



Comhairle Contae Chill Mhantáin
Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

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

Rosemarie McLaughlin
RML Planning
3 David Road
Drumcondra
Dublin 9
D09 H2V6

21st December 2023

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) – EX84/2023 –

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.





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

Applicant: Maria Gallen

Location: Amber. Herbert Road, Bray, Co. Wicklow

CHIEF EXECUTIVE ORDER NO. CE/PDE/2160/2023

A question has arisen as to whether “erecting a banner/screen attached to a protected structure” at Amber. Herbert Road, Bray, Co. Wicklow is or is not exempted development.

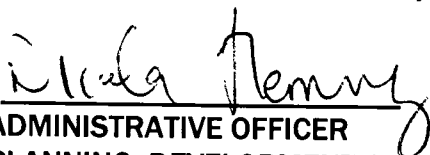
Having regard to:

- The details submitted on the 4th December 2023;
- Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended).
- The definitions of ‘structure’, ‘protected structure’, ‘development’, ‘works’ and ‘alteration’ in the Planning and Development Act 2000 (as amended)
- Bray MD Local Area Plan 2018 and Wicklow CDP 2022
- The banner was in place during the period 6 August to 20 October 2023 and is a moveable piece of material.

Main Reasons with respect to Section 5 Declaration:

- Amber Violet Hill is a protected structure Ref B25 as per the Wicklow CDP 2022 and Bray MD LAP 2018
- The erection of banner does not involve any act of construction, excavation, demolition, extension, alteration, repair or renewal of the protected structure, and does not involve the application or removal of plaster, paint, wallpaper, tiles or other material from the surfaces of the interior or exterior of the structure. The erection of the banner does not material change the use of the structure.
- Therefore the erection of the banner does not constitute development.

The Planning Authority considers that “erecting a banner/screen attached to a protected structure” at Amber. Herbert Road, Bray, Co. Wicklow is not development.

Signed: 
**ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT**

Dated  December 2023





Comhairle Contae Chill Mhantáin Wicklow County Council

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

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**David O'Brien & Grainne Birdthistle
Amber
Violet Hill
Herbert Road
Bray
Co. Wicklow**

21st December 2023

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) – EX84/2023 –

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.**



WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PDE/2160/2023

Reference Number: EX 84/2023

Name of Applicant: Maria Gallen

Nature of Application: Section 5 Referral as to whether or not "erecting a banner/screen attached to a protected structure" is or is not exempted development.

Location of Subject Site: Amber. Herbert Road, Bray, Co. Wicklow

Report from Aisling, EP & Edel Bermingham SEP

With respect to the query under section 5 of the Planning & Development Act 2000 as to whether "erecting a banner/screen attached to a protected structure" at Amber. Herbert Road, Bray, Co. Wicklow is or is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Having regard to:

- The details submitted on the 4th December 2023;
- Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended),
- The definitions of 'structure', 'protected structure', 'development', 'works' and 'alteration' in the Planning and Development Act 2000 (as amended)
- Bray MD Local Area Plan 2018 and Wicklow CDP 2022
- The banner was in place during the period 6 August to 20 October 2023 and is a moveable piece of material,

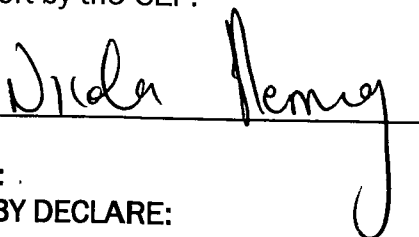
Main Reason with respect to Section 5 Declaration:

- Amber Violet Hill is a protected structure Ref B25 as per the Wicklow CDP 2022 and Bray MD LAP 2018
- The erection of banner does not involve any act of construction, excavation, demolition, extension, alteration, repair or renewal of the protected structure, and does not involve the application or removal of plaster, paint, wallpaper, tiles or other material from the surfaces of the interior or exterior of the structure. The erection of the banner does not material change the use of the structure.
- Therefore the erection of the banner does not constitute development.

Recommendation

The Planning Authority considers that "erecting a banner/screen attached to a protected structure" at Amber. Herbert Road, Bray, Co. Wicklow is not development as recommended in the report by the SEP.

