

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

Director of Services Order No: 1531/2022

Reference Number: EX 49/2022

Name of Applicant: Gerard Coone & Nuala O'Brien

Nature of Application: Section 5 Referral as to whether "The knocking down of front garden and widening access for off-street parking at 195 Killarney Park, Bray, Co. Wicklow" is or is not exempted development.

Location of Subject Site: 195 Killarney Park, Bray, Co. Wicklow

RECOMMENDATION: Report from Edel Bermingham SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "The knocking down of front garden and widening access for off-street parking at 195 Killarney Park, Bray, Co. Wicklow" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- a) The details submitted with the Section 5 Declaration.
- b) Sections 2 , 3 and 4 of the Planning and Development Act 2000 (as amended)
- c) Schedule 2, Part 1 , Class 5 and Class 6 of the Planning and Development Regulations 2001 (as amended)
- d) Article 6 & 9 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- The knocking down of front garden and widening access for off-street parking would be development having regard to the provisions of Section 3 of the Planning and Development Act 2001(as amended).
- The works would come within the description of Class 5 of Part 1 : Schedule 2 of the Planning and Development Regulations 2001 (as amended). These exemptions however are subject to the restriction set out under Article 9 of the Regulations which provides that development shall not be exempted development if the carrying out of such development would consist 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. Given the public road

width exceeds 4m at this point, the proposal which includes the widening of a means of access on to this public road would not be exempted development given the restriction under Article 9 of the Planning and Development Regulations 2001 (as amended).

The Planning Authority considers that "The knocking down of front garden and widening access for off-street parking at 195 Killarney Park, Bray, Co. Wicklow" is development and is not exempted development

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ORDER:

That a declaration to issue stating:

That "The knocking down of front garden and widening access for off-street parking at 195 Killarney Park, Bray, Co. Wicklow" is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: _____
2022

[Signature]
Director of Services
Planning Development & Environment

Dated 19 day of September



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

19 September 2022

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

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

Exemption Ref. No: EX 49/2022

Applicant: Gerard Coone & Nuala O'Brien

Nature of Application: "The knocking down of front garden and widening access for off-street parking at 195 Killarney Park, Bray, Co. Wicklow"

Location: 195 Killarney Park, Bray, Co. Wicklow

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

Is mise, le meas,


ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT.



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol Planning Development and Environment

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

Applicant: Gerard Coone & Nuala O'Brien

Location: 195 Killarney Park, Bray, Co. Wicklow

DIRECTOR OF SERVICES ORDER NO. 1531/2022

A question has arisen as to whether "The knocking down of front garden and widening access for off-street parking at 195 Killarney Park, Bray, Co. Wicklow" is or is not exempted development.

Having regard to:

- a) The details submitted with the Section 5 Declaration.
- b) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- c) Schedule 2, Part 1, Class 5 and Class 6 of the Planning and Development Regulations 2001 (as amended)
- d) Article 6 & 9 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

- The knocking down of front garden and widening access for off-street parking would be development having regard to the provisions of Section 3 of the Planning and Development Act 2001 (as amended).
- The works would come within the description of Class 5 of Part 1 : Schedule 2 of the Planning and Development Regulations 2001 (as amended). These exemptions however are subject to the restriction set out under Article 9 of the Regulations which provides that development shall not be exempted development if the carrying out of such development would consist 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. Given the public road width exceeds 4m at this point, the proposal which includes the widening of a means of access on to this public road would not be exempted development given the restriction under Article 9 of the Planning and Development Regulations 2001 (as amended).

The Planning Authority considers that "The knocking down of front garden and widening access for off-street parking at 195 Killarney Park, Bray, Co. Wicklow" is development and is not exempted development.



Comhairle Contae Chill Mhantáin
Wicklow County Council

Forbairt Pleanála agus Comhshaol
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Signed: *C. Canters* Dated 19 September 2022
ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

PP

19/09/22

Section 5 Application EX 49/2022

Date : 8th September 2022.

