

WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

Director of Services Order No: 1914/2022

Reference Number: EX 69/2022

Name of Applicant: Maria Gallen C/O RML Planning

Nature of Application: Section 5 Referral as to whether "works consisting of two sheds located to the front of a protected structure at Amber, Violet Hill, Bray (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side" is or is not exempted development.

Location of Subject Site: Amber, Violet Hill, Bray, Co Wicklow

Report from Aisling McNamara EP & Edel Bermingham SEP

With respect to the query under Section 5 of the Planning & Development Act 2000 as to whether "works consisting of two sheds located to the front of a protected structure at Amber, Violet Hill, Bray (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side" 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 application, received 2nd November 2022;
- Section 2, 3, 4 and 57(1) of the Planning and Development Act 2000 (as amended).
- Schedule
- The definition of 'house' set out in Article 5 of the Planning and Development Regulations 2001, i.e. "house" does not, as regards development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;
- Bray MD Local Area Plan 2018 and Wicklow CDP 2022


Main Reasons with respect to Section 5 Declaration:

- i. The erection of two sheds and a chicken coup involves the carrying out of 'works' as per the definition set out in the Planning and Development Act 2000 (as amended) and therefore is 'development'.

- ii. The Planning and Development Regulations 2001 (as amended), Schedule 2, Part 1 provides that 'Development within the curtilage of a house' includes various classes to exempt development in the curtilage of a house. Class 3 relates to the construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure'.
- iii. Article 5 of the Planning & Development Legislations 2001(as amended) provides that; for the purpose of class 3, the definition of 'house' does not include a building used as 2 or more dwellings or a flat, an apartment or other dwelling within such building. The proposed development relates to 'Amber' which occupies part of the main Violet Hill property which is used for multiple dwelling units. Therefore class 3 cannot be relied on.
- iv. There is no other exemption set out in the Act or Regulations under which the development could be considered.

Recommendation

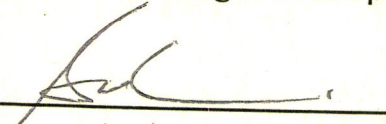
The Planning Authority considers that "works consisting of two sheds located to the front of a protected structure at Amber, Violet Hill, Bray (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side" is development and is not exempted development as recommended in the planning reports.

Signed  Dated 25th day of November 2022

ORDER:

That a declaration to issue stating:

That "works consisting of two sheds located to the front of a protected structure at Amber, Violet Hill, Bray (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side" is development and is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Signed: 
2022

Dated 24 day of November

Director of Services
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: Maria Gallen C/O RML Planning

Location: Amber, Violet Hill, Bray, Co Wicklow

DIRECTOR OF SERVICES ORDER NO : 1914/2022

A question has arisen as to whether “works consisting of two sheds located to the front of a protected structure at Amber, Violet Hill, Bray (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side” is or is not exempted development.

Having regard to:

- The details submitted with the application, received 2nd November 2022;
- Section 2, 3, 4 and 57(1) of the Planning and Development Act 2000 (as amended).
- Schedule
- The definition of ‘house’ set out in Article 5 of the Planning and Development Regulations 2001, i.e. “house” does not, as regards development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;
- Bray MD Local Area Plan 2018 and Wicklow CDP 2022

Main Reasons with respect to Section 5 Declaration:

- i. The erection of two sheds and a chicken coup involves the carrying out of ‘works’ as per the definition set out in the Planning and Development Act 2000 (as amended) and therefore is ‘development’.
- ii. The Planning and Development Regulations 2001 (as amended), Schedule 2, Part 1 provides that ‘Development within the curtilage of a house’ includes various classes to exempt development in the curtilage of a house. Class 3 relates to the construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure’.



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- iii. Article 5 of the Planning & Development Legislations 2001(as amended) provides that; for the purpose of class 3, the definition of 'house' does not include a building used as 2 or more dwellings or a flat, an apartment or other dwelling within such building. The proposed development relates to 'Amber' which occupies part of the main Violet Hill property which is used for multiple dwelling units. Therefore class 3 cannot be relied on.
- iv. There is no other exemption set out in the Act or Regulations under which the development could be considered.

The Planning Authority considers that "works consisting of two sheds located to the front of a protected structure at Amber, Violet Hill, Bray (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side" is development and is not exempted development.

