



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

Brendan Fitzgerald

September 2023

**RE: Declaration in accordance with Section 5 of the Planning & Development Acts
2000 (As Amended) – EX58/2023**

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: Brenda Fitzgerald

Location: 5 Bayview Grange, Wicklow, A67DV27

CHIEF EXECUTIVE ORDER NO. CE/PDE/1682/2023

A question has arisen as to whether "The widening of an access onto a public local road and the hard surfacing of the front garden" is or is not exempted development.

Having regard to:

- i. The details submitted under Section 5 Declaration on 23/08/2023
- ii. The taken in charge register of Wicklow County Council
- iii. Sections 2(1), 3(1), and 4 of the Planning and Development Act 2000 (as amended)
- iv. Articles 6(1) & 9(1) (a) (ii) of the Planning and Development Regulations 2001 as amended
- v. Class 6 of the Planning and Development Regulations 2001 as amended

Main Reasons with respect to Section 5 Declaration:

- The widening of an access and the hard surfacing of the front garden are works, and would come within the definition of development as set out under Section 3 of the Planning and Development Act 2000 (as amended).
- The alteration of the entrance by removal of pillar and associated hedging would come within the description of Class 5 of Part 1 : Schedule 2 of the Planning and Development Regulations 2001 (as amended). This exemption is subject to the restriction set out under Article 9 (1)(a)(ii) of the Regulations 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. As the housing estate has been taken in charge the estate road is a public road with a carriageway width of 7m wide. The proposal which is for the material widening of an access onto a public road which is in excess of 7m wide would therefore contravene the provision set out under Article 9(1) (a) (ii).
- The hard surfacing of the front garden with concrete so that more than 50% of the area of the garden forward of the front building line would be hard surfaced and with

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All correspondence should be addressed to the Director of Services, Planning Development & Environment.



a material which is not a permeable material or otherwise to allow for rainwater to soak into the ground, would not come within the limitations set out under Class 6 : Part 1 : Schedule 2 of the Planning and Development Regulations 2001 (as amended) .

The Planning Authority considers that "The widening of an access onto a public local road and the hard surfacing of the front garden" at 5 Bayview Grange, Wicklow, A67DV27 is development and is not exempted development.

Signed: _____
ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Dated September 2023

WICKLOW COUNTY COUNCIL

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

CHIEF EXECUTIVE ORDER NO. CE/PDE/1681/2023

Reference Number: EX 58/2023

Name of Applicant: Brenda Fitzgerald

Nature of Application: Section 5 Referral as to whether "The widening of an access onto a public local road and the hard surfacing of the front garden" is or is not exempted development

Location of Subject Site: 5 Bayview Grange, Wicklow, A67DV27

Report from Holly O'Connor, EP & Edel Bermingham, SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "The widening of an access onto a public local road and the hard surfacing of the front garden" at 5 Bayview Grange, Wicklow, A67DV27 is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- i. The details submitted under Section 5 Declaration on 23/08/2023
- ii. The taken in charge register of Wicklow County Council
- iii. Sections 2(1), 3(1), and 4 of the Planning and Development Act 2000 (as amended)
- iv. Articles 6(1) & 9(1) (a) (ii) of the Planning and Development Regulations 2001 as amended
- v. Class 6 of the Planning and Development Regulations 2001 as amended

Main Reasons with respect to Section 5 Declaration:

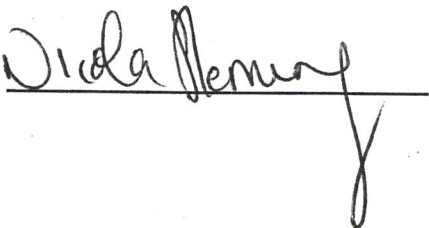
- The widening of an access and the hard surfacing of the front garden are works, and would come within the definition of development as set out under Section 3 of the Planning and Development Act 2000 (as amended).
- The alteration of the entrance by removal of pillar and associated hedging would come within the description of Class 5 of Part 1 : Schedule 2 of the Planning and Development Regulations 2001 (as amended). This exemption is subject to the restriction set out under Article 9 (1)(a)(ii) of the Regulations 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. As the housing estate has been taken in charge the estate road is a public road with a carriageway width of 7m wide. The proposal which is for the

material widening of an access onto a public road which is in excess of 7m wide would therefore contravene the provision set out under Article 9(1) (a) (ii).

