




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.i
Suíomh / Website: www.wicklow.ie

BPS Planning & Development Consultants Ltd
PO Box 13658
Dublin 14
D14 RW01

 June 2024

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000 (As Amended) – EX47/2024

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

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: Henry & Sheena Cullen

CHIEF EXECUTIVE ORDER NO. CE/PERD/824/2024

A question has arisen as to whether “development consisting of the carrying out of works for the maintenance improvement or other alteration of an existing dwelling in poor condition” at Poundbrook Lane, Rathdrum, Co. Wicklow is or is not exempted development.

Having regard to:


- The details submitted with this Section 5 Application
- Planning Permission Register Reference PRR 93/759
- Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- Articles 5, 6 and 9 of the Planning and Development Regulations 2001 (as amended)

Main Reasons with respect to Section 5 Declaration:

- Development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition at Poundbrook Lane, Rathdrum, Co. Wicklow, as described in the documents and details submitted as part of this Section 5, are considered to be works and would constitute development and is exempted development under Section 4 (1) (h) of the Planning and development act 2000(as amended) as this element comprises of “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.”*

The Planning Authority considers that “development consisting of the carrying out of works for the maintenance improvement or other alteration of an existing dwelling in poor condition” at Poundbrook Lane, Rathdrum, Co. Wicklow is development and is exempted development

Signed:


ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT

Dated 14th June 2024



WICKLOW COUNTY COUNCIL

PLANNING & DEVELOPMENT ACTS 2000 (As Amended)
SECTION 5

CHIEF EXECUTIVE ORDER NO. CE/PERD/824/2024

Reference Number: EX47/2024

Name of Applicant: Henry & Sheena Cullen

Nature of Application: Section 5 Referral as to whether or not "development consisting of the carrying out of works for the maintenance improvement or other alteration of an existing dwelling in poor condition" is or is not development and is or is not exempted development.

Location of Subject Site: Poundbrook Lane, Rathdrum, Co. Wicklow

Report from Suzanne White, SEP

With respect to the query under section 5 of the Planning & Development Act 2000 as to whether "development consisting of the carrying out of works for the maintenance improvement or other alteration of an existing dwelling in poor condition" at Poundbrook Lane, Rathdrum, Co. Wicklow is or is not exempted development within the meaning of the Planning & Development Acts 2000 (as amended).

Having regard to:

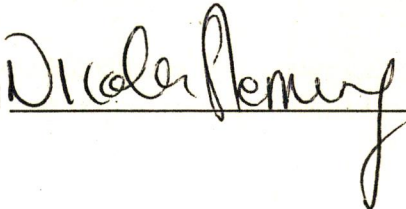
- (a) The details submitted with this Section 5 Application
- (b) Planning Permission Register Reference PRR 93/759
- (c) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- (d) Articles 5, 6 and 9 of the Planning and Development Regulations 2001 (as amended)

Main Reason with respect to Section 5 Declaration:

1. *Development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition at Poundbrook Lane, Rathdrum, Co. Wicklow, as described in the documents and details submitted as part of this Section 5, are considered to be works and would constitute development and is exempted development under Section 4 (1) (h) of the Planning and development act 2000(as amended) as this element comprises of "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."*

Recommendation:

The Planning Authority considers that “development consisting of the carrying out of works for the maintenance improvement or other alteration of an existing dwelling in poor condition” at Poundbrook Lane, Rathdrum, Co. Wicklow is development and is exempted development as recommended in the report by the SEP.


Signed 

Dated 14th day of June 2024

ORDER:

I HEREBY DECLARE:

That “development consisting of the carrying out of works for the maintenance improvement or other alteration of an existing dwelling in poor condition” at Poundbrook Lane, Rathdrum, Co. Wicklow 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 14th day of June 2024

Section 5 Application EX 47/2024

Date : 14th June 2024

Applicant : Henry and Sheena Cullen

Address : Poundbrook Lane, Rathdrum, Co. Wicklow

Question:

Whether or not:

“development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition”

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

Site Location

The subject site is located within the settlement of Rathdrum. Existing on site is a semi-derelict house, trees and vegetation. The site slopes steeply downhill from north to south towards the pound brook stream which runs along the southern boundary of the site. There are dwellings and fields on the adjacent sites.

Planning History:

23/357: permission refused for the demolition of the existing (non-habitable) house and for the construction of a two-storey house with garage, new vehicular entrance off existing laneway, connecting to mains services and all ancillary site works.

22/1083: permission refused for demolition of the existing (non-habitable) house and outline planning permission for the construction of 3 no. two storey houses, new vehicular entrance off existing laneway, connecting to mains services and all ancillary site work

08/341 (PL 27/233742) – Permission was refused for the demolition of dwelling and associated out building and construction of 22 dwellings consisting of 11 no. 2 bed apartments and 11no 3 bed duplex units and associated site works.

97/6270 Outline application submitted by Pdraig Kelly for 3 no dwellings, report on file recommends refusal on the basis

93/759 Application submitted by Philomena Casey for retention of bungalow and garage approved subject to conditions

90/5905 Outline Application submitted by Michael Woodward for dwelling approved subject to conditions

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':

'Works' includes "Any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

Section 2(1) of the Act states the following in respect of 'structure':

"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,

Section 4 sets out the types of works that while considered 'development', can be considered 'exempted development' for the purposes of the Act.

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.

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) and (b) 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.

ASSESSMENT

The Section 5 declaration application seeks an answer with respect to the following question i.e. whether or not:

"development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition"

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

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.

“alteration” includes the removal of plaster or stucco or the replacement of a door, window or roof that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures.

I note that the terms ‘maintenance’ or ‘improvement’ are not defined in the statute and have therefore to be given their normal meaning.

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

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

I am satisfied that the proposals would involve works and therefore the proposals do constitute development.

The second stage of the assessment is to determine whether or not the proposed works would be exempted.

Having regard to the definition of ‘structure’ under Section 2 of the Act, I consider that the existing house on the site constitutes a structure.

The existing structure is semi-derelect, without its roof covering, chimney, window panes and doors. It does however retain its external and internal walls, window frames, roof joists and some roof tiles. It is accepted that the structure was previously in use as a dwelling, though it is not known when it was last used as such or how long it has been in a semi-derelect condition. It is not clear if the existing structure would constitute a habitable house. The applicant states that the building is on the Derelect Sites Register, however the latest version of the register on the Council’s website (dated 17th November 2023) does not include this site. The site is however on the Vacant Sites Register as of 4th April 2024. The applicant states that the reason for the present state of the building is that maintenance works were commenced some years ago but not finished.

From review of the planning history of the site, I note that the structure on site resembles that for which permission was granted under PRR 93/759. No drawings or details of the works proposed have been submitted, however the applicant states that the current proposal is to return the house to its original appearance i.e. as permitted under PRR 93/759. No extension is proposed.

Having regard to Section 4(1)(h) of the Act, as the proposal is to return the structure to its original appearance, as approved under PRR 93/759, and given the extent to which the original structure is intact, it can be accepted that the proposed works of “maintenance, improvement or other alteration” would 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. It is noted that the exemption under Section 4(1)(h) does not require the structure to be habitable.

