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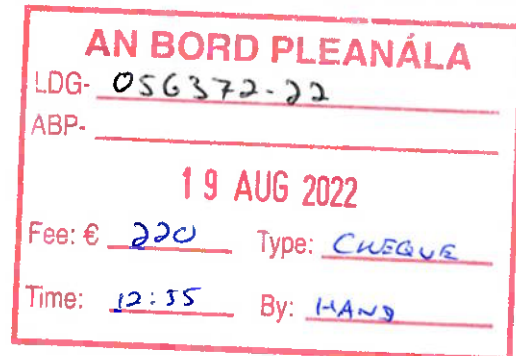
19th August 2022

The Secretary

An Bord Pleanála

Marlborough Street

Dublin 1



Reg. Ref.: Ref. 7522 [Section 5 Declaration]

Re: Springhill, Ballyedmonduff Road, Sandyford, Dublin 18

Decision Date: 4th August 2022

Referral By: 31st August 2022

RE: Section 5 Referral

Dear Sir or Madam,

We act on behalf of **Colm Ryan, 'Springhill', Ballyedmonduff Road, Sandyford, Dublin 18** who has instructed us to file a section 5 referral in respect of the declaration decision by Dun Laoghaire Rathdown County Council in relation to the following section 5 question:

Is the placement of a 23.4 sq.m. shed for agricultural use only at 'Springhill', Ballyedmonduff Road, Sandyford, Dublin 18 exempt development?

We attach a cheque for € 220 in respect of the prescribed fee, a copy of the local authority decision, and 3 no. photos at Ballyedmonduff Road.

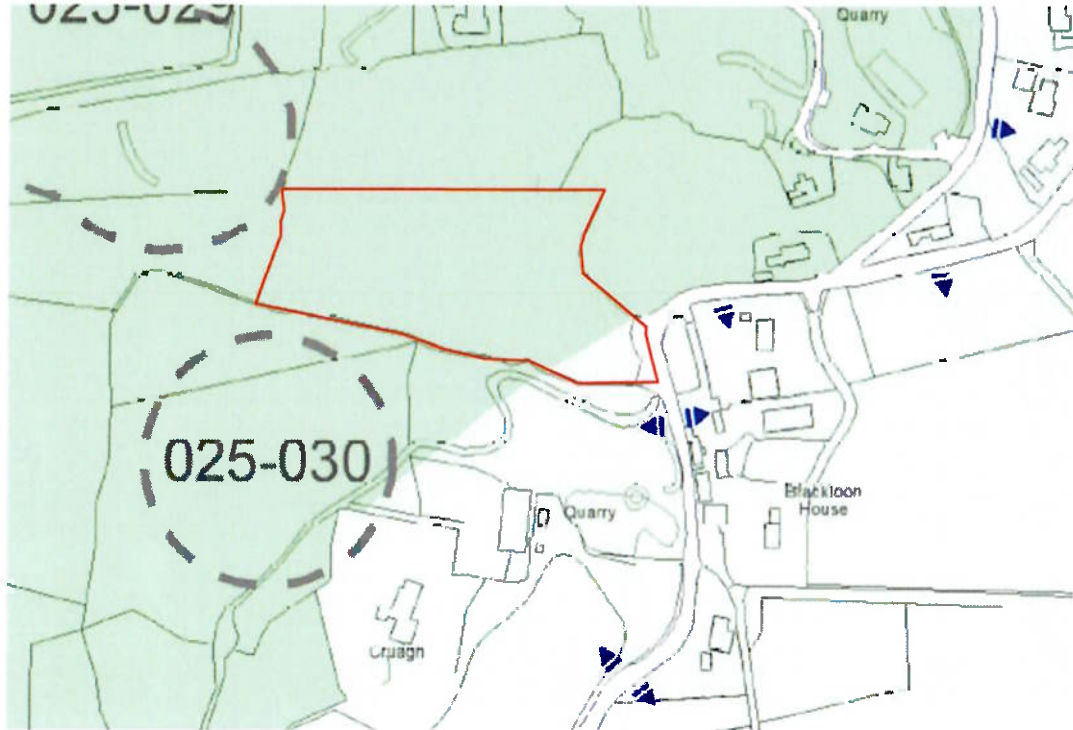
The Council held that restriction on exemption in Article 9(1)(a)(vi) applied and thus the development was not exempt development. Article 9(1)(a)(vi) states as follows:

