



An
Bord
Pleanála

Inspector's Report

ABP-309030-20

Question	Whether or not the conversion of the ground floor retail unit is or is not exempted development.
Location	45 Ferrybank, Co. Wicklow.
Declaration	
Planning Authority:	Wicklow County Council
Planning Authority Ref. no:	EX 68/2020
Applicant for Declaration:	Timo Barry
Planning Authority Decision:	Is development and is not exempt
Referral	
Referred by	Timo Barry
Owner/Occupier	Timo Barry
Observer(s)	None
Date of Site Inspection	21 st May 2021
Inspector	Suzanne Kehely

1.0 Site Location and Description

- 1.1. The site is located at the northern end of Arklow town at the corner of Ferrybank and Sea View Avenue . It is part of a terrace on the main route (R772) which links the town centre to the M11. Seaview Avenue provides access to the Leisure Centre and Arklow North Beach.
- 1.2. The site comprises a two-storey building and includes a vacant retail unit with accommodation at first floor level. No 48 (two doors down) has a railed front garden consistent with some other properties along the street more particularly to the north of the Sea View Avenue junction. There is a cobble-locked pavement extending from the building façade to the roadside kerb. The corner property on opposite also on Ferrybank and Sea View Avenue has hard-surfaced path from the façade to the kerb. The area is predominantly residential with some intermittent commercial uses in the direction of the town centre.

2.0 The Question

- 2.1. A referral case has been received by the Board pursuant to Section 5(4) of the Planning and Development Act 2000 whereby Timo Barry has sought a determination as to whether the conversion of an existing ground floor retail unit at no.45 Ferrybank to 1 apartment is or is not development and is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Section 5 Determination Application

- 3.2. Timo Barry sought a Section 5 Declaration from Wicklow County Council on 9th November 2020 as to whether the conversion of an existing ground floor retail unit at no.45 Ferrybank, Arklow to 1 apartment is or is not development or is or is not exempted development.

3.3. Declaration

3.3.1. Wicklow County Council issued a Declaration in accordance with Article 5(2)(a) of the Planning & Development Act 2000 on 26th November 2020. Wicklow County Council declared that the conversion of the ground floor unit is development but is not exempted development for the stated main reasons:

(i) The change of use from retail/restaurant to residential use is considered a material change of use and the external and internal works to facilitate the residential use would also constitute works and is therefore development as defined in section 3 of the Planning and Development Act 2000 (as amended)

(ii) Having regard to the provisions of Article 10(6) it is considered the proposed change of use would not meet the provisions of this exemption as-

The provision of external wall and railing would, it is considered, materially affect the external appearance which would make it inconsistent with the character of the structure and the structure on the opposite side of the junction to the north.

(iii) The erection of a new wall and railing to the front of no.45 Ferrybank would be contrary to the restriction set out in Article 9 (iv) of the PDR 2001 as amended as it would result in 'the construction, erection, extension or renewal of a building on any street so as to bring forward the building or any part of the building beyond the front wall of the building on either side.'

3.4. Planning Authority Reports

Planning Reports

3.4.1. It is the view of the planning authority that the provision of the external wall and railings is considered to materially affect the external appearance which would make it inconsistent with the character of the structure on the opposite side of the junction to the north.

3.4.2. It is also considered that the new wall and railing would be contrary to the provision for exemption under Article (9) (1) (iv)

3.4.3. With respect to the restriction (viii) regarding unauthorised development it is stated that the current structure is subject to unauthorised development proceedings which relate solely to the non-payment of the development contributions. It is considered

that the use is otherwise not considered unauthorised and so the restriction in this regard is not considered applicable.

3.4.4. The development is not considered to be restricted in its exemption by Article 10(6) as set out in the report.

3.4.5. In the conclusion, reference is also made to no. 46 Ferrybank and in respect of both it is concluded that the conversion of the ground floor retail units and the conversion of the commercial units at ground and first floor levels at no. 45 and 46 to 3 apartments would not come within the scope of exemption under Article 10(6) and is therefore development and not exempted development.

4.0 Planning History

4.1. The site

4.1.1. PA ref. PX47/2020 refers to a Declaration in respect of nos. 45 and 46 Ferrybank and drawings are in a pouch at the back of the file.

