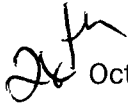




Comhairle Contae Chill Mhantáin
Wicklow County Council

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Planning, Economic and Rural Development

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Suíomh / Website: www.wicklow.ie

 October 2024

Jerry Doyle
Rep Churchview Residents Assoc

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) – EX77/2024

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

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

Is mise, le meas,


ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT





Comhairle Contae Chill Mhantáin
Wicklow County Council

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

Applicant: Jerry Doyle Rep Churchview Residents Association

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1290

Section 5 Declaration as to whether “the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow” constitutes exempted development within the meaning of the Planning and Development Act, 2000(as amended).

Having regard to:


1. The details received with this section 5 application (EX77/2024) on the 6th September and 1st October 2024.
2. Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).
3. Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
4. Class 9, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended
5. Site visit of 18th October 2024

Main Reasons with respect to Section 5 Declaration:

- 1) The “the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow”, as set out in the documents lodged, would be development having regard to Section 3 of the Planning and Development Act 2000 (as amended).
- 2) The works comprising of “the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow” falls within the scope of the exempted development provisions of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

The Planning Authority considers that “the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow” is development and is exempted development

Signed:


ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT

Dated  October 2024



WICKLOW COUNTY COUNCIL
PLANNING & DEVELOPMENT ACTS 2000 (As Amended)

SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/2024/1290

Reference Number: EX77/2024

Name of Applicant: Jerry Doyle Rep Churchview Residents Association

Nature of Application: Section 5 Declaration request as to whether or not: -
"the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow" is or is not development and is or is not exempted development.

Report from Suzanne White, SEP

With respect to the query under section 5 of the Planning & Development Act 2000 as to whether "the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow" is or is not exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Having regard to:

1. The details received with this section 5 application (EX77/2024) on the 6th September and 1st October 2024.
2. Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).
3. Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
4. Class 9, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended
5. Site visit of 18th October 2024

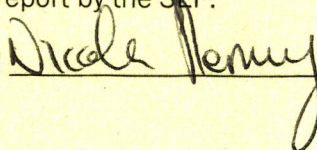
Main Reason with respect to Section 5 Declaration:

- 1) The "the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow", as set out in the documents lodged, would be development having regard to Section 3 of the Planning and Development Act 2000 (as amended).
- 2) The works comprising of "the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow" falls within the scope of the exempted development provisions of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Recommendation:

The Planning Authority considers that "the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow" is development and is exempted development as recommended in the report by the SEP.

Signed



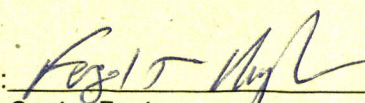
Dated 18th day of October 2024

ORDER:

I HEREBY DECLARE:

That "the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow" is development and is exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed:


Senior Engineer
Planning, Economic & Rural Development

Dated 24th day of October 2024



**WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT**

Section 5 – Application for declaration of Exemption Certificate

REF: EX77/2024
NAME: JERRY DOYLE
DEVELOPMENT: GATE TO ABBEYLANDS, AT CHURCHVIEW
LOCATION: BETWEEN 24 & 25 CHURCHVIEW, ARKLOW, CO. WICKLOW

The Site: the site comprises the boundary between the cul-de-sac of an existing estate, Churchview, and existing undeveloped lands to the east, known as Abbeylands.

Relevant Planning History:

13/610002- permission refused for erection of 2m high palisade fencing and vehicular access gates to property at Abbeylands, Arklow, Co. Wicklow

Adjacent- site to north:

UD5774 – wall at junction of Abbey Heights and Abbeylands, Arklow. File closed.

Question:

The applicant has applied for a determination as to whether the following is or is not development and is or is not exempted development:

“is planning required for a gate to above land from Church View coordinates 52.7895413 – 6.1572555 via road between No.24 & 25 Churchview, Arklow, Co. Wicklow.”

It is considered that the query can be rephrased as follows:

“Whether “the erection of a gate (4ft high x8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow is or is not development, and is or is not exempted development.”

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 ‘works’:

“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.

Section 4(1)(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;

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, including:

9. (1) 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,*
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,*
- (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,*
- (xi) obstruct any public right of way*

Part 1 (Classes 9-13) of Schedule 2 describes classes of development comprising of sundry works which are exempted development, provided that such development complies with the associated conditions and limitations. Class 9 is relevant in this case.

CLASS 9	
Description	Conditions and Limitations
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” include any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.

I am satisfied that the erection of a gate would comprise works and therefore constitutes development.

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

The dimensions of the gate are stated to be 4ft x 8ft, which equates to 1.22m x 2.44m.