Signed: Carol Murphy
ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 24 November 2022



Comhairle Contae Chill Mhantáin
Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

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Maria Gallen
C/O RML Planning
3 David Road
Drumcondra
Dublin 9

24th 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 69/2022

Applicant: Maria Gallen C/O RML Planning

Nature of Application: "works consisting of two sheds located to the front of a protected structure at Amber, Violet Hill, Bray (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side"

Location: Amber, Violet Hill, 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.

Section 5 Declaration

Ref: EX69/2022

Name: Maria Gallen

Location: Amber, Violet Hill, Bray

Re: Two sheds and chicken coop

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

Whether works consisting of two sheds located to the front of a protected structure at Amber, Violet Hill, Bray (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side is or is not development and is or is not exempted development.

Planning History:

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

21/988 (ABP311675-21) – Grainne Birdthistle and David O'Brien – refused – permission for 69m² extension to the north eastern end of a protected structure (RPS no. B25(Kilbride) Violet Hill) consisting of a single story pitched roof element offset from the existing building and a single story flat roof link. The proposed extension will provide three additional bedrooms along with a bathroom, ensuite and linking corridor. Works to existing building include: removal of existing double door on north east elevation, connection of new glazed link removal of paint on selected areas of brick and granite on external walls to restore to original condition. Along with associated site works.

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

22/272 – Tudor violet Hill Management Company – Appealed – permission for installation of electric gates at the entrance to the private avenue used by Tudor Violet Hill Company Members

Heritage:

Violet Hill is protected structure B25

Violet Hill House is listed on the NIAH as being of regional importance.

Trees at Violet Hill are protected by Tree Preservation Order no.2 (Schedule 10.08 Existing Tree Preservation Orders, Bray MD LAP)

Relevant Legislation:

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

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

Section 2 (1) defines a protected structure as "(a) a structure, or (b) a specified part of a structure, which is included in a record of protected structures, and, where that record so indicates, includes any specified feature which is within the attendant grounds of the structure and which would not otherwise be included in this definition";

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

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

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

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

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

"protected structure" means—

(a) a structure, or

(b) a specified part of a structure,

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

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

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

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

(i) the interior of the structure,

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

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

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

Planning and Development Regulations, 2001 (as amended):

Article 6(1) states that certain classes of development which are specified in Schedule 2 shall be exempted development for the purposes of the Act, subject to compliance with any associated conditions and limitations;

Article 9(1)(a) details a number of circumstances under which the development to which Article 6 relates shall not be exempted development for the purposes of the Act

Part 1 (Classes 1-8) of Schedule 2 describes classes of development situated within the curtilage of a house which are exempted development, provided that such development complies with the associated conditions and limitations.

Class 3 refers to: "The construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure."

"house" does not, as regards development of classes 1, 2, 3, 4, 6(b)(ii), 7 or 8 specified in column 1 of Part 1 of Schedule 2, or development to which articles 10(4) or 10(5) refer, include a building designed for use or used as 2 or more dwellings or a flat, an apartment or other dwelling within such a building;

Assessment:

Violet Hill house is a protected structure. The structure was originally a period house and has since been converted into a number of different independent dwelling units.

This question relates to 'Amber', which occupies part of the ground floor of the eastern part of the house and includes a private amenity space.

The applicants are requesting a Declaration in accordance with Section 5 for the works outlined above.

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

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

The question relates to three structures – shed 3m x 5m, shed 2m x 4m, coup 3m x 6m.

It is considered that 'development' has taken place.

The question now arises with regard to whether this 'development' is 'exempted development'.

Schedule 2, Part 1 'Development within the curtilage of a house' includes various classes of exempt development in the curtilage of a house. Class 3 relates to the construction, erection or placing within the curtilage of a house of any tent, awning, shade or other object, greenhouse, garage, store, shed or other similar structure'.

For the purpose of class 3, the definition of 'house' does not include a building used as 2 or more dwellings or a flat, an apartment or other dwelling within such building.

Therefore class 3 cannot be relied on.

Because the development is not exempt, there is no need to assess further in relation to Section 57(1).

