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| Question | Whether single storey timber buildings, with windows and doors were constructed contiguous to the eastern boundary of the site: and later abutting the northern face a pile of stored timber is or is not development or is or is not exempted development. |
| Location | 'Roseville', Salmon Leap, Leixlip Road, Lucan Demesne, Co. Dublin. |
| Planning Authority | South Dublin County Council. |
| Planning Authority Reg. Ref. | ED21/0002 |
| Referrer(s) | John Colgan. |
| Type of Case | Referral. |
| Planning Authority Decision | Is not exempted development. |
| Type of Referral | Third Party |
| Owner Occupier(s) | Lara Lenihan and Justin Winston |
| Observer(s) | N/A. |

Date of Site Inspection

12.07.2022.

Inspector

Mary Mac Mahon.

1.0 Introduction

- 1.1. The referrer requested a declaration from South Dublin County Council in respect of a number of items in relation to the property of Roseville, on 30.12.2020. Following a request for Further Information, the planning authority issued a Declaration in relation to some items of the declaration and not on others, due to insufficient information, on 13.04.2021. The planning authority found that the wooden building was development and was not exempted development. The referrer was not satisfied in relation to the decision as items included in the request had not been adjudicated upon and so referred the decision to An Bord Pleanála.
- 1.2. Please note that a USB and CD has been submitted by the referrer. I was not able to retrieve any files from the USB. I note the memo on file that the owner/occupiers had similar difficulty. However, I was able to access the files on the CD. Having undertaken a site visit, I am satisfied that I have enough information to arrive at a recommendation on this case.

2.0 Site Location and Description

- 2.1. The is located in Leixlip, on the southern bank of the River Liffey, adjoining the eastern side of Leixlip Bridge. The county boundary line between South Dublin County Council and Kildare County Council runs approximately midway through the River Liffey.
- 2.2. The site is opposite the Salmon Leap Inn, which is a protected structure (Ref 009). The gates of the site are protected structures (Ref 005). On the far side of the Liffey is the Toll House, a protected structure in the Kildare County Development Plan (Ref B11-44). This is the property of the referrer.
- 2.3. The site is wedge shaped and is effectively on three levels. There is a large, part two, part single storey dwelling house on the site on the main level area. The front elevation of the house is south-facing and at 90 degrees to the entrance gate. The house, the car parking area and three sheds are located on this level area. The shed in question is a wooden shed painted grey on the western side of the house. The two other sheds are on the eastern side and behind the side building line of the house. The shed in

question is fitted out as a home office and gym area. It is approximately 25 square metres in area.

- 2.4. Beyond the level area to the north is a steep drop to the lower river bank level. There is a metal fence along the edge of the bank with a gate, to provide access. The sloped area is accessed via two sets of steps – one of stone and the other cut timber trunks. A wooden fence has been provided on the northeastern section of the garden, which prevents access to an area with a steep fall. It is contained within the existing boundary fences. The third level is the eastern section of the garden, which rises significantly and is accessed by stone and concrete steps.
- 2.5. The stumps of a number of individual trees are evident in the garden. Some of the trunks have been sawn and stored. Others have been used to provide steps on the sloping part of the site, connecting the upper garden to the lower bank. There is some timber placed near the house.

3.0 **The Question**

- 3.1. The development to assessed comprises of 7 items:
1. The single storey timber building on eastern side of the building;
 2. The timber stored on site;
 3. The tarmacadum parking area;
 4. The cutting of trees in the garden and on the river bank;
 5. The removal of undergrowth on the river bank;
 6. The clearing of steps, and,
 7. Provision of hand rail.
- 3.2. The question to be addressed is whether the above items are or not development, and if development, are or are not exempted development.

4.0 **Planning Authority Decision**

4.1. **Decision**

Is development and is not exempted development. This decision was confined to the shed on the western side of the house, as it was considered that insufficient detail had been supplied on the other items.

