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The Toll House  
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Leixlip

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

Co Kildare  
W23 X0V5  
LDG: 039022-21  
A25<sup>th</sup> April 2021  
26 APR 2021  
Fee: € 220 Type Cheque  
Time: 17-03 By: Herd

Re: Referral for a review by the Board of a decision made by South Dublin County Council (SDCC) on my (John Colgan's) Section 5 Request which decision was conveyed to me, the applicant, John Colgan, of the above address, by email dated 13/4/2021 about 1.02pm, on foot of my Section 5 Request application sent by registered post on 30/12/2020 at about 3.45pm to the Council, and augmented by my email the following day, 31/12/2020 at about 11.22pm in respect of another element of the development (a set of timber steps).

I am making this application because there were significant errors and omissions in SDCC's consideration of my Request, as well as confusion and ambiguity in their decision in the matter which I would like to Board to consider in its review.

The site the subject of the matter is Roseville, Leixlip Road, Lucan Demesne, Co Dublin, *in the administrative county of SDCC*. This is the address used by the previous owners/occupiers. It has not been known as Roseville, Salmon Leap, Leixlip, Co Kildare, an address used by the Council; there is no such place. It's unacceptable that a location that is incorrect and that I did not use in my section 5 application (*and in a complementary letter dated 30/11/2020 alleging unauthorised development on this site*) should be unilaterally applied to my references by SDCC. To affirm my contention, SDCC has listed the gate piers to the premises, a one-time gate lodge to Lucan Demesne (and House), as at **Leixlip Road Lucan**.

The matters referred to in my Request are NOT 'proposed development' but actual, existing (putative) development, which may also be exempt development or not, depending on the planning authority's determination. The correspondence from the Council, despite my clear description, has referred predominantly to EXEMPT development, compounded in the very reference, "ED21/0002".

The Roseville site changed ownership on an essentially Executor sale of the former Downey family property, about the year 2016. Planning permission was sought on behalf of the new owners, Laura Lenehan and her husband, Justin Winston, the application being received by SDCC on 4/4/2017; register No. SD17B/0123.

On 21/3/2017, Laura Lenehan called, uninvited, for the first (and only) time, to my home, The Toll House, a protected structure in Co Kildare, abutting Leixlip Bridge, and built essentially contemporaneously with the bridge, and serving as a buttress to it, ca 1730. Ms Lenehan called ostensibly about another matter – repairs to the bridge wall following a vehicle crash into it. She also said they were applying for a planning permission to extend Roseville, with a granny flat within, for her mother who lived in Sligo. She provided her mobile telephone number and email – [laralen@yahoo.com](mailto:laralen@yahoo.com) - I wrote to her by emailed letter on 5/5/2017, after having recently seen the proposed house extension planning application. *This letter will not be known to SDCC, but it is supportive of matters I raised with the Council. I'm attaching a copy for your information.*



According to SDCC's on-line records, no submissions were made by third parties to the proposed extension.

The applicants' agent, Paul Redmond, gave an undertaking as part of the planning application that the proposed development "won't have adverse impact on the proposed Natural Heritage Area". This commitment is part of the terms and conditions of the planning permission subsequently granted by SDCC but not referred to by SDCC in their consideration of my Request; it ought to have been.

Neither SDCC's Conservation Officer nor Heritage Officer contributed to the decision-making on SD17B/0123, despite the fact that the proposed development was in or contiguous to the Liffey Valley and the Use Zoning Objective, for Zone HA, was "to protect and enhance the outstanding natural character and amenity of the Liffey Valley" [page 41 of the extant County Development Plan for SDCC] *I have listed other relevant policy decisions of the Development Plan in my letter of 30/11/2020 to the planning authority alleging unauthorised development:*

"The Development Plan states

- Core Strategy Policy 5, Rural Areas – It is the policy to restrict the spread of dwellings in .. the Liffey Valley (HA, LV) [Page 23] This policy applies to this area [Page 41]
- Residential development will only be permitted in exceptional circumstances – Policy H24
- [Including where] the preservation of the high amenity landscape, views or vistas, biodiversity and amenity of the valley [Page 43]
- HCL10 Objectives 1 & 2 & 4 are applicable and
- It is the policy.. to improve and extend the Liffey Valley SAA Order – Policy 14, [page 166]

In the Development Plan, effective from 10/6/2016, the zoning of this site, HA, is to protect and enhance the outstanding natural character and amenity of the Liffey Valley.. area [page 41]

Table 11.13 – Zoning Objectives – of the extant Development Plan notes that NOT PERMITTED are housing for older people, offices of any kind or a scrap yard. Moreover it states that "All development classes shall not be permitted within 30m of the river bank in order to protect the recreational amenity".

