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The Toll House,  
Dublin Road Street,  
Leixlip,  
Co Kildare.

23<sup>rd</sup> March 2021

Your Ref: ED21/0002

FAO, Senior Planner, Eoin Burke, SDCC.

**Re: My Request whether particular matters at the site, Roseville, Leixlip Road, Lucan Demesne, Co Dublin, constitute development or not, or exempted development or not. Your request for Further Information.**

Dear Mr Burke,

I have received the letter dated 15/2/2021 sent me on your behalf with a request for Further Information.

My initial request for a Section 5 Declaration was made by registered letter dated 30/12/2020. This was augmented by an emailed letter of the following day, 31/12/2020, on account of another perceived development installed by the owner/occupier and or agent shortly after I drafted the principal letter. Both communications were accompanied by jpegs and a related video which showed the 'before' situation.

ALL of the matters I cited were undertaken, for practical purposes, shortly after the development, the subject of a grant of permission, SD17B/0123, had been effected. The permission was in accordance with the plans and particulars cited. Among these was an undertaking by the applicant's agent that "the development won't have adverse impact on the proposed Natural Heritage Area". What transpired certainly has had an adverse impact and it continued to worsen.

The general site had been the subject of a complaint of alleged Unauthorised Development which I made to the Council by letter dated 30/11/2020, received by SDCC's Planning Department on 2/12/2020. This complaint included more photos, including a photograph of the north-face of the escarpment taken in November, 2019 – a 'before' aspect - and again in November 2020. A Warning Letter, albeit in incomplete compliance with the Act, issued to the owner/occupier on 15/1/2021. I received a copy after I requested it sometime later.

I have not been informed of any response made, if any, or even if any response has been made, by the owner/occupier to the Warning Letter within the time the planning authority allowed, ie, by 16/2/2021, nor of any site investigation, if any, carried out by the planning authority on foot of my complaint letter of 30/11/2020. I have enquired for same on the 3<sup>rd</sup> inst.

I made it clear in my earlier correspondence that I am not, or never have been, the owner or occupier of the property the subject of my Section 5 Request and that I was unable to provide measurements of any of the matters cited by me. And, given that I have referred to it as unauthorised development, one hardly expects the defaulter to welcome a request to allow me access. That remains my position.

Section 6 of the principal Act states that "A planning authority and the Board shall each have all such powers of examination, investigation and survey as may be necessary for the performance of their

functions in relation to this Act or to any other Act.” Section 152 provides similar powers of inspection to the planning authority in respect of Unauthorised Development. The legislature thus envisaged that the Council as planning authority will carry out whatever measurements are necessary to enable it to make a determination, if measurements are an essential requirement for decision-making.

**The full schedule of the matters the subject of my request (at the time I made it) is:**

- 1) The timber building (shed?) with window(s) and door constructed contiguous to the eastern boundary of the site *and within 30m of the River Liffey's edge.*
- 2) The pile of cut sawn timber up against the northern face of the aforementioned shed, *also nearer still to the River Liffey's edge.*
- 3) The Shomera brand habitable insulated room or rooms perched on the top of the escarpment down to the river. The structure has two windows facing north into the garden of the Toll House on the north bank of the Liffey, already mentioned as a protected structure in the Co Kildare inventory of protected structures. The structure has a door facing the main house, windows and is situated forward of the front face of the main house.
- 4) The macadam roadway cum hard surface carpark for four car spaces or more created from the site entrance on the Leixlip to Lucan road outside the protected-structure gate piers to the top of the escarpment down to the river, as far as it concerns me only in so far as it appears to have no soakpit to temporarily store surface water. *Is it development and/or exempted development if it has no soakpit? I note that you are unclear if what has been constructed meets Class 6 of the Exempted Development regulations. It is not unclear to me give the owner/occupier admits to providing 4 car parking spaces; There never had been such number previously and there was no hard standing, just compacted ground.*
- 5) The substantial destruction of the outstanding natural character and amenity of the Liffey Valley which fronts the northern edge of the site from the Liffey Bridge eastwards over the entire site. *The owner/occupier and agents have continued removing ground cover and trees. I shall provide more photos if I have them of 'before' and after of this copse of wooded area. The wooded area extended high above the plateau on which the house sits.*
- 6) A substantial set of timber steps to go with a conspicuous hand rail, including the interruption of the ground cover and trees which had hitherto been there over the full length of the steps (staircase) from the top of the escarpment down to the top of the riverside containment wall. They are not predominantly a fence; rather their primary use is as a staircase; the rail is probably a safety feature.

