

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

Director of Services Order No: 1880/2022

Reference Number: EX 68/2022

Name of Applicant: Christopher Hill

Nature of Application: Section 5 Referral as to whether "The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road at Kilboy, Arklow, Co Wicklow" is or is not exempted development.

Location of Subject Site: Kilboy, Arklow, Co Wicklow

Report from Andrew Spencer AP & Suzanne White SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road at Kilboy, Arklow, Co Wicklow" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

- The details submitted with the Section 5 Declaration Application.
- Site Inspection on the 15th November 2022.
- Section 2, 3 and 4 of the Planning & Development Act 2000 (as amended).
- Articles 6 and 9 and Schedule 2: Part 1 of the Planning & Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

1. The proposal 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 purposed works would be exempted development having regard to Class 9 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

Recommendation

The Planning Authority considers that "The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road at Kilboy, Arklow, Co Wicklow" is development and is exempted development as recommended in the planning reports.

Signed 

Dated 21st day of November 2022

ORDER:

That a declaration to issue stating:

That "The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road at Kilboy, Arklow, Co Wicklow" is development and is exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: 
2022

Dated 22 day of November

**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

Christopher Hill

21st November 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 68/2022

Applicant: Christopher Hill

Nature of Application: "The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road at Kilboy, Arklow, Co Wicklow"

Location: Kilboy, Arklow, 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
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**DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING &
DEVELOPMENT ACT 2000 AS AMENDED**

Applicant: Christopher Hill

Location: Kilboy, Arklow, Co Wicklow

DIRECTOR OF SERVICES ORDER NO. 1880/2022

A question has arisen as to whether "The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road at Kilboy, Arklow, Co Wicklow" is or is not exempted development.

Having regard to:

- The details submitted with the Section 5 Declaration Application.
- Site Inspection on the 15th November 2022.
- Section 2, 3 and 4 of the Planning & Development Act 2000 (as amended).
- Articles 6 and 9 and Schedule 2: Part 1 of the Planning & Development Regulations 2001 (as amended).

Main Reasons with respect to Section 5 Declaration:

1. The proposal 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 proposed works would be exempted development having regard to Class 9 of Part 1 of Schedule 2 of the Planning & Development Regulations 2001 (as amended).

The Planning Authority considers that "The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road at Kilboy, Arklow, Co Wicklow" is development and is exempted development.

Signed: 

ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 21st November 2022



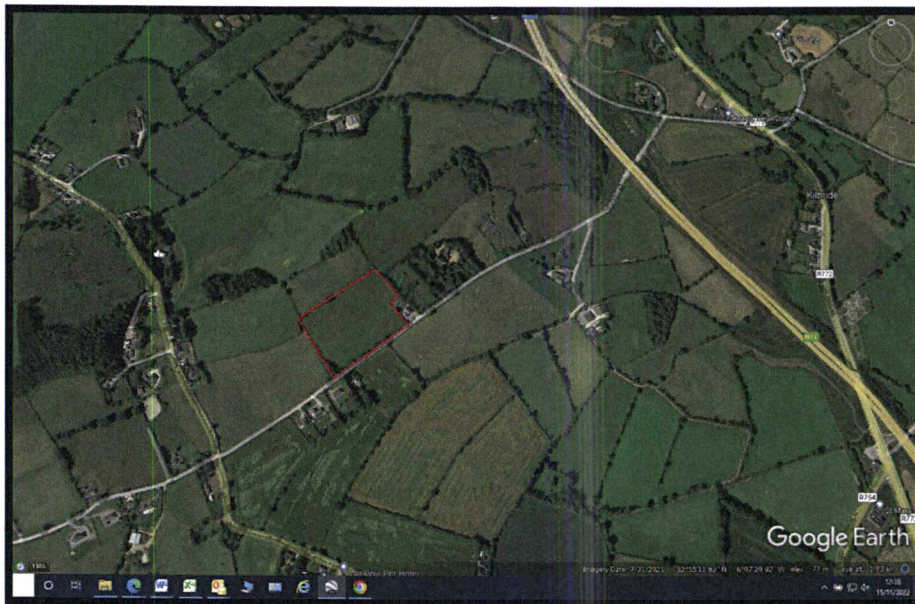
WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT

Section 5 – Application for declaration of Exemption Certificate

REF: EX 68/2022
NAME: CHRISTOPHER HILL
DEVELOPMENT: CLOSURE OF EXISTING ENTRANCE AND INSTALLATION OF NEW ENTRANCE ONTO PUBLIC ROAD.
LOCATION: KILBOY ARKLOW CO. WICKLOW.

The Site: Existing agricultural field located 0.75km west of the M11 and 7km east of the town of Rathdrum. The field is currently accessed via an entrance off the northern side of the L-5158-0.

Google Earth Image:



Planning History (subject site): None.