4.2. **Planning Authority Reports**

4.2.1. Planning Reports

The planner's report noted that there was a lack of information regarding the works that are subject to the referral and sought additional information from the referrer. Further Information was received on 15.02.2022. The report finds that the single storey timber buildings are development. It is unclear what the purpose of the piles of timber are for domestic or commercial use. The tall timber building is development and the fixing of green material is considered works and is development. The non-removal of a ladder is not considered development. The new fence is works which is considered development. The disposal of material at the bottom of the escarpment is not considered works or a material change in use. The surfacing of the roadway is works and is development.

The report refers to Class 3 of Part 1 of Schedule 2 of the Planning and Development Regulations which considers structures within the curtilage of a dwelling. It finds that a building constructed of timber in the location described does not meet the limitations of Class 3.

Class 5 refers to railings. It is unclear if the railings comply with the limitations set out in the Regulations in regard to this class.

Class 6 refers to landscaping and the provision of hard surface to the front or side of the house for parking. It is unclear if the railings comply with the limitations set out in the Regulations in regard to this class.

The report refers to Section 57 in relation to exempted works under Section 4 (1)(h) in relation to Protected Structure and states that the application was referred to the

Conservation Officer. It is not considered that there is sufficient information to consider the impact on the Protected Structures.

The report refers to Article 9 restrictions on exempted development. It notes that it is unclear if Article 9 restrictions apply, save for the absence of any conditions contravening an existing permission.

Based upon the Further Information Response, the stored timber is not development, the 'Shomera' is located to the front of the dwelling. The fence is steps and railings and there are no classes specific to this. Parking for 3 or 4 cars is not exempted development. The substantial alteration of the site, including clearance of vegetation to allow for buildings, would have a negative effect on the Protected Structures in the planning authority and Kildare County Council.

In relation to Article 9 restrictions, the impact of the development on the character of the landscape, or view or prospect it is an objective to preserve, could have a significant impact. It is considered that a planning application would allow this impact to be assessed. It is possible that excavation has occurred within the pNHA. It is considered that the development has had a negative impact on the pNHA.

The report concludes that the installation of timber building to the site, Sheomra to the front, creation of hard standing for 3 / 4 cars and installation of steps constitutes development and is not exempted development.

4.2.2. Other Technical Reports

Not applicable.

5.0 Planning History

S8634 – live file regarding habitable unauthorised development.

SD17B/0123 – permission granted 12.07.2017 for a single storey living room and kitchen extension to eastern elevation and modifications to existing double 'A' roof profile on west elevation joining both roofs to form a new single profile 'A' roof to accommodate new bedrooms and bathroom in converted attic space, together with internal alterations to house with the re-opening of an existing front entrance door and internal remodelling, with all associated site and drainage works.

92A/0972 – permission granted for retention of ground renovations and beauty clinic sign.

6.0 Referrer's Submission

6.1. The referrer, John Colgan, considers that there are errors and omissions in the planning authority's consideration of the case which he requests to be reviewed. He states:

- Address of property different to that submitted on referral form.
- The development exists and is not proposed development.
- Development has occurred with the benefit of planning permission that has adversely impacted on the proposed Natural Heritage Area. That application for permission was not referred to the Conservation Officer or the Heritage Officer. It did not consider the loss of privacy to the Toll House or the visual impact on the Liffey Valley.
- The zoning of the site under the 2016-2022 County Development Plan, HA, and states that '*All development classes shall not be permitted within 30 metres of the river bank in order to protect the recreational setting*'.
- The banks of the Liffey are in use for recreational purposes, in particular, canoeing and fishing.
- The planning authority has failed in its duty under Section 15 of the Planning and Development Act, 2000, as amended, to secure the objectives of the development plan, in relation to SD17B/0123 or the unauthorised development on the site in a timely manner.
- It did not take into account the Toll House, which is a protected structure, albeit within Kildare County Council administrative area, in relation to the impact on the curtilage and privacy of its garden space, arising from the removal of trees.
- After alerting the planning authority about unauthorised development on the site, no information, save for a copy of the warning letter, has been provided to the referrer.
- The matters that the referrer wishes to be assessed are:

1. The wooden shed – additional reasons required as to why this is not exempt development, such as the provisions of the development plan and interference with wooded development and impact on the Toll House, a protected structure and Leixlip Bridge;
2. Timber stored on site, which resembles a scrap yard and is an eyesore;
3. The ‘shomera’ style shed is used for habitable purposes and trees were removed to provide a level space for the development. It negatively impacts on the visual amenity of the valley and gives rise to overlooking. Comprehensive reasons and considerations are required to give guidance to recipients. No conclusion has been given in relation to Article 9 restriction in relation to contravening a condition of permission or the development plan’s provision in relation to development coming within 30 metres of the edge of the River Liffey;
4. The tarmacadam surface, which provides for four car parking spaces and lacking a soakpit;
5. The removal of ground cover and trees, in an area where these are to be protected and enhanced;
6. The clearing of timber steps and provision of hand rail.