Signed



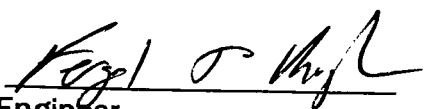
Dated 21st day of December 2023

ORDER:

I HEREBY DECLARE:

That "erecting a banner/screen attached to a protected structure" at Amber. Herbert Road, Bray, Co. Wicklow is not development within the meaning of the Planning & Development Act 2000 (as amended).

Signed:


Senior Engineer
Planning Development & Environment

Dated 21st day of December 2023

Ref: EX84/2023

Name: Maria Gillen

Location: Amber, Violet Hill, Herbert Road, Bray

Re: erecting a banner

Question: The applicant is seeking a Section 5 Declaration for the following:

Whether erecting a banner / screen at Amber, Herbert Road, Bray attached to a protected structure is or is not development and is or is not exempted development

Planning History:

Site 'Amber' :

23/60035 (Appealed ABP 317559-23) – David O'Brient and Grainne Birdthistle – grant – retention of demolition of existing timber garden sheds and replacement with new timber sheds, retention of chicken coop, internal alterations to previous planning permission PL ref: 17/544 including permitted internal partition wall not built, internal wall permitted to be demolished left in place, modifications to permitted spiral stairs, all within a protected structure.

22/1102 (Appealed ABP 317733-23) – David O'Brient and Grainne Birdthistle – grant – permission for single storey extension to north-eastern end of a protected structure (RPS no. B25 Kilbride, Violet Hill) consisting of demolition of modern garden wall, removal of existing modern double door on north-east elevation, construction of new single-storey, flat roof timber clad extension with partially glazed link to the existing house, and associated site works

21/988 (ABP 311675-21) – Grainne Birdthistle and David O'Brien – refused – permission for 69m² extension to the north eastern end of a protected structure (RPS no. B25(Kilbride) Violet Hill) consisting of a single story pitched roof element offset from the existing building and a single story flat roof link. The proposed extension will provide three additional bedrooms along with a bathroom, ensuite and linking corridor. Works to existing building include: removal of existing double door on north east elevation, connection of new glazed link removal of paint on selected areas of brick and granite on external walls to restore to original condition. Along with associated site works.

17/544 – David O'Brien and Grainne Birdthistle – grant – permission for refurbishment and reordering of interior features, involving their replacement with mezzanine floor and spiral staircase, reordering of attic to loft, their replacement with a mezzanine floor and spiral staircase, reordering of attic to loft, incorporation of breathable insulation to external walls of apartment, incorporation of panelling to walls of living room, replacement of kitchen units and fittings, removal of closet to kitchen and replacing door with niche, removal of 1970s screen to kitchen, and insertion of new screen to corridor to form new kitchen and dining area, incorporation of new enlarged family bathroom at location of existing shower and boiler room, subdivision of boiler room with new door to new utility, removal of closet to corridor and its replacement with niche to new kitchen dining area, closing of door to existing bedroom 3 and the conversion of this room to utility, refurbishment of conversion of this room to utility, refurbishment of existing WC and existing ensuite bathroom, replacement of 1970s glazed doors. Refurbishment of all existing windows, the glazing of the existing dormer windows, the installation of an air / water heat pump in the garden, and all associated site works

Adjoining 'Mandalay':

22/1013 (ABP 315055-22) – Peadar and Danielle Bruton – modified – permission for conversion of existing attic to habitable accommodation, restoration of existing roof, new roof lights, new roof structure between existing ridges, new stairs from first floor to attic in existing dwelling and associated site works, all within a protected structure

22/151 (ABP 214979-22) – Bruton – grant – permission for demolition of existing single-storey rear extension, construction of new single-storey rear extension, conversion of existing attic to habitable accommodation, restoration of existing roof, new roof lights, new roof structure between existing ridges, new stairs from first floor to attic in existing dwelling and associated site works, all within a protected structure (WCC RPS no. B25 Kilbride, Violet Hill)

15/346 (ABP 27.246000) – Bruton – grant – permission for conversion of existing attic to habitable accommodation, restoration of existing roof, new roof lights, roof structure between existing ridges, new stairs from 1st floor of existing dwelling a protected structure and associated site works

10/630059 – Bruton – grant – permission for alterations to previously approved conservatory extension to rear of existing dwelling, a protected structure, Planning Reg. Ref. 05/294 and associated site works