- The hard surfacing of the front garden with concrete so that more than 50% of the area of the garden forward of the front building line would be hard surfaced and with a material which is not a permeable material or otherwise to allow for rainwater to soak into the ground, would not come within the limitations set out under Class 6 : Part 1 : Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Recommendation

The Planning Authority considers that "The widening of an access onto a public local road and the hard surfacing of the front garden" at 5 Bayview Grange, Wicklow, A67DV27 **is development and is not exempted development.** as recommended in the report by the SEP.

Signed  Dated 21st day of September 2023

ORDER:

I HEREBY DECLARE:

That "The widening of an access onto a public local road and the hard surfacing of the front garden" at 5 Bayview Grange, Wicklow, A67DV27 **is development and is not exempted development** within the meaning of the Planning & Development Acts 2000 (as amended).

Signed:  Dated: 21st day of September 2023
Senior Engineer
Planning Development & Environment

**WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT****PLANNING REPORT SECTION 5 APPLICATION**

TO: FERGAL KEOGH S.E. / EDEL BERMINGHAM S.E.P
FROM: HOLLY O'CONNOR E.P.
SUBJECT REF: EX 58/2023
DECISION DATE: 02/10/2023
APPLICANT: BRENDA FITZGERALD
ADDRESS: 5 BAYVIEW GRANGE WICKLOW A67DV27
EXEMPTION: WIDENING OF DRIVEWAY

Site Location:

The site is located within the settlement of Wicklow Town in the established housing development Bayview Grange, served by the Local Road L16003-0. The subject site consists of a two storey dwelling on the end of the row.

Planning History:

None on subject site- housing development built in 1990s.

Relevant legislation:

Planning and Development Act 2000 (as amended)

"Works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal

"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

Section 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 2 opposite the mention of that class in the said column 1.

Article 9(1) restrictions on exemption, 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.

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,

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

Schedule 2- Part 1- Development within the curtilage of a house

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

Conditions & Limitations:

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.

Class 6- any works within the curtilage of a house for –

- (ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such.

Conditions & Limitations:

1. The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground.
2. Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller
Or
if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

Submission:

The applicants are applying for a Section 5 Exemption in relation to the following;

To determine whether the widening of a driveway and alteration to front garden and public footpath and kerb at 5 Bayview Grange, Wicklow, Co. Wicklow, is or is not development and is or is not exempted development within the meaning of the Planning and Development Act, 2000 (as amended).

Assessment:

The site is located within an existing housing estate. To the side of the dwelling is a capped and plastered wall which is adjoined by public open space. The front roadside boundary consists of a hedge boundary and low brick pillar.

This proposal seeks works consisting of:

- Removing of pillar and hedge and widening of access;
- Removing grass and laying of cement on front garden space;
- Dropping public kerb.

Having regard to the definition of development in Section 3 of the Planning and Development Act 2000 (as Amended), it is considered that proposed development to the existing entrance is development.

Removing of pillar and hedge and widening of access;

The housing estate has been taken in charge by WCC and therefore is now a public road L16003-0. The road measures c.7m wide. Article 9(1) sets out restrictions on exemption if the carrying out of such development would consist of the material widening of a means of access to a public road which the surfaced carriageway exceeds 4 metres in width, therefore the removing of the pillar and hedge is development and is not exempt.

Removing grass and laying of cement on front garden space;

Class 6 sets out the provision of a hard surface in the area of the garden forward of the front building line of the house for purposes incidental to the enjoyment of the house as such. The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground, not detailed to be altered by 1m. Provided that the area of the hard surface is less than 25 square, the area is measuring c.15sqm, or less than 50% of the area of the garden forward of the front building line of the house, the entire front garden is c.40sqm, of which 25sqm is already hard surfaced and the proposal is to surface the remaining 15sqm.

Or

If the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, with the existing and proposed the area would be more than 50% of the garden, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground. It has been detailed to lay cement; it has not been shown to be permeable. The proposal to lay concrete to the front which would consist of more than 50% of the area of front garden being hard surfaced in a material not shown to be permeable would be development and would not be exempt.

Dropping public kerb:

This development relates to works to the public footpaths which is not on private land and therefore cannot form part of this question.