RECOMMENDATION: EXEMPT

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

“development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition”

at Poundbrook Lane, Rathdrum, Co. Wicklow constitutes exempted development within the meaning of the Planning and Development Acts, 2000 (as amended).

The Planning Authority considers that:

“development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition” as described in the documents and details submitted as part of this Section 5 is development and is exempted development.

Main Considerations with respect to Section 5 Declaration:

- (a) The details submitted with this Section 5 Application
- (b) Planning Permission Register Reference PRR 93/759
- (c) Sections 2, 3 and 4 of the Planning and Development Act 2000 (as amended)
- (d) Articles 5, 6 and 9 of the Planning and Development Regulations 2001 (as amended)

Main Reasons with respect to Section 5 Declaration:

*Development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition at Poundbrook Lane, Rathdrum, Co. Wicklow, as described in the documents and details submitted as part of this Section 5, are considered to be works and **would constitute development and is exempted development under** Section 4 (1) (h) of the Planning and development act 2000(as amended) as this element comprises of “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.”*

I recommend that the applicant be informed accordingly.



Suzanne White
Senior Executive Planner
14/06/2024

*Noted. There is a lot of information retained in the submitted documents in support of an exemption. However, there is a distinct lack of information on what actual works would be carried out. The latter information is of more importance. I concur with the conclusion of the SEP that it is reasonable to assume the works/development the subject of the declaration request are works to bring the existing structure back to what was originally permitted. Issue declaration as recommended.
Keg 1 to this 2 82
14/06/24*



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

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).
EX47/2024

I enclose herewith application for Section 5 Declaration received 21st May 2024.

The due date on this declaration is 17th June 2024.



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

BPS Planning & Development Consultants Ltd
PO Box 13658
Dublin 14
D14 RW01

28th May 2024

RE: Application for Certificate of Exemption under Section 5 of the Planning and Development Acts 2000 (as amended). – EX47/2024 for Henry & Sheena Cullen

A Chara

I wish to acknowledge receipt on 21/05/2024 details supplied by you in respect of the above Section 5 application. A decision is due in respect of this application by 17/06/2024.

Mise, le meas

Nicola Fleming
Staff Officer
Planning, Economic & Rural Development





**Planning & Development
Consultants**

M 087 261 5871

T 01 539 4960

E info@bpsplanning.ie

W www.bpsplanning.ie

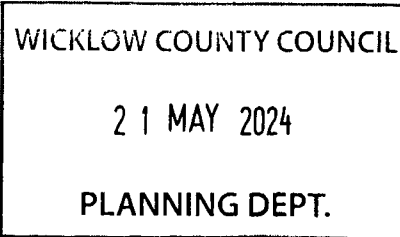
PO Box 13658

Dublin 14

BY HAND

The Secretary,
Planning Department,
Wicklow County Council,
County Buildings,
Station Road,
Wicklow Town,
County Wicklow

21 May 2024



Dear Sir/Madam,

Section 5 referral / exemption declaration. A question arises as to whether development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition at Poundbrook Lane, Rathdrum, County Wicklow would constitute exempted development. The property is owned by Henry & Sheena Cullen of Poundbrook Lane, Rathdrum, County Wicklow.

BPS Planning and Development Consultants LTD, a firm of Irish Planning Institute accredited town planning consultants, has been retained by Henry & Sheena Cullen of Poundbrook Lane, Rathdrum, County Wicklow [hereafter client"] to prepare and to lodge a Section 5 referral / exemption declaration application to Wicklow County Council [hereafter "WCC"] pertaining to the issue of whether development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition at Poundbrook Lane, Rathdrum, County Wicklow would constitute exempted development.

The requirement for a Section 5 Declaration arises because, following their inheritance of this residential property, our client has made two planning applications to WCC, reg. refs. 2211083 and 23357 for the demolition of the existing dwelling and for its replacement with an alternative dwelling. Both planning applications were refused and for a number of reasons. Our client is now left with no alternative but to carry out works for the maintenance, improvement or other alteration of the existing dwelling which, though in poor condition, remains substantially intact and is already a dwelling.

BPS has advised our client to lodge a Section 5 to confirm that the proposed works constitute exempted development

In making this Section 5, BPS notes how in lodging two previous planning applications, our client at no point relinquished their exempted development rights regarding this residential property. It is an established principle of Irish planning law that the making of a planning application does not, in itself, remove a party's right to rely at any stage on the exempted development provisions of the Planning and Development Act 2000 (as amended) [here referred to as the "PDA"] and/or the Planning and Development Regulations 2001 (as amended) [here referred to as the "PDR"]

In its assessment of planning application reg ref 23357, the WCC Planner's Report refers to the existing structure as "semi-derelect". It is nonetheless a permitted structure under planning law (See Section 6.1.1 of this letter). In fact, the existing dwelling resembles an existing dwelling undergoing significant energy upgrading with some roof slates and windows and/or window panes removed pending their replacement. The existing dwelling is and continues to maintain the appearance of a 1990s bungalow with all of its walls fully intact internally and externally - this is not an historic derelict structure, it is a modern dwelling. Planning permissions pertaining to the dwelling were issued in outline under reg. ref. 90/5905 and in full under reg. ref. 93759 ("retention of bungalow and garage approved subject to conditions"). The property is sited in a town centre where all mains water, foul drainage, surface water drainage, and electrical services already exist and is accessed via the same laneway through which its construction stage was achieved and through which it was accessed for decades in its operational phase.

The WCC Planner's Report for reg ref 23357 states "It is clear that this structure was in use at one point as a dwelling" and "there was a dwelling on site". That a dwelling exists and is set within a residential property is clear from a review of Google Maps or Earth aerial imagery and/or from a site visit. The dwelling was purchased by our client approx 3 years ago. The previous owners' attempts to re-start maintenance works were clearly not successful. There are clearly reasons for this, but our client does not know what these are. Suffice to say, the maintenance works should have been completed some years ago, but our client has only owned the property for a short period during which he has lodged two planning applications. This is a dwelling that was built in 1992/1993. It is only approx 30 years old.

Our client's family do not and have never considered the existing permitted dwelling structure to be derelict. They have merely had family issues which delayed maintenance works, etc. The WCC Planner's Report pertaining to reg. ref. 23357 states: "The site has on it a single storey dwelling which is in a derelict state." However, clarity is not provided as to why it has been considered

derelict when a house undergoing maintenance works would not be deemed so. There are many residential properties throughout Ireland's many towns which need maintenance and improvement work, this does not remove the fact that they remain dwellings, townhouses, apartments, etc. There are government funded schemes available which seek to maintain and improve town centre residential buildings requiring investment. This investment in maintenance, improvement and alteration does not generally require planning permission. For example, The Vacant Property Refurbishment Grant¹ is a scheme to support the sustainable reuse of vacant properties. Funded by the Croí Cónaithe (Town) Fund, the scheme is helping to bring vacant and underused buildings back into residential use and is ensuring that existing housing stock is being used to the fullest extent possible. It is also providing new choices for people to live in all cities, towns, villages and rural areas in Ireland, supporting their future growth and development. Two types of grants exist.