Under Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), Class 9 sets out exempted development provisions for 'the construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway'. The subject site is not located within or bounding the curtilage of a house. There is 1 no. Condition / Limitation under Class 9 which requires that 'The height of any such structure shall not exceed 2 metres'. The proposed gate is understood to be 1.22m in height and therefore complies with the condition of Class 9. On this basis, the proposed gate is exempted development.

I note the exception under **Article 9(1)(a)** of the Planning and Development Regulations 2001 (as amended), which provides that:

9. (1) 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—

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

I note that available aerial photography indicates possible pedestrian desire lines across the Abbeylands site from Churchview. This could be to access Abbey Heights to the northeast or for recreation purposes. However, the referrer makes no mention of this. The referrer makes reference to 'old poles and wire still exist behind newer fence'. Google streetview imagery dated 2009 shows a post and wire fence on the boundary at that time. I visited the site on 18th October and observed a simple, low level timber fence along the boundary (photos attached below). It would appear that the lands have been fenced in the past and are currently fenced. Consequently, based on the information available, it is not considered that Article 9(1)(a)(x) of the Planning and Development Regulations 2001 (as amended) applies.

Recommendation:

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

Whether or not "the erection of a gate (4ft high x8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow" is or is not development, and is or is not exempted development.

The Planning Authority considers that:

The proposal for "is the erection of a gate (4ft high x8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow" is development, and is exempted development.

Main Considerations with respect to Section 5 Declaration:

- The details received with this section 5 application (EX77/2024) on the 6th September and 1st October 2024.
- Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).
- Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,
- Class 9, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended
- Site visit of 18th October 2024

Main Reasons with respect to Section 5 Declaration:

- 1) The "the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow", as set out in the documents lodged, would be development having regard to Section 3 of the Planning and Development Act 2000 (as amended).
- 2) The works comprising of "the erection of a gate (4ft high x 8ft wide) between Churchview (nos. 24 & 25) and Abbeylands, Arklow" falls within the scope of the exempted development provisions of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended).

The applicant should be informed.

Suzanne White

18/10/2024

Suzanne White

Senior Executive Planner

*Issue declaration as recommended
Pg 1 to Pg 2 53
24/10/24*





Comhairle Contae Chill Mhantáin
Wicklow County Council

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

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Suíomh / Website: www.wicklow.ie

MEMORANDUM

WICKLOW COUNTY COUNCIL

TO: Suzanne White
Senior Executive Planner

FROM: Nicola Fleming
Staff Officer

**RE:- Application for Certificate of Exemption under Section 5 of the
Planning and Development Acts 2000 (as amended).
EX77/2024**

I enclose herewith application for Section 5 Declaration received 1st October 2024.

The due date on this declaration is 28th October 2024.

Staff Officer
Planning Development & Environment





Comhairle Contae Chill Mhantáin Wicklow County Council

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

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**Jerry Doyle
Rep Churchview Residents Association**

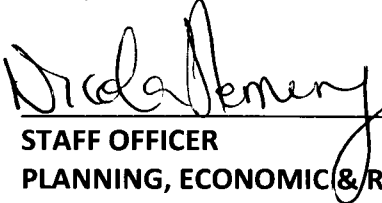
4th October 2024

Re: Application for a Declaration in accordance with Section 5 of the Planning & Development Act 2000 (as amended) : - EX77/2024: - gate from Churchview via road between no. 24 & 24 Churchview, Arklow, Co. Wicklow

A Chara

I wish to acknowledge receipt on 01/10/2024 full details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 28/10/2024.

Mise, le meas

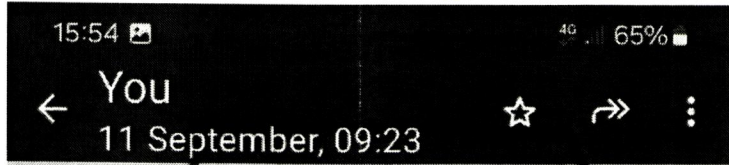

STAFF OFFICER
PLANNING, ECONOMIC & RURAL DEVELOPMENT



Church View

Arklow

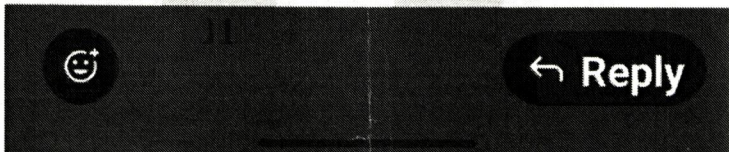
SHIELA BUSHEA 0860764150



X mark's the spot for
 for new 4 x 8ft gate
 Old poles and wire
 still exist behind
 newer fence...

WICKLOW COUNTY COUNCIL
 01 OCT 2024
 PLANNING DEPT.