Recommendation:

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

The widening of an access onto a public local road and the hard surfacing of the front garden at 5 Bayview Grange, Wicklow, Co. Wicklow, is or is not development and is or is not exempted development within the meaning of the Planning and Development Act, 2000 (as amended).

The Planning Authority considers that:

The ~~proposed works~~ widening of an access onto a public local road and the hard surfacing of the front garden at 5 Bayview Grange, is development and is **not** exempted development.

Main Considerations with respect to Section 5 Declaration:

- i. The details submitted under Section 5 Declaration on 23/08/2023
- ii. The taken in charge register of Wicklow County Council
- iii. Sections 2(1), 3(1), and 4 of the Planning and Development Act 2000 (as amended)
- iv. Articles 6(1) & 9(1) (a) (ii) of the Planning and Development Regulations 2001 as amended
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Main Reasons with respect to Section 5 Declaration:

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- The ~~proposal is to~~ hard surfacing of the front garden with concrete so that more than 50% of the area of the garden forward of the front building line would be hard surfaced and with a ~~the proposed~~ material which is not a permeable material or otherwise to allow for rainwater to soak into the ground, would not come within the limitations set out under Class 6 : Part 1 : Schedule 2 of the Planning and Development Regulations 2001 (as amended) .

Holly O'Connor

Holly O'Connor E.P. Date: 25/09/2023

Agreed as modified

Edl Donnington SEP.

25/9/2023

*Issue of recommended
Regl P. 27/09/20*



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

MEMORANDUM

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WICKLOW COUNTY COUNCIL

TO: Holly O'Connor
Executive Planner

FROM: Nicola Fleming
Staff Officer

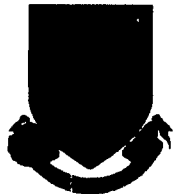
RE:- Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). EX58/2023 – Brenda Fitzgerald

I enclose herewith for your attention application for Section 5 Declaration received 6th September 2023

The due date on this declaration is the 3rd October 2023.

Staff Officer
Planning Development & Environment





Comhairle Contae Chill Mhantáin Wicklow County Council

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

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8th September 2023

Brenda Fitzgerald

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). EX58/2023

A Chara

I wish to acknowledge receipt on 6th September 2023 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 3rd October 2023.

Mise, le meas

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



Nicola Fleming

From: Nicola Fleming
Sent: Monday 28 August 2023 13:25
To:
Subject: application under Section 5

I refer to your recent application under Section 5 of the Planning & Development Acts 2000 (as amended) please be advised a site location map is required showing the location of the site please submit same via post of return email in order to process your application.

Regards,

Nicola Fleming

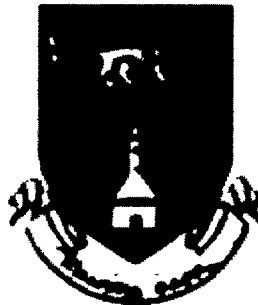
Staff Officer

Planning Department

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

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

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



Map received via
email on 06/09/23
[Signature]

Wicklow County
County Buildings
Wicklow
0404-20100

23/08/2023 16:17:30

Receipt No L110/317776
***** REPRINT *****

BRENDA FITZGERALD
5 BAYVIEW GRANGE
WICKLOW TOWN
CO WICKLOW
A67DV27

EXEMPTION CERTIFICATES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

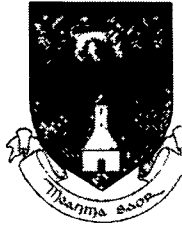
Total	80.00 EUR
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Tendered	
Credit Card	80.00

Change	0.00
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Issued By: Charlie Redmond
From: Customer Service Hub
Vat reg No 0015233H

A67FW96



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: BRENDA FITZGERALD.

Address of applicant: _____

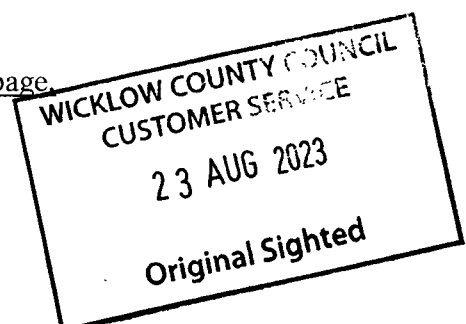
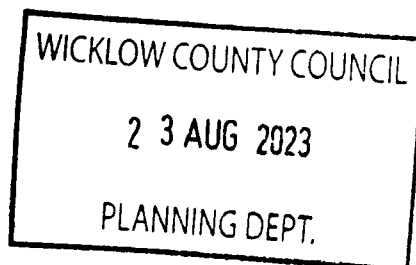
Note Phone number and email to be filled in on separate page.

