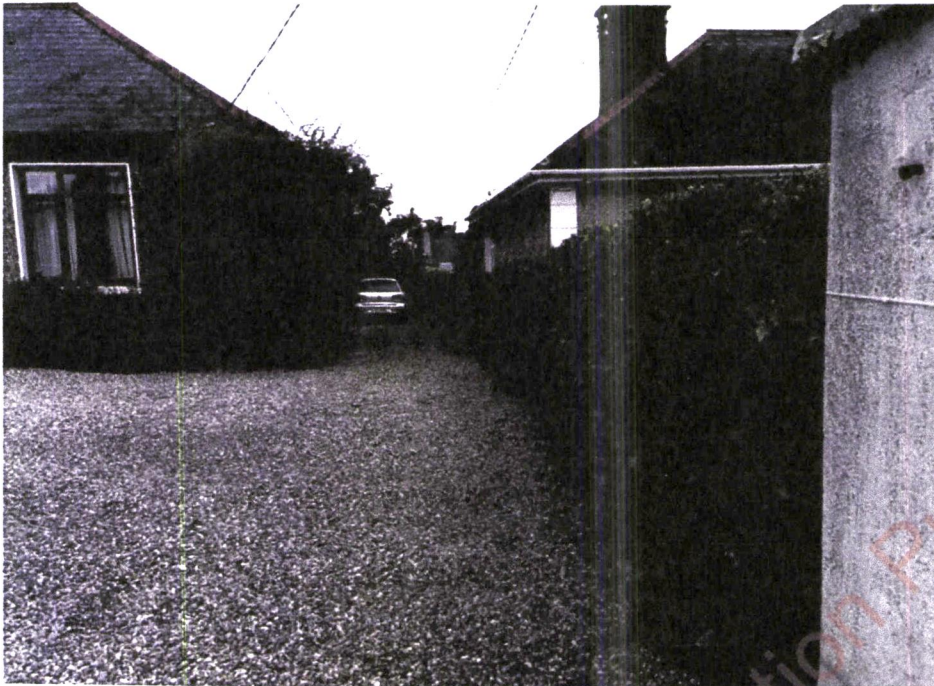


16/11/21.

Aidan
Bannigan
18/11/21

Site Photos

Current access to the side of Buffana



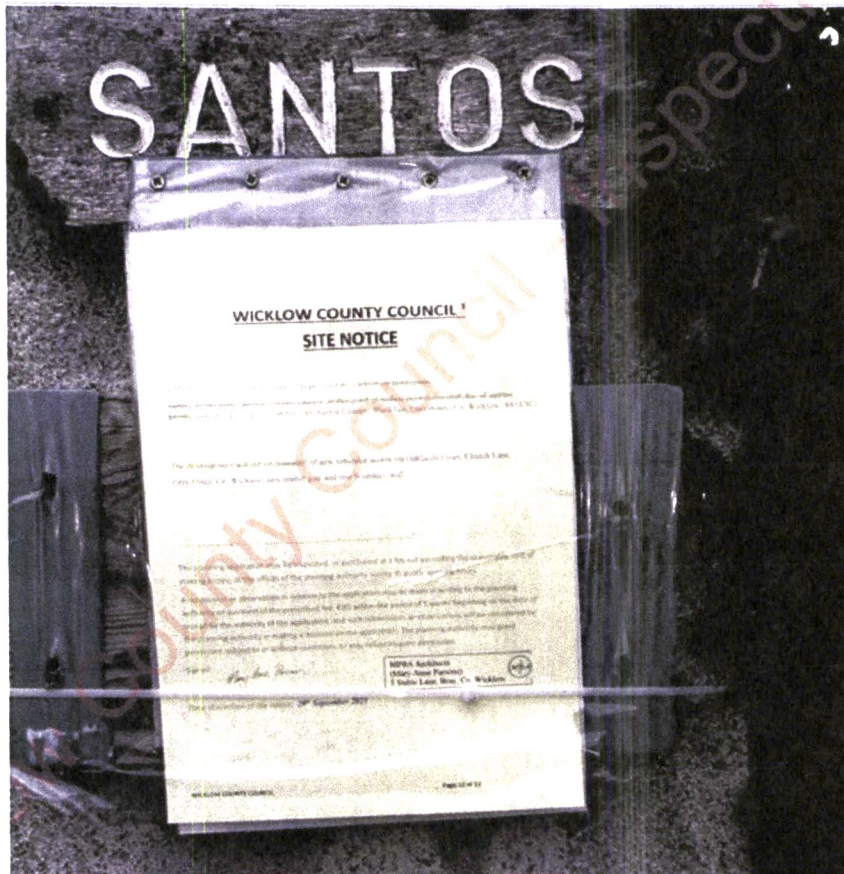
Lane access to front gate of Santos.