Question:

The applicant has applied to see whether or not the following is or is not development; and is or is not exempted development:

- 1) The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road.

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 the following:

'Works' include "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.

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,

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

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

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

Schedule 2: Part 1

CLASS 9

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

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

Assessment:

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

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

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

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

I am satisfied that the closing of an existing entrance to an agricultural field and the installation of a new entrance to access the same field involves works and therefore constitutes development.

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

Respecting the closure of the existing entrance:

Given that there is no planning history respecting the existing entrance it is reasonable to assume that its closure is a reversion to its previous natural state and does not require planning permission and is therefore exempt.

Respecting the installation of a new entrance:

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

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

Article 9(1)(a):

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

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

Part (ii)

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

From examination, the public road is c. 3.8m in width, and therefore the new entrance would not breach this criteria.

Part (iii)

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

The entrance is located on a lightly trafficked route the L-5158-0, at a straight stretch, and would not, it is considered, give rise to a traffic hazard or obstruction on this local road.

Part (viiB)

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

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

Part (viiC)

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

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

Conclusion:

Having regard to the above assessment it is considered that closure of an existing entrance onto public road L-5158-0 and the installation of a new entrance 80m to the south west onto public road L-5158-0 would be exempted development.

Recommendation:

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

- 1) The closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road

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

The Planning Authority consider that the closing of an existing field entrance on the L-5158-0 road and the opening of an entrance in the same field 80m south west of the existing entrance on to the L-5158-0 road is development and is exempted development,

Main Considerations with respect to Section 5 Declaration:

The details submitted with the Section 5 Declaration Application.

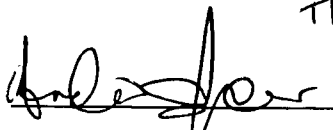
Site Inspection on the 15th November 2022

Section 2 , 3 and 4 of the Planning and Development Act 2000 (as amended)

Articles 6 and 9 and Schedule 2: Part 1 of the Planning and Development Regulations 2001(as amended).

Main Reasons with respect to Section 5 Declaration :

- 1) The proposal 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) ~~Articles 6, 9 and Schedule 2: Part 1 of the Planning and Development Regulations 2001 (as amended).~~



**Andrew Spender
Assistant Planner**

The proposed works would be exempted development having regard to Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended). 16/11/2022

Agreed as amended
Julius SEP
17/11/22

MEMORANDUM

WICKLOW COUNTY COUNCIL

**TO: Andrew Spencer
Assistant Planner**

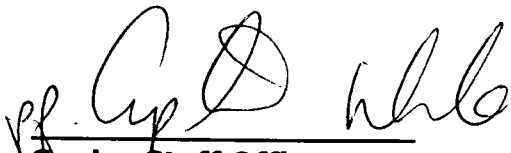
**FROM: Crystal White
Assistant Staff Officer**

**RE:- EX 68/2022 - Declaration in accordance with Section 5 of the
Planning & Development Acts 2000 (as amended)**

**Closure of existing entrance and install new entrance onto the public road.
New entrance will be moved approx 80m south-west of the existing
entrance at Kilboy, Arklow, Co Wicklow**

I enclose herewith for your attention application for Section 5 Declaration
received 27th of October 2022.

The due date on this declaration is the 23rd November 2022.



**Senior Staff Officer
Planning Development & Environment**



Comhairle Contae Chill Mhantáin
Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

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Suíomh / Website: www.wicklow.ie

28/10/2022

Christopher Hill

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). Ex 62/2022

Closure of existing entrance and install new entrance onto the public road. New entrance will be moved approx 80m south-west of the existing entrance at Kilboy, Arklow, Co Wicklow

A Chara

I wish to acknowledge receipt on the 27th of October 2022 details supplied by you in respect of the above section 5 application. A decision is due in respect of this application by 23/11/2022.

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SENIOR EXECUTIVE OFFICER
PLANNING DEVELOPMENT AND ENVIRONMENT



Wicklow County Council
County Buildings
Wicklow
0 -20100

27/10/2022 12 15 38

Receipt No L1/0/303687

CHRISTOPHER HILL
JOHNSTOWN HOUSE
ARKLOW
CO WICKLOW

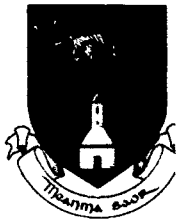
PLANNING FEE OTHER BUILDING	80 00
GOODS	80 00
VAT Exempt/Non-vatable	

Total 80 00 EUR

Tendered
Credit Card 80 00
CLASS 13

Change 0 00

Issued By Margaret Cullen
From Customer Service Hub
Vat reg No 0015233H



Wicklow County Council
County Buildings
Wicklow
Co Wicklow
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Fax 0404 69462