- *Vacant properties*: A grant of up to a maximum of €50,000 is available for the refurbishment of a vacant property into a principal private residence or to be made available for rent, including the conversion of a property that has not been used for residential purposes before. The property must be vacant for two years or more and be built before 2008.
- *Derelict properties*: A maximum of €70,000 is available for the refurbishment of a derelict property. For a property to be deemed derelict (i.e. structurally unsound and dangerous), the applicant must confirm this by submitting an independent report prepared by an appropriately qualified professional along with the application form. The property can also be deemed derelict if it is on the local authority's Derelict Sites Register. Evidence that the property was built before 2008 and that it is vacant for two years or more will also be required.

A Sustainable Energy Authority of Ireland (SEAI) Better Energy Home Scheme Grant may be available in combination with the above grant. The SEAI Better Energy Home Scheme covers works of up to €26,750.

In this case, WCC has placed our clients' property on the Derelict Sites Register though it is not structurally unsound or dangerous. The dwelling merely needs investment in maintenance, improvement or other alterations.

The existing property is sited on an existing laneway and is accessed in the same manner as it has always been. There is no change. WCC's Planner's Report stated "as the proposal is for a single dwelling it is considered that the proposal will have no greater impact over and above the original dwelling and therefore on this basis the access to same is acceptable." That is, WCC accepted our clients' planning applications were seeking to replace one existing dwelling with a new dwelling accessed via the same laneway, etc.

BPS notes how all existing maps, drawings and details pertaining to the existing dwelling and to this property are set out in WCC planning files, reg. refs 2211083 and 23357. However, OS Planning Pack maps, survey drawings and photographs are submitted with this Section 5 both to address validation requirements arising under the PDR but also to inform the WCC assessment of this matter. This level of detail is considered reasonable to allow the matters arising in this Section 5 to be assessed. We trust this is in order.

Section i of this Section 5 covering letter sets out how all relevant validation requirements have been addressed, while Sections 2.0 to 6.0 provide all relevant information required to assess this matter. Section 7.0 offers a conclusion and Section 8.0 a recommendation. If WCC requires any further details, these can be provided on request.

i Validation of this Section 5

In terms of validation of this Section 5, we refer to Section 5 —(1) of the Planning and Development Act 2000 (as amended) which states:

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.

Please find a cheque for **€80** attached which is the statutory fee payable for a Section 5.

To further support this Section 5 application, BPS has:

1. Provided a completed WCC Section 5 Form
2. Set out in this letter the question which has arisen in this case as to whether

Development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition at Poundbrook Lane, Rathdrum, County Wicklow would constitute exempted development.

3. Set out in this letter details of matters relevant to the assessment of this Section 5.
4. Attached OS Site Location Maps and site layout plan and details attached to this letter clearly outline the location and appearance of the existing dwelling structure. Survey drawings should be available in the WCC archives at refs 90/5905 &

¹ <https://www.gov.ie/en/publication/43d9d-refurbishing-vacant-property-all-supports/>

93759 though they are not uploaded to the online WCC website Our client has no survey drawings of the existing dwelling structure Photographs of the existing dwelling structure are provided in this letter.

We accept that WCC may need more detail and we note how under Section 5 (2) (b) "A planning authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the authority to issue the declaration on the question . "

Contents

| | |
|-------|---|
| 1.0 | Site location & description |
| 2.0 | Section 5 question arising |
| 3.0 | Background to Referral |
| 3.1 | Planning History |
| 4.0 | Policy context |
| 4.1 | Development Plan and Town Plan |
| 5.0 | Statutory Provisions |
| 5.1 | PDA - Planning and Development Act 2000 (as amended) |
| 5.2 | PDR - Planning and Development Regulations, 2001 (as amended) |
| 6.0 | <u>Assessment</u> |
| 6.1 | Assessment under the PDA |
| 6.1.1 | Is or is not a "Structure" |
| 6.1.2 | Is or is not a "House"? |
| 6.1.3 | The use of the property as a residential property |
| 6.1.4 | Is or is not "Development"? |
| 6.1.5 | Conclusion re development at the existing house structure |
| 6.2 | The question of "exempted Development" |
| 6.3 | "Exempted Development" - conclusion |
| 7.0 | Conclusion |
| 8.0 | Recommendation |

1.0 Site location & description

This Section 5 pertains to an existing dwelling structure within a residential property located off Poundbrook Lane in Rathdrum, County Wicklow. The property measures 0.52ha and is located within the development boundary of the town as defined under the Rathdrum Town Plan 2022-2028 (Rathdrum is a 'Level 4' – 'Self Sustaining Town')

The existing house was built in the 1990s and is a modern bungalow. As noted above, maintenance works to the roof and windows was started some years ago by the previous owners but this work was not completed. The dwelling maintains all its walls (internally and externally) and its roof joists are all in place. In recent planning applications, WCC has referred to the existing appearance of the dwelling as being semi-derelect. In fact, the existing dwelling resembles an existing dwelling undergoing significant energy upgrading with some roof slates and windows and/or window panes removed pending their replacement. This is not an historic derelect structure it is a modern dwelling.

The property is sited in a town centre where all mains water, foul drainage, surface water drainage, and electrical services already exist. Uisce Eireann has confirmed that our client does not need a new connection but already has a pre-connection agreement (arising from the fact there is already a dwelling on the site)

The property is accessed via the same laneway through which its construction stage was achieved and through which it was accessed for decades in its operational phase

The property adjoins other residential properties in this town centre area.

If further details are required, these can be provided on request

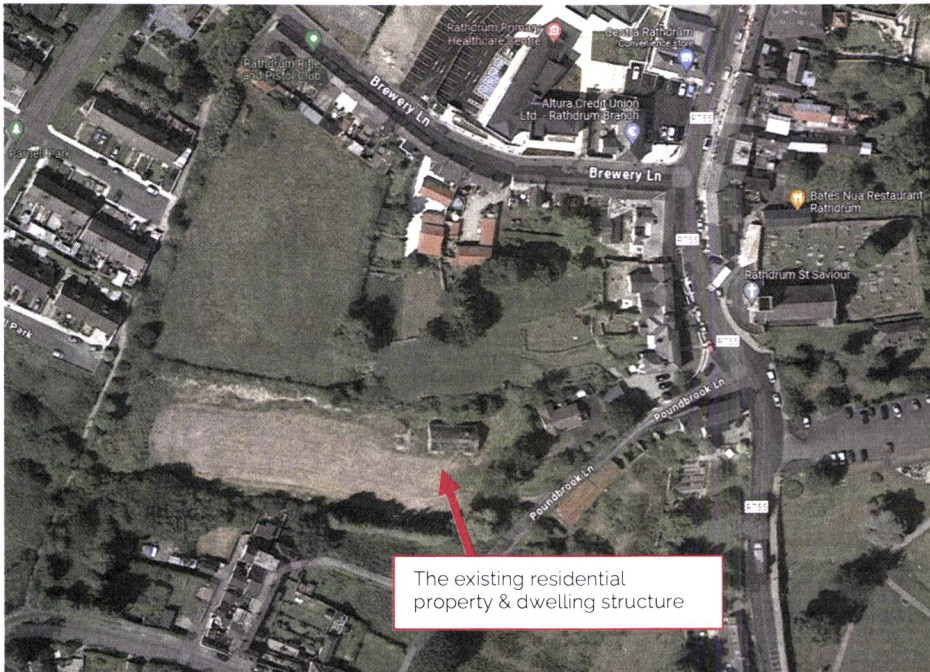


Fig. 1: The location of the existing residential property and dwelling structure within Rathdrum Town Centre (1)