The south side of my home, a half-acre in extent, faces directly the south bank on which the Roseville gate lodge sat, albeit hidden from the views of each other by the copse of timber and vegetation which constitute the Liffey Valley in this location. There is only one garden, or private space, associated with the Toll House, the rere of the House. The SDCC planning maps show the Liffey Valley extending to where it abuts Leixlip Bridge, ie at the west side of the Roseville site.

*I have given to SDCC examples of the use of the wooded escarpment of the Liffey Valley up to and including the brow of the plateaued area of the site for the use of recreational amenity, specifically for slalom canoeing and to provide cover and flies for anglers. (The slalom event required elevated, horizontal lines, from which poles were hung, to be tied to the trees or high walls on both sides of the Liffey. The north side is my property, in Co Kildare, and the south side would be the lower reaches of the escarpment down to the river's edge. Such slalom events have occurred during my occupancy of the Toll House. Indeed I had occasion to write to the Irish Canoe Union to request that they remove the sisal string from my property after one such event)*

I submit that the planning authority has failed in its general duty (specified in Section 15 of the Act of 2000) to secure the objectives of the development plan in respect of the Liffey Valley, which extends over the site, either at all in respect of the permission granted for SD17B/0123, or on foot of my complaint of Unauthorised Development on the site in a timely fashion. It seems to



have focussed on development which might be exempt under regulations covering typical back gardens in residentially zoned lands and sought further information of me which delayed the decision making process while adding little to it.

The Executive Business report with SD1 7B/0123 refers to its Impact on Protected Structures [page 4]; these they cited are (i) the entrance Gate Piers to the residual private road to Lucan House through Lucan Demesne, which circumnavigated Roseville gate lodge and (ii) Leixlip Bridge, *or rather the first one and a half arches of that bridge to the centre line of the River Liffey; the remaining one and half main arches and two minor (former millrace) arches are protected structures in Co Kildare. The 2 minor arches are in the garden of the Toll House and are in my possession. I have maintained them and the Bridge's battlement wall within my property since 1991.*

The SDCC Executive Business report does not acknowledge the existence of the Toll House as a protected structure in Co Kildare, RPS No. B11-44. NIAH Ref: 11804076 in Leixlip townland, 6" Map. Sheet No. 11.

The Toll House would be well known to SDCC, which collaborated with Kildare Co Council (KCC) up to 2006 in 'upgrading' of Leixlip Bridge's footpath and the ensuing wrangle I had with KCC over its failure to comply with the approved plans and KCC's agents' sawing off of a stone step from the Toll House to the bridge road, installing a private sewer, etc. These led to High Court proceedings which were settled on the opening day of the proceedings several years ago.

The report on the aforementioned planning permission notes that "Having regard for the overall scale and location of the proposed development it is considered that the works would have no impact on the Protected Structures and the works would be visually acceptable in relation to their location within the curtilage of the Protected Structures."

I submit that the Council failed to properly apprise itself of the impact on the curtilage and privacy of the sole garden space of the Toll House consequent on the removal of the copse of mature and unruly wood which formed the Liffey Valley up to and over the near-horizontal plinth or site containing Roseville residence.

There is no evidence that the planning authority actually visited the site for the purposes of either confirming my allegations of unauthorised development (made 30/11/2020), assessing their impact, checking compliance with the approved planning permission on Roseville, or the impact of the several elements the subject of the Section 5 Request (made 30/12/2020 et sequi) on the value of my property and their compliance with the County Development Plan, in particular the parts of the plan on the Liffey Valley, and other planning regulations.

The Executive Business report on the planning application on Roseville noted that "The proposal is for an extension to an existing house and it is not considered that it will have an adverse impact on the proposed Natural Heritage Area".

