



An
Coimisiún
Pleanála

Inspector's Report ABP-322810-25

Question	Whether the proposed widening of vehicular entrance from 2.89 Metres to 3.1 metres is or is not development and is or is not exempted development
Location	17, Killiney Gate, Killiney, Dublin, A96TX64
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	REF9525
Applicant for Declaration	Kay Kelly
Planning Authority Decision	Is not exempted development
Type of Appeal	First Party
Appellant(s)	Kay Kelly
Referred by	Kay Kelly
Date of Site Inspection	27 th October 2025
Inspector	Bernadette Quinn

1.0 Site Location and Description

- 1.1. The referral site is located in Killiney Gate, an established residential development of detached two storey dwellings located approximately 500m west of Killiney. The site contains a detached two storey dwelling, the front façade of which is finished in red brick. The site measures a stated area of 451.72 sq.m. The dwelling is served by a vehicular entrance which comprises an opening in the boundary wall with no gates or piers. The boundary wall is finished in red brick, similar to the dwelling on site. A foot path is in place between the entrance and the road and which is dished.
- 1.2. The site is located at an end point in a cul de sac of houses of similar design and with similar brick finished front boundary walls which vary in height to take account of differences in ground levels. Entrances to dwellings throughout the estate comprise of openings in the walls similar to the appeal site and of varying widths.

2.0 The Question

- 2.1. The question referred to the planning authority (the PA) pursuant to Section 5(1) of the Planning and Development Act, 2000, as amended (“the Act”) and subsequently referred by the referrer to the Coimisiún, pursuant to Section 5(3)(a) of the Act is, as follows:

Whether the proposed widening of vehicular entrance from 2.89 Metres to 3.1 metres is or is not development and is or is not exempted development

3.0 Planning Authority Declaration

3.1. Declaration

- 3.2. Dun Laoghaire Rathdown County Council (DLR) issued a declaration on the question on the 11th June 2025 as follows:

Having regard to:

- Sections 2 and 3 of the Planning and Development Act 2000, as amended,
- Article 9 (1) (a)(ii) of the Planning and Development Regulations 2001, (as amended),

- The content of the submitted application,

It is considered that the proposed works constitute development and do not constitute exempted development.

3.3. Planning Authority Reports

3.3.1. Planning Reports

The recommendation within the report of the Planning Officer dated 11/06/2025 reflects the declaration issued by the planning authority. The Report can be summarised as follows:

- The subject development involves the carrying out of works and is therefore considered to be development.
- The proposal involves the widening of the vehicular entrance from 2.89m to 3.1m. The works would be contrary to Article 9(1)(a)(ii) of the regulations as the roadway of Killiney Gate is in excess of 4m in width.
- The works constitute development and do not constitute exempted development.

3.3.2. Other Technical Reports

None on file.

4.0 Planning History

No recent relevant planning history.

5.0 Policy Context

5.1. Development Plan

The site is zoned Objective A 'To provide residential development and improve residential amenity while protecting the existing residential amenities'.

The boundary of Killiney Architectural Conservation Area (ACA) is located to the rear of the site, the site is not located within this ACA boundary.

5.2. Natural Heritage Designations

None in the vicinity of the site.

6.0 The Referral

6.1. Referrer's Case

The appeal against the decision of the Planning Authority can be summarised as follows:

- The works constitute 'development, however the proposal is exempted development under Section 4(1)(h) of the Act and Article 6(1) of the Regulations subject to compliance with Schedule 2, Part 1, Class 5.
- The proposed works involve a minimal increase of 21 centimetres in width of an existing entrance, a 7.3% increase.
- The central issue is whether such a minor alteration can properly be characterised as 'material widening' within the meaning of Article 9(1)(a)(ii) of the Regulations which removes exempted development status only where works involve "material widening of a means of access ...".
- The Council's decision effectively interprets any widening, regardless of how minor, as automatically constituting "material" widening which is incorrect and renders the word "material" meaningless and imposes an unreasonable regulatory burden for de minimis works that have no meaningful planning implications.
- The proper interpretation of "material" requires consideration of the scale, impact and context of the proposed widening.
- The ordinary meaning of "material" denotes something significant, substantial, or important. A 21cm increase cannot reasonably be characterised as substantial or significant in the context of a vehicular entrance and when the resulting width remains modest at 3.1m.
- The proposed width is below the development plan standard width for vehicular entrances of 3.5m.