Fig. 2: The location of the existing residential property and dwelling structure within Rathdrum Town Centre (2)

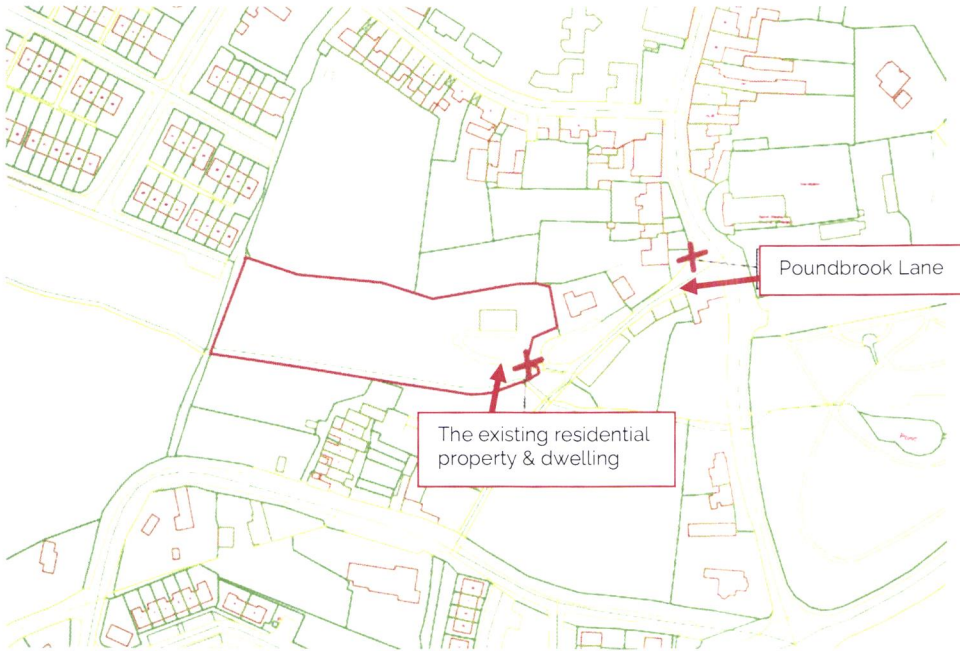


Fig. 3: The location of the existing residential property within Rathdrum Town Centre (3)



Fig. 4: Photograph of the existing dwelling structure with its windows and roof tiles removed for delayed maintenance (1)



Fig. 5: Photograph of the existing dwelling structure with its windows and roof tiles removed for delayed maintenance (2)



Fig. 6: Photograph of the existing dwelling structure with its windows and roof tiles removed for delayed maintenance (3)

2.0 Section 5 question arising

The question referred to the planning authority pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended ("the Act") for review is, as follows: "A question arises as to whether development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition at Poundbrook Lane, Rathdrum, County Wicklow would constitute exempted development."

3.0 Background to Section 5

3.1 Planning History

The existing dwelling on the site was only built in 1992/1993 under:

- *Reg. ref. 90/5905* - Outline Application submitted by Michael Woodward for dwelling approved subject to conditions.
- *Reg. ref. 93759* - Application submitted by Philomena Casey for retention of bungalow and garage approved subject to conditions.

There are clear records of these original planning permissions for the dwelling available at WCC. This dwelling is only approx. 30 years old.

There has never been a Section 5 lodged regarding this property. WCC has placed the existing dwelling on the Derelict Sites Register. This cannot be disputed; however, the existing appearance of the dwelling is one of complete walls and roof joists. Window panes and roof slates were originally removed by the previous owners to facilitate maintenance. The dwelling maintains the appearance of a bungalow which had been inhabited but maintenance works were started, and the structure was left with an 'under construction' appearance. The structure is in good condition and is structurally sound. It is not unsafe.

There have been two recent planning applications made to demolish the existing dwelling and to redevelop the site. These include:

- *Reg. ref. 2211083* - Demolition of the existing (non-habitable) house and outline planning permission for the construction of 3 no. two storey house, new vehicular entrance off existing laneway connecting to mains services and all ancillary site works. Decision: Refused. The refusal reasons refer to the full redevelopment of the site as 3 no. dwellings. Our clients have therefore attempted to redevelop the site at a higher density.
- *Reg. ref. 23357*: for the demolition of the existing (non-habitable) house and for the construction of a two-storey house with garage, new vehicular entrance off existing laneway, connecting to mains services and all ancillary site works. Decision: This planning application was refused for two reasons:
 - The first reason for refusal refers essentially to WCC's preference that our clients' property be re-developed as part of Opportunity Site OP2 which includes lands they do not own. It is wholly unclear as to how WCC considers this single residential property on a sloping site with a restricted access could be developed as part of a wider multi-ownership site. WCC's refusal on the basis of density is also difficult to understand when our clients attempted previously to propose 3 no. dwellings on the property. The developable area of this site - that zoned 'TC' - 'Town Centre' - is only 0.12ha. in size.
 - WCC noted that additional details would have been required if a Further Information request was being issued.

These decisions and the close to impossibility that our client could team up with other landowners to redevelop this property alongside other adjoining lands has caused our client to revert - as noted above - to a preference for the maintenance, improvement or other alteration of the existing dwelling.

4.0 Policy context

4.1 Development Plan and Town Plan

The Statutory County Development Plan is the Wicklow County Development Plan 2022-2028 (the "CDP"). Under Chapter 4 – 'Settlement Strategy', Rathdrum is designated as a level 4 settlement (Self-Sustaining Towns). As a 'Self-Sustaining Towns', the CDP makes clear how the settlement should provide housing for people from across the county and region.

Rathdrum maintains its own statutory plan. This is the Rathdrum Town Plan 2022-2028. The subject site is included in the Town Plan as:

- Being within the statutory boundary of the town
- Part 'TC' – 'Town Centre' zoned land (0.12ha.) 'and' part 'OS2' – 'Passive Open Space' zoned land (0.5ha.). The Town Plan offers the following descriptions of these zonings

TC - Town Centre

Objective: To provide for the development and improvement of appropriate town centre uses including residential, retail, commercial, office and civic use.

Description - To develop and consolidate the existing town centre to improve its vibrancy and vitality with the densification of appropriate commercial and residential developments ensuring a mix of commercial, recreational, civic, cultural, leisure and residential uses, while delivering a quality urban environment, with emphasis on regeneration, infill town and historic centre conservation; ensuring priority for public transport where applicable, pedestrians and cyclists, while minimising the impact of private car based traffic and enhance and develop the existing centre's fabric.