7.0 Response from Owner Occupier

7.1. Justin Winston and Lara Lenihan, the Owner Occupiers, responded as follows:

- Requested copies of the Section 5 Request, including videos and photographs;
- A copy of the Folio of the property is submitted, as evidence of the property address;
- The timber structure is a log house and is 5 metres X 5 metres in area. It is used as a home office and photographs are enclosed. It is a replacement shed;
- They are unaware of the enforcement process;
- They are unaware of a 30 metre exclusion zone on their property;
- The property is private and not a recreational amenity;

- The overlooking is no worse than currently occurs from the existing house and if privacy concerns are an issue, the referrer can remedy it within his own property;
- The timber retained on property is for use in DIY projects and is domestic in nature;
- Three trees have been removed – one due to the condition of the tree on the advice of a tree surgeon, one from storm damage and one was a Leylandii Cyprus which was at risk of falling;
- Overgrown shrubs, bramble and ivy encroaching on deciduous trees were removed, for maintenance reasons. No damage arises to the proposed Natural Heritage Area;
- The driveway was previously a pebbled area and the tarmac covers the same footprint, which provides for two parked cars.

8.0 Legislation

8.1. Section 3 of the Planning and Development Act, 2000, as amended, defines development as follows:

3.—(1) *In this Act, “development” means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land.*

8.2. A Structure in Section 2 of the above Act:

“structure” means any building, structure, excavation, or other thing constructed 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 structures referred to in subparagraphs (i) or (iii)*

8.3. Works are defined in that section 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.

8.4. Section 4 (1) provides for exempted development that does not come within the scope of the exempted development classes within the Planning and Development Regulations, 2001, as amended:

(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;

i) development consisting of the thinning, felling or replanting of trees, forests or woodlands or works ancillary to that development, but not including the replacement of broadleaf high forest by conifer species

(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;

8.6. Section 15 of the Act concerns the duty of a planning authority to implement its development plan:

15.—(1) *It shall be the duty of a planning authority to take such steps within its powers as may be necessary for securing the objectives of the development plan.*

8.7. Section 57 of the Act concerns Protected Structures:

57.—(1) *Notwithstanding section 4 (1)(h), the carrying out of works to a protected structure, or a proposed protected structure, shall be exempted development only if those works would not materially affect the character of—*

(a) the structure, or

(b) any element of the structure which contributes to its special architectural, historical, archaeological, artistic, cultural, scientific, social or technical interest.

Section 204 concerns landscape conservation:

204.—(1) *A planning authority may, by order, for the purposes of the preservation of the landscape, designate the functional area of the authority as a landscape conservation area.*

(2) (a) Notwithstanding any exemption granted under section 4 or under any regulations made under that section, the Minister may prescribe development for the purpose of this section, which shall not be exempted development.

(b) Development prescribed under paragraph (a) may be subject to any conditions or restrictions that the Minister may prescribe.

(3) An order made by a planning authority under this section may specify, in relation to all or any part of the landscape conservation area, that any development prescribed by the Minister under subsection (2) shall be considered not to be exempted development in that area.

8.9. Section 177U (9) concerns the need to screen referrals for Appropriate Assessment issues:

(9) In deciding upon F787[a declaration or a referral under section 5] of this Act a planning authority or the Board, as the case may be, shall where appropriate, conduct a screening for appropriate assessment in accordance with the provisions of this section.]

