Comhairle Contae Chill Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

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

Modern Contractors Ltd,
C/o Hughes Planning & Development Consultants,
85 Merrion Square,
Dublin 2,
D02 FX60

13th Of November 2026

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) -EX 133/2026

A Chara,

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 Coimisiún Pleanála of such fee as may be prescribed, refer a declaration for review by the Coimisiún within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

pp Dáire Byrne
ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Comhairle Contae Chill Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

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

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

Applicant: Modern Contractors Ltd

Location: 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, Y14 V968

Reference Number: EX133/2026

CHIEF EXECUTIVE ORDER NO. CE/PERD/2026/1373

A question has arisen as to whether *"the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons" at* 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, Y14 V968 is or is not exempted development.

Having regard to:
(a) sections 2(1), 3(1), and 4(1)(j) of the Planning and Development Act, 2000, as amended,
(b) The details submitted in the Section 5 Application, in particular the nature of the use carried on therein,
(c) the absence of any works, and
(d) the planning history at the subject site

Main Reasons with respect to Section 5 Declaration:

i) The use remains residential in character and is consistent with the use authorised under Planning Ref. 00/610089 (P89/2000), which permitted residential apartments at the subject site,
ii) The proposed development would not come within the scope of the definition of works in Section 2 of the Planning & Development Act 2000, as amended, and would therefore not come within the scope of definition of development in Section 3 of the Planning & Development Act 2000, as amended.

The Planning Authority considers that *"the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons" at* 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, Y14 V968 **is NOT development.**

Signed: Dianne Byrne Date: 13/11/2026
JP ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2026/1373

Reference Number:	EX 133/2026
Name of Applicant:	Modern Contractors Ltd
Nature of Application:	Section 5 Referral as to whether *"the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons"* is or is not development and is or is not exempted development.
Location of Subject Site:	1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, Y14 V968
Report from:	Neal Murphy, E.P.

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether *"the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons" at* 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, Y14 V968 is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended)

Having regard to:

(a) sections 2(1), 3(1), and 4(1)(j) of the Planning and Development Act, 2000, as amended,
(b) The details submitted in the Section 5 Application, in particular the nature of the use carried on therein,
(c) the absence of any works, and
(d) the planning history at the subject site

Main Reasons with respect to Section 5 Declaration:

i. ATC permission PRR 00/89 permitted the demolition of existing garages and construction of seven shop units with age #2 story residential units above.
ii. The continued use of the residential units is for accommodation of homeless persons providing long term accommodation with residents living in the units for a minimum of 12 months. No more than five persons would be accommodated in each individual unit.
iii. Given the nature of the use which is residential the permitted scale of the units the long term nature of the occupancy it is considered that this use would be the same in nature and scale as the permitted usage , would have the same impacts, and would therefore not represent a material change of use and therefore is not development.

Recommendation

The Planning Authority, as recommended by the above named, considers that *"the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons"* at 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, Y14 V968 **is NOT development** as recommended in the planning reports.

Signed: Joanne Byrne

Date: 13/11/2026

ORDER:

I HEREBY DECLARE:

THAT *"the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons"* at 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, Y14 V968 **is NOT development** within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: [signature]