OS2 Passive Open Space

Objective - To protect and enhance existing open, undeveloped lands

Description - To protect, enhance and manage existing open, undeveloped lands that comprise flood plains, buffer zones along watercourses and rivers, steep banks, green breaks between built up areas, green corridors and areas of natural biodiversity.

- Part of the property is included in an area titled 'OP 2'. The Town Plan offers no adequate detail as to this area whose boundaries are not those of our clients' entire property, etc. The Town Plan states:

Opportunity Site - OP 2 - Between Brewery Lane and Pound Brook Lane Objectives OP 2 The layout and design of any new development adjacent to the existing identified or potential future access points into the remainder of the lands shall ensure that access is not impeded; New roads / streets into and throughout this area shall be narrow with priority to pedestrians and structures shall generally be located directly on the street. In the event that a comprehensive development encompassing the entire or a significant part of these lands can be brought forward, the lands should be developed as an extension to the traditional town centre, and shall comprise of a series of new streets and squares, opening up linkages between the Main Street, Brewery Lane and Pound Brook Lane

The subject site is not a sensitive one regarding the following

- The property is not a protected structure and is not sited within an Architectural Conservation Area
- The property is not in an area visible within protected views or prospects.
- The property does not flood (see Map No. 3 of the Town Plan).
- Regarding Environmental Impact Assessment and Appropriate Assessment, WCC's Planner's Report pertaining to planning application reg. ref 23/357, which referred to a proposal to demolish the existing dwelling and to re-build a new dwelling states

Screening for Environmental Impact Assessment

Having regard to nature and scale of the development and the urban location of the site there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

Appropriate Assessment

[The subject property is not located in or adjoining a European site] Having regard to the nature and scale of the proposed development, the nature of the receiving environment, the absence of any pathway linking the site to any Natura 2000 sites, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a

significant effect individually or in combination with other plans or projects on a European site and therefore a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

Therefore, the existing dwelling and/or maintenance, improvement or other alteration to the existing dwelling do not raise EIA or AA concerns

5.0 Statutory Provisions

5.1 PDA - Planning and Development Act 2000 (as amended)²

Section 2(1)

In this Act, except where the context otherwise requires—

"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).

"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."

"habitable house" means a house which—

(a) is used as a dwelling,

(b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or

(c) was provided for use as a dwelling but has not been occupied."

"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

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.

"alteration" includes—

(a) plastering or painting or the removal of plaster or stucco, or

(b) the replacement of a door, window or roof,

that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures

Section 4

Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including

- 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'
- Section 4(1)(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'

² References refer to <https://revisedacts.lawreform.ie/elr/2000/act/30/revised/en/html#SEC4>

5.2 PDR - Planning and Development Regulations, 2001 (as amended)

Article 5

"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

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1

Article 9(1)(a)

Development to which article 6 relates shall not be exempted development for the purposes of the Act – (a) if the carrying out of such development would –

- (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 ...
- (vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,
- (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,
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended,
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000
- (viii) consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use,
- (ix) consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan .
- (xii) further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area

Article 10 (1)

Article 10 (2) (a) states: "A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use."

Schedule 2

Part 1 'Exempted Development', 'General', of Schedule 2 sets out exempted development class for exempted development general to which Art 6(1) refers.

Schedule 2 sets out a wide range of 'Development within the curtilage of a house' which can take place without requiring planning permission including extensions, sheds, etc

6.0 Assessment

The purpose of this assessment is not to determine the acceptability or otherwise of the matters raised in respect of the proper planning and sustainable development of the area, but rather **whether or not** the matter in question constitutes development, and if so, falls within the scope of exempted development within the meaning of the relevant legislation

6.1 Assessment under the PDA

6.1.1 Is or is not a "Structure"

The existing house is a "structure" as it is a building, structure, made on, in or under any land, or any part of a structure so defined. The structure includes the land on, in or under which the structure is situated, the interior of the structure, the land lying within the curtilage of the structure, and all fixtures and features which form part of the interior or exterior of the structure.

It is important that the structure be recognised as such as this is important when one considers Section 4(1)(h) of the PDA

6.1.2 Is or is not a "House"?

Section 2(1) of the PDA states, inter alia, that a "house" means "a building or part of a building which is being or has been occupied as a dwelling ..." The existing dwelling is a house

Section 2(1) then defines a "habitable house" which means "a house which— (a) is used as a dwelling, (b) is not in use but when last used was used, disregarding any unauthorised use, as a dwelling and is not derelict, or (c) was provided for use as a dwelling but has not been occupied". Our client's house is a dwelling and was last used as a dwelling. They do not accept that it is derelict. Its current appearance arises from maintenance works starting and then not being completed. The structure of the house remains sound. Energy improvement works regularly replace roofs, windows and apply internal and external insulation which involve significant temporary alterations to the external appearance of a dwelling. Such is the case here. It is estimated that approx. 8 weeks of work would see the maintenance, improvement and alterations works completed and the dwelling once again back to its old appearance as a 1990s bungalow. As noted above, this is not an historic fundamentally unsound structure – it is a 1990s dwelling in need of maintenance, improvement and alterations works.

6.1.3 The use of the property as a residential property

Section 2(1) of the PDA states that "use", in relation to land, does not include the use of the land by the carrying out of any works thereon. It relates only to the actual use. In this instance, the subject property has been in residential use since the early 1990s. The property maintains planning permissions which required compliance with planning conditions including the payment of development contributions. This part 'Town Centre' zoned property is a residential property. Its garden areas are mostly zoned open space which has always provided for an attractive residential environment. The property uses the same permitted vehicular access as it always has.

The "authorised use" of this property is as a residential property. This authorised use has not been revoked. Any change to this would be an "unauthorised use" (which means, in relation to land, a use commenced on or after 1 October 1964, being a use which is a material change in use of any structure or other land and being development other than exempted development, or development the subject of a permission which has not been revoked).

6.1.4 Is or is not "Development"?

This Section 5 pertains to proposed "works". Being works defined as such under Section 2(1) of the Act and given how Section 3(1) defines "development" to include "the carrying out of any works on, in, over or under land ...", it is the professional opinion of BPS that, for the purposes of the Act, the proposed maintenance, improvement and alterations works needed to the existing dwelling within this residential property are "works" which constitute "development".

6.1.5 Conclusion re. development at the existing house structure

BPS acknowledges that the crux of this Section 5 assessment depends on the determination by WCC and, if required, An Bord Pleanála as to whether the existing 1990s house is a "structure". We consider that it is inarguably a structure.

Concerns arise that given our clients' recent planning applications, WCC may need to consider the differences between a structure, a house, and a habitable house.

- A structure is a permitted development such as a house – see Section 6.1.1 of this letter.
- A house is a permitted house which has been constructed – see Section 6.1.2 of this letter.

It is sufficient for our clients' house to be a permitted house structure for Section 4 (1)(h) to apply – see Section 6.2 of this letter.

Notwithstanding this, we also note how WCC can determine that the existing house is

- A habitable house undergoing stalled maintenance, improvement and alterations works to its windows and roof but is otherwise a sound modern bungalow dwelling, or
- An unsound fully derelict house essentially in need of demolition as inferred by the most recent WCC Planners' Reports pertaining to the planning applications described in Section 3.1 of this submission.