*9.(1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—(a) if the carrying out of such development would—
(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan*

The Council cited three considerations for applying this restriction on exemption namely (i) objective in the Development Plan "to northward views on both sides of Ballyedmonduff Road", (ii) planning decision Reg. Ref. D20A/0109, and (iii) the 'portacabin' interferes with views the development plan has an objective to preserve. In our opinion, none of these three considerations apply; each is addressed below.

(i) **Development Plan Objectives**

The following is an extract from land use zoning map no. 9 from the Dun Laoghaire Rathdown County Development Plan 2022 – 2028 with the approximate outline of the site in red:



The Board will note that our client's landholding has two zoning objectives; the lighter green is objective B: rural amenity and agriculture, and the darker (or brighter) green is objective G: high amenity areas. The Plan also shows blue arrows that indicate "to preserve views". The blue arrows along the west side of Ballyedmonduff Road clearly starts on the adjoining property to the south of the subject site. As shown on the development plan, the preserved view is south of the pathway that leads up the hillside and the direction of the view is west and not north as claimed in the planner's report.

It is submitted that the planning authority is factually incorrect with regard to the development plan objective on Map No. 9. The view to be preserved nearest the subject site is not across our client's land. Further, the agricultural shed is not visible from the arrows further south along Ballyedmonduff Road even those with a northwest orientation.

Notwithstanding that the view across is south of our client's property and it does not include an view across his land or of the agricultural shed, we attach 3 no. photographs taken on 15th August 2022 at the location of the first blue arrow/viewpoint to the south of the site. Photo no. 1 is in a westerly direction in accordance with the blue arrow/view on the development plan map. Frankly it is not clear why this view is identified for preservation because nothing beyond the roadside hedgerow is actually visible. It is evident the agricultural shed subject of this referral is not visible in photo no. 1.

Photo no. 2 is taken from the centre of Ballyedmonduff Road and it faces directly towards the agricultural shed subject of the declaration and referral. The shed is again not visible in this photo. As the shed wasn't visible, it was decided to also take a third photo from the eastern side of Ballyedmonduff Road – see Photo no. 3. Again, the view is directed towards the site and agricultural shed, which is barely visible. Some of the roof is visible through the roadside trees and hedgerows. It follows that the shed does not interfere with the view to be preserved.

(ii) Reg. Ref.: D20A/0109

We have reviewed the planning officer's report on application Reg. Ref. D20A/0109 and the full extent of the proposed development. It is submitted that in the declaration assessment, the planning officer erred by failing to consider the fact that Reg. Ref. D20A/0109 expressly included the relocation of the portacabin on site. In doing so, the portacabin (now agricultural shed), would have been placed within the objective G high amenity lands with a stated finished floor level of +258.00, which is materially different to its current position on objective B rural amenity and agriculture land with an existing FFL of +240.00 i.e. an 18 metre height difference and materially different land use zoning objective.

Further, a total of 6 no. structures with a combined floor area of 340 sq.m. plus a large hardstanding area all on objective G high amenity land were part of that proposed development, which cumulatively lead to the Council's first reason for refusal. The following extract from the planner's report on D20A/0109 confirms that the polytunnel was of particular concern vis a vis preserved views on Ballyedmonduff Road:

The proposed development has, to date, involved significant site clearance and excavations works which have had a negative impact on the visual amenity and biodiversity value of the area. It is considered that the existing portacabin to be relocated and the proposed steel containers, portaloo and yard constructed from hardcore would, by reason of their unsightly appearance, further diminish the amenity value of the site. Furthermore, the proposed polytunnel, by reason of its elevated and prominent position, would appear visually obtrusive from Ballyedmonduff Road, from which views are to be preserved.