8.10. The Planning and Development Regulations, 2001 as amended is considered next. A number of Articles are relevant to the referral:

8.11. Article 8 (F) states:

Development (other than the replacement of broadleaf high forest by conifer species) that is licensed or approved under section 6 of the Forestry Act 2014 (No. 31 of 2014) and that consists of – (a) the thinning, felling or replanting of trees, forests or woodlands, or (b) works ancillary thereto, shall be exempted development.

8.12. Article 9 restrictions on exemptions for Exempted Development in the Planning and Development Regulations that are relevant to the referral are set out below:

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

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

(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,

(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,

(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,

(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,

(b) in an area to which a special amenity area order relates, if such development would be development:— (i) of class 1, 3, 11, 16, 21, 22, 27, 28, 29, 31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39, 44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or (ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or (iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or

(iv) of any class of Parts 1, 2 or 3 of Schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,

8.13. The section below will consider the Classes of Exempted Development and their limitations.

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

1. No such structure shall be constructed, erected or placed forward of the front wall of a house.

2. The total area of such structures constructed, erected or placed within the curtilage of a house shall not, taken together with any other such structures previously constructed, erected or placed within the said curtilage, exceed 25 square metres.

3. The construction, erection or placing within the curtilage of a house of any such structure shall not reduce the amount of private open space reserved exclusively for the use of the occupants of the house to the rear or to the side of the house to less than 25 square metres.

4. The external finishes of any garage or other structure constructed, erected or placed to the side of a house, and the roof covering where any such structure has a tiled or slated roof, shall conform with those of the house.

5. The height of any such structure shall not exceed, in the case of a building with a tiled or slated pitched roof, 4 metres or, in any other case, 3 metres.

6. The structure shall not be used for human habitation or for the keeping of pigs, poultry, pigeons, ponies or horses, or for any other purpose other than a purpose incidental to the enjoyment of the house as such.

8.15. CLASS 5 *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.*

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 wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete. 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.

8.16. CLASS 6 (a) *The construction of any path, drain or pond or the carrying out of any landscaping works within the curtilage of a house.*

(b) Any works within the curtilage of a house for—

(i) the provision to the rear of the house of a hard surface for use for any purpose incidental to the enjoyment of the house as such, or,

(ii) the provision of a hard surface in the area of the garden forward of the front building line of the house, or in the area of the garden to the side of the side building line of the house, for purposes incidental to the enjoyment of the house as such. The level of the ground shall not be altered by more than 1 metre above or below the level of the adjoining ground. Provided that the area of the hard surface is less than 25 square metres or less than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, whichever is the smaller, or if the area of the hard surface is 25 square metres or greater or comprises more than 50% of the area of the garden forward of the front building line of the house, or 50% of the area of the garden to the side of the side building line of the house, as the case may be, it shall be constructed using permeable materials or otherwise allow for rainwater to soak into the ground.

8.17. CLASS 33 *Development consisting of the laying out and use of land—*

(a) as a park, private open space or ornamental garden,

(b) as a roadside shrine, or

(c) for athletics or sports (other than golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), where no charge is made for admission of the public to the land.

The area of any such shrine shall not exceed 2 square metres, the height shall not exceed 2 metres above the centre of the road opposite the structure and it shall not be illuminated.

8.18. The Forestry Act, 2014, as amended defined 'thinning' of trees' as "*the removal from a forest in accordance with good forest practice of excess or diseased trees, or trees of poor quality in order to improve the growth, health and value of the remaining trees.*"

8.19. It provides for Exemptions and De-exemptions under Section 19: 19 (1) provides for exempted trees to be felled and 19 (2) de-exempts trees to be felled.

(1) A tree—

(a) *in an urban area,*

(b) *within 30 metres of a building (other than a wall or temporary structure), but excluding any building built after the trees were planted,*

(2) A tree—

(a) *within the curtilage or attendant grounds of a protected structure under Chapter 1 of Part IV of the Act of 2000,*

(b) *within an area subject to a special amenity area order,*

(c) *within a landscape conservation area under section 204 of the Act of 2000,*

(d) *within—*

(i) *a monument or place recorded under section 12 of the National Monuments (Amendment) Act 1994 ,*

(ii) a historic monument or archaeological area entered in the Register of Historic Monuments under section 5 of the National Monuments (Amendment) Act 1987 , or

(iii) a national monument in the ownership or guardianship of the Minister for the Arts, Heritage and the Gaeltacht under the National Monuments Acts 1930 to 1994,

(e) within a European Site or a natural heritage area within the meaning of Regulation 2(1) of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), or

(f) which is more than 150 years old,

shall not be an exempted tree, unless it is a tree to which—

(i) any of paragraphs (a) to (l), or paragraph (n), of subsection (1), or

(ii) subparagraph (i), (ii), (iv) or (v) of subsection (1)(m),

applies.

