



An  
Coimisiún  
Pleanála

## Inspector's Report ABP-322368-25

### Question

Whether the erection of metal fencing which blocks public access at two locations at either end of an established right of way is or is not development and is or is not exempted development.

### Location

Rocheshill, (Mullins Hill), Killiney Hill, Co.Dublin

### Declaration

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

REF3125

Applicant for Declaration

Ballinclea Residents Association Ltd

Planning Authority Decision

Is exempted development

### Referral

Referred by

Ballinclea Residents Association Ltd

Owner/ Occupier

Killiney Golf Club

Observer(s)

None

**Date of Site Inspection**

24<sup>th</sup> June 2025

**Inspector**

Aisling MacNamara

## 1.0 Site Location and Description

- 1.1. The site is an area of open space at Roches Hill (Mullins Hill), Killiney, County Dublin. Roches Hill is a hilly and rocky area of scrub and vegetation that is roughly bounded to the west by Killiney Golf Club and to its northern, eastern and southern sides by residential development. Roches Hill is open to the public and there are paths crossing the hill linking the open space area to the surrounding built up area. The site that is the subject of this referral is a linear parcel of land that is owned by Killiney Golf Club, located adjoining the eastern boundary of the golf club. The site forms part of the wider open space area that is Roches Hill.

## 2.0 The Question

- 2.1. The question before the Commission is whether the following is or is not development and is or is not exempted development:
- 2.2. *Whether the erection of metal fencing that blocks public access on an established right of way at two locations at Rocheshill (Mullins Hill), Killiney Hill, Co. Dublin is or is not development and is or is not exempted development*
- 2.3. I proposed to re-word the question as follows:
- 2.4. *Whether the erection of metal fencing that blocks public access at two locations at Rocheshill (Mullins Hill), Killiney Hill, Co.Dublin is or is not exempted development.*

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The planning authority issued a declaration, by order dated 24<sup>th</sup> March 2025, as follows:

Having regard to:

- (a) Sections 2,3, 4(1)(h) and 4(2)(a) of the Planning and Development Act 2000 as amended,
- (b) Section 208 of the Planning and Development Act 2000 as amended,

(c) Articles 6(1) and 9(1) of the Planning and Development Regulations as amended,

It is considered that the proposed works constitute Development and Exempted Development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

- Report of Case Planner sets out the basis for a recommendation as per the declaration. Planner notes paths through the pNHA are regularly used. Planner notes that there are two fences located either end of the subject path. The fences could be perceived to be blocking the path however there is a well worn path running around each fence. The fencing on lands owned by Killiney golf Club does not obstruct the public access to the established Right of Way 'Claremont Road via Roches Hill to Glenalua Road ROW' and the development constitutes exempt development. Section 208 of the Planning and Development Act 2000 as amended is upheld. The works are exempt under Class 9, schedule 2, Part 1 Sundry works. The fence does not exceed 1.2m. There is no impact on the integrity of a European site. There is no likelihood of significant effect on the environment.

#### 3.2.2. Other Technical Reports

None

### 4.0 Planning History

- **Section 5 REF9124, ABP320914-24** – Patrick Drudy – ABP on 29<sup>th</sup> May 2025 decided that *Fencing erected at two locations – 12metres close to Golf Club Wicket Gate and 10 metres at other end of lands at Killiney Golf Club, Ballinclea Road, Killiney* **is development and is not exempted development**. DLRCoCo had decided by order dated 29/08/2024 that the works as described in the same question is development and is exempted development.

