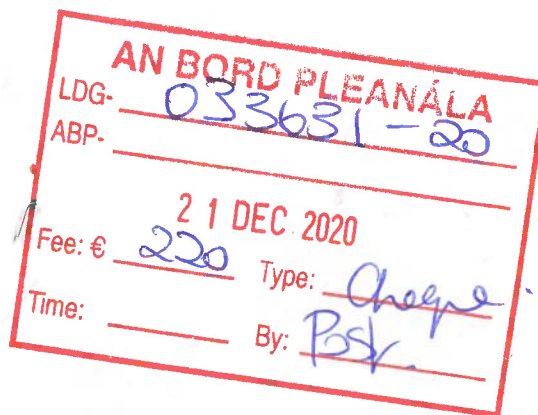


The Secretary
An Bord Pleanála
64 Marlborough St.
Dublin 1



Date: 18.12.20

Referral By: Timo Barry, 39 Castlepark Road, Dalkey, Co. Dublin

Agent: Jonathan O'Toole, OTE Solutions, Dublin Road, Arklow, Co. Wicklow

Re: Section 5 Declaration on whether the conversion of the ground floor retail unit at No. 45 Ferrybank, Arklow, Co Wicklow to 1 No. Apartment is or is not development and is or is not exempted development.

Wicklow Co Council Exemption Ref: 68/2020

A Chara,

On behalf of our client, Mr Timo Barry, we request a review by An Bord Pleanála on a Section 5 declaration made by Wicklow Co Council on whether the conversion of the ground floor retail unit at No. 45 Ferrybank, Arklow, Co. Wicklow to 1 No. Apartment is or is not development and is or is not exempted development.

Please find enclosed the following documentation for the validation of this referral

- Fee of €220
- Copy of Wicklow Co. Council's decision
- Set of drawings

Wicklow Co Council Decision

Wicklow Co Council determined that the conversion of the ground floor retail unit is development but is not exempted development.

Having reviewed the planners report under exemption ref 68/2020, the applicant believes that the judgement by the council is incorrect and as a result, requests a referral on the decision from An Bord Pleanla that the proposed works to the ground floor retail unit at No. 45 Ferrybank to one No. Apartment is exempted development under Article 10 (Amendment) (No.2) under the Planning Development Regulations 2018.

Planning & Development (Amendment) (No.2) Regulations 2018

Article 2 of these Regulations amends Article 10 of the Principal Regulations, by inserting a new sub-article, to provide that development consisting of the change of use, and any related works, from an existing specified use class to residential use, in certain circumstances and subject to conditions and limitations, is exempt from the requirement to obtain planning permission

The proposal meets the conditions as follows:

- *Article 10(6)(b) – The change of use to residential use from class 1 (shop)*
 - The proposal meets this criterion as it operated as a shop.
- *Article 10(6)(c)(i) – The structure concerned was completed prior to the making of the 2018 regulations*
 - The existing structure is over 100 years old. The planners report is mistaken in its determination that the structure was never completed in full.
- *Article 10(6)(c)(ii) – The structure concerned has at some time been used for the purpose of its current class 1*
 - The existing unit operated has a shop for more than 50 years.
- *Article 10(6)(c)(iii) – The structure concerned has been vacant for over two years*
 - The shop has been vacant for 9 years.
- *Article 10(6)(d)(i) - The change of use and related works must occur between the 8 February 2018 and 31 December 2021.*
 - The proposed works will occur before the 31st December 2021.
- *Article 10(6)(d)(ii) & (iii) In general, the development works to the building must primarily be works which only affect the interior of the building. Some limited works to the external appearance of the structure are permitted, but they must be consistent with the character of the structure and of neighbouring properties.*

- The proposed works to the elevations and in particular the shopfront is consistent with the fenestration details and architectural character of the existing structure and streetscape.
- In relation to the proposed front boundary wall and railing, it is proposed to erect a wall and railing to the same design and standard as the adjoining property at No 46 & 48 Ferrybank.



Under Exemption application 68/2020, the planner deemed that *“the provision of an external wall and railing would it is considered materially affect the external appearance which would make it inconsistent with the character of the structure, and of the structure on the opposite side of the junction to the north”*

- Please note that the proposed wall and railing enclosure to the front of the subject property is consistent with No 46 & 48 Ferrybank directly to the south of the subject property.
- Please note that the planner comments that it is inconsistent with the structure to the north on the opposite side of the junction is not comparable as there is a road junction separating them so there is no continuity to the streetscape at this location. It should also be noted that the planning status and history of the buildings to the immediate north of the subject site is not helpful for comparing planning standard precedence.
- Please see the attached land registry map highlighting in green that the majority of residential properties on Ferrybank from the Wheelie Pump corner to Stringer’s Lane all have enclosed front gardens with wall and railing boundaries. All the houses to the west

28,29,30,31,32,33,34,35,36,38,39,46,48,52,56,58 to the north and south of the subject site all have a wall and railing front enclosure.

