

EIA Pre-screening – EIAR Not Submitted

An Bord Pleanála Case Reference	ABP-314088-22			
Development Summary	<p>Whether the following:</p> <p>a. The previous Section 5 did not take into account ENF14221 decision.</p> <p>b. This area provides a safe area for customers to dine + drink in fine weather.</p> <p>c. The residents do not have any objection to the outdoor area.</p> <p>d. There is an outdoor defibrillator in this area for community use.</p> <p>e. The area is now safer for customers + children with the picket fence in place.</p> <p>f. There is now a pedestrian walkway demarcated instead of parking access.'</p> <p>Is or is not development and or is or is not exempted development</p>			
Development Address	The Druids Chair, Killiney Village, Killiney Hill Road, Killiney, Co Dublin.			
1. Does the proposed development constitute an EIA project? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	<input checked="" type="checkbox"/>	
		No		
2. If YES, does the proposed development, or any part of it, fall within a class of development set out in Part 1 or Part 2, Schedule 5 of the Planning and Development Regulations?				
Tick		Threshold	Comment (if relevant)	Conclusion
No	<input checked="" type="checkbox"/>	N/A		No EIAR or Preliminary Examination required
Yes		If YES , tick one of the following:		
		Exceeds / Is equal to / No Threshold		EIAR required
		Sub threshold		Preliminary Examination required (Issue letter to EPA if IED/ IPC/ Waste licence)
3. If Preliminary Examination is required, has Schedule 7A information been submitted?			Yes No	

EIA – No EIAR Submitted

	N/A
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EOI ~~SEO~~

Milli

Date:

27/7/2022



FEARGALL KENNY
REGISTERED ARCHITECT

B.Arch. Dip. T.P. RIBA FRIAI MIPI
PLANNING CONSULTANT

45 Hainault Drive, Foxrock, Dublin D18 H092 T:01-2892119 M:987-2360717 E:feargarch@hotmail.com

The Secretary
An Bord Pleanála
61 - 64 Marlborough Street
Dublin D01 V902

AN BORD PLEANÁLA

LDG- 055273-22

ABP- _____

13 JUL 2022

Fee: € 220 Type: cheque

Time: 12.15 By: h. n. n.

12th July 2022

Re: Section 5 Declaration by order of ~~Dun Laoghaire Rathdown County Council~~ dated 17.06.22

Planning Authority Order Ref: 76/22

Location: The Druids Chair, Killiney Village, Killiney Hill Road, Killiney, Co Dublin

Dear Sir / Madam

I have been instructed by Mr Paul Cosgrave, director of Cosgrave (Mount Merrion) Ltd., the owners and operators of the licensed premises known as "The Druids Chair" to refer the above Declaration for review by An Bord Pleanála on his behalf, as provided for in Section 5(3)(a) of the Planning and Development act 2000. I attach my clients cheque for €220 in respect of the statutory fee. I set out below the background to this case followed by the reasons and considerations underpinning this reference.

BACKGROUND

The Druids Chair is a well-known licensed premises which has traded in Killiney Village for over a hundred years. It is located at the summit of Killiney Hill Road, opposite its junction with Victoria Road. Although the summit area is referred to as Killiney Village and although the surrounding area is densely developed there is very little of village function other than the pub and an adjoining small shop. The pub serves an important social function for the local population and also for the many tourists who visit Killiney throughout the year

The pub building is set back from the street frontage and the open area in front of the premises along the street frontage has in the past been used for car parking, and since the introduction of the smoking ban in 2004 it has also functioned as an informal outdoor smoking and drinking area. With the onset of the Covid pandemic in 2020, the owners decided to formalize the area as an outdoor hospitality area and to remake it as an attractive outdoor alternative to drinking and socializing indoors. To this effect they relegated all parking to their existing parking area on the other side of Victoria Road and upgraded the area in front of the premises to by the installation of outdoor tables and seating. Also as can be seen in the appended photograph, they installed all-weather synthetic grass carpeting over the entire area and delineated the boundary between the area and the road by a low timber white-painted picket fence. This initiative proved quite popular with the pub's customers and was seen by many as a worthwhile venture to

continue into the future. Indeed, despite the relaxation of Covid restrictions, the continuing prevalence of the disease has led to many customers preferring to use the outdoor facility. This may well continue into the future even as Covid fades and as can be seen from the attached copy of a letter of support from the Killiney Village Residents Association.