The Wildlife Act 2000, as amended:

15.—In this Chapter—

“user” has the meaning assigned by section 19 (1)(a)(ii);

“works” includes any activity which destroys or which significantly alters, damages or interferes with the integrity of—

(a) a site, or

(b) any of its species, communities or habitats,

either intentionally or unintentionally, or any activity which has a significant impact on the site or on any of its species, communities or habitats, or on its landforms or geological or geomorphological features, or on its diversity of natural attributes, other than development by a local authority or development which is not exempted development for the purposes of the Planning and Development Act, 2000 .

19.—(1) Where there is a subsisting natural heritage area order in respect of any land, no person shall carry out, or cause or permit to be carried out, on that land any works specified in the order or any works which are liable to destroy or to significantly alter, damage or interfere with the

features by reason of which the designation order was made unless—

- (a) (i) the owner or occupier of that land has given to the Minister notice in writing of his or her intention to carry out the works specifying the nature of the works and the land, or part thereof, on which it is proposed to carry them out, or
 - (ii) where the consent of the owner or occupier of that land is not required, the person who is to carry out or cause to be carried out the works (in this Chapter referred to as “the user”) has applied in writing to the Minister for permission to carry out the works,
- and
- (b) (i) the works are carried out with the consent in writing of the Minister, or
 - (ii) the works are carried out in accordance with the terms of an agreement under section 11 or 18 of the Principal Act, or
 - (iii) 6 months have expired from the date of the notice under *paragraph (a)* and the Minister has not refused

consent in writing to
the works being
carried out.

(2) Notwithstanding *subsection (1)*, where a notice has been served under [section 16 \(2\)\(b\)](#) in respect of any land, no person shall carry out, or cause or permit to be carried out, on that land any works specified in that notice, being works which are liable to destroy or to significantly alter, damage, or interfere with the features by reason of which the notice was served, without giving the Minister not less than 3 months' prior notice in writing of his or her intention to carry out such works.

9.0 Policy and Context

9.1. Development Plan

The current *South Dublin County Development Plan 2016-2022* applies. However, the new development plan (2022-2028) was adopted on 22.06.2022 and will come into effect 6 weeks later (03.08.2022). The decision by the Board of An Bord Pleanála may be made after the new plan is adopted. Therefore, for clarity, I will include the current policies, and the policies as expressed in the draft development plan. My recommendation will be based on the policies in the current 2016-2022 plan.

South Dublin County Development Plan, 2016-2022

The site is zoned 'HA-LV' High Amenity – Liffey Valley'.

HERITAGE, CONSERVATION AND LANDSCAPES (HCL) Policy 10 Liffey Valley and Dodder Valley

It is the policy of the Council to protect and enhance the visual, recreational, environmental, ecological, geological and amenity value of the Liffey Valley and Dodder Valley, as key elements of the County's Green Infrastructure network.

HCL10 Objective 1: To restrict development within areas designated with Zoning Objective 'HA – LV' (To protect and enhance the outstanding character and amenity of the Liffey Valley) and 'HA – DV' (To protect and enhance the outstanding character and amenity of the Dodder Valley) and ensure that new development is related to the area's amenity potential and is designed and sited to minimise environmental and visual impacts.

HCL10 Objective 7: Within areas designated 'High Amenity – Liffey Valley' and 'High Amenity – Dodder Valley' non-residential development will only be permitted where it: Relates to the area's amenity potential or to its use for agriculture or recreational purposes, including recreational buildings; or Comprises the redevelopment of or extensions to existing commercial or civic uses or development of new commercial or civic uses within an existing established area of commercial or civic activity; and Preserves the amenity value of the river valley including its landscape value, views or vistas of the river valley and its biodiversity value.