Applicant : Gerard Coone & Nuala O'Brien

Address : 195 Killarney Park, Bray, Co.Wicklow

Exemption Whether or not :

the knocking down of front garden and widening access for off-street parking

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

Relevant legislation :

Planning and Development Act 2000 (as amended)

"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, ...

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

Section 3 :

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

Section 4 :

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

;

(3) A reference in this Act to exempted development shall be construed as a reference to development which is—

(a) any of the developments specified in *subsection (1)*, or

(b) development which, having regard to any regulations under *subsection (2)*, is exempted development for the purposes of this Act.

(4A) Notwithstanding subsection (4), the Minister may make regulations prescribing development or any class of development that is—

(a) authorised, or required to be authorised by or under any statute (other than this Act) whether by means of a licence, consent, approval or otherwise, and

(b) as respects which an environmental impact assessment or an appropriate assessment is required, to be exempted development.

Planning and Development Regulations 2001(as amended).

Article 6

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

Article 9(1) Note see Regulations for full Article

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

(a) if the carrying out of such development would—

(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,

Schedule 2 : Part 1

<p>CLASS 5 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.</p>	<p>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.</p> <p>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.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>
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Assessment :

The Section 5 declaration application seeks an answer with respect to the following question i.e. Whether or not the amendments to front garden wall and lowering of section of kerb and

the knocking down of front garden and widening of access for off-street parking

is or is not exempted development

The works would also require the lowering of section of kerb and fill in an area of grass verge.

The first question to be asked therefore is whether the removal of the front boundary and widening access is or is not development. In this regard as such works would be works of demolition and alteration, such operations would come within the definition of development as set out under Section 3 of the Act :-

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.

The alteration of the front wall to provide a wider entrance area would come within the description/provisions of Class 5.

Article 9 provides that the exemptions under Schedule 2 ; Part 1 are clawed back where the works would

- (a) 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,

The road to the front of the dwelling is in excess of 4m, and therefore the proposal would not be exempted development as it would contravene Article 9.


Recommendation :

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

the knocking down of front garden and widening access for off-street parking at 195 Killarney Park, Bray, Co.Wicklow

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

The Planning Authority consider that :

the knocking down of front garden and widening access for off-street parking 
~~Killarney Park, Bray, Co.Wicklow~~

is development and is **not exempted development**

Main Considerations with respect to Section 5 Declaration :

- a) The details submitted with the Section 5 Declaration.
- a) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- b) Schedule 2, Part 1, Class 5 and Class 6 of the Planning and Development Regulations 2001 (as amended)
- c) Article 6 & 9 of the Planning and Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration :

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Shirley...
SLP
8/1/2022

Wicklow County Council
County Buildings
Wicklow
0404-20100

29/08/2022 10 24 47

Receipt No L1/0/300737

GERARD COONE & NUALA O'BRIEN
195 KILLARNEY PARK
BRAY
CO WICKLOW

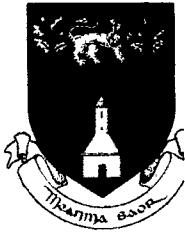
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GOODS	80 00
VAT Exempt/Non-vatable	

Total 80 00 EUR

Tendered
Postal Order 80 00

Change 0 00

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WICKLOW COUNTY COUNCIL
CUSTOMER SERVICE

29 AUG 2022

**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: Gerald Cooney + Nuala O'Brien

Address of applicant: _____

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

WICKLOW COUNTY COUNCIL
CUSTOMER SERVICE

29 AUG 2022

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) _____

Address of Agent : _____

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

WICKLOW COUNTY COUNCIL

29 AUG 2022

PLANNING DEPT.