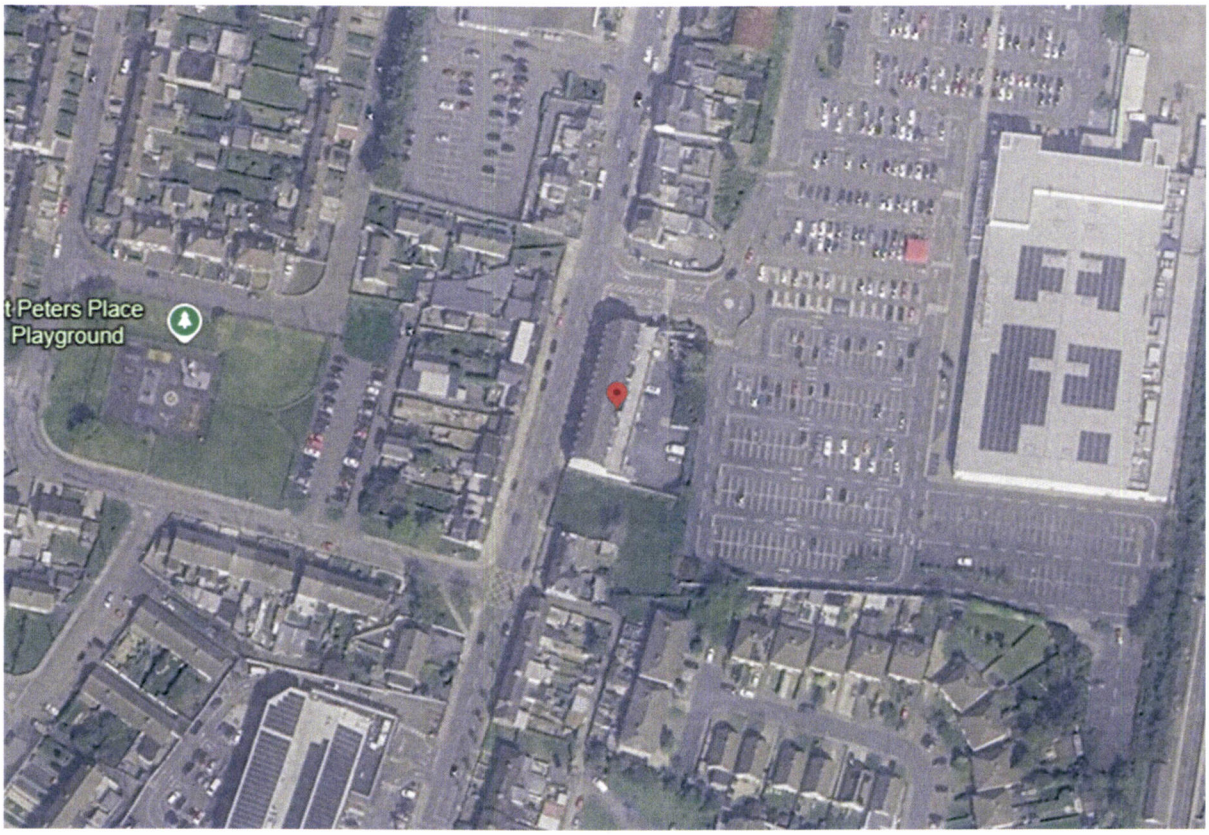
T/Senior Planner

Planning, Economic & Rural Development

Date: 13/11/2026

WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT
Section 5 – Application for declaration of Exemption Certificate

TO:	**Edel Bermingham T/SP, Patrice Ryan SEP**
FROM:	**Neal Murphy EP**
REF:	**EX 133/2026**
DECISION DUE DATE:	**16/11/2026**
APPLICANT:	**MODERN CONTRACTORS LIMITED**
DEVELOPMENT:	**CONTINUED USE OF 8 NO. RESIDENTIAL APARTMENTS, WHERE CARE IS NOT PROVIDED, TO HOUSE HOMELESS PERSONS**
LOCATION:	**1-8 BENTLEY COURT, WEXFORD ROAD, ARKLOW, CO. WICKLOW, Y14 V968**



Site Location and Description

The subject is located on the Wexford Road near the centre of Arklow town. The development contains 8 duplex apartments over retail units with separate access and a parking area to the rear which are situated west of the Tesco car park.

Question

The applicants have applied to see whether or not the following is or is not development and is or is not exempted development:

- Whether the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons, is or is not development within the meaning of the Planning and Development Acts and Regulations.

Planning History

00/610089 (P89/2000) – **PERMISSION GRANTED** for demolition of existing garage/stores/dwelling & construction of 7 No shop units on ground floor with 8No two storey residential units over with services.

03/610121 – **PERMISSION GRANTED** for change of use of two shop units to restaurant and permission for retention for alterations to elevations and relocation of staircase to that granted under Planning Permission Ref. No. P89/2000

09/610022 – **PERMISSION GRANTED** for change of use of shop to use as pizza bakery with home delivery service and takeaway, and for new shopfront and signage

10/610032 – **PERMSSION GRANTED** for minor alterations to front elevation of existing commercial units

17/1477 – **PERMISSION GRANTED** for change of use of existing retail units at ground floor level to Pizza bakery and restaurant use with seating capacity for 80/90 no complete with kitchen, stores, wcs and staff amenities. The development will also consist of new external signage and awning to the existing shop front elevation with the removal of entrance doors to unit 5 and new entrance doors to unit 6 from Wexford Road

20/1164 – **WITHDRAWN FOLLOWING FURTHER INFORMATION REQUEST** for subdivision of existing retail units 4, 5, 6 & 7 (343.5 sq.m) into two separate units, namely Units 4 & 5 and 6 & 7. It is proposed to change the use of units 4 & 5 (170 sq.m) from Retail use to Restaurant / Takeaway use with associated site works and associated external signage

Zoning

Arklow Local Planning Framework
TC – Town Centre: To provide for the development and improvement of appropriate town centre uses including residential, retail, commercial, office and civic use.