For clarity, the site is not located within the Liffey Valley Special Amenity Area Order lands.

High Amenity Liffey Valley HA-LV To protect and enhance the outstanding character and amenity of the Liffey Valley.

In relation to proposed development open to consideration in this land use zoning, places of worship, recreation facility and sports clubs, have a footnote attached to them referring to 'All development classes shall not be permitted within 30m of the river bank, in order to protect recreational amenity.' Residential use does not have this footnote.

004 Leixlip Bridge, Leixlip Stonebridge & Former Bridge Site (RM)

005 Leixlip Road, Lucan Ashlar Limestone Gate Piers

009 Salmon Leap Inn, Leixlip Public House

The land use zoning and protected structures are unchanged in the *South Dublin Development Plan 2022-2028*.

For clarity, the Toll House is a protected structure in the Kildare County Development Plan (B11-44).

10.0 Natural Heritage Designations

10.1. The River Liffey is a Proposed Natural Heritage Area (Site Code 000128).

10.2. The Rye Water Valley Carton SAC is upstream of the site and extends to the western side of Leixlip Bridge. Its qualifying interests are:

Petrifying springs with tufa formation (Cratoneurion) [7220]

Vertigo angustior (Narrow-mouthed Whorl Snail) [1014]

Vertigo moulinsiana (Desmoulin's Whorl Snail) [1016]

10.3. There is no pathway connection between the site and this SAC.

10.4. There are no other Natura 2000 sites within 15km that there are any direct or indirect connections to.

10.5. Having regard to minor scale and the emissions from the development 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.

10.6. **Planning Authority Response**

10.7. Not applicable to the current case.

10.8. **Further Responses**

10.9. None received.

11.0 **Assessment**

11.1. Before beginning the assessment proper, for the purpose of clarity, the role of An Bord Pleanála in relation to Section 5 referrals will be set out. The purpose of An Bord Pleanála in relation to Section 5 referrals is to ascertain what is and is not development and if development, whether that development is exempted development or not. It is not the purpose of the Board to review planning permissions granted under Section 34 other than through the appeals system. Therefore, the planning history of the site is relevant in relation to the issue of whether the development in question is restricted due to a condition of that permission. An Bord Pleanála does not have a role in relation to unauthorised development, which falls under the remit of the planning authority.

11.2. Arising from the above, not all the questions submitted by the referrer will be dealt with and by necessity, the questions submitted must be distilled to consider only items that come within the remit of An Bord Pleanála. It should be noted that some of the impacts described by the referrer are relevant only to a situation where an application for planning permission has been made. Overlooking of the referrer's property, for example, is not a consideration in this Section 5 referral. Other issues raised by the referrer relate to objectives within the development plan. Save for specified circumstances in the Regulations, the policies of the development plan do not come into consideration generally in referrals. The statutory obligation to implement the policies in the development plan under Section 15, do not generally overcome exemptions for development in the Act or Regulations.

- 11.3. The Section 5 declaration refers to the location of the development, as opposed to the address. I am satisfied that all parties are in agreement on the location of the site. I note that the address of the property on Eircode is different to the two addresses provided to date – Rosavilla, Dublin Road, Leixlip, Co. Dublin, W23K5D0.
- 11.4. The items to be assessed in the referral are existing and are not proposed development.
- 11.5. The site is zoned 'HA – LV' in the current development plan. It is a residential development and so is not affected by the reference in the development plan that all classes of development shall not be permitted within 30 metres of the river bank. This reference only applies to specific use types in the development plan.
- 11.6. The lower part of the site is within the proposed Natural Heritage Area. There is a restriction under Article 9 (viiC) which development that would be likely to have an adverse impact on an area designated a natural heritage area by order made under Section 18 of the Wildlife (Amendment) Act, 2000. I note that the restriction applies to development that comes within the scope of the Exempted Development Provisions of the Regulations, and does not apply to Exempted Development that comes within the scope of the Act. I also note that the site is a proposed Natura Heritage Area only and has not been formally designated under Section 18. Nevertheless, I am satisfied its proposed status confers protection.
- 11.7. While the river bank is at a lower level than the remainder of the property, I note on the historic map a well located here, with a pathway (presumably the existing steps) connecting the house to the well. I therefore consider all levels of the site part of the curtilage of the house.
- 11.8. The timber shed is the third shed on the property. It appears to replace one that had previously existed on site, as can be seen on the Ordnance Survey Aerial Photo of 2013. The current shed is circa 25 square metres. It is forward of the front wall of the house. The total areas of the sheds on site exceed 25 square metres. The finish is painted timber. The height and roof of the shed come within the limit for exempted development and its use is as a home office and gym, incidental to the use of the house. It is development and is not exempted development.