06/630181 – Eamonn O'Connor – grant – permission for 7sqm solar panels on the roof (a protected structure)

06/630122 – Eamonn O'Connor – refused – permission for 7sq.metres of solar panels and a micro wind turbine all on the roof (a protected structure)

06/630108 – Eamonn O'Connor – withdrawn – permission for double garage with studio accommodation overhead

06/630053 – Eamonn O'Connor – grant – permission for interior alterations to first floor level and permission for conversion of existing attic to habitable accommodation with new roof lights and roof window

05/630294 – Eamonn O'Connor – grant – permission for conservatory extension to rear of dwelling (a protected structure)

Adjoining 'Violet Hill House':

06/630123 – Hattenhauer – withdrawn – permission for double garage with studio accommodation overhead (previous planning permission 8/93) (a protected structure)

18/1429 – Stephen Hattenhauer – refused – permission for wo storey house with dormer roof and integral garage, onsite effluent treatment system, reinstatement of original entrance and driveway from Ballywaltrim Lane to the property and provision of new realigned driveway from existing on site entrance and driveway to Violet Hill House, associated works, all within the curtilage of a protected structure

Adjoining – driveway –

22/272 (ABP 313725-22) – Tudor Violet Hill Management Company – refused – permission for installation of electric gates at the entrance to the private avenue used by Tudor Violet Hill Company Members

08/630102 – Tudor Violet management Company – grant – permission for upgrade and improve existing public road entrance

UD History:

UD5548C – case closed – Amber, Violet Hill – compliance with conditions

UD5601 – case closed – Amber, Violet Hill, Herbert Road, Bray – shed without planning permission

Section 5 History:

EX21/2023 – internal works

EX69/2022 – two sheds and chicken coup

Heritage:

Protected structure – RPS B25 Kilbride Violet Hill

Relevant Legislation:

-Planning and Development Act, 2000 (as amended):

Section 2 (1) defines works as including “Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”;

Section 2 (1) defines a structure as “Any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and (a) where the context so admits, includes the land on, in or under which the structure is situate, and (b) in relation to a protected structure or proposed protected structure, includes (i) the interior of the structure, (ii) the land lying within the curtilage of the structure, (iii) any other structures lying within that curtilage and their interiors, and (iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

Section 3 (1) defines development as “The carrying out of works on, in, over or under land or the making of any material change in the use of structures or other land”;

Section 4 (1)(a) to (l) specifies various categories of development which shall be exempted for the purposes of the Act;

Section 4 (2) provides for certain classes of development to be designated as exempted development by way of legislation.

Section 57 (1) states “Notwithstanding section 4(1)(a),(h),(i),(j),(k) or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of – (a) the structure, or (b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest”.

“protected structure” means—

(a) a structure, or

(b) a specified part of a structure,

which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition;

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

(a) where the context so admits, includes the land on, in or under which the structure is situate, and

(b) in relation to a protected structure or proposed protected structure, includes—

(i) the interior of the structure,

(ii) the land lying within the curtilage of the structure,

(iii) any other structures lying within that curtilage and their interiors, and

(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);

“alteration” includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or 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

Assessment:

Amber , Violet Hill is a protected structure.

The applicant is requesting a Declaration in accordance with Section 5 for the following question:

Whether erecting a banner / screen at Amber attached to a protected structure is or is not development and is or is not exempted development.

A report is submitted by the applicant.

The report includes a photograph of the banner. On day of site visit, the banner had been removed and was not in place. It is stated that the banner was in place between 6th August to 20th October 2023.

Section 3 (1) defines *development* as “*The carrying out of works on, in, over or under land or the making of any material change in the use of structures or other land*”;

Section 2 (1) defines *works* as including “*Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure*”;

The banner shown in the photograph is a piece of rectangular material, beige in colour and attached via metal rings and hooks to part of the front of the protected structure.

The banner is removable and was not in place on day of visit and is a moveable piece of material.

The erection of a banner does not involve any act of construction, excavation, demolition, extension, alteration, repair or renewal of the protected structure, and does not involve the application or removal of plaster, paint, wallpaper, tiles or other material from the surfaces of the interior or exterior of the structure. The erection of the banner does not materially change the use of the structure.