MEMORANDUM

WICKLOW COUNTY COUNCIL

TO: Aisling McNamara
Executive Planner

FROM: Crystal White
Assistant Staff Officer

**RE:- EX 69/2022 - Declaration in accordance with Section 5 of the
Planning & Development Acts 2000 (as amended)**
**Works consisting of two sheds located at the front of the Protected
Structure and a chicken coup to the side at Amber, Violet Hill, Bray, Co
Wicklow.**

I enclose herewith for your attention application for Section 5 Declaration received 2nd of November 2022.

The due date on this declaration is the 29th November 2022.



Senior Staff Officer
Planning Development & Environment



**Comhairle Contae Chill Mhantáin
Wicklow County Council**

**Forbairt Pleanála agus Comhshaol
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07/11/2022

**Maria Gallen
C/O RML Planning
RML Planning
3 David Road
Drumcondra
Dublin 9**

**RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). Ex 69/2022
Works consisting of two sheds located at the front of the Protected Structure and a chicken coup to the side at Amer, Violet Hill, Bray, Co Wicklow.**

A Chara

I wish to acknowledge receipt on the 2nd of November 2022 details supplied by you in respect of the above section 5 application. A decision is due in respect of this application by 29/11/2022.

Mise, le meas

**SENIOR EXECUTIVE OFFICER
PLANNING DEVELOPMENT AND ENVIRONMENT**



RML PLANNING

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Director of Services,
Planning Section,
Wicklow Co. Council,
County Buildings,
Station Road,
Whitegates,
Wicklow, A67 FW96

My Ref: 0125

2/11/2022

Re: Section 5

Dear Director,

On behalf of my client, **the referrer**, Ms Maria Gallen, The Gallery, Violet Hill, Herbert Road, Bray, please find this referral pursuant to section 5 of the Planning and Development Act 2000 as amended (PDA2000). Please note the referrer is not the owner of the site the subject of this section 5. A Section 5 referral application form is attached. The appropriate fee has been paid.

Address of site the subject of this section 5 reference: Amber, Violet Hill, Bray, Co. Wicklow. This site is a protected structure.

Owner of site subject of section 5 reference: David O'Brien and Grainne Birdthistle.

A recent planning application was made on the site the subject of the section 5 reference, (Ref. 221102) not related to the subject matter of this reference.

1. The Question

The following question has arisen and the referrer seeks a declaration.

Whether works consisting of two sheds located to the front of a Protected Structure at Amber, Violet Hill, Bray, Co. Wicklow (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side is or is not development and is or is not exempted development?

2. Site Location

The site is located in the southwest suburbs of Bray, c.125m east of the M11 and located off Herbert Road. The site contains a large, protected structure, built in c.1862 with an additional wing built in the 1890s. The house was subdivided into four residences c. 50 years ago and are known as Amber, Mandalay, The Gallery, and Violet Hill House. Several former outbuildings are also in residential uses within the curtilage of the protected structure.

The Wicklow County Development Plan 2022-2028 record of protected structures includes *B25 Kilbride, Violet Hill*.