4.1.2. Arklow Town Council Ref: PRR 09/31 refers to permission for external and internal alterations and extension to low wall and railing to front. (2009)

4.1.3. An Bord Pleanála Ref PL33.215836 refers to permission for alterations to existing shop and demolition of house at 45 Ferrybank for alterations and demolition of existing out buildings and change of use from dwelling house to café at No. 46 and for the provision of further shop to the rear of nos. 45 and 46 at ground level and 4 apartments at first and second floor levels. The appeal was against the s.28 contribution and there was an outstanding contribution of €104332 in respect of this permission at time of the planning authority's declaration in the subject case.

4.2. Relevant Decisions

4.2.1. ABP ref 304765: The Board in this case decided (2020) the conversion of an existing vacant ground floor retail unit to 2 no. one bedroom apartments at 2 South Quay, Arklow is development and is exempted development. The Order and report are on file.

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The site is governed by the **Arklow & Environs Local Area Plan 2018 – 2024** and is designated as “**MU Mixed Use**” where the objective is “To provide for mixed use development” . The nature of the mixed-use development envisaged for any particular site is set out in the text of the plan.
- 5.1.2. Ferrybank marks the northern edge of the centre of Arklow which is described in the plan as stretching from Ferrybank to the Wexford Road and where the primary strategy focuses on the area around the Main Street. In setting the framework for town centre objectives, the plan states that “The factors that make a town centre economically viable and attractive to visitors are numerous and often hard to predict and influence’ but Pedestrian access and movement is one of the primary factors identified in enhancing the town and for the purpose of the land use plan it is a key element of the strategy of the Main Street. . The Plan further states. “ It is important that the public realm is as inclusive as possible to all users. Some of the town footpaths and streets are at present unsuitable for wheel or push chair users. Rectifying this should be part of a broader redesign of these areas. The safety and ease of pedestrian movement must be considered in relation to vehicular movement and parking around the town, particularly along walking routes to and from car parks, schools, sports facilities and other public facilities.”

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within a designated Natura 2000 site. There are no Natura 2000 sites located in the vicinity of the site.

6.0 The Referral

6.1. Referrer's Case

- 6.1.1. The referral has been submitted by Timo Barry owner of 45 Ferrybank and the following case is made.
- 6.1.2. The proposal meets with;
- Article 10(6)(b) which provides exemption for change of use from a class 1 (shop) on the basis that the premises operated as a shop.
 - Article 10 (6) (c)(i) which requires that the structure was completed prior to the making of the 2018 Regulations on the basis that the existing structure is over 100 years old . It is submitted that the planning report is mistaken in its determination that the structure was never fully completed.
 - Article (10)(c)(ii) which requires that the structure concerned has at some time been used for the purpose of its current class 1 on the basis that the shop operated as such for over 50 years.
 - Article (6)(c)(iii) which requires that the structure concerned has been vacant for over 2 years on the basis that it has been vacant for 9 years.
 - Article (6)(d)(i) which requires that the works must occur between 8th February 2018 and 31 December 2021 on the basis that the works will be completed prior to 31st December 2021.
 - Article 10(6) (d) (ii) and (iii) which requires that the development works to the building must primarily be works which only affect e.g. interior of the building. Some limited works to the external appearance of the structure are permitted but they must be consistent with the character of the structure and of the neighbouring properties on the basis that the proposed works to the elevation and in particular the shopfront are consistent with the fenestration details and architectural character of the existing structure and streetscape.
- 6.1.3. Also in relation to the front boundary wall and railing it is proposed to erect a wall and railing to the same design and standard as the adjoining property at no. 46 and 48 Ferrybank. It is disputed that the wall and railing would materially affect the external

appearance which would make it inconsistent with the character of the structure and of the structure on the opposite side of the junction on the basis that:

- It is consistent with the properties directly south.
- There is no continuity in streetscape with the properties north of the junction given the separation. It is further commented that the planning history pertaining to other properties is not relevant.
- The majority of properties from Wheelie pump corner to Stringers Lane all have enclosed front gardens with walls and railings. All houses to the west of the site have front gardens and in particular houses 28, 29, 20, 31, 32, 33, 34, 35, 36, 38, 39, 46, 48, 52, 56, and 58 to the north and south of the subject site all have a wall and railing front enclosure. (A coloured map illustrates this.)
- There are 51 houses along this same stretch and 41 are residential and 80% have enclosed front gardens.