- **Section 5 REF12624** - Simone Walsh, Chair, Killiney Village Residents Association – By order dated 18/10/2024 DLRCoco decided that *An established Right of Way is blocked at two locations. There is a two meter fence close to the Golf Club 'Wicket Gate' and a 10 meter fence has been erected close to the other end of this path. There are signs directing people away from the Public Right of Way on the Golf Club suggesting use of the other paths on Roches (Mullins Hill). All stated routes are in regular and sustained use by the residents of Killiney and visitors* **is development and is exempted development.**
- **Section 5 REF12724** – Damian Furlong – By order dated 18/10/2024 DLRCoco decided that *An established Right of Way is blocked at two locations. There is a two meter fence close to the Golf Club 'Wicket Gate' and a 10 meter fence has been erected close to the other end of this path. There are signs directing people away from the Public Right of Way on the Golf Club suggesting use of the other paths on Roches (Mullins Hill). All states routes are in regular and sustained use by the residents of Killiney and visitors at Rocheshill (Mullins Hill), Killiney* **is development and is exempted development.**
- **Section 5 REF10424** - Mary Holohan – By order dated 25/09/2024 DLRCoco decided that *An established Right of Way is blocked at two locations. There is a 12 meter fence close to the Golf Club 'Wicket Gate' and a 10 metre fence has been erected close to the other end of this path. There are signs directing people away from the Public Right of Way on the Golf Club suggesting use of the other paths on Roches Hill. This is a short cut used by many from Glenalua Road to Killiney Shopping Centre at Rocheshill, Killiney* **is development and is exempted development**
- **PA D95A/0106, PL06D.097552** – Killiney Golf Club - March 1996 – Refuse – Permission for extension to golf club – 2 reasons for refusal: (i) the golf course extension located within Roches Hill area designated as a site of scientific interest in the current development plan would interfere with this area of special interest which it is necessary to preserve, would have an adverse impact on ecology of the site and contrary to proper planning and

sustainable development, (ii) the proposed golf course extension would interfere with established pedestrian pathways across these lands which would seriously injure the amenities of the area and be contrary to proper planning and development of the area.

- **ENF14224** –erection of mesh fencing without benefit of planning permission
- Reference is made in the planners report to the following historic applications:
  - (i) Application by Lord Talbot in 1964 under 1934 Town and Regional planning Act for a motel and chalets which was refused permission,
  - (ii) Application by XJS Investments in 1982 for apartments and dwellings which was refused by An Bord Pleanala in 1986.

## 5.0 Policy Context

### 5.1. Development Plan

#### Dun-Laoghaire Rathdown County Development Plan 2022-2028

- The site is zoned objective F: To preserve and provide for open space with ancillary active recreational amenities.
- It is a specific local objective to prepare a Management Plan for Killiney Hill Park to include the area comprising the entire pNHA of Killiney Hill and Roches/Mullins Hill in consultation and liaison with the National Parks and Wildlife Service.
- The 'Claremont Road via Roches Hill to Glenalua Road' public right of way (map 7) is east of the site.
- The 'Killiney Golf Club Pavilion to Roches Hill' public right of way (map 7) is to the north of the site.
- Policy Objective GIB18: Protection of Natural Heritage and the Environment: It is a Policy Objective to protect and conserve the environment including, in particular, the natural heritage of the County and to conserve and manage Nationally and Internationally important and EU designated sites - such as Special Protection Areas (SPAs), Special Areas of Conservations (SACs),

proposed Natural Heritage Areas (pNHAs) and Ramsar sites (wetlands) - as well as non-designated areas of high nature conservation value known as locally important areas which also serve as 'Stepping Stones' for the purposes of Article 10 of the Habitats Directive.

- Policy Objective GIB21: Designated Sites: It is a Policy Objective to protect and preserve areas designated as proposed Natural Heritage Areas, Special Areas of Conservation, and Special Protection Areas. It is Council policy to promote the maintenance and as appropriate, delivery of 'favourable' conservation status of habitats and species within these areas.

## **5.2. Natural Heritage Designations**

Dalkey Coastal Zone and Killiney Hill/ Roches Hill is a proposed Natural Heritage Area.