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

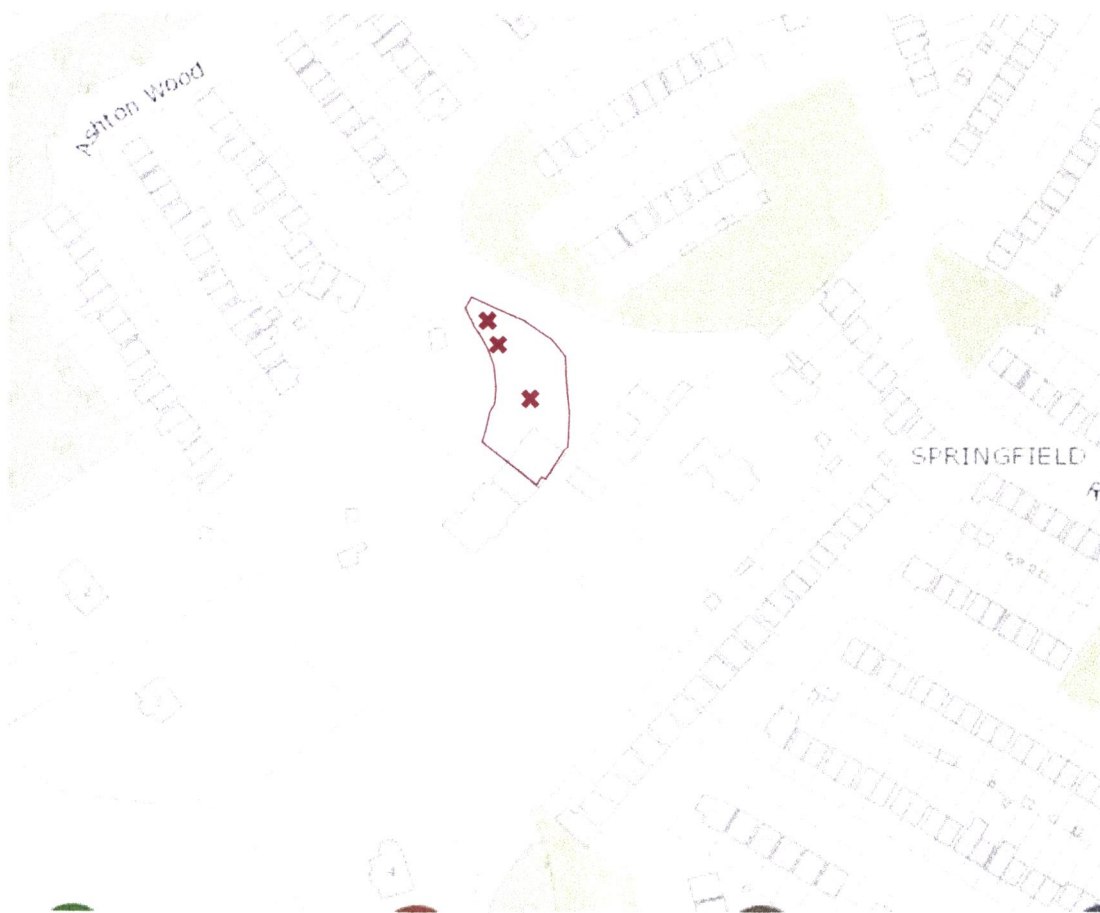
A Tree Preservation Order No.2 (Schedule 10.08 existing Tree Preservation orders Bray LAP 2018) applies to the site.

The site is managed by Tudor Violet Management Company Ltd.

The structures which are the subject of this reference are approximate:

- Shed 3m x 5m
- Shed 2m x 4 m
- Coup 3 x 6 m

Fig. 1 Site location with locations of sheds/coup marked in **X**. Please note site outline is approximate as the referrer does not own site and cannot survey it. **Source** My: Plan



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Planning Section,
Wicklow Co. Council,
County Buildings,
Station Road,
Whitegates,
Wicklow, A67 FW96

My Ref: 0125

2/11/2022

Re: Section 5

Dear Director,

On behalf of my client, **the referrer**, Ms Maria Gallen, The Gallery, Violet Hill, Herbert Road, Bray, please find this referral pursuant to section 5 of the Planning and Development Act 2000 as amended (PDA2000). Please note the referrer is not the owner of the site the subject of this section 5. A Section 5 referral application form is attached. The appropriate fee has been paid.

Address of site the subject of this section 5 reference: Amber, Violet Hill, Bray, Co. Wicklow. This site is a protected structure.

Owner of site subject of section 5 reference: David O'Brien and Grainne Birdthistle.

A recent planning application was made on the site the subject of the section 5 reference, (Ref. 221102) not related to the subject matter of this reference.

1. The Question

The following question has arisen and the referrer seeks a declaration.

Whether works consisting of two sheds located to the front of a Protected Structure at Amber, Violet Hill, Bray, Co. Wicklow (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side is or is not development and is or is not exempted development?

2. Site Location

The site is located in the southwest suburbs of Bray, c.125m east of the M11 and located off Herbert Road. The site contains a large, protected structure, built in c.1862 with an additional wing built in the 1890s. The house was subdivided into four residences c. 50 years ago and are known as Amber, Mandalay, The Gallery, and Violet Hill House. Several former outbuildings are also in residential uses within the curtilage of the protected structure.

Plate 1 Sheds on site



3. Relevant legislation

The Planning and Development Act 2000, as amended (PDA2000) and the Planning and Development Regulations 2001 (PDR2001) apply in seeking a determination from the Planning Authority whether a question is a question development and is or is not exempted development.