Therefore the erection of the banner does not constitute development.

Recommendation:

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

erecting a banner / screen at Amber, Herbert Road, Bray attached to a protected structure

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

The Planning Authority considers that:

erecting a banner / screen at Amber, Herbert Road, Bray attached to a protected structure

is not development

Main considerations with respect to Section 5 Declaration:

- The details submitted on the 4th December 2023;
- Section 2, 3 and 4 of the Planning and Development Act 2000 (as amended).
- The definitions of 'structure', 'protected structure', 'development', 'works' and 'alteration' in the Planning and Development Act 2000 (as amended)
- Bray MD Local Area Plan 2018 and Wicklow CDP 2022
- The banner was in place during the period 6 August to 20 October 2023 and is a moveable piece of material,

Main Reasons with respect to Section 5 Declaration:

- Amber Violet Hill is a protected structure Ref B25 as per the Wicklow CDP 2022 and Bray MD LAP 2018
- The erection of banner does not involve any act of construction, excavation, demolition, extension, alteration, repair or renewal of the protected structure, and does not involve the application or removal of plaster, paint, wallpaper, tiles or other material from the surfaces of the interior or exterior of the structure. The erection of the banner does not material change the use of the structure.
- Therefore the erection of the banner does not constitute development.

A. MacNamara
Ex Pl.

18/12/2023

And Subp 20
18/12/2023

Issue is recommended
Declaration to issue to all relevant
persons.

Agd T. M. L. S.
21/12/23



Comhairle Contae Chill Mhantáin
Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

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MEMORANDUM

WICKLOW COUNTY COUNCIL

TO: Aisling McNamara
Executive Planner

FROM: Nicola Fleming
Staff Officer

RE:- Application for Certificate of Exemption under Section 5 of the
Planning and Development Acts 2000 (as amended).
EX84/2023 – Maria Gallen

I enclose herewith application for Section 5 Declaration received 04/12/2023

The due date on this declaration is 10th January 2024.



Staff Officer
Planning Development & Environment





Comhairle Contae Chill Mhantáin Wicklow County Council

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

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11th December 2023

Rosemarie McLaughlin
RML Planning
3 David Road
Drumcondra
Dublin 9
D09 H2V6

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX84/2023 for Maria Gallen

A Chara

I wish to acknowledge receipt on 04/12/2023 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 10/01/2024.

Mise, le meas



**NICOLA FLEMING
STAFF OFFICER
PLANNING DEVELOPMENT AND ENVIRONMENT**

*Ta an doicimead seo ar fáil i bhformáid 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
County Buildings
Wicklow
0404 20100

04/12/2023 15 02 27

Receipt No L11/0/322357

Rosemarie McLaughlin
3 David Road
Drumcondra
Dublin 9
D09 H2V6

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

Total	80 00 EUR
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Tendered	
Credit Card	80 00
Maria Gallen	

Change	0 00
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County Buildings
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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: MARIA GALLEN
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) ROSEMARIE MCLAUGHLIN
Address of Agent : RML PLANNING, 3 DAVID ROAD, DRUMCONDRA,
DUBLIN 9 D09H2V6

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

3. Declaration Details

- i. Location of Development subject of Declaration AMBER, VIOLET HILL,
HERBERT ROAD, BRAY.CO WICKLOW (PROTECTED STRUCTURE)

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

iii. If 'No' to ii above, please supply the Name and Address of the Owner, and or
DAVID O'BRIEN & GRAINNE BIRDTHISTLE, AMBER, VIOLET HILL,
HERBERT ROAD, BRAY CO. WICKLOW

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
PLEASE SEE ATTACHED

Additional details may be submitted by way of separate submission.

PLEASE SEE ATTACHED

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

Additional details may be submitted by way of separate submission.

PLEASE SEE ATTACHED

vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of
a Protected Structure (or proposed protected structure) ? YES

vii. List of Plans, Drawings submitted with this Declaration Application
ATTACHED PLANNING REPORT WHICH INCLUDES SITE LOCATION
MAP

viii. Fee of € 80 Attached ? YES (PAID TO ACCOUNTS BY PHONE)

Signed :  Dated : 4/12/2023

Additional Notes :

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

- A. Extension to dwelling - Class 1 Part 1 of Schedule 2 N/A
- Site Location Map
 - Floor area of structure in question - whether proposed or existing.
 - Floor area of all relevant structures e.g. previous extensions.
 - Floor plans and elevations of relevant structures.
 - Site Layout Plan showing distance to boundaries, rear garden area, adjoining dwellings/structures etc.