The first five matters, above, were listed on page 2 of my registered letter of 30/12/2020; the sixth item in my email of 31/12/2020 to the Planning Department. There are, and were, no other matters the subject of my reference. All were, I submit, known to the Planning Department from that time or at sometime thereafter reinstated as a formal Section 5 request.

I propose to consider each of these matters, 1 to 6, in conjunction with the requests for further information sought of me in your letter of 15/2/2021.

**First some preliminary matters which I contend ought be mentioned:**

- A. The agent for the occupier /owner misrepresented the site of the planning permission sought in SD17B/0123 by including the projected area of the wildly wooded escarpment down to the riverside wall as belonging to the site and to the applicant. For convenience, I took this at face

value, while noticing that the site plan did not distinguish the wooded escarpment from the plateau above it. My contention always has been that the escarpment and maybe more, being part of the Liffey Valley, did not belong with the Roseville property, which was originally the Gate Lodge (vide maps), south of the private road which encircled it. I have been since informed that my contention is confirmed by a previous resident of the property. *Moreover, even if the escarpment is found to belong to the Roseville property, ownership does not convey a right to go against the provisions in the Development Plan.*

- B. You have excluded my residence (since 1991), the Toll House, Leixlip, as a protected structure close to the site, which it is. Your appraisal is, I submit, out of order in this respect. The Toll House garden – it's only private open space directly faces the river frontage at the foot of Roseville. The Toll House is on the Protected Structures' list for Co Kildare thus:

RPS No: B11-44, NIAH Ref: 11804076, in Leixlip townland, 6" Map sheet No. 11.

By law, everybody is required to have regarded for the welfare of protected structures: it does not exclude SDCC for the reason that it is not within their administrative area. But in this case its curtilage is. And the Toll House has suffered damage and substantial loss of its value by the negligent, unilateral removal of the wooded area from the Roseville Site down to the river and the vista created from the living room of the Roseville property by the insertion of a wide timber staircase and rail which facilitates gross encroachment and diminution almost entirely of the privacy of our sole garden and private space, a half-acre gross site, measuring about 50m riverside frontage and about the same from riverside to northern boundary.

- C. The description of the Development the subject of my Declaration request is not that cited by your official. This mis-description has been repeated.
- D. There is a Development Plan extant in the County. Section 15 of the principal Act imposes a general duty of the planning authority to secure the objectives of the development plan. While your planning appraisal dwells on the exempted development provisions of the Act and the exclusions from same, by omitting reference aspects of the Development Plan which have a bearing on the matters for which I sought a Declaration, I contend there is a lack of balance in your report. Moreover, the quest for measurements which you seek of me may be redundant.

**Taking each matter in my request in turn:**

1. The Timber Shed

According to the aforementioned planning application and ensuing petition, this, the sole added shed, is in the front garden of the house, not in the back garden. There are already two old sheds in the back garden of the house, which are not visible to me; they abut the masonry wall bounding the street/road. I don't know what the combined area of these three sheds are or what amount of private space to the rear and side of the house exists for the exclusive use of the residents. The absence of the hitherto existing wooded copse on the embankment and above the level of the grassed plateau which comprises the principal site (cut down by agents for the owner/occupier; I have reported with photo of them in action), means that the shed is now "in our face" at a height.

I observe that the Minister may make regulations which "would not offend against principles of proper planning and sustainable development". I contend that the regulations he has made are essentially aimed at housing schemes or sole houses on the flat with their

environment, not two or three storeys above neighbouring property, whether protected structures or not.

The timber shed is likely to breach a regulation in the Development Plan which precludes development of any kind within 30 metres of the river Liffey's edge. *I presume it could be located anywhere else on the plateaued site, the other criteria being met, provided it was more than 30m from the river edge.*

2. The Pile of Sawn Timber Planks

This is an eyesore – which is probably why it has been placed where it is by the owner/occupier. It is “in our face” at the height it is, replacing the wooded copse of wilderness which made up the south facing escarpment and above it of this premises. I have no idea where its future lies; I note that the aerial photography shows several piles of logs, lying against walls, etc, which I presume are the remains of all the timber cut for the owner/occupier on the site.

