



GRADY ARCHITECTS  
ARCHITECTURE. PLANNING. INTERIOR DESIGN

The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1  
D01 V902

**AN BORD PLEANÁLA**  
LDG- 060212-22  
ABP- \_\_\_\_\_  
29 DEC 2022  
Fee: € 220 Type: cheque  
Time: \_\_\_\_\_ By: reg post

Our Ref.: 81-N-22

20<sup>th</sup> December 2022

Dear Sir/Madam,

**Re: P22/949 – Declaration under Section 5 for alteration to existing access at no. 5 New Road, The Demesne, Westport, Mayo  
Referral to An Bord Pleanála**

I, Pat Grady of Grady Architects, Altamount Street, Westport, Co. Mayo, Agent on behalf of our Clients Jim and Joan Noud of Annbrook, Kilrush, Athy, Co. Kildare, hereby write to appeal/refer the Section 5 decision/declaration of Mayo County Council in relation to the above matter of an alteration to an existing access at no. 5 New Road, The Demesne, Westport, Co. Mayo.

I enclose herewith a cheque for the appropriate referral of €220.00 made payable to An Bord Pleanála.

I enclose herewith a copy of the Declaration under Section 5 from Mayo Co. Co. at Appendix A.

I enclose a copy of the Section 5 Declaration application at Appendix B herein.

I set out the grounds of appeal/referral as follows;

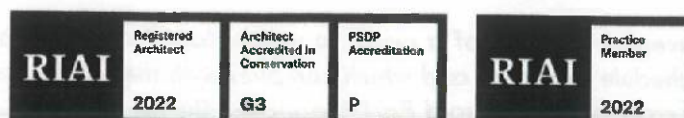
**1. Background/justification:**

The property was purchased by our clients in approximately January 2021.

Alterations were carried out to the existing access to the property for the following reasons;

- (i) To facilitate access to the rear of the property for maintenance and construction
- (ii) To provide for onsite EV charging facilities

The house owners required an access to a parking area for a car to facilitate the use of an EV charger. This is a reasonable + sustainable requirement. The original access point would not facilitate parking for an EV charger without impacting on the use of the footpath and health and safety. See attached site layout plan drawing at Appendix C.



On street EV charging is not feasible in this case because of the potential health + safety hazard caused by the charging cable.

We submit that an alteration was carried out to an existing access and a new access was not created. The attached drawings at Appendix C indicate the alterations carried out.

A pedestrian gate was installed as part of the alteration works to the existing access. There were strong and justifiable reasons for installing the pedestrian gate, arising out of the destruction of a substantial amount of the original fairfaced blockwork by a landscaping contractor and the inability of the house owner to source matching blockwork to replace it.

(Please note we have photographic evidence on file of the destruction of the original fairfaced blockwork and can share with the planning authority if required.)

In the circumstances the view was taken that a pedestrian gate was more appropriate than having a rendered section of wall or pastiche fair faced blockwork.

## **2. Correspondence with the Planning Authority**

- Letter from Planning Enforcement Unit Mayo Co. Co. 4<sup>th</sup> of August  
Response from Grady Architects 17<sup>th</sup> of August.
- Letter from Planning Enforcement Unit Mayo Co. Co. 21<sup>st</sup> of September  
Response from Grady Architects 5<sup>th</sup> of October.
- An application for a Section 5 Declaration was made dated 7<sup>th</sup> November 2022 on behalf of the Client (copy enclosed at Appendix B).
- The Section 5 Declaration was received dated the 1<sup>st</sup> December 2022. (copy enclosed at Appendix A).

## **3. The Planning Authority decision/declaration:**

(a) **The decision of Mayo Co. Co. refers to "Article 9(1) Restrictions on Exemption Planning and Development Regulations 2001 (as amended)".**

**And**

**"Section 28(1) of the Planning and Development Act 2000 (as amended)".**

(b) **Article 9(1) states**

**"Development to which article 6 relates shall not be exempted development for the purposes of the Act-**

*If the carrying out of such development would-*

- contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,*
- consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,*
- endanger public safety by reason of traffic hazard or obstruction of road users,*
- except in the case of a porch to which class 7 specified in column 1 of Part 1 of Schedule 2 applies and which complies with the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column*

1, comprise 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 thereof or beyond a line determined as the building line in a development plan for the area 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,