B. Land Reclamation - N/A

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

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

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

- Site layout plan showing location of structure and any adjoining farm structures and any dwellings within 100m of the farm structure.
- Gross floor area of the farm structure

- Floor plan and elevational details of Farm Structure and Full details of the gross floor area of the proposed structure.
- Details of gross floor area of structures of similar type within the same farmyard complex or within 100metres of that complex.

RML PLANNING

Rosemarie McLaughlin
3 David Road,
Drumcondra,
Dublin 9
D09H2V6
0876787323

Planning Report

Report to accompany section 5 referral

RML PLANNING

www.rmlplanning.ie

Document Control		
Project Title: Planning Application Report to accompany section 5 referral		
Project No:		
Rev No.	Comments	Date
0	Draft for review	29/11/2023
F	Final	4/12/2023

Confidentiality Statement

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1 Introduction

I have been instructed on behalf of Maria Gallen, The Gallery, Violet Hill, Herbert Road, Bray, Co. Wicklow to submit a section 5 referral pursuant to the planning and Development Act 2000, as amended (PDA) where any person may refer a question whether a particular case, is or is not development and is or is not exempted development. The map in section 2 contains an indicative site boundary of the subject site and please be aware the referrer does not own the site in question. The section 5 details are outlined below.

1.1 Section 5 referral details

Referrer	Marie Gallen
Address of referrer	The Gallery, Herbert Road, Violet Hill, Bray, Co. Wicklow
Subject address of section 5 referral	Amber, Violet Hill, Herbert Road, Bray, Co. Wicklow
Agent name	Rosemarie McLaughlin
Agent address	RML Planning, 3 David Road, Drumcondra, Dublin 9 D09H2V6

1.2 The question



Whether erecting a banner/screen at Amber, Herbert Road, Bray, Co. Wicklow, attached to a protected structure is or is not development and is or is not exempted development.

1.3 Other relevant Section 5 determinations in vicinity

- **PA Ref. EX 69/2022**
Wicklow Co. Council (WCC) determined that two sheds and chicken coup at Amber, Violet Hill, were development and were not exempted development.
- **PA Ref. EX 21/2023**
Wicklow Co. Council (WCC) determined that three internal works at Amber, Violet Hill, were exempted development relating to an existing wall for new door to master bedroom, a door ope blocked and en suite wall removed.

1.4 Relevant planning history

PA Ref. 21988: Permission was refused on appeal for an extension to Amber..extension to the north eastern end of a protected structure (RPS no. B25(Kilbride) Violet Hill) consisting of a single story pitched roof element offset from the existing building and a single story flat roof link.Works to existing building include: removal of existing double door on north east elevation, connection of new glazed link removal of paint on selected areas of brick and granite on external walls to restore to original condition. Along with associated site works.

PA Ref. 221102 Permission granted for an extension to Amber for single storey extension to north-eastern end of a protected structure (RPS no. B25 Kilbride, Violet Hill) consisting of demolition of modern garden wall, removal of existing modern double door on north-east elevation, construction of new single-storey, flat roof timber clad extension with partially glazed link to the existing house, and associated site works which is currently on appeal.

PA Ref. 17544 Permission was granted, for refurbishment and reordering of interior features, refurbishment of existing windows, the glazing of the existing dormer windows, the installation of an air/water heat pump in the garden, and all associated site works. Condition 1 states that

"permission refers to the development as described in the documents lodged save as the conditions hereunder require". Please note no banner/screens or awnings were illustrated in P.A. Ref. 17/544 or either of the other 2 applications referred to above and were not referenced in those applications.