In the recent past however, some planning issues arose. In July 2021 the Planning Authority issued an Enforcement Warning Letter (Ref. Enf. 14221) to the management of the premises in respect of alleged unauthorized development consisting of *"The creation of an outdoor dining area within the curtilage of the premises materially changing the use of the car park"*. The Planning Authority investigated the matters raised and carried out an inspection of the premises on 29th September 2021. The Authority subsequently issued a letter to my clients dated 1st October 2021 which stated as follows: **"The Planning Authority does not consider that the use of the external open space to the public house for outdoor drinking / dining in itself constitutes a material change of use of the land."** Having made this authoritative decision the Authority accordingly closed the enforcement file.

Notwithstanding the above decision, Consultants acting on behalf of a third party (presumably the same third party who initiated the enforcement action) made an application to the Planning Authority on 6th April 2022 for a declaration under Section 5 of the Planning and Development act 2000, in relation to the alleged change of use of the subject area. By Order no. REF 53/22 dated 3rd May 2022 the Planning Authority decided to issue a declaration that:

"The Planning Authority hereby determines that the Indicated Change of Use and works, of 'change of use of C.75m2 of the car park to a beer/outdoor drinking area at the front of the Druids Chair Pub', under the Planning and Development Act, 2000 (as amended), constitutes development, and specifically under Section 82(1) of the Planning and Development Act, 2000 (as amended) does Not constitute exempted development."

This volte-face by the Planning Authority came as a shock to my clients, particularly in the light of the authoritative opinion to the contrary issued only seven months previously. They were further surprised to learn that having been excluded from the decision-making process, they were further precluded from appealing a decision which directly affected the use and enjoyment of their property. Having been advised that the only way of bringing the matter to the attention of An Bord Pleanála would be to seek a further Section 5 Declaration themselves, Mr Paul Cosgrave, a director of my client company, made an application to the Planning Authority for a Section 5 Declaration in respect of the use of the subject area, in which he detailed the advantages to the business and its clientele. However, by Order no 76/22 dated 17th June 2022, the Planning Authority issued a Declaration indicating that the indicated change of use and works **"constitutes development and does not constitute exempted development."**

PLANNING CONSIDERATIONS

It is noted that the subject premises and the surrounding area is located in an area zoned Objective A *“To provide residential development and improve residential amenity while protecting the existing residential amenities”* in the current Dun Laoghaire Rathdown County Development Plan 2022 – 2028. The site is also located within the Killiney Architectural Conservation Area (ACA) as delineated in the Development Plan.

CASE FOR EXEMPTED DEVELOPMENT STATUS

In seeking a review of the Planning Authority declaration Ref. 76/22 dated 17/06/22, I put forward the following points for consideration by An Bord Pleanála:

A. USE:

Section 3(1) of the Planning and Development Act 2000 defines 'development' as meaning *“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”*. It is argued by my clients that there is no change of use of the subject area. The entire premises has an established primary use as a licensed premises. The subject area is an integral part of the licensed premises and its use for activities associated with the primary use cannot and should not be questioned. The subject area (coloured green on the attached map) has been used as an informal smoking and / or drinking area since at least 2004 and even prior to that in good weather visitors to this popular tourist area could drink outside and enjoy the views from the summit. The use of the subject site for car parking has never been questioned. Why therefore should its use for the primary function of a licensed premises be questioned?

B. APPEARANCE:

Section 4 of the Planning and Development Act 2000 provides for various categories of development to be exempted developments for the purposes of the Act. Subsection 4(1)(h) lists *“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”* as exempted development for the purposes of the Act. The use of the subject area as an outdoor element of its primary function is a visual improvement over its use as a car park. Insofar as (a) the contested development affects only the use of the space; (b) as the subject area is not a structure; and (c) moveable elements (parked cars) have been replaced by other moveable elements in the form of tables and chairs, the development does not materially affect the external appearance of the premises so as to render it inconsistent with its character or with the character of the area. It is

debatable as to whether the rearrangement of moveable elements within a defined area with an established use can be described as development, but even if so described, it must be regarded as exempted development in this particular context.