Office Use Only

Date Received _____

Fee Received _____

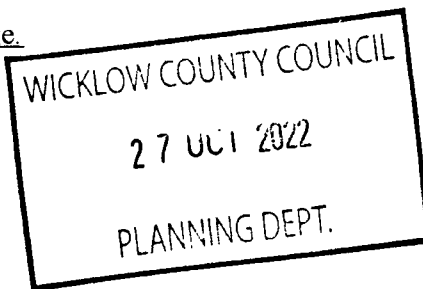
**APPLICATION FORM FOR A
DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

(a) Name of applicant: Christopher Hill

Address of applicant: _____

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

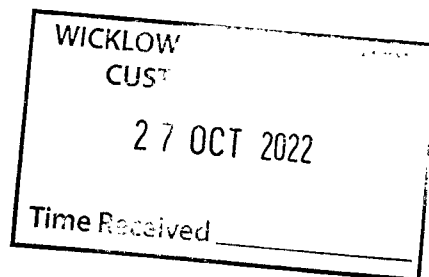
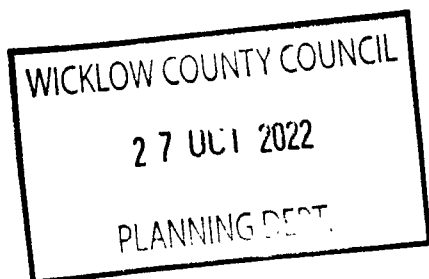


2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) N/A

Address of Agent : N/A

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



3. Declaration Details

i. Location of Development subject of Declaration Kilboy, Arklow, Co. Wicklow. Refer to Drawing CH_DRG_001 for Location Plan

ii. Are you the owner and/or occupier of these lands at the location under i. above?
Yes.

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 _____

There is an existing field entrance providing access to the L-5158 and I am proposing to close the existing entrance and install a new entrance onto the public road. The new entrance will be moved approximately 80m south-west of the existing entrance and sightlines will be improved. The surfaced carriageway of the L-5158 in the vicinity of the field measure 3.95m

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 _____

Part 2, Exempted Development, Section 9 (Restriction on exemption) (1) (ii) Development to which article 6 relates shall not be exempted development for the purposes of the Act – (a) if carrying out of such development would (ii) consist of or compromise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4m in width.

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 _____

CH_DRG_001 – Location Plan

CH_DRG_002 – Details

viii. Fee of € 80 Attached ? YBS

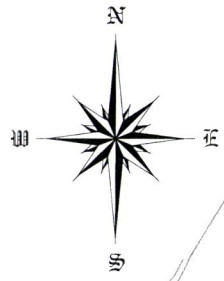
Signed : Champion Mill Dated : 27/10/22

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.

KILMACURRA EAST



BALLARD UPPER

BALLARD LOWER

BALLYCAPPLE HILL

BALLINACOR WEST



PROPOSED NEW FIELD ENTRANCE

NOTES:

X: 725852

Y: 687036

Townland: Kilboy

Barony: Arklow

Folio: WW2758

REV.	DATE	DRN BY:	DESCRIPTION
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REVISIONS:

JOB

SECTION 5 APPLICATION

TITLE

LOCATION PLAN

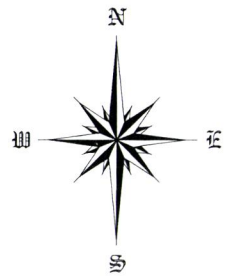
SCALE: 1:5000 Date: Sept. 22

DWG NO: CH_DRG_001 Drawn: AKH

SHEET SIZE: A3 Checked: AKH

STATUS: PLANNING REV: 0

DO NOT SCALE - USE FIGURED DIMENSION ONLY - ALL DIMENSIONS IN METRES



NOTES:
 Old field access to be completely blocked up.
 New entrance further south-west will improve sightlines.
 Average width of surfaced carriageway in the vicinity of the field is 3.95m

EXISTING FIELD ENTRANCE TO BE BLOCKED UP

PROPOSED NEW FIELD ENTRANCE

SIGHTLINES MEASURED 2.4m FROM ROAD EDGE

AVERAGE SURFACED CARRIAGEWAY MEASURES 3.95m

L-5158 to Kilbride

L-5158 to Ballykeane

80.0

80.1

REV.	DATE:	DRN BY:	DESCRIPTION
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REVISIONS:

JOB:
SECTION 5 APPLICATION

TITLE:
DETAILS

SCALE: 1:5000	Date: Sept. 22
DWG NO: CH_DRG_002	Drawn: AKH
SHEET SIZE: A3	Checked: AKH
STATUS: PLANNING	REV: 0

DO NOT SCALE - USE FIGURED DIMENSION ONLY - ALL DIMENSIONS TO BE CHECKED ON SITE - UNLESS OTHERWISE SPECIFIED