6.2. Planning Authority Response

6.2.1. The Planning Authority has made no further comments on the referral.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000 (as amended)

Section 2 (1) of the Act provides the following definitions:

“**works**” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

“**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;

“**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)

Section 3(1) of the Act defines “development” as follows:

“In this Act, “development” means, except where the context otherwise requires, the carrying out 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 4(2) of the Act provides that the Minister may by regulation provide any class of development to be exempted development. The Regulations which are applicable in this case are the Planning and Development Regulations 2001 (as amended).

7.2. **Planning and Development Regulations, 2001**

“**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 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 *inter alia* —

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

(iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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, (already covered within Art 10 (6))

(v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable, or any works to which class 25, 26 or 31 (a) specified in column 1 of Part 1 of Schedule 2 applies,

(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,

Article 10. (1) provides that any change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development provided that they do not:-

(a) involve the carrying out of any works other than works which are exempted development;

(b) contravene a condition attached to a permission under the Act;

(c) be inconsistent with any use specified or included in such a permission, or

(d) be a development where the existing use is an unauthorised use, save where such change of use consists of the resumption of a use which is not unauthorised and which has not been abandoned;

Part 4 of the Second Schedule to the Regulations states as follows:-

Exempted Development – Classes of Use

Class 1: Use as a shop

Class 9: Use—

- (a) for the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose),
- (b) as a hospital or nursing home,
- (c) as a residential school, residential college or residential training centre.

Part 1 of the Second Schedule to the Regulations -

Class 5 – exempted development

The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

Subject to

1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.
2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.
3. No such structure shall be a metal palisade or other security fence

- 7.3. **S.I. No. 30 of 2018** relates to certain change-of-use from e.g. shop or office use to residential use being exempted development. Article 10(6) was inserted by the Planning and Development (Amendment) (No 2) Regulations 2018 (S.I. No. 30 of 2018). New Provision to provide an exemption for the change of use, and any related works, of certain vacant commercial premises to residential use.

Article 10 (6) (a) defines the relevant period as “the period from the making of these Regulations until 31 December 2021.”

Article 10 (c) states that “notwithstanding sub-article)1) where in respect of a proposed development referred to in paragraph (b) –

- i. The structure concerned was completed prior to the making of the Plan and Development (Amendment) (no.2) regulations 2018.
- ii. The structure concerned has at some time been used for the purpose of its current use class, being Class 1,2,3, or 6 and
- iii. The structure concerned or so much of it that is the subject of the proposed development has been vacant for 2 years or more immediately prior to the commencement of the proposed development,
- iv. That the proposed development for residential use and any related works shall be exempted development for the purposes of the Act, subject to the conditions and limitations

Article 10 (6)(d)(iii), (iv) and (vii) states as follows:

- (i) The development is commenced and completed during the relevant period.
- (ii) Subject to sub-paragraph (iii), any related works, including works as may be required to comply with sub-paragraph (vii), shall affect only the interior of the structure and shall not materially affect the external appearance of the structure so as to render its appearance inconsistent with the character of the structure or of neighbouring structures.
- (iii) Any related works for the alteration of existing ground floor shop fronts shall be consistent with the fenestration details and architectural and streetscape character of the remainder of the structure or of neighbouring structures.
- (iv) No development shall consist of or comprise the carrying out of works to the ground floor area of any structure which conflicts with any objective of the relevant local authority development plan or local area plan, pursuant to the Part 1 of the First Schedule to the Act, for such to remain in retail use, with the exception of any works the purpose of which is to solely provide on street access to the upper floors of the structure concerned.
- (v) No development shall consist of or comprise the carrying out of works which exceeds the provision of more than 9 residential units in any structure.
- (vi) Dwelling floor areas and storage spaces shall comply with the minimum floor area requirements and minimum storage space requirements of the “Sustainable Urban Housing: Design Standards for New Apartments — Guidelines for Planning

Authorities” issued under section 28 of the Act or any subsequent updated or replacement guidelines.

(vii) Rooms for use, or intended for use, as habitable rooms shall have adequate natural lighting.

(viii) No development shall consist of or comprise the carrying out of works to a protected structure, as defined in section 2 of the Act, save where the relevant planning authority has issued a declaration under section 57 of the Act to the effect that the proposed works would not materially affect the character of the structure or any element, referred to in section 57(1)(b) of the Act, of the structure.