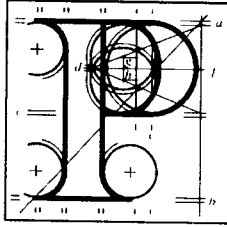


Location of proposed vehicular access taken from Oaklands Court . Site notice on fence.



Site notice on Kindlestown Lwr. Road





An
Bord
Pleanála

Inspector's Report ABP312173-21



Development

Create a new vehicular access with timber gate and new boundary wall at Santos Cottage.

Location

Oaklands Close, Church Lane,
Greystones, County Wicklow.

Planning Authority

Wicklow County Council

Planning Authority Reg. Ref.

21/1177

Applicant(s)

Michelle Connolly

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party v Refusal

Appellant(s)

Michelle Connolly

Observer(s)

Oaklands Court Residents Association
Deborah & Ronan Nicholson

Date of Site Inspection

18th March 2022.

Inspector

Hugh Mannion.

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	3
3.1. Decision	3
3.2. Planning Authority Reports	3
4.0 Planning History	4
5.0 Policy and Context	4
5.2. Development Plan	4
5.5. Natural Heritage Designations	4
5.6. EIA Screening	4
6.0 The Appeal	5
6.1. Grounds of Appeal	5
6.2. Planning Authority Response	5
6.3. Observations	5
6.5. Further Responses	6
7.0 Assessment	6
8.0 Recommendation	8
9.0 Reasons and Considerations	8

1.0 Site Location and Description

- 1.1. The application site has a stated area of 0.043ha and comprises an existing house 'Santos Cottage' at Blacklion, Greystones, County Wicklow. The applicant's site backs onto a residential cul de sac – Oaklands Close – and a new vehicular access from 'Santos Cottage' to Oaklands Close is proposed.

2.0 Proposed Development

- 2.1. The proposed development comprises the creation of a new vehicular access with a timber gate and boundary wall from for a house at 'Santos Cottage' onto Oaklands Close, Church Lane, Greystones, County Wicklow.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission.

The access is over lands that form part of the public amenity space at Oaklands Court. The applicant has not demonstrated sufficient legal interest to carry out the proposed development and the proposed development would contrary to traffic safety and to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planner's report recommended refusal as set out in the manager's order.

3.2.2. Other Technical Reports

No other reports.

4.0 Planning History

- 4.1. Reference number 21/855 permission refused for a similar development for the lack of sufficient legal interest and traffic hazard.
- 4.2. Reference numbered 20/979 permission refused for a similar development for the lack of sufficient legal interest and traffic hazard.

5.0 Policy and Context

- 5.1. The Development Management Guidelines for Planning Authorities (DOEHLG 2007) deals with the matter of tile to land when processing planning applications at paragraph 5.13.

5.2. Development Plan

- 5.3. The Wicklow County Development Plan is the relevant county development plan for the area.
- 5.4. The Greystones – Delgany and Kilcoole Local Area Plan 2013-2019 is the relevant Local Area Plan.

Objective SOC9: Public open space within residential housing estates shall be preserved and enhanced. No development shall be permitted that would compromise the integrity of these spaces. In particular, residential development shall not be permitted on designated public open space within these areas.

5.5. Natural Heritage Designations

Not relevant.

5.6. EIA Screening

- 5.7. Having regard to nature and scale of the proposed development and the absence of emissions therefrom it is possible to exclude the requirement for submission of an EIAR at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- the planning authority refused permission for lack of legal interest and traffic hazard as in previous applications.
- the lands have been taken in charge by the planning authority. Therefore, the applicant has a right to make an application and the planning authority may grant a permission.
- the owner of the lands is Town Park Estates limited. They have given consent to make this application therefore it is a valid application.
- the residents' association attempted unsuccessfully to register a deed over the land.
- the land does not function as meaningful open space and therefore the proposed access over the land is not contrary to objective SOC 9 in the Local Area Plan.
- there are numerous examples where planning permission has been granted for access over open space.