- There are 51 properties between the Wheelie Pump corner and Stringer's lane on Ferrybank of which 41 are residential. **80% of these residential properties have front gardens enclosed by a wall and or railing boundary.**



- The additional information above clearly shows that the provision of an external wall and railing would **NOT** materially affect the external appearance of the subject site and is wholly consistent with the character of the as-built environment along the entirety of Ferrybank.

- *Article 10(6(d)(iv) Generally, works cannot be carried out to a ground floor of a building that conflicts with an objective of the relevant Local Authority development plan or local area plan for such ground floor to remain in retail use.*

- The site is zoned “*Town Centre*” under the current Arklow Local Area Plan 2018-2024 but it lies outside the designated “*retail core area*” of Arklow and so it does not conflict with any objective of the county or local development plan for a ground floor to remain in retail use.

Under ABP-304765-19, An Bord Pleanála confirmed that in relation to the Arklow Local Area Plan, “*there is no stated policy in the Development Plan or LAP for existing ground floor shop uses within the Town Centre to remain in retail use. This is reflected in the wording of the Town Centre zoning objective for the site.*”

Under ABP-304765-19, An Bord Pleanála approved that the conversion of a ground floor retail unit to residential use within the town centre of Arklow was exempted development having regard to Article 10 (6)(d)(iv) and (vii) of the Planning and Development regulations, 2001, as amended.

- It should be noted that Ferrybank is predominately residential and that the subject building has been vacant for over ten years with no interest or demand for its commercial use.
- *Article 10(6(d)(v) No more than nine individual housing units can be provided in any building.*
- The proposed is for one residential unit.
- *Article 10(6(d)(vi) Dwelling floor areas and storage spaces shall comply with minimum floor area requirements*
- Refer to Design Standards for New Apartments’ DoECLG, March 2018 below.
- *Article 10(6(d)(vii) Rooms for use as habitable rooms shall have adequate natural lighting*
- The proposed apartment design and layout achieves this requirement.
- *Article 10(6(d)(viii) Works to a protected structure shall not be permitted unless it has been confirmed by the planning authority that the works will not affect the character or elements of the structure, which have been identified for protection.*
- The building is not a protected structure.

➤ *Article 10(6(d)(ix) any development must not contravene a condition attached to a planning permission relating to the building.*

- The proposal does not contravene a condition attached to the planning permission.

➤ *Article 10(6(d)(x) Works shall not be permitted in a number of limited areas, such as areas of special planning control and areas to which special amenity area orders relate and within certain perimeter distances of certain establishments where flammable/ toxic or chemical substances are stored.*

- The building is not located in an area of special amenity.

➤ *Article 10(6(d)(xii) Works for the provision of on-site waste-water treatment and disposal systems (i.e. septic tanks) are not exempted development.*

- The building is connected to mains services

➤ In relation to concerns raised under Exemption Ref:68/2020 which stated that “ *the erection of a new wall and railing to the front of No. 45 Ferrybank would be contrary to the restriction set out under Article 9(iv) of the Planning and Development Regulations 2001(Amended) as it would result in “ the construction, erection, extension or renewal of a building on any street so as to bring forward the building, or any part of the building beyond the front wall of the building on either side”*, please note the following which highlights that the proposed wall is **NOT** contrary to article 9(iv)

➤ The works above refers to the construction of a building or extension. The proposal is for a minor wall and railing to the same standard and building line of the as built wall to the adjoining property.

➤ The proposed front wall is to be constructed in accordance with the building line of the adjoining property at No 46 Ferrybank and so does not bring forward the wall beyond the front wall of the neighbouring building. The building line of the 44 Ferrybank cannot be considered as there is a road junction between the properties and a discontinuity in the streetscape.

➤ It should be noted that if the subject property was existing residential, the proposed front wall would be considered exempted development within the meaning of Schedule 2 Part 1. Class 5 of the Planning and Development Regulations 2001.

Design Standards for New Apartments' DoECLG, March 2018.

In relation to room sizes, please find enclosed our apartment floor area standards table confirming that the proposed apartments all achieve the minimum standard requirements as set out in the *Sustainable Urban Housing: Design Standards for New Apartments' DoECLG, March 2018*.

Please note that the proposed units are dual aspect providing plenty of natural light to the habitable rooms.