(ix) No development shall contravene a condition attached to a permission under the Act or be inconsistent with any use specified or included in such a permission.

(x) No development shall relate to any structure in any of the following areas:

(I) an area to which a special amenity area order relates;

(II) an area of special planning control;

(III) within the relevant perimeter distance area, as set out in Table 2 of Schedule 8, of any type of establishment to which the Major Accident Regulations apply.

(xi) No development shall relate to matters in respect of which any of the restrictions set out in subparagraph (iv), (vii), (viiA), (viiB), (viiC), (viii) or (ix) of article 9(1)(a), or paragraph (c) or (d) of article (9)(1), would apply.

(xii) No development shall consist of or comprise the carrying out of works for the provision of an onsite wastewater treatment and disposal system to which the code of practice made by the Environmental Protection Agency pursuant to section 76 of the Environmental Protection Agency Act 1992 relates and entitled Code of Practice — Wastewater Treatment and Disposal Systems Serving Single Houses together with any amendment to that Code or any replacement for it

7.4. Circular Letter PL 01/2018

- 7.4.1. The Department issued a Circular Letter, PL01/2018, to outline the changes and their proposed intention and refers to Action 5.9 of Rebuilding Ireland which commits to reviewing planning legislation to allow the change of use of vacant commercial units in urban areas, including vacant to underutilised areas over ground floor premises, into residential units within having to go through the planning process

..... the main objectives of the exemption are to facilitate the provision of increased and much needed housing supply, to maximise the use of vacant underutilised spaces and assist in the rejuvenation of inner-core urban area. The circular refers to the need to comply with housing standards and refers to Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities and 2015 standard which require a 73 sq.m. floor area for two bed units. The circular however clarifies that the update guidelines are relevant in determining the standards.

7.5. Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities as amended, December 2020

- 7.5.1. SPPR 3 specific a minimum floor area of 73sq.m for a2 bed unit and 45 sq.m. for a one bed.
- 7.5.2. The floor area parameters set out in SPPR 3 above shall generally apply to apartment schemes and do not apply to purpose-built and managed student housing. In relation to social housing, or purpose-built housing for older people it is considered necessary that these guidelines would also make provision for two-bedroom apartment to accommodate 3 persons. This is in line with the Quality Housing for Sustainable Communities guidance published by the Department in 2007, for application to social housing schemes. Accordingly, planning authorities may also consider a two-bedroom apartment to accommodate 3 persons, with a minimum floor area of 63 square metres, in accordance with the standards set out in Quality Housing for Sustainable Communities (and reiterated in Appendix 1). This type of unit may be particularly suited to certain social housing schemes such as sheltered housing.
- 7.5.3. Private amenity space standards for apartments are set out in Appendix 1. For building refurbishment schemes on sites of any size or urban infill schemes on sites of up to 0.25ha , private amenity space requirements may be relaxed in part or whole, on a case-by-case basis, subject to overall design quality.
- 7.5.4. Minimum storage space in Appendix 1 is 5 sq.m. for a two bed unit and 3 sq,m for a one bed.
- 7.5.5. Minimum private open space area of 6 sq.m. for 3 persons (two bed)

8.0 Assessment

8.1. Preliminary Matters

- 8.1.1. A determination is sought in respect of no. 45 Ferrybank as to whether the conversion of a vacant ground floor retail unit to a two-bedroom apartment in Arklow Town is or is not development or is or is not exempted development.
- 8.1.2. It is important to emphasise that the referral is not for the purpose of deciding on the merits of the development at issue but rather is confined to determine if the change of use and associated works amounts to development and whether or not it is exempted by reference to the legislative provisions.
- 8.1.3. The relatively recent decision in the case ABP ref 304765 (2020) pertaining to a similar change of use also in Arklow town has informed this appraisal and is attached

8.2. Is or is not development

- 8.2.1. The development consists of :
- Change of use from retail to shop
 - Associated works within the building
 - Associated external works to the building and its curtilage.

8.3. Works

- 8.3.1. I consider the works which included alterations to the façades, construction of a wall and railings to the front of the structure, fenestration and alterations to the internal layout to constitute “any act or operation or alteration” which falls within the definition of works under Section 2 of the Act and accordingly constitute development.
- 8.3.2. In determined the materiality of the works, the change of use has a bearing having regard to the conditions and limitations set down in Article 10.