C. WORKS:

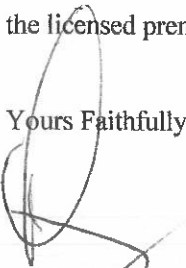
Section 2(1) of the Planning and Development Act 2000 defines “works” to include “*any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal.....*”

The only part of the matter under the review that would qualify as “works” is the picket fence erected along the road boundary of the subject area. The fence is less than 1.2m high and is defined as exempted development in Class 11 of Part 1 of the Second Schedule of the Planning and Development Regulations 2001 (S.I. no. 600 of 2001). In his report on the application the Planning Officer refers to the Conservation Department’s observation that Section 82(1) of the Planning and Development Act, 2000 (as amended) indicates that notwithstanding section 4(I)(h) the carrying out of works to the exterior of a structure located in an Architectural Conservation area shall be exempted development only if those works would not materially affect the character of the area. As already argued above it is my clients’ considered opinion that the development does not materially affect the external appearance of the premises so as to render it inconsistent with its character or with the character of the area. Not alone that, the removal of parked cars has led the visual improvement of the subject space, and the provision of the picket fence has contributed to an improvement in the safety of pub customers and their children and also for members of the public using the defined pedestrian walkway outside.

CONCLUSION

The decision by the Planning Authority in the two Section 5 applications Ref 55/22 and 76/22 flies in the face of the previous decision of the Planning Authority in Enforcement case Enf. 14421. In the latter instance the planning authority categorically stated that it did not consider the use of the external open space to the public house for outdoor dining / drinking in itself to constitute a material change of use. This declaration is accepted by my clients as being the correct decision in this case. Given the diametrically opposing views declared at different times by the Planning Authority, my clients have no other recourse than to place the matter in the hands of Bord Pleanála to arrive at a definitive decision. The Bord is respectfully requested to endorse my clients’ view that the use of the subject area within the curtilage of the licensed premises for activities directly connected with its primary use is Exempted Development.

Yours Faithfully



Feargall Kenny

APPENDICES

- Map at 1/1000 scale showing subject area.
- Photograph of subject area.
- Planning Authority Enforcement File closure letter of 01.10.21
- Planning Authority Section 5 Notice dated 03.05.22
- Planning Authority Section 5 Notice dated 17.06.22
- Copy letter of letter from Killiney Village Residents Association dated 19.05 22

OSi PLACE Map

CENTRE COORDINATES:
ITM 725728, 725448

PUBLISHED: 12/07/2022
ORDER N: 50279619

MAP SERIES: 1:1,000
MAP SHE: 3457-03
3457-08

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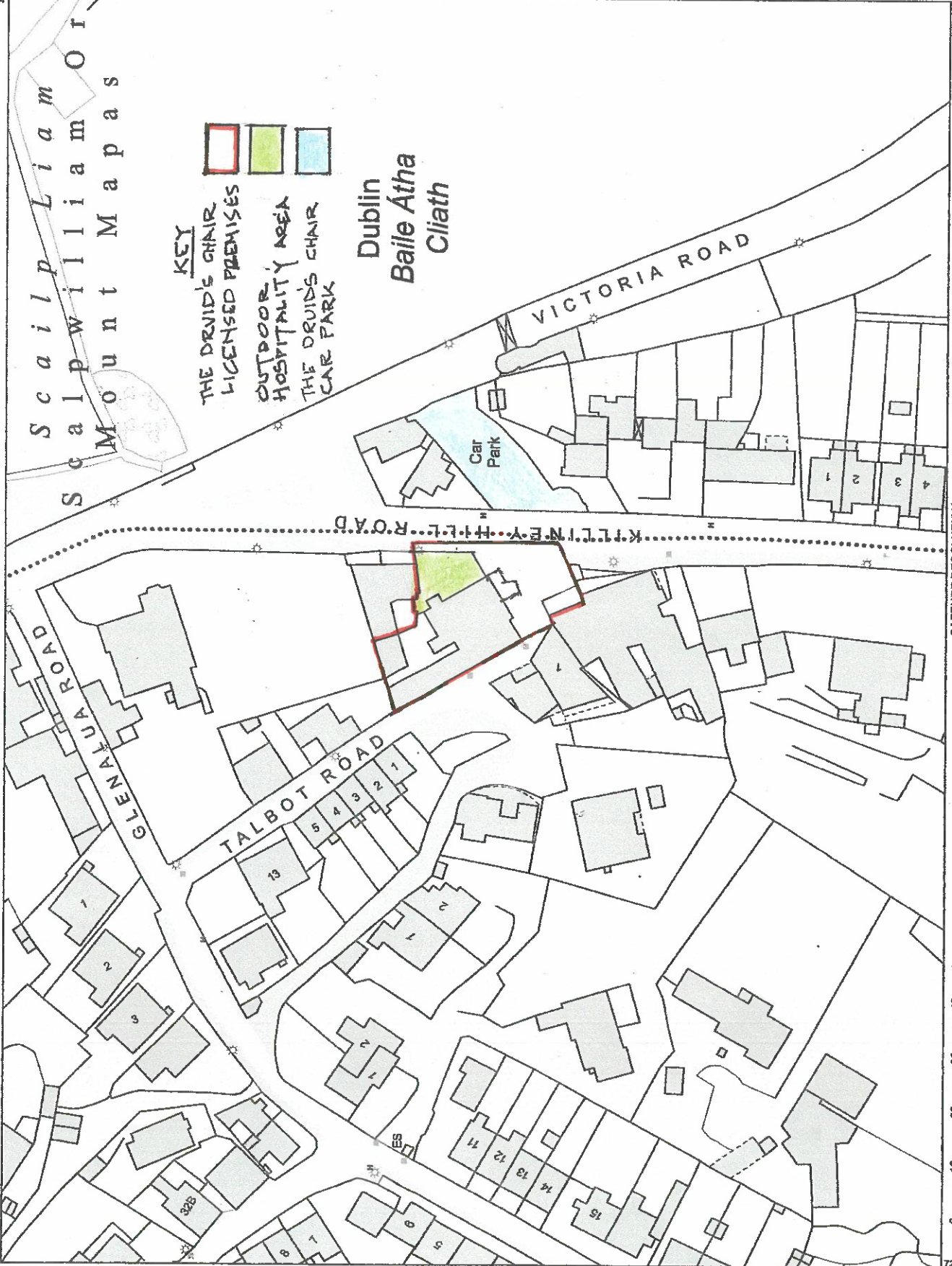
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PHOTOGRAPH TAKEN 1st APRIL 2022