2 The site

Fig. 1 Outline of area subject of question (approximate) please note referrer is not owner – Source: MyPlan.ie



Fig.2 The banner/screen from common parking area of north west facing front elevation of protected structure. The Gallery at first floor with bay window and Amber below. Source: Client

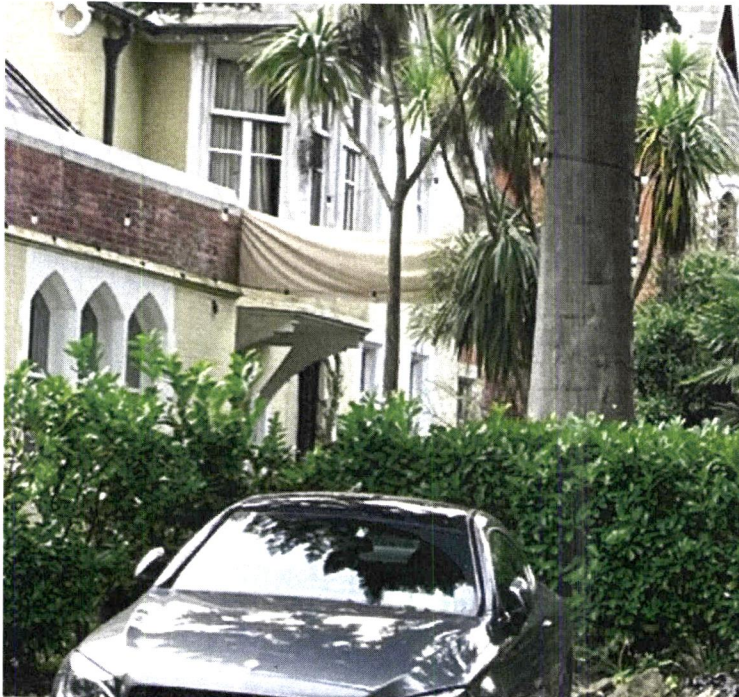


Fig.3 Close up of Fig. 2 Source: Client



Fig. 4 Banner/screen from sitting room window of The Gallery. Source:Client



The subject site is included in the Wicklow County Development Plan 2022-2028 record of protected structures, B25 Kilbride, Violet Hill. The subject site is located at the south-west section of the structure.

The National Inventory of Architectural heritage (NIAH) has deemed the structure Reg No. 16400702 of **inter alia architectural special interest** and **regional importance**.

The NIAH appraisal states that the protected structure is a "medium-sized country house, in mildly Tudor style, which is in substantially original condition. *Although somewhat spoiled with the painting of the brickwork and the sub-division into nine apartments, this is still an important asset to the architectural heritage of the area.*"

2.1 Context of site and question

A banner/screen was placed on Amber, Violet Hill, Herbert Road, Bray, Co Wicklow during a period in 2023 (6 August to 20 October 2023). This was fixed to the protected structure. The banner/screen came down during a storm. The referrer was concerned that this could have caused considerable damage to the bay window of The Gallery. This section 5 reference requires the PA to determine if the placing of a banner/screen is or is not development and is or is not exempted development on a protected structure.

Covenants apply to all property owners. A management company manages the common areas.

The subject site is one of four residential units within the main protected structure and is in the unique position of being located below the Gallery, a first floor apartment. Please note that when the building was included on the record of protected structures, there were no banner/screens.

The legislative test that applies is, whether erecting of a banner/screen on the protected structure would "*affect the appearance of a protected structure*" and not if it is a positive or negative impact. The banner/screen has a negative impact on the residential amenity of the referrer as it is directly below the window of her apartment.

The submitted section 5 is a reasonable question for the PA to consider, as any exemption of attaching a banner/screen to the protected structure would set a precedent for similar attachments being fixed to the protected structure which is in multiple ownerships.

3 Relevant legislation

The PDA and associated Planning and Development Regulations 2001 as amended (PDR) apply.

Of note in this referral is that the site is a protected structure and therefore the **Architectural Heritage Guidelines for Planning Authorities 2011 (AHGPA)** apply which in accordance with section 28 of PDA the PA shall "have regard".

3.1.1 Relevant definitions

Section 2 of PDA relating to definitions includes:

1 "alteration" includes— (a) plastering or painting or the removal of plaster or stucco, or (b) the replacement of a door, window or roof, that materially alters the external appearance of a structure **so as to render the appearance inconsistent** with the character of the structure or neighbouring structures;

The definition of alteration is not restricted to the above.

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

Section 3 of the PDA relates to the definition of development.

1 3.—(1) In this Act, "development" means, except where the context otherwise requires, the carrying out of **any works on, in, over or under land** or the making of any material change in the use of any structures or other land.