## **6.0 The Referral**

### **6.1. Referrer's Case**

Stephen Jenkins on behalf of Ballinclea Residents Association has appealed the declaration decision of Dun-Laoghaire-Rathdown County Council. The following is a summary of the issues raised:

- Wish for the decision of the planning authority to be reviewed.
- The works constitute 'development' and this is not disputed by anyone.
- Identical planners reports were used for the subject referral and REF12624, REF10424 and REF12724 section 5 referrals.
- Note Map 7 of DLRCDP2022-2028 showing the location of the public ROW from golf course through Mullins Hill.
- Aerial images submitted showing the location of established pedestrian path running to the east of the golf course lands and showing the location of two fences.

- Mullins Hill and Roches Hill are used interchangeably in CDP. Note SLO70 in relation to preparation of a management plan for Killiney Hill park and to include the area comprising the pNHA of Killiney Hill and Roches / Mullins Hill and to retain and preserve the natural environment and biodiversity on Roches /Mullins Hill Killiney.
- The Council's planning officer indicates that there is a well worn path running around the fence enabling access to the path on the other side. The path can be overgrown and it is not accessible all year round.
- The development is not exempted development under Article 9(1)(a)(x). The designated path is blocked by the fence resulting in the enclosure of a path habitually used by the public for a period exceeding ten years. It does not matter than an alternative route may have been available on the day of the Council's site visit.
- The development is not exempted development under Article 9(1)(a)(vi). The path is blocked. The black post and rail metal fencing is incongruous in the wild, unspoilt landscape which is pNHA.
- The development is not exempted development under Article 9(1)(a)(vii). The works consist of the alteration of a place of ecological interest as provided for in SLO70 which seeks to preserve and retain the natural environment and biodiversity.
- Class 9, Part 1 of Schedule 2 is not applicable. The development is a fence, not a gate or gateway.
- Class 11, Part 1 of Schedule 2 is not applicable. The fence does exceed 1.2m at points.

## **6.2. Planning Authority Response**

None

## **6.3. Owner/ occupier's response**

None



## **7.0 Statutory Provisions**

### **7.1. Planning and Development Act, 2000 as amended**

#### **Section 2(1)**

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

“fence” includes a hoarding or similar structure but excludes any bank, wall or other similar structure composed wholly or mainly of earth or stone

#### **Section 3(1)**

In this Act, except where the context otherwise requires, "development" means— (a) the carrying out of any works in, on, over or under land, or the making of any material change in the use of any land or structures situated on land

#### **Section 4**

(1) sets out development that is exempt from requiring planning permission.

(2) (a) The Minister may by regulations provide for any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that—

(4) Notwithstanding paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

**Section 208** relates to supplemental provisions with respect to public rights of way

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

**Article 6 (1)** states as follows: ‘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)** 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—

(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.

(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,

## **Schedule 2**

### **Part 1 – Exempted Development – General – Sundry Works**

#### **CLASS 9**

The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.

##### **Conditions and Limitations**

The height of any such structure shall not exceed 2 metres.

#### **CLASS 11**

The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of – (a) any fence (not being a hoarding or sheet metal fence), or (b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

##### **Conditions and Limitations**

1. The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.
2. Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.

## **8.0 Assessment**

### **8.1. Background**

- 8.1.1. This referral relates to the erection of two sections of fencing across paths on lands owned by Killiney Golf Club (but not part of the golf club development or its golf course). The lands are part of the Roches Hill (Mullins Hill) open space area which is traversed by a network of paths that are accessible by the wider public and link across the open space to the surrounding areas.

- 8.1.2. The planning history shows that DunLaoghaire Rathdown County Council decided on four section 5 referral applications during the period August, September and October 2024 in relation to the erection of the subject fencing (FEF9124, REF10424, REF12724 and REF12624). In all cases, the planning authority decided that the works constitute development and **is** exempted development.
- 8.1.3. REF9124 was the first referral decided on. This referral was referred to An Bord Pleanála (ABP320914) and the Board decided on 29<sup>th</sup> May 2025 that the fencing is development and **is not** exempted development. The subject referral relates to the same matter and works that has already been decided by the Board under ABP320914.