Relevant legislation:

Planning and Development Act 2000 (as amended)

Section 2

"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,

"use", in relation to land, does not include the use of the land by the carrying out of any works thereon

"house" means a building or part of a building which is being or has been occupied as a dwelling or was provided for use as a dwelling but has not been occupied, and where appropriate, includes a building which was designed for use as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

Section 3

3.—

(1) In this Act, except where the context otherwise requires, "development" means—
(a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land, or
(b) development within the meaning of Part XXI (inserted by section 171 of the Maritime Area Planning Act 2021).

Section 4
Section 4 (1) (a) – (l) sets out what is exempted development for the purposes of this Act and includes (*j*) development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

Planning and Development Regulations 2001(as amended).
Schedule 2: Part 1 Exempted Development – General
Change of Use:
10. (1) Development which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not—
(a) involve the carrying out of any works other than works which are exempted development,
(b) contravene a condition attached to a permission under the Act,
(c) be inconsistent with any use specified or included in such a permission, or
(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned.

Assessment
The Section 5 application seeks a declaration as to whether or not the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons, is or is not development within the meaning of the Planning and Development Acts 2000 (as amended).

The subject site as described contains 8 existing over the shop duplex apartments which are currently in use to provide accommodation for homeless persons.

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 2000 (as amended).

In Browne, Simons on Planning Law at chapter 2-37 to 2-38[1], it is stated that:

"in order for there to be a material change in use two conditions must be satisfied: first, there must be an actual change in use; the act of development is the change, not the use itself. Secondly, the change must be material, that is material for planning purposes"

"It is the second of these two requirements, namely that the change be material, which has given rise to the greatest difficulty. There would appear to be two schools of thought, as follows. The first is to consider whether or not the character of the existing use of the land will be substantially altered by the proposed change: it is the change from use A to use B which is important. The second approach is to examine the materiality of the proposed change as it impacts on the proper planning and sustainable development of the adjoining area".

[1] Browne, Simons on Planning Law, 3rd edn, 2021 chapter 2-37 to 2-38

The details submitted outline the proposal will be for the provision of long-term accommodation in self-contained duplex apartments with no communal facilities requirements for homeless people with the minimum tenancy being 12 months. I am therefore satisfied that the proposed used is not akin to a shared hostel or similar development.

The applicant has further stated that staff employed by the applicant would be present during daytimes for the cleaning and maintenance of the property only and would not include the provision of care and in that regard, the use is more aligned with residential use and I do not believe that the amount of trips that may be generated by such cleaning and maintenance activities would be so great as to constitute a material change of use. The maximum occupancy is 5 persons per 3 bedroomed apartment.

No alterations or extensions to the units are proposed as part of the Section 5 application. Each apartment has separate access arrangements with all occupants free to enter and exit during the day as noted in the application.

The determining factor is the planning use of the accommodation rather than the personal circumstances of the occupants. The apartments remain self-contained residential units occupied on a long-term basis in a manner consistent with ordinary residential occupation.

With the above noted, I conclude that that the use is consistent with the planning permission granted for residential use under 00/610089 (P89/2000) and therefore is not 'development' as defined in section 3 of the Act. As it is not 'development' the provisions for exempted development do not therefore apply.

Recommendation

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

The continued use of 8 no. residential apartments, where care is not provided, to house homeless persons at 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, Y14 V968,

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

The Planning Authority considers that continued use of 8 no. residential apartments, where care is not provided, to house homeless persons **is NOT Development**.

Main Considerations with respect to Section 5 Declaration:

(a) sections 2(1), 3(1), ~~and 4(1)(j)~~ of the Planning and Development Act, 2000, as amended,
(b) The details submitted in the Section 5 Application, in particular the nature of the use carried on therein,
~~(c) the absence of any works, and~~
(d) ~~the planning history at the subject site.~~ ~~PRR~~ Arklow Town Council PRR 00/89.