I submit that had the development been carried out in accordance with the plans and particulars and had the developer not shortly thereafter trashed the wooded and wild area of the Liffey Valley, and built on its precipice, it would not have been visually unacceptable to me, which is why I made no representations having belatedly (because it was late going on the web) seen the proposals in SD1 7B/0123. Nevertheless, I contend that the planning authority was remiss for not obliging the developer to not interfere with the existing proposed, natural heritage area or to breach any of the stated development plan objectives for the Liffey Valley; it would have been prudent to do so in the interest of proper planning and development.

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By letter dated 30<sup>th</sup> November, 2020, I, John Colgan, wrote formally to SDCC alerting them to perceived Unauthorised Development on the Roseville site by or for the owner-occupiers, Lenehan and Winston. It included reference to the removal of trees on what is the Liffey Valley and the erection of a habitable building on the site, neither being the subject of planning permission. A Warning Letter issued on Friday, 15/1/2021 on foot of my complaint, and only after I emailed Aisling Stafford of SDCC on this day. I received a copy of the Warning Letter by email, 21/1/2021. The Warning Letter does not correspond to the requirements laid down in section 152 (4) of the principal Act, 2000, but probably suffices. The Council, SDCC, has denied me information about any response they received on foot of it.

#### THE ASPECTS OF JOHN COLGAN'S REQUEST FOR A SECTION 5 DECLARATION

- 1) The application, in a letter from John Colgan, was despatched by registered letter on 30/12/2020 and the [4] elements of the Request were contained in the letter.
- 2) John Colgan sent an email, with five jpegs, on 31/12/2020, mentioning a 5<sup>th</sup> element to his Request, which had been work done by the developer (owner occupier) since the opening request letter was drafted on 29/12/2020. Separately, for reasons of file size, he sent a video of the south bank of the Liffey to the rear of Roseville which was made by him on his phone on 17/7/2019, taken from the roof of a newly installed single storey extension of the Toll House (the subject of a grant of planning permission from KCC).
- 3) By email of 7/1/2021, Aisling Stafford, Assistant Staff Officer, SDCC Planning, asked John Colgan to complete a *mandatory* application form.
- 4) John Colgan completed the "obligatory" application form and with a covering letter of the 8/1/2021 FAO Aisling Stafford and annotated maps [7 pages in toto] posted it to SDCC. In the covering letter I observed that the development, the subject of my Request, may still be in progress and that I had referred the matter to the Unauthorised Development section of the Council by letter, received by the Council on 2/12/2020.
- 5) In a telephone conversation with Aisling Stafford about 3.20pm on 11/1/2021, she informed John Colgan that a decision had been made by the Enforcement Section [Sharon Greene] to proceed with the Enforcement process, slow because of Covid; a letter will come to me today to say as much. *No letter did come*. During the conversation I agreed to 'put on ice' the Section 5 request and I will email SDCC to this effect. *I have no record of this email, and I probably never sent one*.
- 6) By email of 21/1/2021 at about 3.18pm I wrote to Aisling Stafford and announced that I was restarting my request for a Section 5 declaration in accordance with my previous correspondence in the matter, and regard today's date as the start date. This email was acknowledged next day at about 10.24am by Ms Stafford's email.
- 7) By letter dated 22/1/2021 from Michelle Furnay for 'Senior Planner' [Eoin Burke?] I got a formal receipt in the post on 25/1/2021 of my Section 5 Declaration – *again referring only to the Exemption aspect, not using the proper address for the premises and citing only one of the elements as 'Development'*. I emailed Ms Furnay on 27/1/2021 enclosing a copy of my original Section 5 Request letter dated 30/12/2021 and tried, in vain, it seems to get a change of direction...
- 8) By emailed letter of 15/2/2021 for 'Senior Planner' I received a request for Further Information, aka *Additional Information*, including matters which John Colgan could not, without access to the site, could provide. *In my original request letter I affirmed that I could not provide details of dimensions as I had no right of access*.





- 9) By letter dated 23/3/2021, sent by email that date, I provided an answer to the request for Further Information.

**HERE ARE THE ELEMENTS OF JOHN COLGAN'S SECTION 5 DECLARATION REQUEST, together with observations on SDCC's decision:**

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.