## **8.2. Is or is not development**

- 8.2.1. Having regard to Section 2(1) and 3(1) of the Planning and Development Act 2000 (as amended), it is considered that the construction of a fence is 'development'.

## **8.3. Is or is not exempted development**

- 8.3.1. Development can be exempt from the requirement for planning permission by either section 4 of the Planning and Development Act 2000 (as amended) or by Article 6 of the Planning and Development Regulations 2001 (as amended).
- 8.3.2. The development does not fall into any of the categories of exempted development under Section 4 of the Planning and Development Act 2000 (as amended).
- 8.3.3. Article 6(1) states that subject to article 9, development of a class listed in part 1 of schedule 2 shall be exempted development subject to the conditions and limitations of the class.
- 8.3.4. I consider that class 11 would be applicable which relates to the erection of any fence other than within or bounding the curtilage of a house. The referrer indicates that the fence is higher than 1.2m at points and does not fall within the conditions of this class. I have visited the site and measured the fence and I am satisfied that substantially, the fencing does not exceed 1.2m and therefore satisfies the conditions and limitations of class 11.

8.3.5. Class 9 relates to a gate or gateway and I do not consider that this class is of relevance.

8.3.6. The fence is 'exempted development' under Article 6.

#### **8.4. Restrictions on exempted development**

8.4.1. Article 9(1)(a) sets out circumstances where an otherwise exempt development would not be exempt due to a stated restriction. The relevant restrictions are considered below:

##### Article 9(1)(a)(vi)

8.4.2. Development shall not be exempted development if the carrying out of development would "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".

8.4.3. There are no preserved views or prospects impacted by the fence. This area is not included in Appendix 8 Landscape Assessment Study and Landscape /Seascape Character Areas. The site is on lands zoned "to preserve and provide for open space with ancillary active recreational amenities" and there is a specific objective to prepare a management plan for the area in consultation with National Parks and Wildlife Service. There is no specific objective to preserve this landscape.

8.4.4. This restriction does not apply.

##### Article 9(1)(a)(vii)

8.4.5. Development shall not be exempted development if the carrying out of development would "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”.

8.4.6. The works are on lands designated Dalkey Coastal Zone and Killiney Hill / Roches Hill proposed Natural Heritage Areas which is of significance for wildlife and habitats and therefore is of ecological interest.

8.4.7. Objectives GIB18 and GIB21 are objectives to protect, preserve and conserve proposed Natural Heritage Areas.

8.4.8. Having regard to the nature and scale of the works which is for a small section of fencing across a pathway, I do not consider that wildlife or habitat is altered.

8.4.9. This restriction does not apply.

Article 9(1)(a)(viiB)

8.4.10. Development shall not be exempted development if the carrying out of development would “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”.

8.4.11. I am satisfied that the development would not be likely to have a significant effect on the integrity of a European site and that appropriate assessment is not required. This is considered under the separate heading Appropriate Assessment below.

8.4.12. Therefore this restriction does not apply.

Article 9(1)(a)(viiC)

8.4.13. Development shall not be exempted development if the carrying out of development would “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”.

8.4.14. The site is within land that is designated as proposed Natural Heritage Area ‘Dalkey Coastal Zone and Killiney Hill / Roches Hill’. The restriction applies to areas designated natural heritage order by order of the Wildlife Act. The land is a proposed natural heritage area only.

8.4.15. In any case, having regard to the nature and scale of works, I am satisfied that the development would not be likely to have an adverse impact on the lands.

8.4.16. Therefore this restriction does not apply.

Article 9(1)(a)(x)

8.4.17. Development shall not be exempted development if the carrying out of development would “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”.