- (v) consist of or comprise the carrying out under a public road of works other than a connection to a wired broadcast relay service, sewer, water main, gas main or electricity supply line or cable or any works to which class 25,26 or 31(a) specified in column 1 of Part 1 of Schedule 2 applies.
- (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,
- (vii) consist of or comprise the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest, the preservation, conservation or protection of which is an objective of a development plan or local area plan for the area in which the development is proposed or, pending the variation of a development plan or local area plan, or the making of a new development plan or local area plan in the draft variation of the development plan or the local area plan or the draft development plan or draft local area plan,
- (viiA) consist of or comprise the excavation, alteration or demolition of any archaeological monument included in the Record of Monuments and Places, pursuant to section 12(1) of the National Monuments (Amendment) Act 1994, save that this provision shall not apply to any excavation or any works, pursuant to and in accordance with a consent granted under section 14 or a licence granted under section 26 of the National Monuments Act 1930 (No.2 of 1930) as amended,
- (viiB) comprise development in relation to which a planning authority or An Bord Pleanála is the competent authority in relation to appropriate assessment and the development would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site,
- (viiC) consist of or comprise development which would be likely to have an adverse impact on an area designated as a natural heritage area by order made under section 18 of the Wildlife (Amendment) Act 2000.
- (viii) Consist of or comprise the extension, alteration, repair or renewal of an unauthorized structure or a structure the use of which is an unauthorised use,
- (ix) Consist of the demolition or such alteration of a building or other structure as would preclude or restrict the continuance of an existing use of a building or other structure where it is an objective of the planning authority to ensure that the building or other structure would remain available for such use and such objective has been specified in a development plan for the area or, pending the variation of a development plan or the making of a development plan, in the draft variation of the development plan or the draft development plan,
- (x) Consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 year preceding such fencing or enclosure for recreational

purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility,

- (xi) Obstruct any public right of way,
  - (xii) Further to the provisions of section 82 of the Act, consist of or comprise the carrying out of works to the exterior of a structure, where the structure concerned located within an architectural conservation area or an area specified as an architectural conservation area in a development plan for the area 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 and the development would materially affect the character of the area,
- (b) in an area to which a special amenity area order relates, if such development would be development:-
- (i) of class 1,3,11,16,21,22,27,28,29,31, (other than paragraph (a) thereof), 33 (c) (including the laying out and use of land for golf or pitch and putt or sports involving the use of motor vehicles, aircraft or firearms), 39,44 or 50(a) specified in column 1 of Part 1 of Schedule 2, or
  - (ii) consisting of the use of a structure or other land for the exhibition of advertisements of class 1, 4, 6, 11, 16 or 17 specified in column 1 of Part 2 of the said Schedule or the erection of an advertisement structure for the exhibition of any advertisement of any of the said classes, or
  - (iii) of class 3, 5, 6, 7, 8, 9, 10, 11, 12 or 13 specified in column 1 of Part 3 of the said Schedule, or
  - (iv) of any class of parts 1, 2 or 3 of schedule 2 not referred to in subparagraphs (i), (ii) and (iii) where it is stated in the order made under section 202 of the Act that such development shall be prevented or limited,
- (c) if it is development to which Part 10 applies, unless the development is required by or under any statutory provision (other than the Act or these Regulations) to comply with procedures for the purpose of giving effect to the Council Directive,
- (d) Sub-article (1)(a)(vi) shall not apply where the development consists of the construction by any electricity undertaking of an overhead line or cable not exceeding 100 metres in length for the purpose of conducting electricity from a distribution or transmission line to any premises.
- (3) For the avoidance of doubt, sub-article (1)(a)(vii) shall not apply to any operation or activity in respect of which a Minister of the Government has granted consent or approval in accordance with the requirements or regulation 31 of the Habitats regulations 1997, and where regulation 31(5) does not apply.

**(C) Analysis of Article 9(1) in comparison to the alteration to the existing access at no. 5 New Road, The Demesne, Westport, the subject matter of this referral.**

9(1)(i) The alteration to the existing access does not contravene a condition attached to a planning permission under the Act or be inconsistent with any use specified in a permission because no. 5 New Road was constructed pre-1963 and does not have a planning permission attached to it.

9(1)(ii) The alteration to the existing access does not;

i) consist of or comprise the formation of a means of access onto the public road. An existing access is already in place, the works carried out are merely an alteration to an existing access, as shown on site layout plan drawing PL(910)01 + Elevational drawing attached at Appendix C.

9(1)(iii) The alteration to the existing access does not endanger public safety by reason of traffic hazard or obstruction of road users. As submitted under 1. *Background Justification* herein, the alteration works are necessary for public safety so that parking for an EV charger can be facilitated "without impacting on the use of the footpath and health and safety".

9(1)(iv) Is not relevant to the referral in question.

9(1)(v) Is not relevant to the referral in question.