- 11.9. The storing of excess timber on site is not a structure. No works arise from the storage of timber. It is not a change of use on the site. It is ancillary to the use of the site as a residence. Therefore, no development occurs.
- 11.10. The extent of driveway in question was in existence in 2013. No change to the size of the driveway appears to have occurred. No loss of garden has arisen to provide for this surface. Therefore, I do not consider that Class 6 of the Exempted Provisions in the Regulations applies in this case. The driveway is an existing structure. The change in surface of the driveway is considered works to improve the structure. Section 4 (1) (h) provides for improvements to structures, provided the works do not materially alter the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures. The change in the surface of the driveway is materially different from its previous surface. It is not inconsistent with the character of the structure or neighbouring structures, given the extensive use of black tarmacadam in the area.
- 11.11. The question arises as to whether Section 57 of the Act, de-exempts Section 4 (1) (h) on this occasion. Section 57 concerns the carrying out of works to a protected structure, shall only be exempted development if these works would not materially affect the character of the structure, or an element of the structure which contributes to its particular character.
- 11.12. I note that the pathway in front of the house and around to Leixlip Bridge (another protected structure) and the Salmon Leap Inn is black tarmacadam. While the use of this surface in the bell mouth and through the driveway is not out of character with the area in the vicinity, I would consider that it materially affects the character of the protected structure and so is not exempted development.
- 11.13. The removal of trees will be considered next. A limited number of trees have been removed on the site as demonstrated in the photographs. Generally, the felling of trees is exempted development under Section 4 (1)(j) of the Planning and Development Act, 2000 as amended. The Forestry Act, 2014, confirms that the felling of trees within 30 metres of a structure is generally exempt. De-exempted trees include trees that are within the curtilage or attendant grounds of a protected structure, or within a natural heritage area.

- 11.14. The trees that have been removed on the main garden area come within 30 metres of the dwelling house. While the gates of the house are a Protected Structure, the trees do not form part of the curtilage or attendant grounds of the gates.
- 11.15. Two trees appear to have been felled in the proposed Natural Heritage Area and one has fallen into the river. I would consider the removal of these trees to be ‘thinning’. I do not consider their removal to be significantly damaging to the proposed Natural Heritage Area. However, the thinning of trees in a proposed Natural Heritage Area does not appear to be exempt development, under the Forestry Act.
- 11.16. I note the photographic evidence submitted by the referrer that there was significant clearance of undergrowth during winter. However, the photograph taken by me when on the site visit shows that there has been no lasting impact to the proposed Natural Heritage Area that would have permanently adversely affected habitat.
- 11.17. In relation to the steps provided in the escarpment, I consider these steps are a path from the shed to the lower river bank. I would consider these steps to be development. Class 6 allows for the construction of any path or the carrying out of landscaping works within the curtilage of the house. I do not consider that the restriction in relation to Article 9 (viiC) applies to the exemption, as it is not likely to have an adverse impact on the proposed Natural Heritage Area.
- 11.18. The wooden and wire fencing that have been introduced is a structure, which is development. The fence is not a boundary fence, but one used to close off unsafe areas of the property. The height is are less than two metres in height and so comes within the scope of the exempted development provisions. I do not consider that the restriction in relation to Article 9 (viiC) applies to the exemption, as it is not likely to have an adverse impact on the proposed Natural Heritage Area.
- 11.19. There are no conditions restricting exempted development in SD17B/0123.