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) _____

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 FRONT DRIVEWAY

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

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

iv. Section 5 of the Planning and Development Act provides that : If any question arises as to what, in any particular case, is or is not development and is or is not exempted development, within the meaning of this act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question. You should therefore set out the query for which you seek the Section 5 Declaration to make driveway a two car driveway, query path height + if planning is required. query if need to ~~can plan permission~~ to change footpath / curb

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 N/A

viii. Fee of € 80 Attached ? _____

Signed : By Fitzgerald Dated : 03/8/23

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

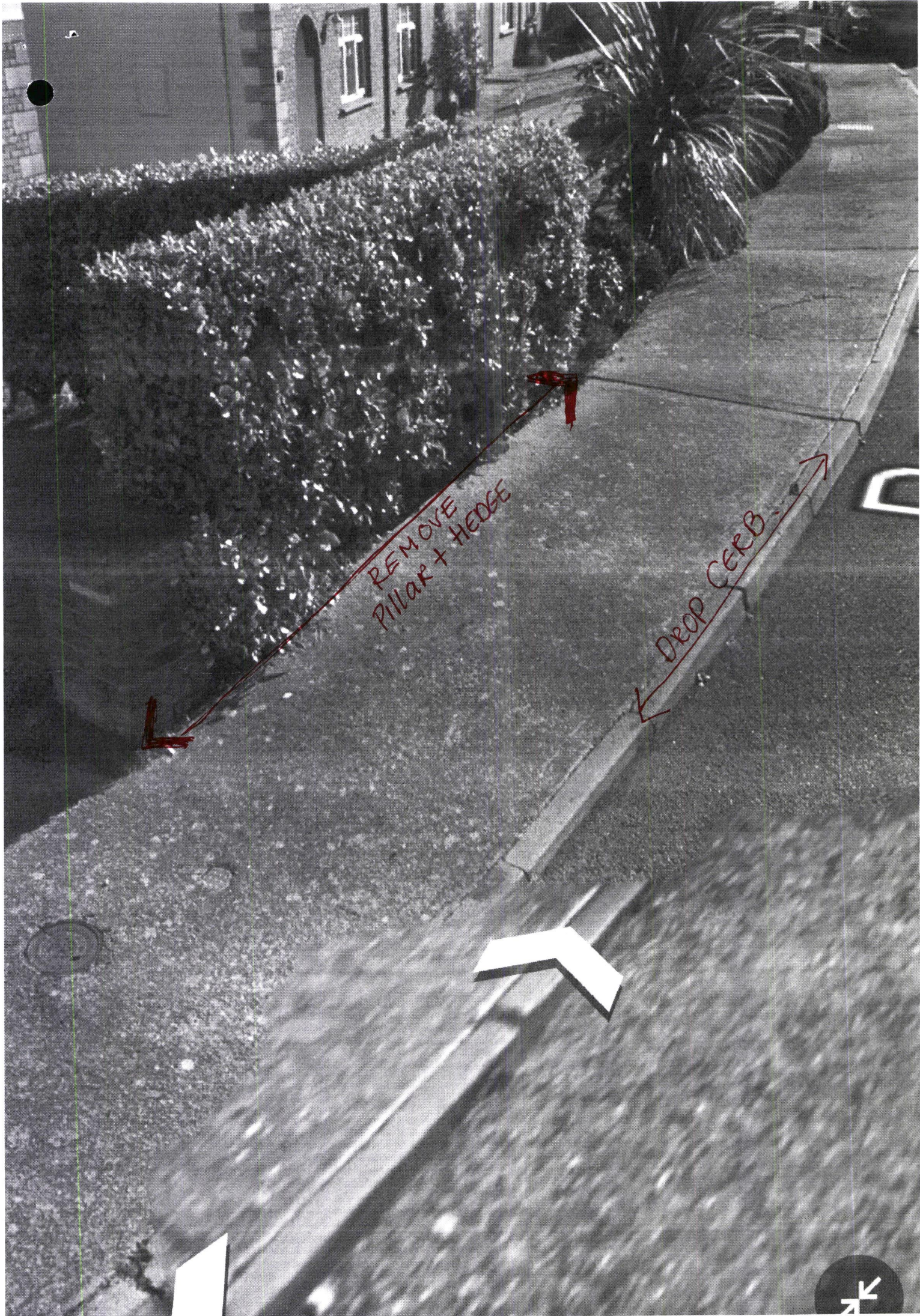
site location
map

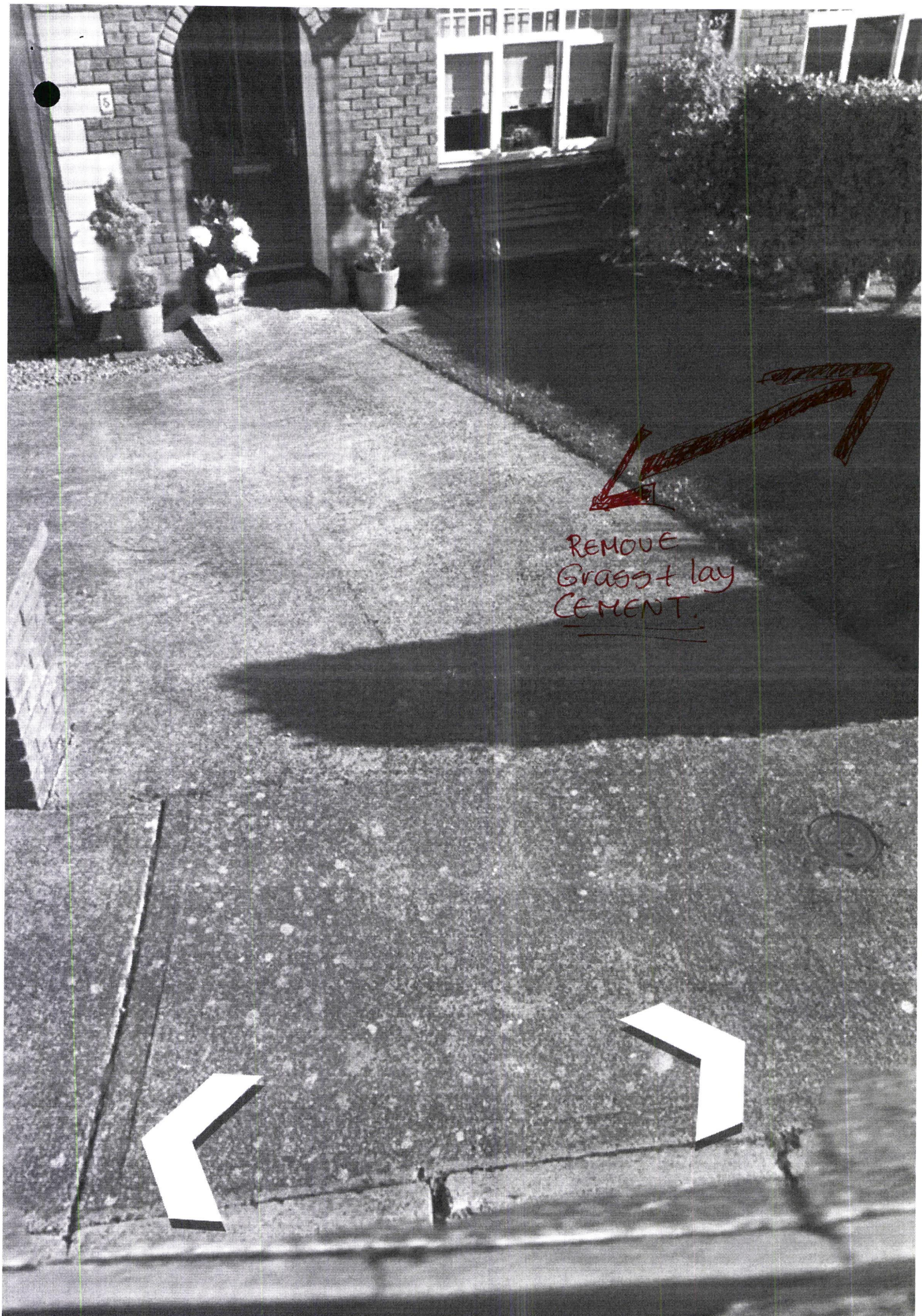
governed by Schedule 2, Part 3, Class 11. Note in addition to confirmation of exemption status under the Planning and Development Act 2000(as amended) there is a certification process with respect to land reclamation works as set out under the European Communities (Environmental Impact Assessment) (Agriculture) 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.