*On page 9 of its Record and CEO's Order (PR/0454/21) the planning authority regards this as development. The planning authority refers only to the Class 3 exemptions, without stating which (inclusive) it fails to comply with or whether the structure fails to comply with the provisions in the Development Plan for the Liffey Valley, eg, the 30m preclusion rule; and interference with wooded area to be preserved etc. SDCC does not give reasons for its decision to regard this as not being exempt development.*

*Table 11.13 of the extant Development Plan states, inter alia, that "All development classes shall not be permitted within 30m of the river bank in order to protect the recreational amenity".*

*The exposure of this timber building at great height relative to the ground floor and garden of the protected structure, the Toll House, on the opposite side of the river, damages the value of, and curtilage of, the protected structure, and destroys the privacy it enjoyed whilst the wildly wooded escarpment and above existed in accordance with the development plan's zoning objectives.*

*The planning authority has failed to cite these reasons in the interests of good planning and development.*

- 2) The pile of cut sawn timber up against the northern face of the aforementioned shed

*The planning authority had ample time between receipt of John Colgan's letter of 30/11/2020 alleging unauthorised development on the site and its decision on the Section 5 Request made on 12/4/2021 to visit and inspect the site and make whatever measurements and photographs it required to facilitate its determination.*

*The planning authority has mistakenly treated some of the matters on which I sought a Declaration as more significant than others.*

*Table 11.13 – Zoning Objectives – states, among development items not permitted in Zone HA, "scrap yard". It is submitted that a pile of waste, sawn planks, probably left over from the construction of the approved extension, has taken on the semblance of a scrap yard.*

*Secondly, it is in the curtilage of the protected structure, the Toll House, abutting Leixlip Bridge and, as is, constitutes an eyesore at a high level and is contrary to proper planning and development.*

*It is my opinion that the pile of post-construction timber was placed behind the shed, it being deemed an eyesore to the inhabitants of the extended Roseville, while at the same time creating an eyesore within the curtilage of the protected structure, The Toll House. Complementary to this is the fact that if the developers of Roseville had left the wooded escarpment intact instead of cutting most of it away, the timber pile would be a matter of*



*indifference to me, the applicant for the Section 5 Declaration, or to any future occupier of the ~290 year-old Toll House.*

The planning authority failed to evaluate this matter in the context of the protected structures, the Toll House and Leixlip Bridge itself in both counties.

- 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.

*To accommodate this structure on the apex of the escarpment, the owner/occupier cut down existing trees under and near the footprint of the structure; the stubs are visible. Construction of it, and maintenance, is only possible on the north side by ladders etc inserted into the wooded escarpment.*

*The planning authority considers this to be development (Page 3, op cit). The planner's appraisal incorrectly states that only a 'single building identifiable from the plans'; two are drawn on the annotated plan I submitted. In his/her consideration of Class 3 exemptions, it is not stated whether the Shomera structure complies with the 25sq m area limit (with the other existing structures); and is silent on whether it is habitable or not, when evidence of it being built with insulation, lit up at night, and delivered by the company which made it for habitation has been provided to the planning authority by me; my wife witnessed the named delivery vehicle and the insulation being taken in. In the context of my allegation of Unauthorised Development, I took jpegs of the windows lit up in the hours of darkness and forwarded them to the planning authority. The planning authority appears not to have inspected the structure which, in the interests of proper planning and development, they ought to have done and also cited the reasons for their decision that the structure is not Exempt Development.*

*The planner also states (Page 6, op cit) that Article 9 (i) restriction, namely that it wouldn't contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. This, I contend, has been breached by the Shomera development. A condition of the planning permission granted (opus cit) includes an assurance by the developer's agent that the proposed development will not adversely impact on the proposed natural heritage area. It also breaches the Development Plan's provision to protect the Liffey Valley wooded area and the preclusion of any development of any class within 30m of the River Liffey's edge.*

*I submit that it behoves the planning authority to provide comprehensive reasons, where practicable, for its decisions, to be of use, including guidance, to the recipient(s). A development which breaches any condition of a Development Plan or a development permission is, by definition, not an exempt development.*

*The Shomera development is overlooking the (sole) garden of the Toll House protected structure on the north bank of the river, on which it has an overbearing impact and spoils the Liffey Valley. Photographs have been supplied to the planning authority.*

*The planning authority gave an undertaking to the applicant, John Colgan, that its inspector would inspect the development complained of (in the context of the Unauthorised Development reference of November, 2020) and stated that it would check the land ownership of the site, which I had questioned on foot of an observation made me by the previous owner's representative.*



- 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.