3.1.2 Relevant exemptions

Section 4 of the PDA provides for exemptions.

4.—(1) The following shall be exempted developments for the purposes of this Act—

....

(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**;

Exemptions are available for certain works in the PDR. These do not apply. There are no exemptions for temporary works to a protected structure and erecting banner/screens on and off may be considered as within the definition of works. Fixtures to the façade of a protected structure to faceplate banner/screens are also works to the protected structure.

3.1.3 Questions arising

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

3.1.4 Declarations

Legislation relating to works affecting the character of protected structures, including the right to request a Declaration from the Planning as to the type of works which it considers would or would not materially affect the character of a Protected Structure is provided within Section 57 of the PDA.

*57.—(1) Notwithstanding section 4(1)(a), (h), (i), (ia), (j), (k), or (l) and any regulations made under section 4(2), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development **only if those works would not materially affect the character of—***

(a) the structure, or

*(b) **any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.***

Despite exemptions provided for under Section 4 of the PDA, section 57(1) limits exemptions to protected structures.

3.1.5 Duty of owners and occupiers to protect structures

“58.—(1) Each owner and each occupier shall, to the extent consistent with the rights and obligations arising out of their respective interests in a protected structure or a proposed protected structure, ensure that the structure, or any element of it which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest, is not endangered.

(2) The duty imposed by subsection (1) in relation to a proposed protected structure arises at the time the owner or occupier is notified, under section 55 or under Part II, of the proposal to add the structure to the record of protected structures.

(3) Neither of the following shall be considered to be a breach of the duty imposed on each owner and each occupier under this section—

(a) development in respect of which permission under section 34 has been granted;

(b) development consisting only of works of a type which, in a declaration issued under section 57(3) to that owner or occupier, a planning authority has declared would not materially affect the character of the protected structure or any element, referred to in subsection (1) of this section, of that structure.

(4) Any person who, without lawful authority, causes damage to a protected structure or a proposed protected structure shall be guilty of an offence.

(5) Without prejudice to any other defence that may be available, it shall be a good defence in any proceedings for an offence under subsection (4) to prove that the damage to the structure resulted from works which were—

(a) urgently required in order to secure the preservation of the structure or any part of it,

(b) undertaken in good faith solely for the purpose of temporarily safeguarding the structure, and

(c) unlikely to permanently alter the structure or any element of it referred to in subsection (1).

3.2 Relevant case law

Dunnes Stores -v- Dublin City Council & Anor [2017] IEHC 148, related an authorised but immune awning in Dublin City. While this case focused on the duration of the period the awnings had been in place, the following illustrates that awnings are not exempt from permission.

"III. Legal Status of Awnings and Consequences of Same

(i) Legal Status of the Awnings.

29. *It appears to be common case between the parties that Taculla has no planning permission for the overhead front awnings; certainly the court has had no sight of any such permission. Whether or not the overhead front awnings have been in situ for more than seven years is not a matter on which this Court has to rule. Suffice it to note that even if they are immune from planning enforcement action, that does not suffice to transmute the overhead front awnings from unauthorised development into authorised development; they remain unauthorised development.*

30. *The foregoing involves so trite a statement of law that the court does not suffice to consider the relevant case-law or commentary in any detail. Instead it would respectfully point the reader to the long-ago decision of the High Court in Dublin County Council v. Mulligan (Unreported, High Court (Finlay P.), 6th May, 1980) (a case concerned with s.31 of the Act of 1963 and since replaced by the enforcement notice provisions in Part VIII of the Act of 2000) and to the helpful summary of the present law provided by Mr Simons in his learned text Planning and Development Law (2nd ed.), at para. 7.50:*

"The fact that the limitation period has expired without enforcement action having been taken does not have the effect of making the unauthorised development lawful. It is not, for example, equivalent to planning permission having been granted by operation of law. Rather, the development enjoys a hybrid status as unlawful but immune."