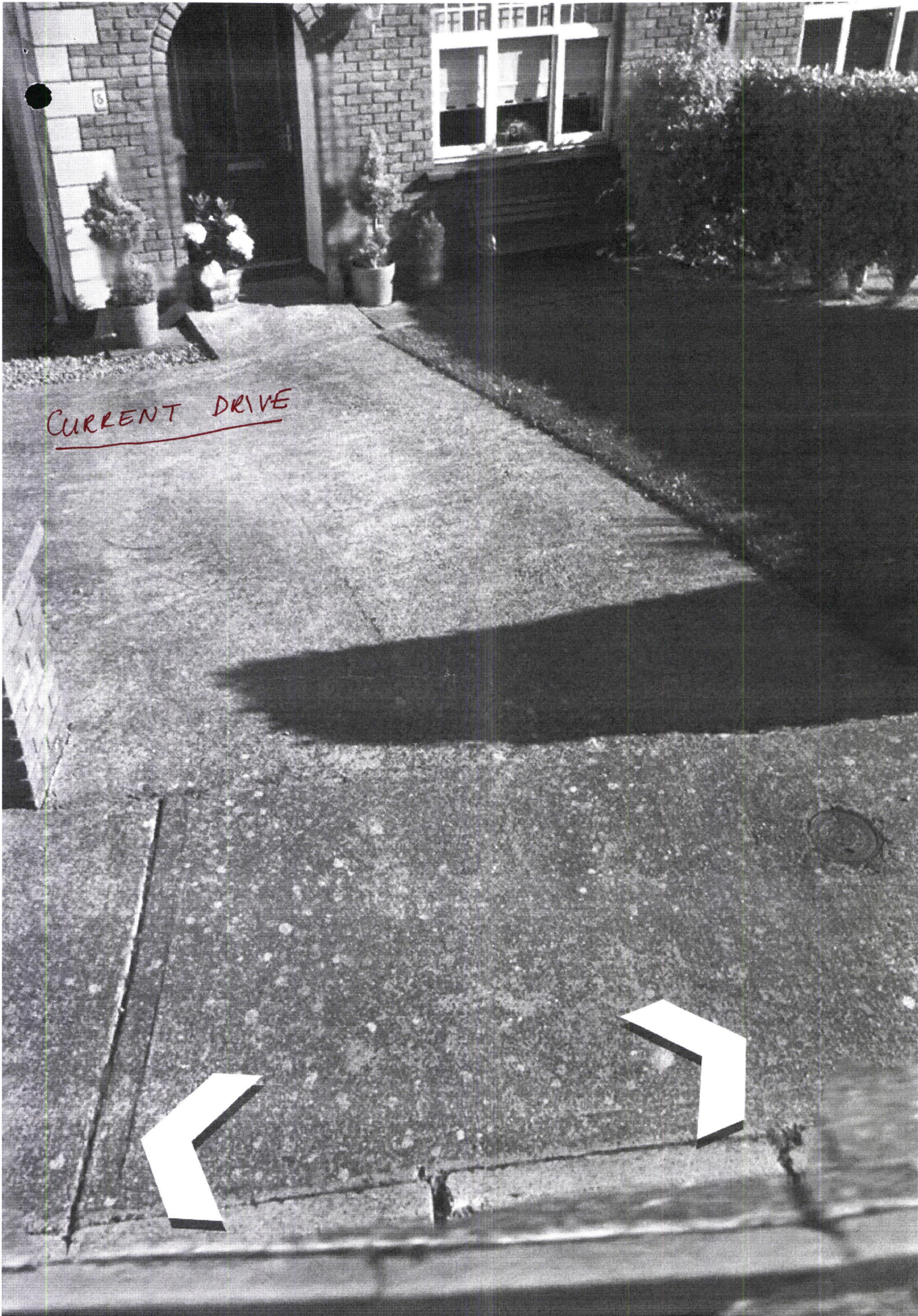
C. Farm Structures - Class 6 -Class 10 Part 3 of Schedule 2.

- 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.