Main Reasons with respect to Section 5 Declaration

a) The use remains residential in character and is consistent with the use authorised under Planning Ref. 00/610089 (P89/2000), which permitted residential apartments at the subject site,

b) The proposed development would not come within the scope of the definition of works in Section 2 of the Planning & Development Act 2000, as amended, and would therefore not come within the scope of definition of development in Section 3 of the Planning & Development Act 2000, as amended.

See (a)(b) & (c) above

Neal Murphy
Executive Planner
09/11/2026

Section 5 to issue in accordance with the recommendation above.

Agreed Ferry
SEP. 11/11/2026

Noted however the main reasons would not align fully with the assessment and should be as follows:

a] ATC Permission PRL 00/89 permitted the demolition of existing garages and construction of 7 shop units with 8 no. 2 storey residential units above

b] The continued use of the residential units is for accommodation of ~~for~~ homeless persons providing long-term accommodation with residents living in the units for a minimum of 12 months. No more than 5 persons would be accommodated in each individual unit.

c] Given the nature of the use which is residential, the ~~is~~ permitted scale of the units, the long term nature of the ~~accommodation~~ occupancy, it is considered that the use would be the same in nature and scale as the permitted usage, and would have the same impacts, and ~~would not~~ would therefore not represent a material change of use, and is not development.

SEP 12/11/2026.

MEMORANDUM

WICKLOW COUNTY COUNCIL

TO: Neal Murphy
Executive Planner

FROM: Joanne Byrne
A/ Staff Officer

RE:- EX133/2026 - Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (as amended)

I enclose herewith for your attention application for Section 5 Declaration received 20/10/2026.

The due date on this declaration is the **16/11/2026.**

Joanne Byrne

A/Staff Officer
Planning, Development & Environment

Comhairle Contae Chill Mhantáin
Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development

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

Hughes Planning & Development Consultants,
85 Merrion Square,
Dublin 2,
D02 FX60

20th October 2026

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended) – EX133/2026

A Chara

I wish to acknowledge receipt on 20/10/2026 full details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 16/11/2026.

Mise, le meas

Joanne Byrne
A/ Staff Officer
Planning, Economic & Rural Development

Bank of Ireland
BUSINESS ON LINE

Payment Details

WCC BANK REC. RECEIPT NO: 2188131

Payment Reference No: [redacted]

Printed On: **Monday, October 19, 2026 02:59:30 PM**

Payment Type: **SEPA Payment**

Payment Status: **Payment Processed**

Pay From:	
Account Name	HPDC CURRENT ACCOUNTS
Location	SWORDS CO DUBLIN
Account Number	

Pay To:	
Account Name	WICKLOW COUNTY COUNCIL SUPPLEMENTAR
Location	BANK OF IRELAND
Account Number	

Payment Details:	
Payment Currency	Euro
Payment Type	Standard
Payment Amount	€80.00
Payment Date	19/10/2026
End To End Reference	1 - 8 BENTLEY COURT
Payment Message	MODERN CONTRACTORS LTD 18 BENTLEY COURT ARKLOW SECTION 5 APP

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: Modern Contractors Ltd.
Address of applicant: Aughnagaddy, Glebe, Ramelton, Donegal, Ireland, F92 DK16

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

WICKLOW COUNTY COUNCIL
20 OCT 2026
PLANNING DEPT.

2. Agents Details (Where Applicable)

(b) Name of Agent (where applicable) Hughes Planning and Development Consultants
Address of Agent : 85 Merrion Square, Dublin 2, D02 FX60

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

WICKLOW COUNTY COUNCIL
CUSTOMER SERVICE
20 OCT 2026

3. Declaration Details

i. Location of Development subject of Declaration 1-8 Bentley Court, Wexford Road, Arklow, Co Wicklow Y14V968

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 N/A

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 ***'Whether the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons, is or is not development?'***

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 n/a

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
OS Map, Planning Report, EFT

viii. Fee of € 80 Attached ? Yes

Signed : Dated : 15/10/2026

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 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.