Having visited the property including driving in via Poundbrook Lane, BPS submits that the existing dwelling maintains a modern bungalow appearance when viewed in person. If the dwelling was encased in scaffolding, the structure would simply look as though maintenance, improvement and alterations works were underway to an existing dwelling. There is no disagreement with WCC regarding how the structure's window panes and most of its roof slates have been removed, but this does not arise from fire, from storm damage, from ageing, or from anti-social behaviour. It arises because maintenance works began and, for reasons unknown to our client, they then stopped.

That WCC describes the structure as "derelict" does not mean it is nor does it mean the house is not a permitted structure. A walk around the dwelling confirms how the external and internal walls are all in good condition (including rendered and plastered), window cills and in place, fascia boards are in place, the internal layout of the dwelling remains, window and door frames are in place, the roof joists are in place, some roof slates remain, etc. WCC has never provided our clients with a report from a structural engineer which states that the dwelling is structurally unsound. The structure is not unsound. It merely requires maintenance, improvement and alterations. The structure is in fact in a relatively tidy condition.

Were our clients' dwelling to be damaged by fire, storms, or other causes, a new planning permission would not be required to address this damage. Necessary maintenance, improvement and alterations would merely be carried out to address the damage. That the dwelling would be uninhabitable during a period within which an insurance claim would have to be processed, builders appointed, and works carried out, does not make it "derelict" and does not cause it to lose its status as a "habitable dwelling". BPS has been asked over many years to review structures in vastly worse states of disrepair, effectively ruins – these are derelict structures. Our client's dwelling is not in a ruinous condition.

The Derelict Sites Act 1990 defines a derelict site as any land that:

... detracts, or is likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question because of: Structures which are in a ruinous, derelict or dangerous condition, or The neglected, unsightly or objectionable condition of the land or of structures on it, or The presence, deposit or collection of litter, rubbish, debris or waste

The existing structure on our client's residential property is screened from surrounding areas. It does not detract nor is it likely to detract, to a material degree from the amenity, character or appearance of land in the neighbourhood of the land in question. It is a bungalow only and it is heavily screened (by trees and vegetation) from the adjoining property to the east which is the closets property and the only one which could possibly be impacted. The structure is not in a ruinous or dangerous condition. Arising from delayed maintenance, improvement and alterations, the house needs work, but the structure itself is not derelict. The structure is not in a neglected, unsightly or objectionable condition, but instead resembles a property where works such as energy improvement works are being undertaken including replacing windows, doors and the roof, and adding insulation. There is no litter, rubbish, debris or waste on the property which has been carefully maintained by our clients pending two planning applications made in the past 3 years.

Arising from the above, BPS submits that the existing house structure can reasonably be considered a house, a structure, and also considered to be a habitable house to which maintenance, improvement and alteration works are ongoing (in the period since these works started, the property has experienced the economic crash and Covid 'and' WCC appeared to encourage the redevelopment of the site under the latest Town Plan and our client submitted two planning applications for its redevelopment with all associated time allowing the weather to impact the structure) and would be completed arising from a positive response to this Section 5.

6.2 The question of "exempted Development"

The subject dwelling was permitted under planning permissions reg refs 90/5905 and 93759. The dwelling on site was then and remains built in accordance with these planning permissions. The existing structure is a house and is, in the opinion of BPS, a habitable house undergoing maintenance, improvement and alteration works.

As the existing house was fully completed, the property is entitled to all its exempted development rights as set out under the PDA and PDR. This house was fully built and connected to all appropriate services in the 1990s, as such this Section 5 pertains only to whether planning permission is needed to complete long delayed maintenance, improvement and alteration works to this house structure.

Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including

- 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.'
- Section 4(1)(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.'

Our client is entitled to carry out these exempted developments as set out under the Planning & Development Act (2000) as amended and the Planning & Development Regulations (2001) as amended

However, for our client to rely on the exempted development provisions of the Act and the Regulations, the onus is on them to prove the works constitute exempted development (see *South Dublin County Council v Fallowvale Ltd.* [2005] IEHC 408, later approved in *Meath County Council v. Murray* [2017] 2 I.R. 297, and accepted (obiter) in the statement of Simons J in *Waterford v Centz* [Judgement of Simons J, 27 November 2020] as being correct) See also *Doorly v Corrigan* [2022] IECA 6 at p. 121, and *Diamrem Limited v Cliffs of Moher Centre Limited* [2021] IECA 291 at p. 47

Key to this Section 5 is that WCC determine the "structure" is Section 5.1 of this letter confirms that the existing house is a "structure". In *McCabe v CIE*³ the issue of whether reconstruction works carried out to a bridge were exempted development under these provisions was considered. It was argued that they did not materially affect the character, design and external appearance of the bridge. Herbert J stated that the Court must assess the character of the structure by looking objectively at the entity as a whole, including overall dimensions, location, and materials used. Considering all of these factors he found that the works to the bridge did not render the appearance inconsistent with the character of the bridge and accordingly found the development in question was exempted development

The current Section 5 pertains to maintenance, improvement or other alterations accumulating to part reconstruction works to a house. As WCC originally granted planning permission for the dwelling - 'as built' - the structure, if returned to its original appearance by way of development consisting of the carrying out of works for the maintenance, improvement or other alteration would 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. The internal maintenance, improvement or other alteration works raise no possible concerns. In *Dublin Corporation vs Lowe and Signways Holdings Limited*⁴, the Supreme Court agreed that the replacing of a hoarding with another of identical dimensions was an alteration which did not materially affect the external appearance of the premises and was therefore an exempted development. The current proposal pertains, inter alia, alterations which will cause the house to return to its original appearance as the same house as permitted by WCC

In *Cairnduff v O'Connell* [1986] IR 73, the issue concerned the construction of a window and balcony attached to the respondent's house. The Supreme Court held that while the works did affect the external appearance of the structure, they did not render the external appearance of the structure inconsistent with either its character or the character of neighbouring structures and was therefore exempt

The Supreme Court⁵ has found that s.4(1)(h) provides for alterations (with concepts of maintenance and improvement being subsets), which are either wholly internal or, if external, are significant. It concluded that an extension is a development that does not come within the exemption. No extension arises here. This Section 5 pertains wholly to alterations to an existing house such as would be carried out to significantly improve the energy efficiency of it (new roof, new windows/doors, new insulation, etc). The house will remain the same at all times only with its current appearance improved. WCC may wish to apply the Supreme Court's logic to the current case. Under the Act, "alteration" includes:

- (a) plastering or painting or the removal of plaster or stucco, or*
- (b) the replacement of a door, window or roof,*
- that materially alters the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures*

Our clients' proposed alterations will extend to some touch up plastering or painting and some the removal of plaster to replace it. It will include the replacement of doors, windows and a roof. The works will not materially alter the external appearance of a structure so as to render the appearance inconsistent with the character of the structure or neighbouring structures. It is reasonable to conclude that the Supreme Court would find the proposals to be exempt alterations.))