4. Relevant planning history to Amber, Violet Hill, Herbert Road, Bray, Co. Wicklow

PA Ref. 22/1102. Current application

Extension to protected structure (RPS no. B25)(Kilbride) Violet Hill) and associated site works.

ABP ref: 311675: (PA. ref. 21/988). Refused Permission on 28/02/2022 by An Bord Pleanála.

Extension to protected structure (RPS no. B25(Kilbride) Violet Hill) and associated site works.

PA Ref. 17/544 Granted permission 05/07/2017,

Refurbishment and reordering of interior features. Refurbishment of existing windows, the glazing of the existing dormer windows, the installation of an air/water heat pump in the garden, and all associated site works. Condition 1 states that *“permission refers to the development as described in the documents lodged save as the conditions hereunder require”*.

Please note no sheds were illustrated in PA Ref. 17/544 and were not referenced in that application.

5. Relevant planning policy

The Wicklow County Development Plan 2022-28 (CDP) applies.

The site is a protected structure as outlined above and on the inventory of Irish architecture.

The Architectural Heritage Objectives include policies *CPO 8.10 -12*.

Record of Protected Structures Objectives include policies *CPO 8.13 -15*

The CDP has several objectives which require the protection of TPOs at CPO 17.4 /CPO 17.7 /CPO 17.18

“Enforcement

*20.3 Development will be controlled in accordance with policies and objectives set out in the County Development Plan and in accordance with the principles of proper planning and sustainable development. With regard to the enforcement provisions of Part VIII of the Planning and Development Act 2000, the role of the Planning Authority is to undertake enforcement action where necessary **with respect to non-compliance with conditions attached to planning permissions and the carrying out of non exempted development without the benefit of planning permission.** Furthermore, the Planning Authority has special control powers under current legislation pertaining to such areas as **protected structures and tree preservation orders.**”*

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

A Tree Preservation order no.2 (Schedule 10.08 existing Tree Preservation orders Bray LAP 2018) applies to the site.

The Bray LAP sets out the Architectural Heritage Objectives in objectives AH 1-4.

6. Interpretation and definitions – general

Section 2(1) of the PDA2000 provides statutory interpretations relevant to a section 5 referral. The relevant definitions are as follows:

*“**exempted development**” has the meaning specified in section 4;*

*“**protected structure**” means—*

(a) a structure, or

(b) a specified part of a structure,

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

*“**protection**”, in relation to a structure or part of a structure, includes **conservation, preservation and improvement compatible with maintaining the character and interest of the structure or part;***

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

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

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

(i) the interior of the structure,

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

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

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

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

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

Section 3 of the PDA2000 defines development as follows:

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.

Part VIII of the PDA2000 relates to enforcement.

*151.—Any person **who has carried out** or is carrying out **unauthorised development** shall be **guilty of an offence.***

(bold my emphasis)

7. Exempted Development

PDA2000

Section 4(1) of the PDA2000 provides for situations of exempted development.

Of relevance to this section 5 referral is as follows;

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

[...]

(h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

[...]

Subsection (2)(a) provides that the Minister may by regulation, provide classes of development to be exempted development for the purposes of this Act.

Section 4(4) of the PDA2000 provides that development shall not be exempted from development if an EIA or an AA of the development is required.

PDR2001

The relevant class of exemptions may be found in Part 1 of Schedule 2 of the PDR2001, provided that such development complies with the conditions and limitations specified.

CLASS 3 *The construction, erection or placing within the curtilage of a house of any tent, awning, shade or **other object**, greenhouse, garage, store, **shed or other similar structure**.*

Conditions and limitations to Class 3

1. No such structure shall be **constructed, erected or placed forward** of the front wall of a house.
2. The total area of such structures constructed, erected or placed within the curtilage of a house **shall not, taken together** with any other such structures previously constructed, erected or placed within the said curtilage, **exceed 25 square metres**.
3. ...
4.
5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.
6. The structure shall not be used for human habitation or for the keeping of pigs, **poultry**, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

8. Restrictions on exemptions

Article 6 of the PDR2001 provides that subject to the restrictions on exemptions in Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development, provided that such development complies with the conditions and limitations specified in column 2, (see section 7 above).

Article 9 of the PDR2001 provides restrictions on exemptions. 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:

(i) **contravene a condition** attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,

.....