PLANNING REPORT

SECTION 5 APPLICATION – DECLARATION OF EXEMPTED DEVELOPMENT

No. 1-8 Bentley Court, Wexford Road, Arklow, Co Wicklow Y14V968

October 2026

SUBMITTED ON BEHALF OF:
Modern Contractors Ltd

HUGHES PLANNING
& DEVELOPMENT CONSULTANTS

55 Merrion Square, Dublin 2, D02 FX60
+353 (0)1 539 0710 info@hpdc.ie www.hpdc.ie

1.0 Introduction

Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, have prepared this report to accompany an application for a Declaration of Exempted Development, on behalf of our client, Modern Contractors Ltd, concerning the use of no. 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow Y14 V968. The subject site comprises 8 no. 3-bed duplex apartment units over commercial premises which fronts the street.

The property management and staff provision will solely be the responsibility of our client, the property owner. Staff will visit the site to carry out maintenance and cleaning works only. No element of care be it social, physical or emotional will be provided to residents at this property, nor will any non-governmental organisation or approved housing body be involved.

Therefore, the question before the planning authority is:

> ***"Whether the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons, is or is not development?"***

2.0 Site Description

The subject site consists of approximately a 0.07ha site located on the Wexford Road. The existing residential development consists of 8 no. self-contained 3-bedroom duplex apartments above ground-floor retail and commercial units. The site comprises a main vehicular and pedestrian entrance via the ground floor level enclosed by gates leading to the rear of the site. In terms of architectural finishes, the apartments feature dormer windows along the front and pitched slate roofs. The area is characterised by terraced houses and retail and commercial buildings.



Figure 1.0 Aerial image showing the locational context of the subject site, outlined in red.

In terms of connectivity and transport, the location is well-served. It is positioned in close proximity to Arklow train station, approximately 210 metres or a 3 minute walk, leading in and out of Dublin's city centre as well as trains to Rosslare Europort. The subject site is also located approximately 120 metres or a 2 minute walk to a number of bus routes, including those serving Dublin Airport and larger towns such as Wexford and Gorey



Figure 2.0 Wider locational context of the subject site (red star).



Figure 3.0 Street view image of the subject property and access entrance

3.0 Planning History

3.1 Subject Site

A review of the Wicklow County Council planning register identified the following applications on file for the subject site:

Reg. Ref. 201164 Planning permission withdrawn by the applicant to Wicklow County Council on 4th June 2021 for subdivision of existing retail units 4, 5, 6 & 7 (343.5 sq.m) into two separate units, namely Units 4 & 5 and 6 & 7. It is proposed to change the use of units 4 & 5 (170 sq.m) from Retail use to Restaurant / Takeaway use with associated site works and associated external signage

Reg. Ref. 171477 Planning permission granted by Wicklow County Council on 9th February 2018 for change of use of existing retail units at ground floor level to Pizza bakery and restaurant use with seating capacity for 80/90 no complete with kitchen, stores, wcs and staff amenities. The development will also consist of new external signage and awning to the existing shop front elevation with the removal of entrance doors to unit 5 and new entrance doors to unit 6 from Wexford Road

Reg. Ref. 10610032 Planning permission granted by Wicklow County Council on 4th October 2010 for minor alterations to front elevation of existing commercial units

Reg. Ref. 09610022 Planning permission granted by Wicklow County Council on 2nd July 2009 for change of use of shop to use as pizza bakery with home delivery service and takeaway, and for new shopfront and signage

Reg. Ref. 03610121 Planning permission granted by Wicklow County Council on 25th November 2003 for change of use of two shop units to restaurant and permission for retention for alterations to elevations and relocation of staircase to that granted under Planning Permission Ref. No. P89/2000

Reg. Ref. 00610089 Planning permission granted by Wicklow County Council on 18th November 2000 for the demolition of existing garage/stores/dwelling & construction of 7 no. shop units on ground floor with 8 no. two storey residential units over with services.

3.2 Planning Precedents

34 North Circular Road, Drumcondra, Dublin 9

Reg. Ref. 0267/24 Section 5 application declared exempt by Dublin City Council on 19th September 2024 with the question before the Planning Authority being; "whether the continued use of a residential building, where care is not provided, to house homeless persons, is or is not development?".