8.4.18. Information provided under ABP320914 indicates that the fences were erected across a path on Roches Hill in 2023. On site visit of 24/06/2025 I observed that fencing is still in place at both sections (however a small part of the southern fence has been removed and is lying within the side vegetation). I am satisfied that the path was habitually open to or used by the public in the 10 years preceding the fencing, based on the following:

- the aerial photographs show that the path is in place in the years 2022, 2021, 2020, 2018, 2017, 2016, 2013, 2009,
- I would consider that the erection of the fencing is in itself an acknowledgement that the land was being accessed by the public,

I also note the planning history of the site including D95A/0106, PL06.097552 and the Brady Shipman Martin maps which indicate that the pathway was historically been used by the public (beyond the last 10 years preceding the fencing) and the ABP order PL06D.097552 which refers to established pedestrian pathways across these lands.

8.4.19. The pathway is an access to Roches Hill which is a recreational asset and is a means of access between the wicket gate at Killiney golf club and the Claremont /Glenalua ROW.

8.4.20. I am satisfied that fencing has occurred of land habitually open to or used by the public during the 10 years preceding the fencing for recreational purposes.

8.4.21. Therefore the restriction applies and the development is not exempted development.

Article 9(1)(a)(xi)

- 8.4.22. Development shall not be exempted development if the carrying out of development would “obstruct any public right of way”.
- 8.4.23. The referrer indicates that the fences block public access at two locations at either end of an established right of way.
- 8.4.24. The County Development Plan includes two rights of way through the lands at Roches Hill which include ‘Claremont Road via Roches Hill to Glenalua Road’ and ‘Killiney Golf Club Pavilion to Roches Hill’. I am satisfied that the fences do not interfere with either of these rights of way.
- 8.4.25. I acknowledge that not every right of way is shown in a development plan. However, there is no evidence to show that a right of way is legally registered on the land between the two fences (marked in yellow on the referrers submission). As I am unclear as to whether or not this section of pathway has the legal standing of a public right of way, I do not consider it reasonable to conclude that the fencing obstructs a public right of way.

**Environmental Impact Assessment and Appropriate Assessment**

- 8.4.26. Section 4(4) of the Planning and Development Act 2000 (as amended) states that notwithstanding any regulations under subsection (2), development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Appropriate Assessment

- 8.4.27. I have considered the development in light of the requirements of Section 177U of the Planning and Development Act 2000 (as amended). The subject site is located approximately 2.17m from Rockabill to Dalkey Island Special Area of Conservation (SAC) and 2.4km from Dalkey Island Special Protection Area (SPA) and approximately 4km from South Dublin Bay SAC and South Dublin Bay and River Toka Estuary SPA.
- 8.4.28. I am satisfied that it can be eliminated from further assessment because there is no risk to any European Site. The reason for this conclusion is as follows:



- The nature, scale and location of the development including the lack of any significant alterations to the lands or environment,
- The distance to the European site network,
- The absence of hydrological or ecological pathways between the development and any European site.

8.4.29. I consider that the proposed development would not be likely to have a significant effect individually or in-combination with other plans or projects, on a European site and appropriate assessment is therefore not required.

#### Environmental Impact Assessment

8.4.30. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 of report.

## 9.0 Recommendation

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

**WHEREAS** a question has arisen as to whether the erection of metal fencing that blocks public access at two locations at Rocheshill (Mullins Hill), Killiney Hill, Co. Dublin is or is not exempted development.

**AND WHEREAS** Ballinclea Residents Association requested a declaration on this question from DunLaoghaire Rathdown County Council and the Council issued a declaration on 24<sup>th</sup> March 2025 stating that the matter was development and was exempted development:

**AND WHEREAS** Stephen Jenkins on behalf of Ballinclea Residents Association referred this declaration for review to An Coimisiún Pleanála on 22<sup>nd</sup> April 2025.