- In case ABP-320023-24, an inspector considered the widening of an entrance from 3.0m to 3.6m (a 60cm increase) as “minor in nature”.
- The purpose of Article 9(1)(a)(ii) of the Regulations is to protect public safety and traffic flow on public roads by controlling significant alteration to vehicular access which is not engaged by a minor 21cm adjustment to the existing entrance.
- Requiring planning permission for such a minimal alteration is disproportionate and contrary to the intent of the exempted development provisions.
- The road is a quiet residential street with minimal traffic volumes and the proposal will improve vehicular access and safety.
- The proposal is so minor as to be virtually imperceptible to the casual observer and will have no discernible impact on the streetscape.
- The proposal involves no change in the function or use of the entrance which will not be intensified.
- The Councils interpretation effectively treats any widening as “material” regardless of scale and adopts an overly broad construction that undermines the purpose of the exempted development regime and imposes unnecessary regulatory burden for truly minor works.
- The legislature’s deliberate choice to use the phrase “material widening” rather than simply “widening” must be given proper effect and its inclusion as a qualifier clearly indicates that some widening may be non-material and therefore not caught by the restriction. The Board must give meaning to every word used by the legislature, and this requires distinguishing between material and non-material widening based on the scale of the proposed works.
- The Councils decision fails to provide a rationale for why the proposal constitutes “material” widening, fails to consider the de minimis nature of the proposal, fails to apply any proportionality test and fails to distinguish between material and non-material widening.

- The proposed widening of 21cm is “not material” within any reasonable interpretation.
- The development falls within Class 5 of exempted development provisions.
- The restrictions in Article 9(1)(a)(ii) do not apply as the widening is not material and the Council's decision represents an overly restrictive interpretation.

6.2. Planning Authority Response

None received.

7.0 Statutory Provisions

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

Section 2 (1) of the Act states: - In this Act, except where the context otherwise requires -

“development” has the meaning assigned to it by Section 3,

‘works’ includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal’

Section 3(1) of the Act states -

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

Section 4 (1) sets out development that is exempt from requiring planning permission and includes subsection (h) development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the structure or of neighbouring structures;

Section 4(2) of the Act provides that the Minister may, by regulations, provide for any class of development to be exempted development.

Section 4(3) states A reference in this Act to exempted development shall be construed as a reference to development which is—

- (a) any of the developments specified in subsection (1) or (1A), or
- (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act.

Section 4(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.'

7.2. Planning and Development Regulations, 2001 (the Regulations)

Article 6 (1) of the Regulations states:

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.

Part 1 of Schedule 2 sets out exempted development to which Art 6(1) refers and includes the following of relevance:

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.

Conditions and Limitations: 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.

Article 9(1)(a) states that development to which article 6 relates shall not be exempted development, if the carrying out of such development would, inter alia:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
- (ii) consist or comprise the formation, laying out or material widening of the means of access to a public road the surface carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of a traffic hazard or obstruction to road users.

7.3. Relevant Coimisiún Referral Decisions

7.3.1. I confirm that the Coimisiún's database of referral cases has been referenced and I note the following relevant referrals:

- ABP-304340-19: In September 2019 the Board decided that the proposed widening of a vehicular entrance from 3.6 metres to 4.2 metres, to the front of 14a Cremore Villas, Dublin 11, is development and is not exempted development. The Board considered the proposed widening of the vehicular entrance onto Cremore Villas, which is a public road and the surfaced carriageway of which exceeds four metres in width, would be a material widening, and would, therefore, not be exempted development by reason of the restriction on exemption set out in Article 9 (1)(a)(ii) of the Planning and Development Regulations, 2001, as amended.
- PL05E.RL2917: In July 2012 the Board decided that, inter alia, the alterations to an entrance onto the N14 national road serving a house at Mulnagung, Ballindrait, County Donegal is development and is exempted development. A material widening of the entrance was declared not to have taken place in this case;
- ABP Ref. PL06D.RL.2671: In May 2010 the Board decided, inter alia, that the widening of the opening to the entrance by an additional one metre at Mount Alverno, Nerano Road and Sorrento Road, Dalkey, County Dublin is development and is not exempted development;