31. *The only means by which the overhead front awnings at Harry's may be rendered lawful is through a grant of retention planning permission under s.34 of the Act of 2000. The awnings are and remain unauthorised development until such retention permission is granted (if ever granted)."*

4 Architectural Heritage Protection Guidelines for Planning Authorities 2011 (AHPGPA)

In summary, there are two options when dealing with a protected structure to determine if development is exempt from planning permission:

1. A referral pursuant to s 5 PDA by "any person" to seek a declaration if works are or are not development and are or are not exempted development i.e. no requirement to seek permission.
2. A declaration pursuant to s 57 PDA by the "the owner or occupier" to determine the works to the structure that would materially affect its character and therefore require planning permission, and those works which may be carried out as exempted development. The details of any such declaration issued by the planning authority or of a decision by the Board must be entered on the planning register.

The most relevant sections of AHPGPA are outlined below.

4.1.1 Expansion of definition of works to a protected structure AHPGPA

*"4.1.2 In relation to protected structures and proposed protected structures, the definition of 'works' in the 2000 Act is expanded from 'construction, excavation, demolition, extension, alteration, repair or renewal' to include 'any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure'. **Any or all of these works have the potential to materially affect the character of a protected structure.***

5 Relevant planning policy

5.1 Wicklow Co. Council Development Plan 2022-2028 (CDP)

The protected structure is described in the Wicklow Development plan 2022-2028 as follows.

Plan Ref. No	Building Location	Street / number	Designation
B25	Herbert Road (Kilbride)	Violet Hill	Structure

The National Inventory of Architectural Heritage (NIAH) has deemed the structure Reg No. 16400702 of inter alia **architectural** special interest.

The Architectural Heritage Objectives include:

*CPO 8.10 To protect, conserve and manage the built heritage of Wicklow and to encourage **sensitive** and sustainable development to ensure its preservation for future generations.*

CPO 8.11 To support the work of the National Inventory of Architectural Heritage (NIAH)....

*CPO 8.12 To have regard to 'Architectural Heritage Protection: Guidelines for Planning Authorities' (Department of Arts, Heritage and the Gaeltacht, 2011) in the assessment of **proposals affecting architectural heritage**.*

Record of Protected Structures Objectives include:

CPO 8.13 To ensure the protection of all structures, items and features contained in the Record of Protected Structures.

*CPO 8.14 To positively consider proposals to alter or change the use of protected structures so as to render them viable for modern use, subject to architectural heritage assessment and to demonstration by a suitably qualified Conservation Architect / or other relevant expertise that the structure, character, appearance and **setting will not be adversely affected and suitable design, materials and construction methods** will be utilised.*

*CPO 8.15 All development works on or at the sites of protected structures, including any site works necessary, shall be carried out using **best heritage practice for the protection** and preservation of those aspects or features of the structures / site that render it worthy of protection.*

The WCDP Appendix 1 states *The Planning Authority will consider proposals for development or alterations to a Protected Structure based on the conservation principles set out in the Architectural Heritage Protection Guidelines for Planning Authorities, DAHG, 2011. Development proposals for works to a Protected Structure or within the curtilage of a Protected Structure may require a method statement that describes the proposed works in appropriate detail.*

5.2 Bray Municipal District Local Area Plan 2018 – 2024 (LAP)

The site is zoned RE. The current Bray LAP expires in 2024.

Architectural Heritage Objectives are found in objectives AH 1-4.

AH1 To ensure the protection of all structures (or parts of structures) contained in the Record of Protected Structures.

*AH2 To positively consider proposals to improve, alter, extend or change the use of protected structures so as to render them viable for modern use, subject to consultation with suitably qualified Conservation Architects and / or other relevant experts, **suitable design, materials and construction methods**. All development works on or at the sites of protected structures, including any site works necessary, shall be carried out using best heritage practice for the protection and preservation of those aspects or features of the structures / site that render it worthy of protection. To support the re-introduction of traditional features on protected structures where there is evidence*

that such features (e.g. window styles, finishes etc) previously existed, while not compromising the need for energy conservation.

6 Appropriate Assessment and Environmental Impact Assessment

The PA as the competent authority, will carry out Environmental Impact Assessment (EIA) Screening and Appropriate Assessment (AA) Screening on the above referral.

7 Conclusion

Having regard to the contents of the submission above, the PA are requested to provide a declaration that the erecting and affixing of a banner/screen to part of the Protected Structure materially alters the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures and is development and is not exempted development.



Rosemarie McLaughlin

BA,MRUP,BL,MIPI

04/12/2023

Encl:

- WCC referral form
- Fee
- This report