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

- (a) Sections 2(1), 3(1) and 4(2) of the Planning and Development Act 2000 (as amended),
- (b) Articles 6 (1) and 9 (1) of the Planning and Development Regulations, 2001(as amended),
- (c) Class 11 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 (as amended),
- (d) the DunLaoghaire-Rathdown County Development Plan 2022-2028
- (e) documentation on file
- (f) aerial photographs
- (g) the planning history including REF9124,ABP320914-24 and D95A/0106, PL06.097552

**AND WHEREAS** An Coimisiún Pleanála has concluded that:

- (a) the erection of a fence consists of carrying out of ‘works’ and therefore constitutes ‘development’ in section 3(1) of the Planning and Development Act 2000 (as amended), and is development,
- (b) the proposed works are within the description and conditions and limitations of development in class 11 of part 1 of schedule 2 of the Planning and Development Regulations under Article 6(1) of the Regulations,
- (c) having regard to the limited nature and scale of the works, the development does not interfere with the character of a landscape the preservation of which is an objective of the Dun Laoghaire Rathdown County Development Plan 2022-2028 and accordingly the

restriction on exempted development in Article 9(1)(a)(vi) does not apply,

- (d) having regard to the limited nature and scale of the works, the development does not alter a place of ecological interest (the proposed Dalkey Coastal Zone and Killiney Hill/ Roches Hill proposed natural heritage area) for which there is an objective in the development plan (objectives GIB18 and GIB21) to protect, preserve and conserve and accordingly the restriction on exempted development in Article 9(1)(a)(vii) does not apply,
- (e) the works comprise fencing of land habitually open to or used by the public during the 10 years preceding such fencing for recreational purposes and accordingly the restriction on exempted development in Article 9(1)(a)(x) does apply,
- (f) having regard to the lack of evidence and certainty regarding whether or not the path is a public right of way, there is insufficient information to conclude that the fencing obstructs a public right of way and accordingly, the restriction in Article 9(1)(a)(xi) does not apply.
- (g) the development is not likely to have a significant effect on the integrity of a European site and appropriate assessment is not required and accordingly the restriction on exempted development in Article 9(1)(a)(viiB) does not apply,
- (h) the land is designated proposed Natural Heritage Areas (Dalkey Coastal Zone and Killiney Hill / Roches Hill) and is not a natural heritage area. The restriction on exempted development in Article 9(1)(a)(viiC) does not apply.

**NOW THEREFORE** An Coimisiún Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the erection of metal fencing that blocks public access at two locations at

Rocheshill (Mullins Hill), Killiney Hill, Co.Dublin **is** development **is not** exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

---

Aisling Mac Namara  
Planning Inspector

8<sup>th</sup> July 2025

### Form 1 - EIA Pre-Screening

<b>Case Reference</b>	322368-25
<b>Proposed Development Summary</b>	Whether the erection of metal fencing which blocks public access at two locations at either end of an established right of way is or is not development and is or is not exempted development
<b>Development Address</b>	Rocheshill (Mullins Hill), Killiney Hill, Co.Dublin
	<b>In all cases check box /or leave blank</b>
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b>  (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes,  - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2.
	<input type="checkbox"/> No, No further action required.
<b>2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?</b>	
<input type="checkbox"/> Yes, it is a Class specified in Part 1.  <b>EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.</b>	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
<b>3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?</b>	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p><b>No Screening required.</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p><b>EIA is Mandatory. No Screening Required</b></p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p><b>Preliminary examination required. (Form 2)</b></p> <p><b>OR</b></p> <p><b>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</b></p>	

<p><b>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</b></p>	
<p><b>Yes</b> <input type="checkbox"/></p>	<p><b>Screening Determination required (Complete Form 3)</b></p>
<p><b>No</b> <input checked="" type="checkbox"/></p>	<p><b>Pre-screening determination conclusion remains as above (Q1 to Q3)</b></p>

Inspector: \_\_\_\_\_ Date: \_\_\_\_\_