Title: Residential Floor Area Standards

Minimum Overall Apartment Floor Area:	Requirement (m2)	No 45 2 Bed Unit
Studio	37	
One Bedroom	45	
Two bedroom (3 person)	63	63
Two bedroom (4 person)	73	
Three bedrooms	90	

Minimum aggregate floor areas for living/dining/kitchen rooms	Width of living/dining room (m)	Aggregate floor area of living / dining / kitchen area (m2)	2 Bed Unit
Studio	5	30	
One Bedroom	3.3	23	
Two bedroom (3 person)	3.6	28	3.6/28
Two bedroom (4 person)	3.6	30	
Three bedrooms	3.8	34	

Minimum bedroom floor areas/widths	Minimum width (m)	Minimum floor area (m2)	2 Bed Unit Unit (m2)
Studio	4	30	
Single Bedroom	2.1	7.1	2.7/9
Double bedroom	2.8	11.4	3.55/14
Twin bedroom	2.8	13	

Minimum aggregate bedroom floor areas	Requirement (m2)	2 Bed Unit
One Bedroom	11.4	
Two bedroom (3 person)	$13 + 7.1 = 20.1$	23
Two bedroom (4 person)	$11.4 + 13 = 24.4$	
Three bedrooms	$11.4 + 13 + 7.1 = 31.5$	

Minimum storage space requirements	Requirement (m2)	2 Bed Unit
Studio	3	
One Bedroom	3	
Two bedroom (3 person)	5	5*
Two bedroom (4 person)	6	
Three bedrooms	9	

* = storage includes cloakroom, store rooms and built in bedroom wardrobes

Minimum floor areas for private amenity space	Requirement (m2)	2 Bed Unit
Studio	4	
One Bedroom	5	
Two bedroom (3 person)	6	19
Two bedroom (4 person)	7	
Three bedrooms	-	

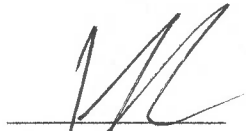
Rebuilding Irelands "Bringing Back Homes" manual states that,

"The exemption applies to existing completed commercial buildings, such as shops and offices, which have been in use for commercial purposes but which have been vacant for a period of two years prior to the proposed works commencing and are available and suitable for housing. As envisaged in Rebuilding Ireland, therefore, the regulations focus on bringing existing vacant commercial units back into use for residential purposes thereby facilitating increased housing supply."

Please note that 80% of the residential properties on Ferrybank have front gardens enclosed by a wall and or railing boundary.

The proposal submitted is compliant with all limiting conditions of the exempted development regulation 2018 and so we ask that it be determined that the proposal is an exempted development.

Yours sincerely,



Jonathan O'Toole

BA. BSc. Civil Tech. IEI.



Comhairle Contae Chill Mhantáin Wicklow County Council

Forbairt Pleanála agus Comhshaol
Planning Development and Environment

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

26th November 2020

OTE Solutions,
Dublin Road
Arklow
Co Wicklow

Agair 23rd Dec.

£220

23rd Dec.

RE: Declaration in accordance with Section 5
of the Planning & Development Acts 2000 – 2011

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the
Planning & Development Act 2000 in respect of the following:

Exemption Ref. No: 68/2020
Applicant: Timo Barry
Nature of Application: Conversion of ground floor retail unit
Location: 45 Ferrybank, Arklow

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

Siobhán O'Brien

ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Encl.

REG POST



Comhairle Contae Chill Mhantáin Wicklow County Council

**Forbairt Pleanála agus Comhshaol
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DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000.

**Applicant: Timo Barry
Location: 45 Ferrybank, Arklow**

DIRECTOR OF SERVICES ORDER NO. 1605/2020

A question has arisen as to whether or not conversion of the ground floor retail unit at No 45 Ferrybank, Arklow is or is not exempted development.

Having regard to:

- The details submitted with the Section 5 Declaration
- Arklow Town Council PRR 05/90 & Arklow Town Council PRR 09/31
- Sections 2, 3 and 4 of the Planning & Development Act 2000 (as amended)
- Article 9 & 10 (6) of the Planning & Development Regulations 2001 (as amended).
- "Sustainable Urban Housing: Design Standards for New Apartments – Guidelines for Planning Authorities – March 2018"
- Arklow and Environs Local Area Plan 2018 – 2024.
- An Bord Pleanála Reference ABP -304765-19

Main Reasons with respect to Section 5 Declaration:

- (i) The change of use from retail/restaurant to residential use is considered a material change of use, and the external and internal works to facilitate the residential use would also constitute works, and is therefore "development" as defined in Section 3 of the Planning & Development Act 2000 (as amended)
- (ii) Having regard to the provisions of Article 10 (6) it is considered the proposed change of use would not meet the provisions of this exemption as –
 - The provision of external wall and railing would it is considered materially affect the external appearance which would make it inconsistent with the character of the structure, and of the structure on the opposite side of the junction to the north.
- (iii) The erection of a new wall and railing to the front of No 45 Ferrybank would be contrary to the restriction set out under Article 9 (iv) of the Planning & Development Regulations 2001 (as amended) as it would result in *"the construction, erection, extension or renewal of a building on any street so as to*

bring forward the building, or any part of the building, beyond the front wall of the building on either side"

The Planning Authority considers that conversion of the ground floor retail unit at No 45 Ferrybank, Arklow is development but is NOT exempted development.

Signed: *Sidhan O'Brien*
ADMINISTRATIVE OFFICER
PLANNING DEVELOPMENT & ENVIRONMENT

Dated 26th November 2020