3. The Shomera brand habitable, insulated room or rooms

This structure was manufactured, sold and installed by Shomera Company for the purposes of human habitation, including use as office working space. While the occupier/owner of Roseville applied for and obtained planning permission (opus cit) which included a ‘granny flat’ within the house, no permission was sought for a separate ‘grandfather’ flat which may be intended in this instance as the parents of one of the owner/occupiers are a separated couple.

This structure is overlooking the curtilage of the Toll House protected structure; it is overbearing and incongruous in the hitherto wooded natural setting. It matters not what its size is for the purposes of determining its ineligibility as an exempted development. The placing of this structure also entailed the cutting down of trees cover at the top of the escarpment which were to be retained and enhanced. Some of the white/yellow butts of the cut trees are visible in the photographs. There is no provision for its maintenance of the structure other than to enter the wooded escarpment to the river.

*I have a jpeg of the building taken from my garden door of this building lit up (one dated 26/12/2020 ca 4.30pm). It has been lighted several times indicating its use for habitation, as recently as Sunday, 21<sup>th</sup> March, 2021.*

*If the Architectural Conservation Officer has advised on the presence of some protected structures, is it not for that person to assess the impact of the in situ development on these structures in the course of your appraisal? And to have regard for the provisions of the Development Plan for the Liffey Valley, which rules out development of every kind within 30m of the river's edge?*

4. The macadam hard surface providing for four or more cars

This macadam surface has been recently installed without any sign of a planning application; it seems to be in partial substitution for a permeable gravelled or compacted soil surface. I do not know the area of it, but three cars are regularly seen parked on it at an elevated level from the Toll House garden and yard: I believe they are the husband and wife's two cars and the resident mother-in-law's car. It isn't clear from aerial views whether the tarmacked area encroaches on the wooded escarpment or that part which

constituted the Liffey Valley. *I have mentioned previously that my principal concern is that there is no augmentation of instant rain water access to the Liffey from the site and that any hard surfaced area has an accommodating soak pit, despite its proximity to the Liffey (as I was required to provide with a recent grant of permission by KCC to enclose a hitherto open yard.)*

5. The substantial destruction of the outstanding natural character and amenity of the Liffey Valley which fronts the northern edge of the site from the Liffey Bridge eastwards over the entire site.

This is evident from the before and after photographs I have supplied. It was the council's function to properly evaluate the aforementioned planning application put before it by the occupier/owner in respect of the provisions of the Development Plan for the Liffey Valley. It didn't do so, but took the applicant's agent's word that it would not adversely affect the high amenity area. It has. That undertaking is a condition of the permission; the undertaking does not apply solely to exempted development but to all development in breach of any condition of the planning permission. It is a fact that almost all of the ground is now visible on account of the decimation the owner/occupier and his agents have undertaken on the escarpment.

6. The substantial set of timber steps with an accompanying hand rail, including the interruption of the ground cover and trees

The steps, of wide, sawn planks, were set into the embankment and accompanied a conspicuous handrail to one side of them, the assembly taking a diagonal course, cutting through the vegetation and involving of necessity a breach in the wooded area. There are already steps of ancient provenance at one or other end of the site; in neither instance do they involve a view over the Toll House property. This development is not what Class 5 depicts, predominantly a fence or wall; it is predominantly a staircase, from the plateau down to the top of the riverside wall. A concrete path runs immediately inside the riverside wall, which is topped with an ancient wire fence. These were created by the previous owner, Jim Downey and spouse, before 1991; Mr Downey was a fencing contractor and there were two children living in the Gate Lodge (Roseville) then. The steps or staircase are aligned with the large window in the livingroom of the house and allow an unimpeded view through what was dense, random, wooded area, over the Toll House (sole) garden on the north side of the river. They are accompanied by the removal of all wood or timber obtruding into the space they take up.

This letter of response is accompanied by three or more Powerpoint Presentations which will be emailed at about the same time to the planning authority.

The Planning Department is again reminded that a complaint alleging unauthorised development was sent by me to that Department about this site and received by the Department on 2<sup>nd</sup> December, 2020. The Department had ample opportunity to investigate the development as it proceeded from its essentially prior-state and to order it to halt had it chosen to do so.

Yours sincerely,

JOHN COLGAN