(vii) consist of or comprise the excavation, **alteration** or demolition (other than peat extraction) of **places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan, in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,**

The site is the subject of a Tree Protection Order.

9. Section 5 declaration

Section 5 of the PDA2000 provides the details of the process of a declaration and referral on development and exempted development and facilitates a review by An Bord Pleanála of the determination.

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

10. Application of relevant legation to this referral

Does a question arise?

Applying section 5 of the PDA2000, in this case, it is submitted that **a question** has arisen. The referrer considers that works that have taken place on the site are development, and are not exempted development.

Is or is not development?

Section 3 of the PDA2000 provides that “development” means, 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**. (Bold my emphasis)

This referral is considered development pursuant to the definition in relation to works.

Works

The relevant interpretation of “works”, “alteration” and “use” are outlined above in section 6.2 above.

The developer has constructed two sheds and a coup. There can be no doubt that **development has been carried out** pursuant to section 3 of the PDA2000.

The Minister has by regulation, provide classes of development to be exempted development for the purposes of this Act in relation to sheds and ancillary buildings as outlined above in section 5 of Class 3 Part 1 of Schedule 2 of the PDR2001. These do not apply because:

- The sheds are forward of the building line (protected structure).
- The coup has contained poultry
- Article 9(1)(a) (i) and (viii) of the PDR apply.
- The planning authority has confirmed the subject of this reference is not exempted. development by letter dated 11th July 2022 to the referrer.

11. Appropriate Assessment and Environmental Impact Assessment

The Habitats Directive (92/43/EEC) and the associated Birds Directive (2009/147/EC) are transposed into Irish legislation by Part XAB of the PDA2000 and the Birds and Natural Habitats Regulations 2011. Screening for appropriate assessment (AA) must be carried out by the planning authority as the competent authority. If significant effects cannot be excluded based on objective information, without extensive investigation or the application of mitigation, a project should be considered to have a likely significant effect and appropriate assessment should be carried out. This is a light trigger and must be based on the precautionary principle. A section 5 referral also

requires to be screened for AA and EIA per the Guidance from the Office of the Planning Regulator. The screening shall also take into account the direct, indirect and in-combination impacts.

The planning authority as the competent authority shall carry out Environmental Impact Assessment (EIA) screening for all plans and projects. If the proposed project is of a class set out in Schedule 5, Part 2 of the Planning and Development Regulations 2001 (PRD2001) but does not meet or exceed the relevant threshold, it is a 'sub-threshold development' and must be screened for EIA.

The sheds are located within the root protection areas of trees the subject of a tree protection order, including what appears as a concrete base.

12. Conclusion

The Planning Authority confirmed in writing¹ that the works were not authorised. Section 151 of the PDA2000 "*Any person who has carried out or is carrying out unauthorised development shall be guilty of an offence*". The Planning Authority while recognising that unauthorised development has taken place, considered the development was visually acceptable to them and relied on section 152(2) PDA2000 "*Notwithstanding subsection (1), where the development in question is of a **trivial or minor nature** the planning authority may decide not to issue a warning letter*".

The position taken by the planning authority is that if unauthorised development occurs to a protected structure, as long as it is visually acceptable, no enforcement will follow to ensure that the development is regularised by seeking planning permission. The planning authority considers that unauthorised sheds at a protected structure and subject to a TPO are trivial or minor matters.

The Planning Authority is requested to determine in accordance with the legislation the question that the stated works is development and is not exempted development.

Yours sincerely,



Rosemarie McLaughlin BA, MRUP, MIPI.
2/11/2022

Encl. Copy of letter from Planning Authority dated 11th July 2022

¹ 11th July 2022 PA ref. TW/AR

Wicklow County Council
County Buildings
Wicklow
0404-20100

02/11/2022 10 00 02

Receipt No L1/0/303913
***** REPRINT *****

RML PLANNING
3 DAVID ROAD
DRUMCONDRA
DUBLIN 9, D09H2V6

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

Total	80 00 EUR
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Tendered	
Cheque	80 00
MARIA GILLEN	

Change	0 00
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Issued By Jessica McDonald
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Wicklow County Council
County Buildings
Wicklow
Co Wicklow
Telephone 0404 20148
Fax 0404 69462

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Date Received _____

Fee Received _____

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

1. Applicant Details

- (a) Name of applicant: MARIA GALLEN
Address of applicar..