8.4. Material Change of Use

- 8.4.1. As set out similarly in the attached report, Article 10 of the Regulations provides for a number of categories of development that are exempted from requiring planning

permission. This Article is linked to Part 4 of Schedule 2 of the Regulation's that consists of a table of use classes. Shop is defined as a Class 1 use. Residential accommodation is considered a Class 9 use. Article 10(1) provides an exemption for development which consists of a change of use within anyone of the classes of use specified in Part 4 of Schedule 2. In this regard I also refer to Planning and Development (Amendment) (No 2) Regulations 2018 (S.I. No. 30 of 2018). Under these amended Regulations the conversion of a Class 1 (Shop) use to Class 9 (residential use) is exempted under certain conditions.

8.5. Restrictions on exempted development

- 8.5.1. With respect to the parameters set down in Article 10 (6) (c) I note that the site is part of a larger site which included construction and demolition works, however the development appears to relate to part of the original structure which the referrer states to be least 100years old. I also note that a retail use formerly occupied the premises as evident in the shopfront and that the referrer claims that the retail unit has been vacant for at least 2 years - in fact 9 years and the planning authority does not dispute this. Furthermore, I see no evidence to the contrary. I am satisfied that these parameters are met.
- 8.5.2. With respect to the conditions and limitations set down in Article 10 (6) and based on the submissions on file and my site inspection, in my judgement, the following can be reasonably concluded:
- (d)(i)
- 8.5.3. The development can be completed during the relevant period having regard to scale of works and submissions by the owner of intention. The exemption cannot be reasonably restricted in this regard.
- (d)(ii)
- 8.5.4. The area to the front of the structure has been hard landscaped to match and create an extended cobble-locked footpath - its use as a pedestrian area is, it would appear, established. To reduce this uniformly paved area and alter pedestrian movement would constitute a change in its character. While it is proposed to enclose what would have been the original front garden by way of constructing a wall and railings to match that of the nearby property at no.48 and while this is

presented as ancillary works in the provision of private amenity space, I am of the opinion that the proposed wall and railings will materially affect both the external appearance and functionality of space by enclosing what has become a public footpath and will I consider be inconsistent with the character of the structure as it presently interfaces with the public realm.

The planning authority is of the opinion the wall and railing that constitutes a material change and as it is inconsistent with the neighbouring structures to the north, whereas the referrer draws comparisons with the enclosed curtilages along Ferrybank. While I accept that matching railings would reinstate the original architectural character the fact remains that the character has changed in form and use since the removal of the original boundary features. This is evident in the LAP maps where the building line is consistent with the façade.

Furthermore, there is no enclosed space to the front of no.46 and therefore the proposal does not tie with an adjacent boundary treatment. While I note the absence of a wall and railing on the opposite corner I am inclined to agree with the referrer that the intervening road breaks the continuity although the existing arrangement is consistent with the subject site at present.

On balance I do not consider the proposed development meets with exemption criteria in Article 6 (d) (ii)

(d)(iii)

- 8.5.5. The fenestration details which include vertically proportioned windows in the Ferrybank façade are consistent with the remainder of the structure and streetscape. The exemption cannot be reasonably restricted in this regard

(d)(iv)

- 8.5.6. The development does not consist of or comprise carrying out of works to the ground floor area of any structure which conflicts with any objective of the County Development Plan or LAP for such to remain in retail use. I say this having particular regard to the attached Board determination (which accepted compatibility with town centre use) and the even greater compatibility of residential use in this case, in a designated mixed use zone in the LAP. With respect to other objectives, the Board

may consider the obstruction of pedestrian traffic by the proposed enclosure to conflict with objective VP9 “To support opportunities to create better linkages between the Main Street, the river, the north and south quay and the beaches, in particular access routes and views between the two.” While the LAP strategy is clear in its aims to improve pedestrian accessibility, I consider the absence of a site specific objective to render this restriction inapplicable in the context of Article (6). The exemption cannot therefore be reasonably restricted in this regard.