6.2. Planning Authority Response

- None.

6.3. Observations

6.4. Observations were received from Oaklands Court Residents Association and Deborah & Ronan Nicholson. The observations can be summarised as:

- There is a history of refusal for this development.
- The original grant of planning permission for Oaklands estate required that the open space areas within the development be dedicated for the use of the residents. Such an agreement was submitted to the planning authority by the landowner Town Park Estates Limited.

- The land where the access is proposed has been planted and is in use a public open space.
- The applicant has insufficient legal interest to carry out the proposed development. The planning authority did not take in charge the land over which access is proposed. The correspondence from Town Park Estates Limited does not refer to the use of the public open space.
- The applicant has sufficient space within her ownership/site to turn a motor car and need not reverse onto R761. The access through Oaklands would be unsuitable for ambulance access.
- The hammer head in Oaklands Court accommodates parking for numbers 9,10 and 11 Oakland Court, interfering with this parking arrangement would seriously injure the amenity of these houses.

6.5. Further Responses

- None.

7.0 Assessment

7.1. Background.

7.2. As pointed out by the parties and observes in this appeal there is a history of unsuccessful applications in relation to this proposed development. The applicant makes the case, *inter alia*, that the existing access from Rathdown Road/R671 to the applicant's house (Santos Cottage) is unsatisfactory for being too long and narrow and requires either reversing down the access towards Santos Cottage or reversing out of the lane onto the regional route, neither of which is satisfactory. Oaklands Court is a housing development to the east/behind Santos Cottage and the application would create a new vehicular access from Santos over a landscaped strip at the western end of Oaklands Court.

7.3. Legal Interest

7.4. Section 34(13) of the Act provides that 'a person shall not be entitled solely by reason of a permission under this section to carry out any development'. The Development Management Guidelines for Planning Authorities clarify that the

planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. The Guidelines make the point that where doubt arises as to the legal interest of the applicant that additional information may be sought by the planning authority to clarify the matter.

- 7.5. It may have been preferable that the planning authority sought additional information from the applicant on this point but having regard to the history of applications the issue has been raised.
- 7.6. In the present case the applicant included a letter from the landowner (Town Park Estates Limited) who was the original builder of Oaklands Court which states that that company grants permission to the applicant to make an application. Oaklands Court was taken in charge by the planning authority and this creates an additional layer in relation to ownership. The observers make the case that the permission for the Oaklands development included a requirement that the open space in the development be dedicated to the use of future residents of the development.
- 7.7. I conclude from all the submissions on file that there are various parties with an interest in the landscaped strip: the original landowner, the planning authority who took it in charge and the residents by virtue of the planning conditions in relation to the future use of public open space within the development. The landowner may be able to confer a right on the applicant to make a valid application but cannot confer a right to carry out the development free of these other layers of interest in the land. I conclude, therefore, that the applicant has insufficient legal interest in the land to carry out the development and I recommend refusal along the lines set out by the planning authority.
- 7.8. **Public Open Space.**
- 7.9. The point is made in the application that the utility of the strip of land as public open space is not significant. The Greystones LAP is the relevant plan for the area, and it includes an objective (SOC9) that public open space within residential housing estates shall be preserved and enhanced and that no development shall be permitted that would compromise the integrity of these spaces.
- 7.10. The relevant open space is narrow, but it is grassed and there are adjoining trees and it provides an attractive end point for the Oaklands Court. I consider that the

strip is of amenity value within Oaklands Court and the LAP policy in relation to protecting public open space is relevant, and the creation of a vehicular access over it would contravene the LAP and injure the amenity of nearby residential property.

7.11. Traffic Safety

7.12. Oaklands Close is a residential *cul de sac* where each house has at least one off-street car space. Given the configuration of the road which does not facilitate high speed I consider it unlikely that an additional access would endanger public safety.