WICKLOW COUNTY COUNCIL
 CUSTOMER SERVICE
 1 OCT 2024





Comhairle Contae Chill Mhantáin
Wicklow County Council

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Jerry Doyle
Rep Churchview Residents Association

17th September 2024

Re: Application for a Declaration in accordance with Section 5 of the Planning & Development Act 2000 (as amended) : - EX77/2024: - gate from Churchview via road between no. 24 & 24 Churchview, Arklow, Co. Wicklow

A Chara

I wish to acknowledge receipt of your application for a declaration in respect of Section 5 for the above proposal on 6th September 2024. Email was forwarded on 10th September 2024 for which I have had not reply.

We received your Section 5 application form however this is incomplete as per our additional notes section: -

- A site location map (an eircode map will suffice) is required. Please also show on the site location map location of the gate.
- Drawing of the gate or photographs including the dimensions of same.

We need these documents to be able to access the application.

Application is currently classed as incomplete and decision date cannot be noted until documentation is received.

Mise le meas

STAFF OFFICER
PLANNING, ECONOMIC & RURAL DEVELOPMENT



Nicola Fleming

From: Nicola Fleming
Sent: Tuesday 10 September 2024 09:03
To:
Subject: EX77/2024

I refer to application for Declaration in accordance with Section 5 of the P&D Act 2000 (as amended) in relation to Abbeylands Arklow and to advise that some additional information is required in order to assess this application. Please submit the following:-

1. Site Location map showing the land in question and the location of the gate
2. Drawing of the gate or photographs including the dimensions of same.

Regards,

Nicola Fleming

Staff Officer

Planning, Economic & Rural Development

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

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

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



Wicklow County Council
County Buildings
Wicklow
040-4 20100

06/09/2024 09:23:34

Receipt No L170/334205
***** REPRINT *****

JERRY DOYLE
REP CHURCHVIEW RESIDENTS ASSOCIAT

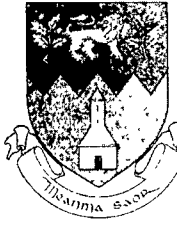
EXEMPTION CERTIFICATES 80 00
GOODS 80 00
VAT Exempt/Non-vatable

Total 80 00 EUR

Tendered
Credit Card 80 00
FOLIO WW10474 PLAN NO 35

Change 0 00

Issued By Cashier5MW
From Customer Service Hub
Vat reg No 0015233H



Wicklow County Council
 County Buildings
 Wicklow
 Co Wicklow
 Telephone 0404 20148
 Fax 0404 69462

Office Use Only

Date Received _____

Fee Received _____

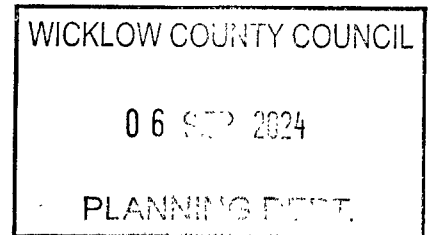
**APPLICATION FORM FOR A
 DECLARATION IN ACCORDANCE WITH SECTION 5 OF THE PLANNING &
 DEVELOPMENT ACTS 2000 (AS AMENDED) AS TO WHAT IS OR IS NOT
 DEVELOPMENT OR IS OR IS NOT EXEMPTED DEVELOPMENT**

1. Applicant Details

(a) Name of applicant: SERRI DOYLE REP CHURCHVIEW RESIDENTS ASSN

Address of applicant: _____

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

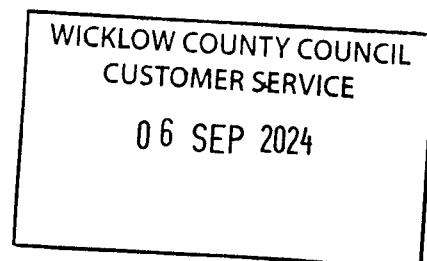


2. Agents Details (Where Applicable)

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

Address of Agent : _____

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



3. Declaration Details

i. Location of Development subject of Declaration _____
ABBEYLANDS ARKLOW
FOLIO NUMBER WW 10474
PLAN NUMBER 35

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 _____
ROSS FOGARTY
ARKLOW PROPERTIES LIMITED
ABBEYLANDS ARKLOW

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 _____
IS PLANNING REQUIRED FOR A GATE
TO ABOVE LAND FROM CHURCH VIEW
COORDINATES 52.7895413 - 6.1572555 VIA
ROAD BETWEEN RD 24 & 25 CHURCHVIEW
ARKLOW CO. WICKLOW
Additional details may be submitted by way of separate submission.

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

Additional details may be submitted by way of separate submission.

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

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

N/A

viii. Fee of € 80 Attached ? _____

Signed : _____ Dated : _____

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