Comhairle Contae County Council

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Dún Laoghaire, Co. Átha Cliath, Éire. A96 K6C9
Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire, Co. Dublin, Ireland. A96 K6C9
01 205 4700 01 280 6969 www.dlrco.ie

**Planning Department
An Rannóg Pleanála**

Enforcement Section

Direct Tel: 012054864

Fax: 01 2803122

planningenforcement@dlrcoco.ie

Our Ref: ENF 14221

Date: 01-Oct-2021

**The Manager
The Druids Chair,
Killiney Hill Road,
Killiney,
Co. Dublin,
A96 CV62**

Re: The Druids Chair, Killiney Hill Road, Killiney, Co. Dublin, A96 CV62

Dear Sir/Madam,

I refer to previous correspondence regarding the above location including the service of a Warning Letter issued for alleged unauthorised development consisting of:

The creation of an outdoor dining area within the curtilage of the premises materially changing the use of the car park.

I wish to advise you that the Planning Authority has investigated the matters raised and carried out an inspection of the location on 29th September 2021.

The Planning Authority does not consider that the use of the external open space to the public house for outdoor dining / drinking in itself constitutes a material change of use of the land.

Accordingly, Enf 14221 is now closed and the register will be updated.

Yours sincerely


Irene O Callaghan
Enforcement Section
Planning Department
Tel: 2054 864



Dún Laoghaire-Rathdown County Council

Contestable: Dún Laoghaire-Rathdown County Council, County Hall, Dún Laoghaire, Co. Dublin, Ireland. Tel: 01 205 4700
Fax: 01 280 3122
Email: planning@dlr.ie

Copy

Planning Department
An Rannóg Pleanála
Registry Section
Cormac Heavey
Asst. Staff Officer
Direct Tel: 01 2054700
Fax: 01 2803122

Raymond O'Malley, Kieran O'Malley and Co. Ltd
Saint Heliers
Stillorgaon Park
Blackrock
Co Dublin

Reference No: Ref3522
Application Type: Declaration on Development and Exempted Development Act
– Section 5, Planning & Development Act (as amended)
Registration Date: 06-Apr-2022
Decision Date: 03-May-2022

Location: The Druids Chair Pub, Killiney Hill Road, Killiney, Co Dublin

Development Works: Is the change of use of C.75m² of the car park to a beer/outdoor drinking area at the front of the Druids Chair Pub development, and if so, is it exempt Development?