7.13. Appropriate Assessment

7.14. Having regard to minor nature and lack of emissions from the proposed development no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

8.1. I recommend refusal.

9.0 Reasons and Considerations

The Board is not satisfied on the basis of the submissions made in relation to the application and appeal that the applicant has sufficient legal interest to carry out the proposed development and is therefore precluded from granting planning permission.

Hugh Mannion
Senior Planning Inspector

20th March 2022.

APPENDIX VI

THIS AGREEMENT made the 8 day of December One Thousand Nine Hundred and Ninety-Seven between **TOWNPARK ESTATES LIMITED** of Cranfort Court, Stillorgan, County Dublin (hereinafter called "the Grantor") of the one part and **ANTHONY BERNARD DOYLE, PETER MICHAEL DOYLE and JAMES MARIO DOYLE** of Amplefort, Greystones in the County of Wicklow (hereinafter called "the Grantee") of the other part.



WHEREAS:-

1. The Grantor is the registered owner of the lands comprised in Folio 18115F of the register County Wicklow.
2. The Grantees are the registered owners of adjoining lands known as Amplefort, Church Road, Greystones, County Wicklow which said lands are hereinafter referred to as "Amplefort", being the lands comprised in Folio 5739, County Wicklow.
3. In consideration of the premises, Townpark Estates Limited the registered owner of the property described in Folio 18115F of the register County Wicklow hereby grants to the Grantee, the owners of Amplefort being the property described in Folio 5739 of the Register County Wicklow and his and their licensees full right and liberty at all times and for the use of the premises known as Amplefort as a private residence, with or without animals or vehicles to pass and re-pass over that part of the property described in the said Folio 18115F of the Register County Wicklow forming the way leading from the Grantor's land to the Grantee's land and shaded yellow on the map annexed hereto together with the right to pass and re-pass over the roadways now laid or to be laid at any time within 21 years from the date hereof by the Grantor on the lands comprised in Folio 18115F leading to and from the public roadway to and from the way shaded yellow on the map annexed hereto.

(Townpark Estates hereby assent to the registration of the said right as a burden on the lands in Folio 18115F, County Wicklow

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and affixed their Seals the day and year first herein written.

Present when the common seal
of the Grantor was affixed hereto:-

W. C. C. —
S. C. C.

Anthony Wood
2

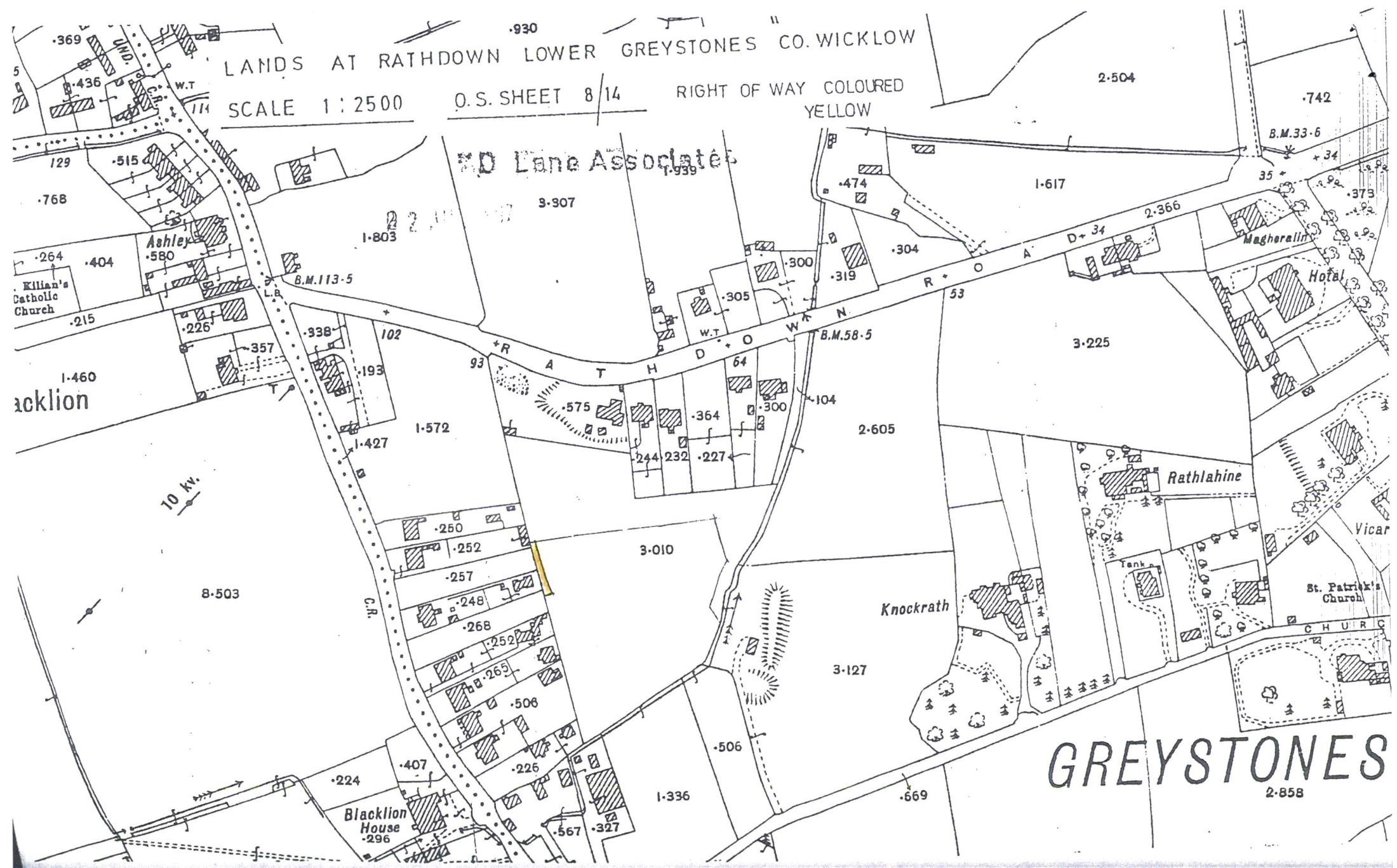
Present when the common seal
of the Grantee was affixed hereto:-