9(1)(vi) The alteration to the existing access does not interfere with the character of a landscape, or a view or special interest. The site/new road Westport is not an architectural conservation area.

9(1)(vii) and 9(1)(viiA) to 9(1)(viiC) are not relevant to the referral in question.

9(1)(ix) The alteration to the existing access does not comprise works to an unauthorized structure.

9(1)(x) and 9(1)(xi) are not relevant to the referral in question.

9(1)(xii) (c) and (d) and (3) are not relevant to the referral in question.

**(D) Comment in relation to "Section 28 of the Planning and Development Act 2000 (as amended)".**

Section 28 refers to Ministerial Guidelines and Directives. The Planning Authority have not specifically indicated any Guidelines/Directives under Section 28 upon which their Section 5 Declaration, the subject of this referral, is based.

#### 4. Conclusion:

Based on the section 5 Declaration issued, the Planning Authority appear to have based their decision solely on Article 9(1)(ii) and possibly 9(1)(iii).

It is submitted that the alteration to the existing access does not comprise the formation laying out or material widening of a means of access onto the public road, the surfaced carriageway of which exceeds 4 metres in width.

The altered access is in substantially the same location. There is no change in circumstances arising in terms of site visibility and there are no traffic safety issues arising. There is no impact on surrounding properties.

We submit that because of the modern sustainable requirement to use electrically powered vehicles, the altered access is an improvement from a health and safety viewpoint as it will ensure that a vehicle can be charged within the confines of the property.

New Road is not an architectural conservation area therefore alterations can be carried out to the property without planning permission.

New Road is a cul de sac. No. 5 New Road is the second last house at the end of the cul de sac. Any alteration to the access to no. 5 does not materially alter the appearance of New Road. Indeed New Road could be classed as an estate road rather than a public road.

In addition to the forgoing, we submit that a pedestrian entrance gate and a vehicular access gate are common place in Ireland. We attach herewith some images of such examples in Westport and the West of Ireland at Appendix D.

It is incumbent on Irish Society, policy makers and policy implementors to take all necessary steps to counteract climate change. Facilitating more sustainable forms of transport such as electric vehicles is an important initiative. Facilitating safe recharging of electric vehicles is paramount.

Requiring an alteration to an existing access, to facilitate safe, on-site electric car charging, where no material widening has occurred, and where there is no impact on traffic safety or surrounding properties to obtain planning permission, would constitute an undue strain on Planning Authority and An Bord Pleanála resources and would introduce unnecessary and time-consuming procedures and delays.

On the basis of the forgoing, we respectfully request that an Bord Pleanála overturn the decision of Mayo Co. Council in relation to the subject Section 5 Declaration application for the alteration to the existing access at No. 5 New Road, Westport.

Yours Sincerely,



**Pat Grady MRIAI**

Grady Architects

Enclosed - Site Location Map



GRADY ARCHITECTS  
ARCHITECTURE. PLANNING. INTERIOR DESIGN

## **APPENDIX A**

### **DECLARATION UNDER SECTION 5 FROM MAYO CO. CO.**







Comhairle Contae Mhaigh Eo  
Mayo County Council

A: Áras an Chontae, Caisleán an Bharraigh,  
Contae Mhaigh Eo, F23 WF90

T: 094 9064000 F: 094 9023937

W: [www.mayo.ie](http://www.mayo.ie)

Ár dTag./ Our Ref.

Do Thag./ Your Ref.

P22/949

**PER REGISTERED POST**

1 December, 2022

Mr Pat Grady,  
Grady Architects,  
3 Cul d'Ean,  
Altamount St.,  
Westport,  
Co. Mayo

**Re: P22/949 - Declaration under Section 5 for alteration to existing access at No. 5 New Road,  
The Demesne, Westport, Co. Mayo**

Dear Sir,

I refer to your request of a Declaration under Section 5 of the Planning & Development Act, 2000.

Mayo County Council wishes to point out having regard particularly to:

- Article 9 (1) Restrictions on Exemption Planning & Development Regulations 2001 (as amended).
- Section 28 (1) of the Planning and Development Act 2000 (as amended).

Mayo County Council has concluded that -

Mayo County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the 2000 Act, hereby decides that:

The development at No. 5 New Road, The Demesne, Westport, Co. Mayo, constitutes development and that such development is **not** exempted development.