The decision of the council is as follows:

> *"It is considered that the continued use of a residential building which was subdivided into 12no. bedsit rooms prior to the coming into force of the Planning & Development Act 1963 to house homeless persons in 11no. net bedrooms, does not constitute a material change of use and, therefore, does not constitute development for the purpose of the Act. The applicant should be advised accordingly."*

This precedent illustrates that where the continued residential use of a building to house homeless persons does not constitute a material change of use and therefore does not constitute development.

4.0 Planning Context

The Wicklow County Development Plan 2022-2028 is the relevant statutory development plan for the subject site. The following section is a brief zoning review and land use objective for the site.

4.1 Zoning

The subject site is zoned Objective 'TC: Town Centre', under the current Wicklow County Development Plan 2022-2028, with the objective:

> *'To provide for the development and improvement of appropriate town centre uses including residential, retail, commercial, office and civic use'*

The vision for development under this zoning designation is one where the development respects the existing setting and character of the area, protects the amenities of the surrounding properties, and is complementary to the existing scale, height, and massing of surrounding properties.

The description for development under this zoning designation is one where development improves the existing town centre's vibrancy and vitality while delivering a quality urban environment.

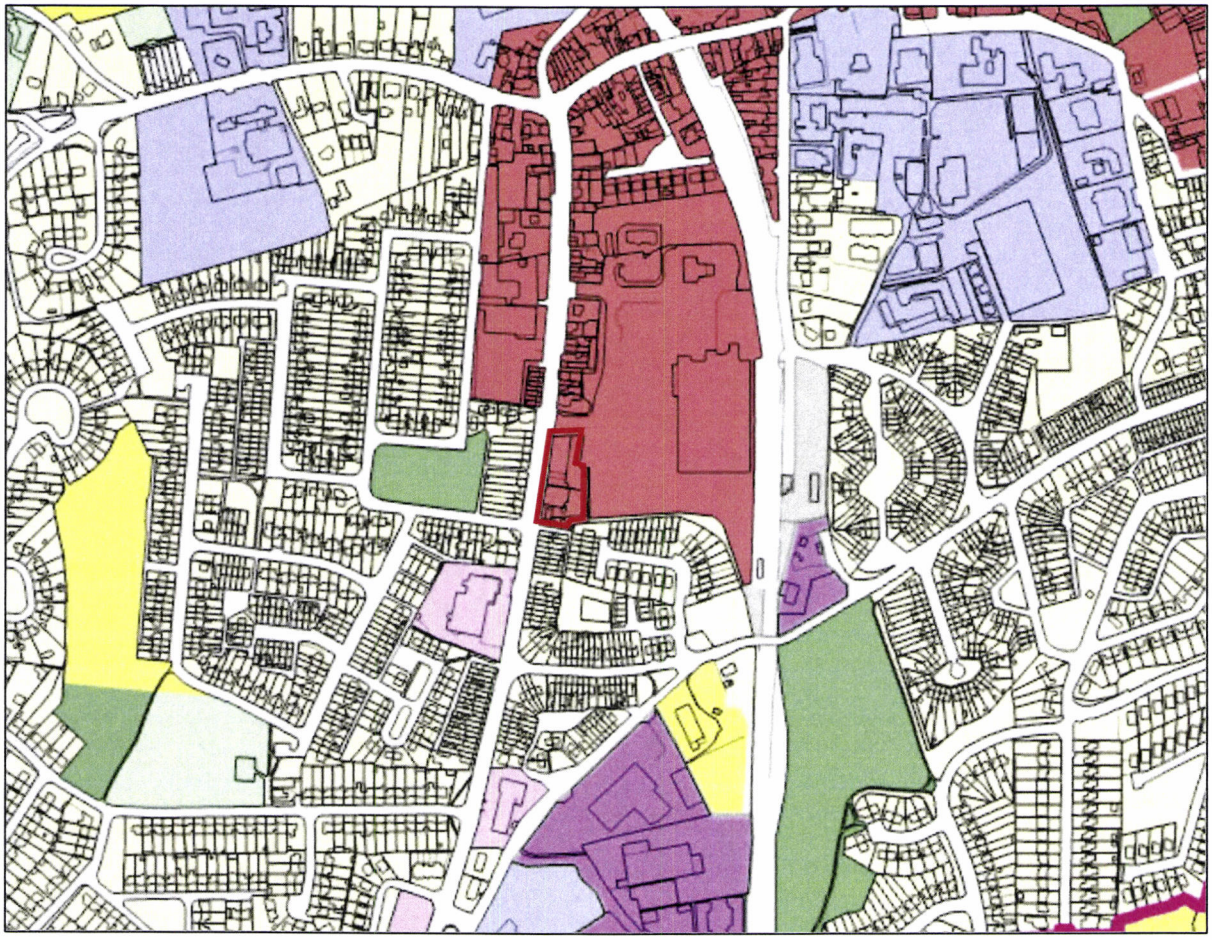


Figure 4.0 Extract from 'Map No. 1 Land Use Zoning Arklow 2026' of the Arklow Local Planning Framework / Variation No. 6 to the County Development Plan 2022-2028 illustrating the subject site (outlined in red) situated within lands zoned 'TC: Town Centre'.

We note that residential use is a permissible use on subject lands. As such, the proposed use of the house is in accordance with 'TC: Town Centre' zoning objective of the Wicklow County Development Plan 2022-2028.

5.0 Development

Under Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3 (1) as follows: -

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

This declaration seeks clarification on the continued use of no. 1-8 Bentley Court, Wexford Road, Arklow, Co. Wicklow, as 8 no. 3-bed dwellings to provide accommodation to homeless persons but does not provide care. From the outset, it is contended that this does not constitute development as no change of use has occurred.

It is noted that legislation does not define the phrase 'material change of use' as used in Section 2(1) of the Act. To determine the materiality of the change, the practical impacts and effects of the proposed change of use and whether it would have led to materially different planning considerations by the Planning Authority are considered in this determination.

It is submitted that there will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying the building which should not be taken into consideration when having regard to whether a material change of use has occurred as evidenced by the Supreme Court *Dublin Corporation v Moore* [1984] ILRM 339 in which the judge stated:

> *"I can well understand the objection voiced by Mr Heneghan in his affidavit, to which I have referred - the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin - yet others for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law - if they were, they might well offend against rights of equality."*

It is considered that if this were a planning application for a dwelling, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic backgrounds.

The subject site is a mixed-use development which has 8 no. 3-bed apartments above retail / commercial units fronting Wexford Road. Residents are free to enter and exit the house throughout the day like any tenant renting from a private landlord. Staff employed by our client will be present in the property, with their duties comprising the cleaning and maintenance of the property. The occupancy of each apartment will be a maximum of 5 no. persons. This building will provide long-term accommodation with residents living there for a minimum of 12 months, with most living there for 18 months or more.

It is submitted that the continued use of the property to provide residential accommodation is <u>not development</u> as no material change of use has occurred.

In considering the above, it is submitted that the use of no. 1-8 Bentley Court as a long-term residential building to house homeless persons, which does not provide care, does not constitute a change of use and therefore, does not constitute development in accordance with the Planning and Development Act 2000 (as amended).

6.0 Conclusion

It is proposed to use the subject site at no. 1-8 Bentley Court, as 8 no. apartments to provide accommodation to homeless persons. This facility will not provide care to residents. The building has been in use as a residential building and the continued use of the building to provide residential accommodation does not constitute development as no change of use has occurred, nor have any works been carried out to the property.

Therefore, the question before the planning authority is:

> ***"Whether the continued use of 8 no. residential apartments, where care is not provided, to house homeless persons, is or is not development?"***

Accordingly, we request a declaration to this effect from Wicklow County Council under Section 5 of the Planning and Development Act 2000 (as amended). Should you have any queries or require any further information including access to the building, please do not hesitate to contact the undersigned.



Kevin Hughes MIPI MRTPI
Director for HPDC

Planning Pack Map



OUTPUT SCALE: 1:1,000

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

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

N

Tailte Éireann

CENTRE COORDINATES:
ITM 723910,673076

PUBLISHED: 16/10/2026

ORDER NO.: 50565295_1

MAP SERIES:	MAP SHEETS:
1:1,000	4427-20
1:1,000	4428-16

COMPILED AND PUBLISHED BY:
Tailte Éireann,
Phoenix Park,
Dublin 8,
Ireland.
D08F6E4

www.tailte.ie

Any unauthorised reproduction infringes Tailte Éireann copyright.

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

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

This topographic map does not show legal property boundaries, nor does it show ownership of physical features.

©Tailte Éireann, 2026.
All rights reserved.