*The planning authority appears not to have carried out a site inspection on foot of either the reference of alleged unauthorised development or my Section 5 Request. My principal concern has been: Is the runoff of storm water to the Liffey worsened on account of the addition of the macadam hard standing or not, and has it an on-site surface-water soakpit installed? And does any of the tarmacked area encroach on the wooded area that constitutes or constituted the Liffey Valley? The previous owner/occupier has confirmed to me that there was never more than one household car, plus one visiting car on the site and that they had a right of way on the private road eastwards past the neighbouring house, Cache Creek, to exit on the old N4. At present, the sides of one or more parked cars are visible from the Toll House garden at an elevation on account of the wooded area being removed.*

- 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 and nothing of the original Gate Lodge was visible from the Toll House garden. Nor was any of the soil on the embankment visible. Photos of the immediately contiguous embankment to the east (left in photos) exemplifies how it was.*

The planning authority has omitted consideration of this matter, to which I referred. As previously mentioned, there has been no mention in the Section 5 response to the Development Plan's references to the Liffey Valley in breach of the planning authority's obligations under the Act of 2000.

While it is easy to photograph that which has been done, it is just luck that photos of the location before the destruction by the incumbent new owner are available. An inspection of the site will reveal the freshly cut tree trunks at ground level and the several stacks of timber harvested in the process. A tall tree which was part of this copse, and towards the bottom of the escarpment, now lies in the river, anchored in situ with by a rope.

The reference to the "outstanding natural character and amenity of the Liffey Valley" [as per the Development Plan] has been repeated in published statements by prominent visitors to the area in the past. These are detailed in my book, *Leixlip, County Kildare* (2005), p101-107. Here are brief quotations:

**Terence O'Toole, pseudonym of Rev Caesar Otway (c1832-40):**

"Any on passing over the Bridge of Leixlip, must, if his eye is worth a farthing for anything else than helping him to pick his way through the puddle, look up and down with delight while moving over this bridge"

**Harry D Inglis, (1834):**

"All the way to Leixlip [from Dublin], the softest and richest scenery, lies along both banks of the river.."

**Mr & Mrs S C Hall, (1853):**

[On Leixlip] "The whole neighbourhood is beautiful; the river is lined with graceful trees, from its borders up the slopes of the hills that ascend from either side."

It seems to me that the removal of a copse of trees and associated ground cover, which is, by the development plan, to be protected and enhanced [p41, and elsewhere, Plan] is development, requiring a planning permission, and not exempt development. However, the planning authority has not decided on that; it has remained silent.



*In my request letter, I referred to a builder's one tonne sack, and broken building, cement blocks been thrown down the embankment and bonfires lit on several occasions; more recently with furniture added at the foot, as expressions of contempt by the owner/occupier for the development plan's objectives. The long delay in processing my complaint of UD has not been helpful; if they acted speedily, much may have been saved. And perhaps the adjoining neighbour, Cache Creek, might not have followed suit, cutting the embankment away.*

I have mentioned earlier the impact of the removal of the copse of wooded cover on the privacy which the garden of, and house, proper, of the Toll House enjoyed. I cannot leave my house to open our vehicular gate, fill recycling or waste bins without feeling I may be watched. Nor can we garden, or sit in our only private garden without being overlooked from Roseville – which hitherto never accessed the river directly - while there; none of these things happened prior to the recent unauthorised developments.

- 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. Until recent times, the footprint of the staircase was covered by timber and undergrowth, like the rest of the escarpment.

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 some time thereafter reinstated as a formal Section 5 request.

I enclose a cheque to cover the Board's fee for this reference.

I am enclosing on a USB flash drive:

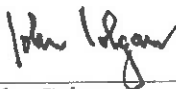
Ltr re Section 5 Declaration to SDCC Planning Dept 301220  
Ltr to SDCC re Section 5 FI Request 230331  
Review ltr to ABP re Section 5 Review  
Ltr to SDCC re Unauthorised Development at Roseville 271120

I have not included any jpeg illustrations sent with these letters in hard copy or by email

I am also including 3 separate PowerPoint presentations, on Roseville, Parts 1, 2 & 3.

If you require any further clarification, please contact me; email will suffice.

Yours sincerely,



John Colgan