Given the above, BPS concludes that these proposals for the maintenance, improvement or other alterations to the existing "structure" constitute exempted development. The exemption does not require the existing house to be habitable or non-habitable, though we argue that the existing house has been under delayed maintenance, improvement or other alterations works for some years.

It is acknowledged how Section 4 was amended by the Environmental (Miscellaneous Provisions) Act 2011 to prescribe that notwithstanding the provisions of Section 4, development shall not be exempted development if an EIA or an AA of the development is required. As set out in Section 4.1 of this letter, BPS has noted how WCC determined, in the most recent planning application lodged by our clients, that the demolition of the existing dwelling and its replacement with a wholly new dwelling would also not require either EIA or AA (being only, at most, alterations); therefore, the maintenance, improvement or other alterations to the existing "structure" would not either those being works of a far less substantial nature. In making this determination, BPS has considered the CJEU decision in the *People over Wind* case⁶ which determined that mitigation measures should not be considered at a screening stage for an AA. The proposed maintenance, improvement or other alterations required to add roof slates, insulate the house, replace windows and doors, etc. do not require mitigation measures.

³ [2006] IEHC 356

⁴ 4 February 2000, unreported

⁵ [2017] IESC 36

⁶ Case C-327/13, *People over Wind and Peter Sweetman v Coillte*

BPS accepts that the existing structure generates surface water run-off but the proposed maintenance, improvement or other alterations to the existing "structure" would not increase this beyond what was granted planning permission in the early 1990s. In any case, measures to address surface water do not constitute mitigation measures. For example, in *Kelly v An Bord Pleanála*,⁷ *Barniville J* in the High Court found that "Sustainable Urban Drainage Systems" (SuDS) incorporated into a development were not mitigation measures. The Court found that it was clear from the evidence that the inclusion of the SuDS measures was not with the intention of avoiding or reducing any potentially harmful effect on a European site, and their inclusion was required for completely different reasons.

It is also acknowledged how Article 9(1)(a) sets out limitations on Article 6. While our client is not seeking to rely on Article 6, it is worth noting how these limitations do not apply because:

- The proposed maintenance, improvement or other alterations to the existing "structure" do not contravene a condition attached to a permission under the Act nor would it be inconsistent with any use specified in a permission under the Act.
- The existing structure, house, is served by an existing permitted vehicular access which was assessed by WCC in the early 1990s as not endangering public safety by reason of traffic hazard or obstruction of road users.
- The proposed maintenance, improvement or other alterations to the existing "structure" do not interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- The proposed maintenance, improvement or other alterations to the existing "structure" do not 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 proposed maintenance, improvement or other alterations to the existing "structure" do not consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12 (1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No. 2 of 1930) as amended.
- The proposed maintenance, improvement or other alterations to the existing "structure" do comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would not require an appropriate assessment because it would not have a significant effect on the integrity of a European site.
- The proposed maintenance, improvement or other alterations to the existing "structure" would not consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- The proposed maintenance, improvement or other alterations to the existing "structure" do not consist of or comprise the extension, alteration, repair or renewal of an unauthorised structure or a structure the use of which is an unauthorised use.
- The proposed maintenance, improvement or other alterations to the existing "structure" does not consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- The proposed maintenance, improvement or other alterations to the existing "structure" does not consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned is located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan and the development would materially affect the character of the area.

6.3 "Exempted Development" - conclusion

The proposed maintenance, improvement or other alterations to the existing "structure" constitute, in the opinion of BPS, exempted development under Section 4(1)(h) of the PDA. Associated development within the curtilage of the property is also exempt under Section 4(1)(j) of the PDA.

7.0 Conclusion

In conclusion, it is our professional opinion that the proposed maintenance, improvement or other alterations to the existing "structure" constitutes "development" and constitutes "exempted development"

The proposed "development" constitutes "exempted development" having regard to

- Section 4(1)(h) and Section 4(1)(j) of the PDA.

No requirement to obtain planning permission arises

⁷ [2019] IEHC 84

8.0 Recommendation

BPS recommends that County Council should decide this Section 5 referral in accordance with the following

WHEREAS a question has arisen as to whether the proposed maintenance, improvement or other alterations to the existing "structure" is or is not development and is or is not exempted development.

BPS, in considering this matter, has had regard particularly to -

- (a) Sections 2(1), 3(1) and 4(1) of the Planning and Development Act, 2000, as amended.
- (b) The Environmental (Miscellaneous Provisions) Act 2011.
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations 2001, as amended.
- (f) The nature of the permitted development previously and currently on site and the pattern of development in the area.

AND WHEREAS BPS has concluded that the proposed maintenance, improvement or other alterations to the existing "structure" constitutes "development" within the meaning of Section 3(1) of the Planning and Development Act, 2000

The development is exempted development

NOW THEREFORE BPS submits that the proposed works are development, and exempted development. A planning permission requirement does not arise

9.0 Finally

We trust that sufficient information has been provided to allow this Section 5 to be fully assessed

Please direct all correspondence to this office

If you have any questions, please call BPS on 01-5394960 or 087-2615871

Best wishes,

Brendan Buck

Brendan Buck MIPI
Managing Director
BPS Planning & Development Consultants LTD
Corporate Member of the Irish Planning Institute

Encl

- Completed WCC Section 5 Form
- Maps and drawings as listed in Section 1 of this letter

Wicklow County Council
County Buildings
Wicklow
0404 20100

22/05/2024 12:01:10

Receipt No: 110732985

BPS Planning Consultants Ltd
Balinacorney Lower
Greenan,
Rathdrum
Co Wicklow

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

Total 80 00 EUR

Tendered
Cheque 80 00
Henry & Sheena Cullen

Change 0 00

Issued By VANESSA PORTER
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: **Henry and Sheena Cullen.**

Address of applicant: **c/o BPS Planning & Development Consultants LTD, PO
Box 13658, Dublin 14, D14 RW01.**

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

2. Agents Details (Where Applicable)

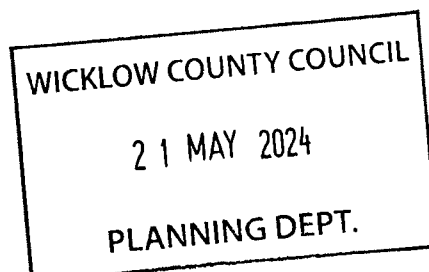
(b) Name of Agent (where applicable): **Brendan Buck MIPI.**

Address of Agent: **BPS Planning & Development Consultants LTD, PO Box
13658, Dublin 14, D14 RW01.**

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

3. Declaration Details

- i. Location of Development subject of Declaration: **Poundbrook Lane, Rathdrum,
County Wicklow.**
- 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, 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:

Section 5 referral / exemption declaration. A question arises as to whether development consisting of the carrying out of works for the maintenance, improvement or other alteration of an existing dwelling in poor condition at Poundbrook Lane, Rathdrum, County Wicklow would constitute exempted development.

Additional details may be submitted by way of separate submission.