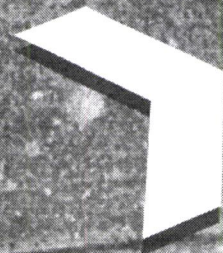
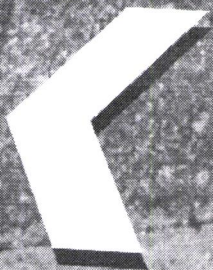




REMOVE
Grass + lay
CEMENT.



CURRENT DRIVE

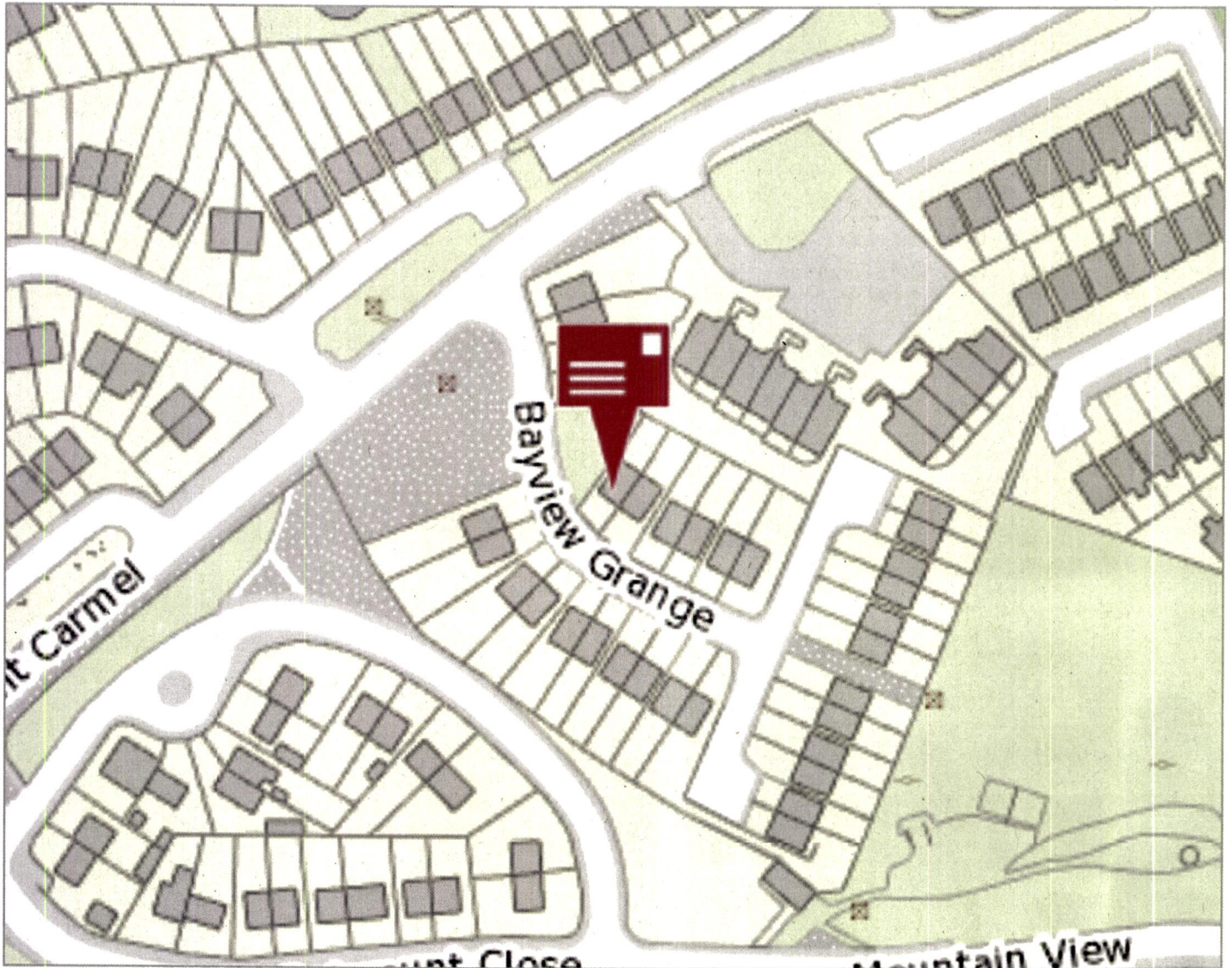


5 BAYVIEW GRANGE

WICKLOW

A67 DV27

Address Query ?



View on Map



Directions



Search