W. C. C.
S. C. C.
Lath/cenham
Dublin 14

J. W. C.
P. W. C.
H. B. C.

LANDS AT RATHDOWN LOWER GREYSTONES CO. WICKLOW
SCALE 1:2500 O.S. SHEET 8/14 RIGHT OF WAY COLOURED YELLOW

MD Lane Associates



GREYSTONES
2-858

Planning Pack Map



Tailte
Éireann

**CENTRE
COORDINATES:**
ITM 728608,712562

PUBLISHED: 10/07/2023
ORDER NO.: 50345181_1

MAP SERIES: 1:1,000
MAP SHEETS: 3674-11
1:1,000 3674-12

COMPILED AND PUBLISHED BY:
National Mapping Division of
Tailte Éireann,
Phoenix Park,
Dublin 8,
Ireland.
D08F6E4

www.tailte.ie

Any unauthorised reproduction
infringes Tailte Éireann copyright.

No part of this publication may
be copied, reproduced or transmitted
in any form or by any means without
the prior written permission of the
copyright owner.

The representation on this map
of a road, track or footpath
is not evidence of the existence
of a right of way.

Topographic maps produced by the
National Mapping Division of Tailte
Éireann never show legal property
boundaries, nor do they show
ownership of physical features.

© National Mapping Division of Tailte
Éireann, 2023. All rights reserved.



This map was produced by
the National Mapping Division
of Tailte Éireann, formerly
Ordnance Survey Ireland (OSI)

728491
712648
712476
728491

728724
712648
712476
728724

Rathdown
Court

Greystones
Na Clocha
Liatha

S.S.
SUBJECT LAND
OUTLINED IN RED
BALANCE OF LAND
OUTLINED IN BLUE

R a t h d o w n
L o w e r

OAKLANDS
COURT

OAKLANDS

0 10 20 30 40 Metres
0 20 40 60 80 100 Feet

OUTPUT SCALE: 1:1,000

CAPTURE RESOLUTION:
The map objects are only accurate to the
resolution at which they were captured.
Output scale is not indicative of data capture scale.
Further information is available at:
www.osi.ie, search 'Capture Resolution'

LEGEND:
To view the legend visit
www.osi.ie and search for
'Large Scale Legend'