7.4. Environmental Impact Assessment (EIA) Preliminary Examination

- 7.4.1. Schedule 5, Part 1 and Part 2 of the Planning and Development Regulations, 2001 (amended) sets out specified development for which EIA is mandatory and development which requires screening for EIA. The proposed development does not fall within a class of development for the purposes of EIA. Having regard to the limited nature and scale of development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.5. Appropriate Assessment

- 7.5.1. The site is located approximately 2.2km west of Rockabill to Dalkey Island SAC (Site Code: 003000) and approximately 3km southwest of Dalkey Islands SPA (Site Code: 004172). Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, it is concluded that no Appropriate Assessment issues arise as the development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Assessment

8.1. Preliminary Assessment

- 8.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the proposed widening of a vehicular entrance from 2.89 Metres to 3.1 metres in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so falls within the scope of exempted development.

8.2. Is or is not development

- 8.2.1. The first question that must be determined is whether the widening of a vehicular entrance is or is not development. In Section 2 of the Planning and Development Act 2000, as amended, the definition of "works" includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal. I

consider that the widening of a vehicular entrance would constitutes demolition (of part of an existing wall) and alteration to the existing entrance and therefore comes within the definition of works.

- 8.2.2. As per section 3(1) of the Act, "development" is the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. I am satisfied that the widening of a vehicular entrance is works, and that such works would be carried out on land and therefore constitute "development" as per section 3(1) of the Planning and Development Act 2000, as amended. I note that the Planning Authority and the referrer do not dispute that the works constitute development.

8.3. Is or is not exempted development

- 8.3.1. The Planning Authority considered the proposed widening of the vehicular entrance from 2.89m to 3.1m would be contrary to Article 9(1)(a)(ii) of the regulations as the roadway of Killiney Gate is in excess of 4m in width and the proposal would therefore not be exempted development.
- 8.3.2. The referral states that the proposal is exempted development under Section 4(1)(h) of the Act and Class 5 of Part 1 of Schedule 2 of the Regulations. Section 4(3) of the Act states that a reference to exempted development shall be construed as a reference to development which is (a) any of the developments specified in subsection (1) or (1A), or (b) development which, having regard to any regulations under subsection (2), is exempted development for the purposes of this Act. I consider the widening of the vehicular entrance in the subject case comes within the provisions of Class 5 of Part 1 of Schedule 2 of the Regulations in that it results in the alteration, within or bounding the curtilage of a house, of a gateway and wall of brick as specified and that it does not exceed the conditions and limitations set out. I therefore do not consider the proposal can be exempted development under the provisions of Section 4(1)(h) of the Act and I am of the opinion that the works are exempt under Class 5 of the Regulations.

8.4. Restrictions on exempted development

- 8.4.1. Article 9 of the Regulations states that development of a class specified in Column 1 and Part 1 of Schedule 2 shall not be exempted development for the purposes of the

Act if certain conditions are met. Article 9(1)(a) states that development to which article 6 relates shall not be exempted development, if the carrying out of such development would, inter alia:

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act;
- (ii) consist or comprise the formation, laying out or material widening of the means of access to a public road the surface carriageway of which exceeds 4 metres in width,
- (iii) endanger public safety by reason of a traffic hazard or obstruction to road users.

