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BY HAND

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1.

6 August 2024

AN BORD PLEANÁLA	
LDG-	<u>073735-24</u>
ABP-	
06 AUG 2024	
Fee: € <u>220</u>	Type: <u>Chy</u>
Time: <u>11:30</u>	By: <u>hurd</u>

Dear Sir/Madam,

Referral to An Bord Pleanála made under Section 5 (3) (a) of the Planning and Development Act 2000 (as amended) following a Section 5 referral / exemption declaration made to and issued by Dun Laoghaire-Rathdown County Council under its planning reg. ref. 6324. A question arises as to whether the line marking of on-street parking spaces within a privately managed housing estate road where car parking is otherwise permitted by law (there are no single or double yellow lines) is or is not development and is or is not exempted development. The on-street parking spaces were line marked on the 2nd of March 2017 within the Cairnbrook Estate, Glenamuck Road, Carrickmines, Dublin 18. The estate's roads and common areas are managed on behalf of Cairnbrook OMC CLG by Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18, D18 A6yo.

BPS Planning and Development Consultants LTD, a firm of Irish Planning Institute accredited town planning consultants has been retained by Cairnbrook OMC CLG c/o Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18, D18 A6yo to prepare and to lodge a referral to An Bord Pleanála (hereafter "ABP") under Section 5 (3) (a) of the Planning and Development Act 2000 (as amended) following a Section 5 referral / exemption declaration made to and issued by Dun Laoghaire-Rathdown County Council (hereafter "DLRCC") under its planning reg. ref. 6324. This Section 5(3)(a) referral pertains to the issue of whether a privately owned and managed housing estate can apply, without first obtaining, planning permission, line markings to delineate on street parking spaces where on street parking is legal (there are no single or double yellow lines and such on street parking takes place in housing estates throughout the county).

This Section 5 is submitted on behalf of Cairnbrook OMC CLG c/o Indigo Real Estate Management which is the body under contract to manage all the estate's common areas including roads.

The decision of DLRCC was made on the 11th of July 2024. This referral is submitted to ABP within 4 weeks of this decision.

BPS notes how all maps, drawings and details pertaining to Cairnbrook are set out in DLRCC planning permission reg. ref. D007A/970, in compliance submissions made regarding this planning permission, and in subsequent planning permissions obtained by property owners within this private estate. This Section 5(3)(a) referral to ABP is accompanied by the details described in Section 1.0 of this letter and aerial photographs and other images are provided in Figs. 1 to 6. This level of detail is considered reasonable to allow the matters arising in this Section 5 (3)(a) referral to be assessed (as also accepted by the DLRCC Planning Department). We trust this is in order.

Section i of this Section 5 covering letter sets out how all relevant validation requirements have been addressed, while Sections 2.0 to 7.0 provide all relevant information required to assess this matter. Section 6.0 offers a conclusion and Section 7.0 a recommendation. If ABP requires any further details, these can be provided on request.

Background to this Section 5 (3)(a) referral

The requirement for a Section 5 Declaration arises from the fact that over 7 years on from line markings being applied by Cairnbrook OMC CLG to manage existing on-street parking within the privately managed Cairnbrook Estate, a Third Party has contacted the Enforcement Section of DLRCC to query the planning status of the line markings. Please find a copy of the letter received from and correspondence undertaken by our client with the Enforcement Section under its reference ENF GC 07524. The letter states:

I refer to the Cairnbrook housing development at Glenamuck Road (D00A/970). The Planning Authority requires details and the current planning status in respect of the carparking spaces that were line marked on the main entrance road along the south-west side post April 2017 lit is not stated from where this date derives – the lines were marked on the 2nd of March 2017 which is over 7 years ago. The Planning Authority have no record in respect of the car parking spaces as lined out and have received a third-party query in respect of the authorisation and planning status.