12.0 Findings

12.1. For convenience, I set out my findings below:

| Item | Is or Is Not Development | Is or Is Not Exempted Development |
|------|--------------------------|-----------------------------------|
| | | |

| | | |
|----------------------------------|--------------------|-----------------------------|
| Gray wooden shed | Is development | Is not exempted development |
| Storage of timber | Is not development | Not applicable |
| Tarmacadam Surface of Driveway | Is development | Is not exempted development |
| Felling of trees outside of pNHA | Is development | Is exempted development |
| Felling of trees within pNHA | Is development | Is not exempted development |
| Removal of ground cover | Is development | Is Exempted Development |
| Timber steps | Is development | Is Exempted Development |
| Wooden fence | Is development | Is Exempted Development |

13.0 Recommendation

13.1. I recommend that an Order be set out as below.

14.0 Draft Order

Planning and Development Acts 2000 to 2022

Planning Authority: South Dublin County Council

Planning Register Number: ED21/0002

WHEREAS questions have arisen in relation to a number of items at 'Rosavilla', Dublin Road, Leixlip, Co. Dublin, is or is not development or is or is not exempted development;

AND WHEREAS the said questions were referred to An Bord Pleanála by John Colgan on 25th day of April, 2021;

AND WHEREAS An Bord Pleanála had regard particularly to:

- (a) Sections 2, 3, 4, 15, 57, 177U and 204 of the Planning and Development Act, 2000, as amended;
- (b) Articles 8, 9 of the Planning and Development Regulations 2001, as amended, with particular reference to 9 (1) (iv) and (viiC);
- (c) Part 1 of Schedule 2, Exempted Development, with particular reference to Classes 3, 5 and 6;
- (d) Sections 1, 19 of the Forestry Act, 2014, as amended;
- (e) Sections 15 and 19 of the Wildlife Act, 2000, as amended;
- (f) The provisions of the South Dublin County Council Development Plan 2016-2022;
- (g) The planning history of the site;
- (h) The submissions made on file, and
- (i) The report of the Inspector

AND WHEREAS An Bord Pleanála concluded that:

- (1) The grey painted wooden shed on the western side of the dwelling house is a structure, in use as ancillary accommodation to the dwelling house. Having regard to the other two sheds on site, the size of area of the shed exceed the size area allowed for under Class 3, which only provides for 25 square metres of such structures. Furthermore, the finishes of the shed do not reflect the finishes of the dwelling house. The shed, therefore, does not come within the limitations of the class;
- (2) The timber cut-offs stored on site is not development;
- (3) The laying of the tarmacadam surface on the parking area is development that is works, that materially affect the character of the Protected Structure on site and is not exempted development;
- (4) The use of land within the curtilage of a house for any purpose incidental to the enjoyment of the house comes within Section 4 (1) j and the maintenance of such areas comes within Section 4 (1) h, therefore the removal of ground cover

is development being works, but comes within the scope of Section 4 (1) h and have not destroyed nor significantly altered, permanently damaged nor interfered with the pNHA;

- (5) The thinning and felling of trees outside of the pNHA is development that is exempted development, coming within the scope of Section 4;
- (6) The thinning and felling of trees within the pNHA is development that is not exempted development;
- (7) The provision of wooden steps is development that is exempted development and comes within the scope of Class 6 and is not restricted by Article 9;
- (8) The provision of wooden and wire fencing is development that is exempted development under Class 5 and is not restricted by Article 9.

NOW THEREFORE An Bord Pleanála, in the exercise of the powers conferred on it by Section 5 (4) of the 2000 Act, hereby decided that:

- (1) The grey painted wooden shed is development that is not exempted development;
- (2) The timber cut-offs stored on site is not development;
- (3) The laying of the tarmacadam surface on the parking area is development that is not exempted development;
- (4) The removal of ground cover is development that is exempted development;
- (5) The felling of trees outside the pNHA is development that is exempted development;
- (6) The felling of trees within the pNHA is development that is exempted development;
- (7) The provision of wooden steps is development that is exempted development;
- (8) The provision of wooden and wire fencing is development that is exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

| | | |
|----------|-----|-----------|
| Mary | Mac | Mahon |
| Planning | | Inspector |

15 July, 2022