3. Declaration Details

i. Location of Development subject of Declaration 195 Killeeney Park
Sligo County Wicklow

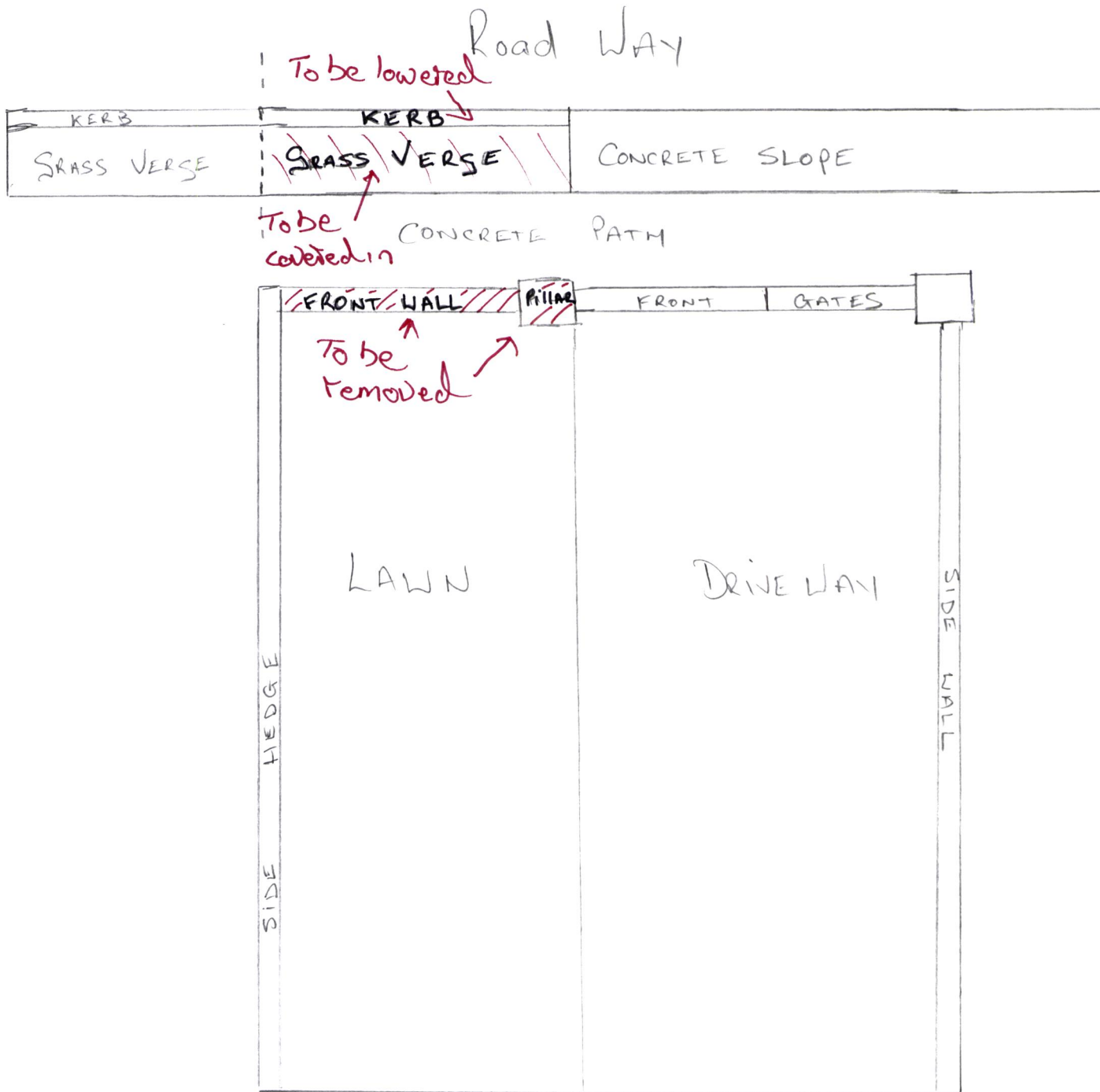
ii. Are you the owner and/or occupier of these lands at the location under i. above?
 Yes/ No.

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

iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, an payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration I wish to knock down my front garden wall (2 meters long) and adjoining gate pillar and provide access and parking for a second family car. I also need to level a 2 meter section of kerb and fill in a small section of grass verge.
Additional details may be submitted by way of separate submission.

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

Additional details may be submitted by way of separate submission.



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

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

Drawing included

viii. Fee of € 80 Attached ? _____

Signed : Gerard Lane Dated : 26/8/22

Additional Notes :

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

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

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

B. Land Reclamation -

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