Yours sincerely,

MARY GORDON, A.O.  
PLANNING SECTION

*Copy to: Jim & Joan Noud, Annbrook, Kiltrush, Athy, Co. Kildare*

EC/BF



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**APPENDIX B**

**SECTION 5 DECLARATION APPLICATION**





GRADY ARCHITECTS  
ARCHITECTURE, PLANNING, INTERIOR DESIGN

**Planning Enforcement  
Mayo County Council  
Fire Station  
Humbert Way  
Castlebar  
Co. Mayo**

Our Ref.: 81-N-22

7<sup>th</sup> November 2022

Dear Sir/Madam,

**Re: Alleged formation of a new access at No.5 New Road, The Demesne, Westport, Mayo**  
**Our Clients: Jim and Joan Noud**  
**Your reference: CA/AD/PE 97/22**

We write on behalf of our clients to make a formal section 5 declaration application in relation to the above matter of the alleged formation of a new access to No.5 New Road, The Demesne, Westport.

We submit that a new access was not formed, but alterations were carried out to an existing access. We further submit that the alteration works are exempted development.

We set out our submission as follows ;

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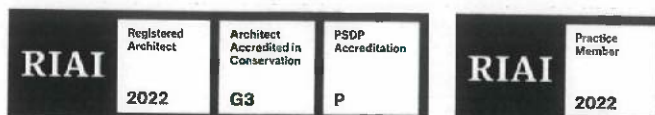
### 1. Background/Justification

The property was purchased by our clients in approximately January 2021.

Alterations were carried out to the existing access to the property for the following reasons ;

- (i) To facilitate access to the rear of the property for maintenance and construction
- (ii) To provide for onsite EV charging facilities

The house owners required an access to a parking area for a car to facilitate the use of an EV charger. This is a reasonable + sustainable requirement. The original access point would not facilitate parking for an EV charger without impacting on the use of the footpath and health and safety. See attached site layout plan drawing.



On street EV charging is not feasible in this case because of the potential health + safety hazard caused by the charging cable.

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We submit that an alteration was carried out to an existing access and a new access was not created. The attached drawings indicate the alterations carried out.

A pedestrian gate was installed as part of the alteration works to the existing access. There were strong and justifiable reasons for installing the pedestrian gate, arising out of the destruction of a substantial amount of the original fairfaced blockwork by a landscaping contractor and the inability of the house owner to source matching blockwork to replace it.

(Please note we have photographic evidence on file of the destruction of the original fairfaced blockwork and can share with the planning authority if required.)

In the circumstances the view was taken that a pedestrian gate was more appropriate than having a rendered section of wall or pastiche fair faced blockwork.

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## **2. Correspondence with the Planning Authority**

- Letter from Planning Enforcement Unit Mayo Co Co 4<sup>th</sup> of August  
Response from Grady Architects 17<sup>th</sup> of August
  - Letter from Planning Enforcement Unit Mayo Co Co 21<sup>st</sup> of September  
Response from Grady Architects 5<sup>th</sup> of October
- 

## **3. Planning Permission / Exempted Development**

The planning authority have not made it clear in correspondence to date why the works carried out to the access at the above address is considered not to be exempted development. We can only speculate on the Planning Authorities' reasons.

We comment as follows ;

(a.) New access is alteration to existing access.

The planning authority may be of the impression that a new access was formed onto New Road. The drawings attached with this Section 5 declaration indicate that an alteration was carried out to the existing access.

(b.) Impact of the alteration to the existing access ;

The altered access is in substantially the same location. There is no change in circumstances arising in terms of site visibility and there are no traffic safety issues arising.

We submit that because of the modern sustainable requirement to use electrically powered vehicles, the altered access is an improvement from a health and safety viewpoint as it will ensure that a vehicle can be charged within the confines of the property.

(c.) Planning legislation

New Road is not an architectural conservation area therefore alterations can be carried out to the property without planning permission.

We are not aware of any planning legislation whereby an existing front boundary wall and access cannot be altered, where the alteration is not substantial and has no impact on the site visibility or traffic safety or surrounding properties.

New Road is a cul de sac. No. 5 New Road is the second last house at the end of the cul de sac. Any alteration to the access to no. 5 does not materially alter the appearance of New Road.

In addition to the forgoing, we submit that a pedestrian entrance gate and a vehicular access gate are common place in Ireland. We attach herewith some images of such examples in Westport and the West of Ireland.

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**Conclusion**

On foot of this Section 5 Declaration application we respectfully request that the Planning Authority re consider it's view that the alteration works to the existing access at no. 5 New Road, The Demesne, Westport is not Exempted Development.

Yours Sincerely,



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**Pat Grady**

Grady Architects





**APPENDIX C**

**SITE LAYOUT PLAN + ELEVATION**



## **APPENDIX D**

### **IMAGES OF PEDESTRIAN ENTRANCE GATES AND VEHICULAR ACCESS GATES**