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

2. Agents Details (Where Applicable)

- (b) Name of Agent (where applicable) ROSEMARIE MCLAUGHLIN

Address of Agent : RML PLANNING, 3 DAVID ROAD, DRUMCONDRA,
DUBLIN 9

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

3. Declaration Details

- i. Location of Development subject of Declaration AMBER, VIOLET HILL,
BRAY, CO. 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 DAVID O'BRIEN & GRAINNE BIRDTHISTLE, AMBER, VIOLET HILL, HERBERT ROAD, BRAY, CO. WICKLOW A98 TR66
- 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

Whether works consisting of two sheds located to the front of a Protected Structure at Amber, Violet Hill, Bray, Co. Wicklow (RPS no. B25 Kilbride, Violet Hill) and a chicken coup to the side is or is not development and is or is not exempted 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

Please see attached letter

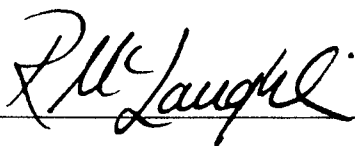
Additional details may be submitted by way of separate submission.

- vi. Does the Declaration relate to a Protected Structure or is it within the curtilage of a Protected Structure (or proposed protected structure) ? YES PROTECTED STRUCTURE RPS no. B25 Kilbride, Violet Hil

- vii. List of Plans, Drawings submitted with this Declaration Application _____
PLEASE SEE ATTACHED LETTER THAT CONTAINS THE SITE LOCATION MAP/FLOOR AREAS THEREIN, THE REFERRER IS NOT THE OWNER.

- viii. Fee of € 80 Attached? YES _____

Signed :



Dated : 2/11/2022

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.

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

TW/AR

11th July 2022

Maria Gallen,
'The Gallery',
Violet Hill,
Herbert Road,
Bray,
Co. Wicklow.

UD5601: Alleged unauthorised development, consisting of the carrying out of the following developments in the front garden/driveway area of a residential site named Amber, Violet Hill, Herbert Road, Bray, A98TR66 [Folio WW40764F/Protected Structure Reference: B25], that is part of a block of dwelling houses that originally constituted the large single unit residential building named 'Violet Hill House'.

1. Erection in the front garden of this site of:
 - (a) A large domestic shed resting on a concrete slab.
 - (b) A small domestic shed.
 2. Placement of a poultry coop enclosure of a steel frame with fencing attached on its elevations, a canopy cover on one of its roof bays and a small internal hut.
-

A Chara,

It is the opinion of the planning authority arising from investigations and assessment carried out for this planning enforcement file under PART VIII [Enforcement] of the Planning and Development Act 2000 (as amended), that this file is appropriate for closure for the reasons outlined hereunder:

1. The erection of the two domestic sheds in the front garden of the site of a dwelling entitled 'Amber' and the placement in the side [eastern] garden thereon of a steel frame fowl coop with a partially enclosed roof, internal hut and netting-fencing attached to its elevations, are each deemed to come within the meaning of 'development' as set out in Section 2(1) of the Planning and Development Act 2000 (as amended).
2. The scope of the exempted development provisions regarding ancillary out buildings/sheds/enclosed objects within the curtilages of single unit dwelling houses



provided in Class 3 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001 (as amended), are deemed not to apply to the three respective developments described in no.1 because:

- (a) The two sheds are each positioned forward of the front building line of this dwelling house.
- (b) Condition-Limitation no. 6 of the Class stipulates that no feature included in the 'Description of Development' in that Class, shall be used for the keeping of animals such as poultry.
- (c) None of the other exempted development provisions of current planning and development legislation are deemed to render those developments exempt from the requirement in accordance with Section 32(1) of the said Planning Act, to obtain planning permission.

3. In the absence of authorisation by planning permission for any of the said three developments, each of them are considered to come within the meaning of 'unauthorised developments' set out in Section 2(1) of the said Planning Act.