Please find a covering letter attached which has been prepared by BPS Planning & Development Consultants LTD

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

Please refer to the attached covering letter which has been prepared by BPS Planning & Development Consultants LTD

- 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 based site location maps (Dwg Nos. 21-22-02 & 22-09-22) and prepared by Eleanor Sheehan Architects with the existing residential property, the site, indicated and/or outlined in red.
- Dwg. No. 001 – Survey – Not to scale. Prepared by Liam Kenna of LK Design.

Note: This is not a query regarding scheduled exemptions pertaining to a dwelling (“Extension to dwelling - Class 1 Part 1 of Schedule 2” as per this form’s ‘Additional Notes’), but a query around the planning status of the existing dwelling structure on the site which was granted planning permission under WCC reg. refs. 90/5905 & 93759. The attached OS Site Location Maps and survey site layout plan and details in the attached letter clearly outline the location and appearance of the existing dwelling structure. Survey drawings should be available in the WCC archives though they are not uploaded to the online WCC website Our client has no survey drawings of the existing dwelling structure. Photographs of the existing dwelling structure are provided in lieu in the attached letter.

viii. Fee of € 80 Attached? **Cheque for e80 attached.**

Signed: *Brendan Buck*

Dated: 21.5.2024

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.

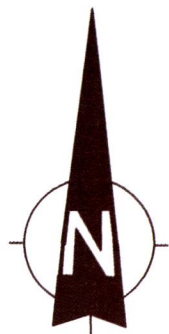
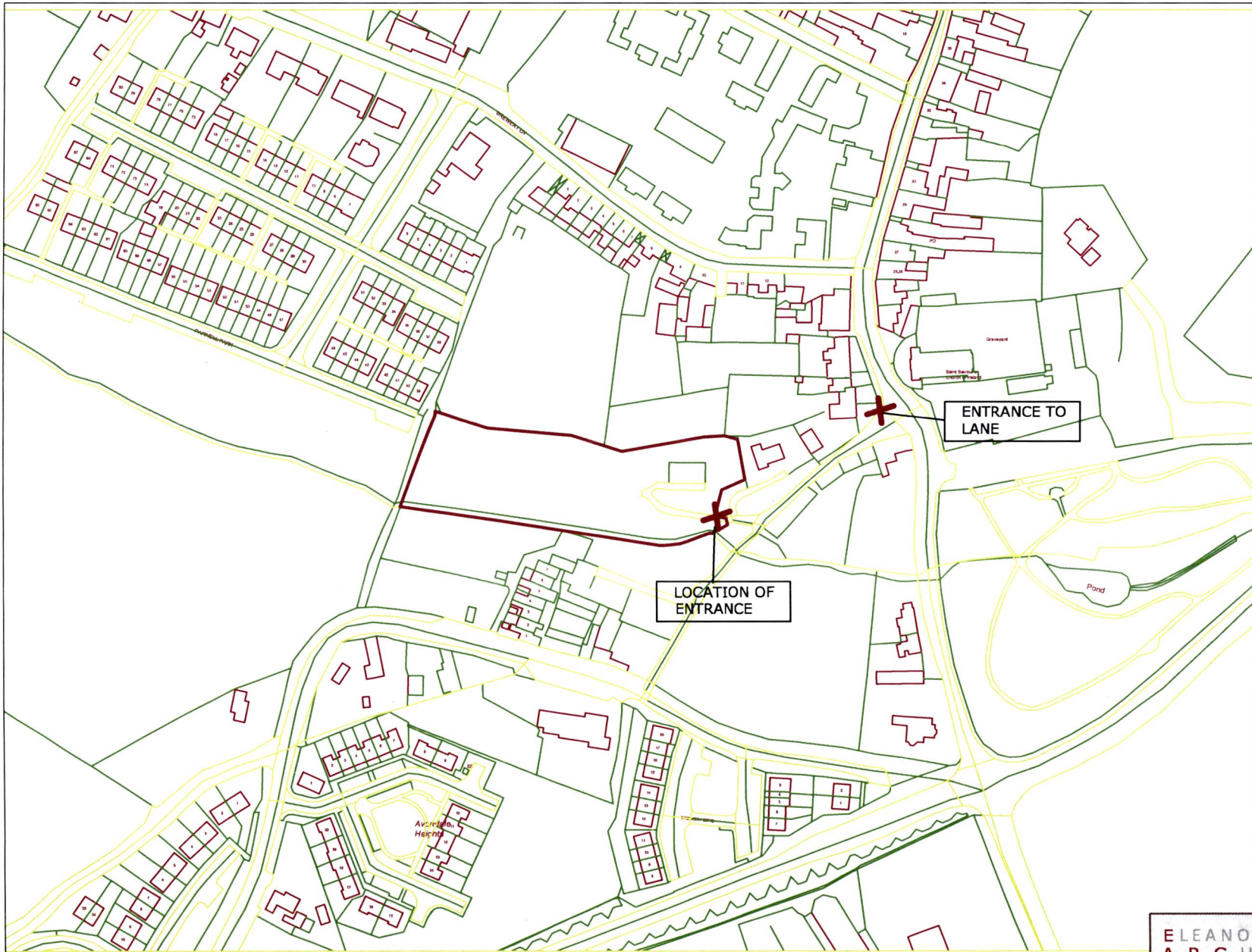
B. Land Reclamation -

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.



Site Section
Natural
Flow

These drawings and the work, information and design are copyright of Eleanor Sheehan Architects. They cannot be copied or reproduced in any form without the express permission of Eleanor Sheehan Architects. Do not take scaled dimensions from these drawings. Figure dimensions only to be used. The drawings are to be used as per the description in the title block. In Planning permission drawings cannot be used for tendering, construction or certification purposes. Copyright all rights reserved Eleanor Sheehan Architects.

FOR
PLANNING
PURPOSES
ONLY

| | | | |
|---|--------------------------------------|---|--|
| ELEANOR SHEEHAN ARCHITECTS <small>Slievevea, Rathdrum, Co. Wicklow Web: www.esarc.ie Ph: 0404-43832 Mob: 087-4517821 Email: eleanor@esarc.ie</small> | |  | <small>Eleanor Sheehan Dip. Arch B. Arch. Sc MRIAI</small> |
| PROJECT: Section 5 | | | |
| DWG TITLE: Site Layout Plan | | SCALE: 1:2,500 | |
| DWG NO: 21-22-02 | CLIENT: Henry & Sheena Cullen | | |
| DATE: 21-5-24 | | | |



NOTE - FIGURED DIMENSIONS ONLY
DO NOT SCALE DRAWING
CONTRACTOR TO CHECK DIMENSIONS
ON SITE BEFORE CONSTRUCTION
DISCREPANCIES ARE TO BE BROUGHT
TO ATTENTION OF THE SURVYORS
PRIOR TO THE COMMENCEMENT OF
WORK.

DRAWING IS INTENDED SOLEY FOR
PURPOSE NOTED. ONLY DRAWINGS
MARKED CONTRACT ARE TO BE USED
FOR CONSTRUCTION.

| | | |
|------------------------------------|---|--------------------|
| DRAWING: SURVEY SCALE 1: 500 | DRAWING BY: LIAM KENNA | DATE: 08.09.22 |
| | PROJECT: HENRY CULLEN, RATHDRUM, CO. WICKLOW | DRAWING NO. 001 |