- 8.4.2. The Planning Authority concluded that the proposal involves the widening of the vehicular entrance from 2.89m to 3.1m and that the works would be contrary to Article 9(1)(a)(ii) of the regulations as the roadway of Killiney Gate is in excess of 4m in width. Having reviewed the file and inspected the site I am satisfied that the width of the road at Killiney Gate is in excess of 4m and I note that the referrer does not dispute this.
- 8.4.3. In relation to Article 9(1)(a)(i) I note that the site contains an established dwelling and that there is no recent planning history relating to the site. I am not aware of any condition which the development would contravene and I am satisfied that the proposal is not restricted by Article 9(1)(a)(i).
- 8.4.4. In relation to Article 9(1)(a)(iii), I note the location of the proposal and the extent of development proposed and I do not consider the development would endanger public safety by reason of a traffic hazard or obstruction to road users. I note the PA did not raise this as a matter for consideration.
- 8.4.5. The matter for consideration therefore relates to whether or not the widening of the existing entrance by 21cm is considered a material widening of the entrance and whether or not this would be of significance to be material in planning terms. In this regard, I note the site is located at the end of a cul de sac with the entrance itself located at the end point in the cul de sac. There is an existing footpath and dropped kerb adjacent to the vehicular entrance and a low brick wall defines the front

boundary on either side of the opening which provides for the vehicular entrance with no gate in place.

- 8.4.6. I note the case made in the referral that the inclusion of the word ‘material widening’ in Article 9(1)(a)(ii) rather than just ‘widening’ indicates that some widening may be non-material and that it is necessary to distinguish between material and non-material widening based on the scale of the proposed works.
- 8.4.7. I note that the Board decided in case reference ABP-304340-19 that the proposed widening of a vehicular entrance from 3.6 metres to 4.2 metres (an increase of 0.6m) onto Cremore Villas, which is a public road and the surfaced carriageway of which exceeds four metres in width, would be a material widening, and would, therefore, not be exempted development by reason of the restriction on exemption set out in Article 9 (1)(a)(ii).
- 8.4.8. The referrer argues that the proposed width is below the development plan standard width for vehicular entrances of 3.5m and that in case ABP-320023-24, an inspector considered the widening of an entrance from 3.0m to 3.6m (a 60cm increase) as “minor in nature”. I note that the cited case refers to the assessment of a planning application rather than an assessment relating to a Section 5 referral and as such I do not consider it relevant in the context of this assessment relating to whether works are exempted development. Furthermore, I consider that the Development Plan standard width for vehicular entrances of 3.5m is relevant to the consideration of a planning application rather than interpretation of exempted development provisions.
- 8.4.9. However, I note the case made by the referrer that the proposal is so minor as to be virtually imperceptible to the casual observer and will have no discernible impact on the streetscape and that the proposal involves no change in the function or use of the entrance which will not be intensified. Having regard to the extent of the proposed increase in width of 21cm, and to the characteristics of the referral site as outlined above, I do not consider the widening would be material in planning terms by virtue of the fact that the appearance of the entrance before and after the development is likely to be appear the same, the increase in width of 21cm is unlikely to be obvious to a casual observer, and the entrance is of sufficient width to accommodate a single vehicle only both before and after the works. Having regard to

the above I do not consider the widening of the entrance from 2.89 metres to 3.1 metres is a material widening. I therefore consider the proposed works are exempted development.

9.0 Recommendation

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

A question has arisen as to whether the proposed widening of a vehicular entrance from 2.89 Metres to 3.1 metres is or is not development or is or is not exempted development:

AND Kay Kelly requested a declaration on this question from Dun Laoghaire Rathdown County Council and the Council issued a declaration on the 11th day of June, 2025 stating that the matter was development and was not exempted development:

AND Kay Kelly referred this declaration for review to An Coimisiún Pleanála on the 16th day of June, 2025:

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

- (a) Section 2(1) of the Planning and Development Act, 2000, as amended,
- (b) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(h), Section 4(2) and Section 4(3) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and Article 9(1)(a) of the Planning and Development Regulations, 2001, as amended,

(e) Parts 1, 3 and 4 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(f) the pattern of development in the area:

AND An Coimisiún Pleanála has concluded that the proposed widening of a vehicular entrance from 2.89 Metres to 3.1 metres is development and is exempted development.

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 widening of a vehicular entrance from 2.89 Metres to 3.1 metres is development and is 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.

Bernadette Quinn
Planning Inspector

28th October 2025