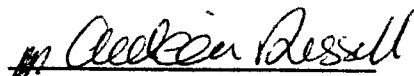
4. However, in accordance with the provisions of Section 152(2) of the said Planning Act, the Planning Authority has decided not to undertake any enforcement action with respect to any of the said three developments for the following reasons:

- (a) The erection of use of the two respective sheds and poultry coop for purposes ancillary to the residential use of the dwelling house of the same site, are considered to be of a relatively minor cumulatively scale that generate negligible visual and use impacts on the residential amenities and historical architectural characteristics of the overall character of the surrounding sites which are each part of the grounds of the former Violet Hill house which is a Protected Structure under PART IV of the said Act. [Reference 25B in Appendix 4 of Volume 3 of the current Wicklow County Development Plan 2016-2022].
- (b) Due to the position of the two sheds in an area of the garden that is largely hidden by dense tree cover, coupled with the dark painted colour of their external elevations, those developments, are deemed not to be injurious to the amenities of neighbouring residential sites or to the protection of any of the heritage value of any of the built features within the curtilage of the site of this protected structure.

- (c) The poultry coop with its scant solid elements is of a size, height that is considered to be of a small scale in the context of the buildings in its vicinity and has very limited views to it from neighbouring sites that is accentuated by its screening by a dense mature evergreen hedging on the adjacent eastern and southern boundaries of this side garden. Therefore the same negligible planning impacts on the character of the surrounding environments and the users/residents thereof, set out in 4(a) above, are considered to also apply in this instance.

Note: In coming to the decision not to undertake planning enforcement action concerning any of the developments, the Planning Authority had regard to the scope and purpose of the Architectural Heritage Objectives referenced respectively as BH9 and BH11 of Section 10.2 of Chapter 10 of the Wicklow County Development Plan 2016-22 and as AH1 and AH2 of the Bray Municipal District Plan 2018.

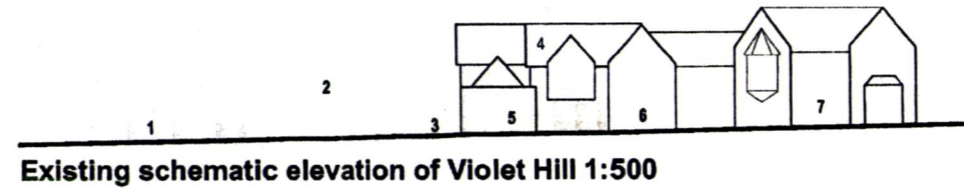
Mise le Meas



ROSEMARIE DENNISON
ADMINISTRATIVE OFFICER
PLANNING ENFORCEMENT

COUNTER COPY

Wicklow County
 DATE 14-10-22 PER No. 221102
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 PLANNING DEPT



Schedule of dwellings and private amenity spaces:

- 1 The Studio A98D611
- 1a Entrance to The Studio
- 1b The Studio private amenity space
- 2 Stable House
- 2a Entrance to Stable House
- 2b Stable House private amenity space
- 3 Coach House A98E176
- 3a Entrance to Coach House
- 3b Coach House private amenity space
- 4 The Gallery (first floor)
- 4a Entrance to The Gallery
- 4b The Gallery private amenity space
- 5 Amber (ground floor)
- 5a Entrance to Amber
- 5b Amber private amenity space
- 6 Mandalay
- 6a Entrance to Mandalay
- 6b Mandalay private amenity space
- 7 Violet Hill House
- 7a Entrance to Violet Hill House
- 7b Violet Hill House private amenity space



SUPPLEMENTARY INFORMATION MAP 1:1000 AS EXISTING

PLANNING

REV.	DATE	DESCRIPTION	AUTHOR
A	2022.10.03	ISSUED FOR CLIENT'S APPROVAL	
A	2022.10.10	ISSUED FOR PLANNING	

wicklow: mortons lane, wicklow town, A67 TF44, t:0404-34652, dublin: synges street, dublin 8 t:01-4753796 e: info@ronanroseroberts.com w: www.ronanroseroberts.com	
PROJECT: House Extension to Amber Violet Hill	CLIENT: O'Brien Birthistle
JOB NO: 2205	DATE: 10/10/2022
DRAWING: LAYOUT OF RESIDENTIAL UNITS	
SCALE: PER NOTES @ A3	
STAGE: 3. SCHEME DESIGN/PL	
DRAWING NO: 3.PL.05	
NOTIFY ARCHITECTS OF ANY DISCREPENCIES . DO NOT SCALE FROM DRAWING CHECK DIMENSIONS ON-SITE COPYRIGHT RESERVED	

RONAN ROSE ROBERTS ARCHITECTS