(d)(v)

8.5.7. The development only relates to one apartment. This restriction does not apply.

(d)(vi)

8.5.8. With respect to the floor area, the parameters are set out in SPPR 3 of the Sustainable Urban Housing: Design Standards for New Apartments - Guidelines for Planning Authorities which apply generally to apartment schemes and to purpose built managed schemes. In relation to social housing or purpose built for older people there is also provision for a 3 person apartment in line with Quality Housing for Sustainable Communities Guidance published by the Department in 2007, for application to social housing schemes. It is stated that “while providing necessary variation in dwelling size, it would not be desirable that, if more generally permissible, this type of two-bedroom unit would displace the current two bedroom four person apartment.” It is my interpretation that a reduced size (i.e. less than 74sq.m. requires to be assessed on its merits. In this case there is no statement as to the nature of use and there is no provision (if exempt) for restricting occupancy. I note that the guidelines provide for a reduced floor area of 63 sq.m and I also note this area and room configuration accords with exactly with the minimum areas as set out in Table 5.1 of Quality Housing for Sustainable Communities guidance published by the Department in 2007. These guidelines however are based within a broader framework of standards “All dwellings should have clearly defined private open space, e.g., private garden space or adequately sized balcony. New dwellings should be integrated in a way that reinforces the existing or newly created streetscape, e.g., by adopting the existing building line.” For certain types of

schemes, e.g., apartments, the scope for the provision of private space for individual dwellings may be limited. In such cases, provision should be made for balcony or other private space of suitable size. (section 4.3.2 and 4.3.5) While the proposal provides for private space to the front of the dwelling such provision for reasons stated require planning permission and in the absence of such, the development of a two bed 63sq.m. unit is I consider substandard. By way of comparison I note that the attached determination case had provision for private open space.

- 8.5.9. While it may be counterargued that the purpose of the temporary Regulations is to provide for a class of accommodation in exceptional circumstances and in this context the change of use to a lesser area of 63 sq.. may be considered acceptable, on balance I do not consider the proposed development can meet with exemption criteria in Article 6 (d) (vi) in the absence of open space.

(d)(vii)

- 8.5.10. The habitable rooms are all provided with windows of a standard size and I am generally satisfied that these rooms have adequate natural light having regard to room depths and the BRE guidelines (Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice, 2nd edition). The exemption cannot be reasonably restricted in this regard.

(d)(viii)

- 8.5.11. The site does not include a protected structure. This restriction does not apply.

(d)(ix)

- 8.5.12. The development does not appear to conflict with any conditions of permission. There is reference by the planning authority to an outstanding contribution in relation to a larger development site including the adjacent property. The planning authority is however satisfied that the conditions are otherwise compliant. The exemption cannot be reasonably restricted in this regard.

(d)(x)

8.5.13. The location of the site is not subject of a special amenity area order or special planning control and is not within the relevant perimeter distance area of any type of establishment to which the Major Accident Regulations apply. This restriction does not apply.

(d)(xi)

8.5.14. I consider the proposed walls and railings to the front at this location to comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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, I refer to the zoning maps as part of the Arklow and Environs LAP 2018-2024 . It therefore is restricted from exemption under article 9(1) (a) (iv) and does not therefore meet with the exemption criteria of Article (6)(d)(xi).

(d)(x)

8.5.15. The development does not include an onsite wastewater treatment and disposal system to which the EPA Code of Practice Wastewater and Treatment and Disposal Systems serving single houses applies. (xii)

Article 10 (6)(e)

8.5.16. The planning authority is aware of the development.

Article 10 (1) (c)

8.5.17. This provision precludes change of use form exemption if it involvea the carrying out of any works other than works which are exempted development;

8.5.18. Notwithstanding the above (Art (6) exemption) , there is also the matter of compliance with the conditions for class 5 which could be applied to the construction of the wall and railings having regard to the definition of 'house' being applicable to the proposed apartment. During my inspection I measured the height of the nearby

railings at a height of 1.4m and as the proposal is to match this height it cannot be considered to meet with the conditions of exemption for class 5 which restrict height to the front of a property to 1.2m. In this way such works cannot be considered exempted development.

Article 9

8.5.19. There is also the scenario of the development being carried out in individual components. While the change of use of for the above reason is I consider not exempted development within the parameters of Article 10 (6), the works to the front by themselves would I consider be also restricted in falling under the exempted category of development having regard to Article 9.