The planning officer has selectively mis-applied Reg. Ref. D20A/0109 to his assessment of this declaration. In doing so, he has incorrectly held the agricultural shed would be visually prominent and visually obtrusive from the views to be preserved at Ballyedmonduff Road.

(iii) Interfere with Views

Following on from items (i) and (ii) above, it should quickly follow that the agricultural shed would not interfere with views to be preserved from Ballyedmonduff Road. Notwithstanding, the following is the text from the planner's report:

It is considered that the subject portacabin, located at a conspicuous location within the site, when seen from Ballyedmonduff Road, or any adjacent land, against the backdrop of lands with the G zoning objective – High Amenity Areas - Interferes with Views which the Development Plan has the objective to preserve. It is therefore, considered that on the basis of Article 9(1)(vi) of the Planning and Development Regulations 2001 (as amended) is not exempted development.

The agricultural shed is not located at a conspicuous location within the site. On the contrary, it is at one of the lowest positions within the site, it is situated on objective B rural amenity and agricultural zoned land, and it is partially screened by a mound, trees, and hedgerows. The shed is not against the backdrop of lands within the G zoning objective; it is fully surrounded by objective B lands and it is not specified what "any adjacent land" the planning officer is referring. Finally, the agricultural shed is not within any of the views to be preserved.

It is submitted and the Board is invited to agree that none of the three considerations raised in the planning officer's report are valid and therefore article 9(1)(a)(vi) does not apply.

Summary and Conclusion

A site inspection will confirm that the agricultural shed is partially visible as you approach the site from Stepside village (to the east) and from Glencullen (to the south). However, any views of the shed are very much localised due to road alignment, the very low lying position of the shed within the overall site, the small size of the shed, and the roadside trees and hedgerows. The agricultural shed does not interfere with the character of the objective G landscape and nor does it interfere with views to be preserved at Ballyedmonduff Road because none of them cross the subject site.

The Council's assessment has confirmed all other restrictions on exemption and the conditions and limitations have been complied with. Therefore, the Board is invited to agree that the placement of shed is development and it is exempt development in accordance with Class 9, Part 3, Exempted Development – Rural in Schedule 2 of the Planning and Development Regulations 2001 (as amended).

Please acknowledge receipt of this section 5 referral and direct all future correspondence to our office.

Regards,



Raymond O'Malley

Kieran O'Malley & Co. Ltd.

ROM: rom

Planning Department

An Rannóg Pleanála
Registry Section

Cormac Heavey

Asst. Staff Officer

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Kieran O Malley and Co Ltd
St Heliers
Stillorgan
Blackrock
Co Dublin



Reference No: Ref7522
Application Type: Declaration on Development and Exempted Development Act
– Section 5, Planning & Development Act (as amended)
Registration Date: 08-Jul-2022
Decision Date: 04-Aug-2022
Location: Springhill, Ballyedmonduff Road, Sandyford, Dublin 18

Development Works: Is the placement of a 23.4m² shed for agriculture use only 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.REF101/22 dated 04-Aug-2022 decided to issue a Declaration that:

Having regard to Article 9(1)(vi) of the Planning and Development Regulations 2001 (as amended), I recommend that Dún Laoghaire-Rathdown County Council advise the Applicant that:

- The placement of a 23.4m² shed for agriculture use only

is considered Development and is not Exempted Development.

Date of issue: 04-Aug-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.



Photo No. 1: View westwards from the eastern side of Ballyedmonduff Road at the location of the first blue arrow/view on DLRC zoning map no. 9.



Photo No. 2: View from centre line of Ballyedmonduff Road facing towards the referrer's site and agricultural shed, which is not visible.



Photo No. 3: View from eastern side of Ballyedmonduff Road facing towards the referrer's site and agricultural shed, which is barely visible as highlighted.