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the planning & Development Act, 2000 (as amended), Dún Laoghaire-Rathdown County Council has, by Order No. **Ref.REF53/22 dated 03-May-2022** decided to issue a Declaration that:

The Planning Authority hereby determines that the Indicated Change of Use and works, of 'change of use of C.75m² of the car park to a beer/outdoor drinking area at the front of the Druids Chair Pub', under the Planning and Development Act, 2000 (as amended), constitutes development, and specifically under Section 82(1) of the Planning and Development Act, 2000 (as amended) **does Not constitute exempted development.**

Date of issue: 03-May-2022

Signed: Cormac Heavey
For Senior Executive Officer

NOTE: Where a Declaration is issued under Section 5, any Person issued with such a Declaration, may, on payment to An Bord Pleanála, 64 Marlborough Street, Dublin 1, of a fee of €220, refer the Declaration for review, **within 4 weeks** of the date of issue of the Declaration.



17.6.22

Planning Department
An Rannóg Pleanála
Registry Section
Ciarán Carolan
Asst. Staff Officer
Direct Tel: 01 2054700
Fax: 01 2803122

Paul Cosgrave
The Druids Chair
Killiney Village
Killiney Hill Road
Killiney
Co Dublin

Reference No: Ref5222

Application Type: Declaration on Development and Exempted Development Act
– Section 5, Planning & Development Act (as amended)

Registration Date: 23-May-2022

Decision Date: 17-Jun-2022

Location: The Druids Chair, Killiney Village, Killiney Hill Road, Killiney, Co Dublin

Development Works: I wish make a section 5 assessment in this application for the following reasons:

1. The previous Section 5 did not take into account ENF14221 decision.
2. This area provides a safe area for customers to dine + drink in fine weather.
3. The residents do not have any objection to the outdoor area.
4. There is an outdoor defibrillator in this area for community use.
5. The area is now safer for customers + children with the picket fence in place.
6. There is now a pedestrian walkway demarcated instead of parking access.

NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT

In pursuance of its functions under the planning & Development Act, 2000 (as amended), Dún Laoghaire-Rathdown County Council has, by Order No.

Ref.REF76/22 dated 17-Jun-2022 decided to issue a Declaration that having regard to:

- The plans and particulars lodged with this Section 5 referral
- Section 3(1), Section 4(1)(h) and Section 82(1) of the Planning and Development Act 2000 (as amended)

The Planning Authority hereby determines that the indicated change of use and works, comprising '... 2. This area provides a safe area for customers to dine + drink in fine weather. 3. ...the outdoor area. 5. The area is now safer for customers + children with the picket fence in place. 6. There is now a pedestrian walkway demarcated instead of parking access', at The Druid's Chair, Killiney Village, Killiney Hill Road, Killiney, Co. Dublin, under the Planning and Development Act, 2000 (as amended), constitutes development, and does not constitute exempted development.

Date of issue: 17-Jun-2022

Signed: Ciarán Carolan

For Senior Executive Officer

NOTE: Where a Declaration is issued under Section 5, any Person issued with such a Declaration, may, on payment to An Bord Pleanála, 64 Marlborough Street, Dublin 1, of a fee of €220, refer the Declaration for review, **within 4 weeks** of the date of issue of the Declaration.



Killiney Village Residents Association
Contact: killineyvillageregeneration@gmail.com

Dun Laoghaire-Rathdown Planning Department
County Hall
Marine Road
Dun Laoghaire
Co Dublin

19 May 2022

Letter of Support re the Section 5 Application, Druids Chair Public House, Killiney.

To whom it may concern,

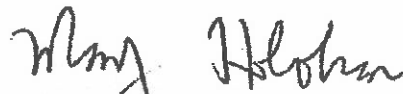
The car parking area for customers in front of the Druids Chair was modified to facilitate outdoor hospitality as per Covid regulations. This space with picnic style tables and seating is also now used by residents and visitors. It is a convenient and pleasant morning and lunchtime meeting point and is close to Eleven Deli. The Druids Chair allow this use until 15.00 each day.

We, the undersigned officers of Killiney Village Residents Association, have consulted with Association committee members regarding the retention of this space in its present configuration. All are in agreement that in recent months this outdoor area has been most beneficial to our community as we try to reconnect after Covid.

Therefore, in good faith and without prejudice, we wish to support the application to retain the outdoor hospitality space in front of Druids Chair Pub.



Simone Walsh
Chairperson



Mary Holohan
Secretary