Article 9 restrictions which applies to part 1 schedule 2 are relevant (which would be class 5 in this case) . In this regard I refer to:

- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
- (iv) except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which 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, comprise the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line 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, (already covered within Art 10 (6))
- (xi) obstruct any public right of way,

To reiterate, the area to the front of the house is laid out as a public path and there is no obstruction to pedestrians nor is there any indication that it is not accessible – the paving is consistent from the façade up to the kerb. The paving appears to be laid for a number of years and seems that it is an established pathway for pedestrian traffic. The proposed enclosure would significantly reduce the pathway at a junction and materially alter its capacity and in this way obstruct an effective public right of way. This obstruction also has implications for traffic safety.

I consider the proposed wall and railing to the front of the property which will enclose what is an open footpath will impact on the flow of pedestrian traffic at a junction and in this way lead to an obstruction of established traffic and would therefore endanger public safety by reason of traffic hazard. Accordingly this element of development by itself is not exempted by reference the restrictions in Article 9 (1) (a) (iii), (iv) and (xi).

8.6. Appropriate Assessment

Having regard to the nature and scale of the proposed development and its distance to the nearest European site, 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. To reiterate, the provisions of Article 10(6)(d)(xi) does not therefore apply.

8.7. Conclusion

In respect of the change of use I consider the development to not comply with the provisions of Article 10(6). Nor does it comply with Article 10(1) (a) which 'requires that such change of use would not involve the carrying out of any works other than works which are exempted development' in so far as I consider the wall and railings are not exempt having regard to both, the conditions for Class 5 and moreover having regard to the restrictions on exemptions for this class as set out in Article 9.

9.0 Recommendation

In view of the foregoing assessment, I consider that the change of use which necessitates particular works constitutes development that is not exempted development having regard primarily to Article 10 (6)(d)(ii)(vi) and (xi) of the Planning and Development regulations, 2001, as amended. Furthermore the provision of the wall and railings by itself is not exempted development having regard primarily to Article 9 (1) (iii) (iv) and (xi).

I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the conversion of an existing retail unit to 1 no. two-bedroom apartment is or is not development or is or is not exempted development:

AND WHEREAS Timo Barry requested a declaration on this question from Wicklow County Council and the Council issued a declaration on the 26th Day of November 2020 stating that the matter was development and was not exempted development

AND WHEREAS referred this declaration to An Bord Pleanála on the 2020:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to –

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 5, 6, 9 and 10 of the Planning and Development Regulations, 2001, as amended,
- (c) Planning and Development (Amendment) (No 2) Regulations 2018 (S.I. No. 30 of 2018)
- (d) Sustainable Urban housing: Design Standards for New Apartments – Guidelines for Planning Authorities (December 2020)
- (e) Arklow & Environs Local Area Plan 2018 - 2024
- (f) the report of the Inspector

AND WHEREAS An Bord Pleanála has concluded that the conversion of an existing retail unit to 1 no. two- bedroom apartment is development and is not exempted development as:

(a) The external works to facilitate the residential use of the ground floor unit would constitute “works” that are “development” under Section 3 of the Planning and Development Act 2000 (as amended).

(b) The internal and external works and do not come within the scope of Article 10 (6)(d)(ii), (vi) and (xi) of the Regulations as

- the construction of a wall and railings to the front of the structure alterations would be inconsistent with streetscape character and would materially affect the external appearance of the structure, and
- the floor area of 63 sq.m. would be substandard having regard to the lack of overall residential amenities as required in Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities.
- the construction of a wall and railings constitutes bring forward the building, or any part of the building, beyond the front wall of the building on either side thereof or beyond a line determined as the building line in a development plan

(c) The construction of a wall and railings by itself is considered to come within class 5 of Part 1 of Schedule 2 but is precluded from exemption having regard to:

- its overall height exceeding 1.2m and the restriction by condition 1 of the exemption for this class
- the restriction on exemption in Article 9 (1) (a) (iii), (iv) and (xi) as it is considered that .
 - The provision of such would reduce an established pedestrian pathway at a junction and endanger public safety by reason of traffic hazard or obstruction of road users,
 - The provision of such would bring forward the building beyond that of no.46 and beyond a line determined as the building line in the development plan for the area.

- The provision of such would obstruct a public right of way,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the 2000 Act, hereby decides:

(a) The use of the of the existing retail unit as 1 no. two bedroom apartment is development and is not exempted development.

(c) The wall and railings to the front of the property is development and is not exempted development

Suzanne Kehely

Senior Planning Inspector

31st May 2021