- Section 4(1)(f) and an accepted compliance submission made in respect of condition 13 of planning permission reg. ref. D00A/0970 and An Bord Pleanála planning appeal, reg. ref. PL 06D.128126.
- Section 4(1)(h) – "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."
- CLASS 13 of Part 1 'Exempted Development – General' of Schedule 2 – "The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving." Conditions and Limitations – "The width of any such private footpath or paving shall not exceed 3 metres."
- The "works" being trivial, immaterial and *de minimus*. The management of roads and parking spaces by the OMC within the common arisen as to areas of the scheme would be assumed, correctly, to require minor intervention "works" which do not require planning permission; and
- Section 12.3.4.5 'Management Companies and Taking in Charge' and Section 12.4.5.6 'Residential Parking' of the CDP and Section 2.2 'Maintenance services' of Circular Letter PD 1/08 which together confirm that all common roads and parking areas within a housing estate must be managed by the OMC.

No requirement to obtain planning permission should arise. The position of DLRCC appears to rely heavily on there being no specific reference to road markings in either the Act or Regulations as being exempted development. However, as the roads authority for the estate, our client must reasonably be able to manage its own road spaces as would any local authority roads authority. To consider that every private management company in Ireland may have to apply for planning permission to mark out one or more parking spaces to properly manage roadside parking would raise a precedent that neither the Minister or the Oireachtas would have intended. Both would prefer, as per DMURS, that all housing estate roads be competently and safely managed; our client has done so and DLRCC is seeking to penalise the management company for acting properly.

- Article 9 does not remove our client's rights to CLASS 13 of Part 1 'Exempted Development – General' of Schedule 2 – "The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street, road or way, and the construction of any private footpath or paving." Conditions and Limitations – "The width of any such private footpath or paving shall not exceed 3 metres."

This matter is clearly one to be assessed under Sections 4(1)(h) and 4(1)(f) wherein alterations to a structure and the maintenance and management of roads is exempted development. Such development would clearly be exempt for DLRCC's own Transportation Department as roads authority and our client is the designated roads authority for this privately managed estate.

ABP is asked to determine that the development is exempted development and for the reasons set out by BPS in this letter. We have provided planning law case examples of where judges have found, inter alia, alterations to existing structures to be exempt and we have shown how these are trivial, minor, immaterial revisions to the estate.

i Validation of this Section 5 referral to An Bord Pleanála

In terms of validation of this Section 5 referral, we refer to Section 5.-(3)(a) of the Planning and Development Act 2000 (as amended) which states:

(3) (a) Where a declaration is issued under this section, any person issued with a declaration under subsection (2)(a) may, on payment to the Board of such fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration.

Please find a cheque for €220 attached which is the statutory fee payable for a Section 5 referral to ABP.

Referrals

Referrals	Fee
R1 You want to refer a declaration made by a planning authority on a question that was put to the planning authority.	€220

Fig. ii: Fee payable to ABP for a Section 5(3)(a) referral (Source: ABP website)

To further support this Section 5 application, BPS has:

1. Provided a copy of the original completed DLRCC Section 5 Form and DLRCC's Section 5 Declaration and Planner's Report for ABP's attention.
2. Set out in this letter the question which has arisen in this case as to whether the line marking of on-street parking spaces within a privately managed housing estate road where car parking is otherwise permitted by law (there are no single or double yellow lines) is or is not development and is or is not exempted development. The on street parking spaces were line marked on the 2nd of March 2017 (over 7 years ago) within the Cairnbroke Estate, Glenamuck Road, Carrickmines, Dublin 18. The estate's roads



Fig. 1: The location of Cairnbrook privately managed housing estate (1)



Fig. 2: The location of Cairnbrook privately managed housing estate (2)



Fig. 5: The locations of on-street painted car parking spaces (2)



Fig. 6: The existing appearance of the painted parking spaces as visible from Glenamuck Road

2.0 Section 5 question arising

The question referred to ABP pursuant to Section 5(3)(a) of the Planning and Development Act, 2000, as amended ("the Act"), for review is as follows: "A question arises as to whether the line marking of on-street parking spaces within a privately managed housing estate road where car parking is otherwise permitted by law (there are no single or double yellow lines) is or is not exempted development."

The on-street parking spaces were line marked on the 2nd of March 2017 within the Cairnbrook Estate, Glenamuck Road, Carrickmines, Dublin 18. The estate's roads and common areas are managed on behalf of Cairnbrook OMC CLG by Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18, D18 A6yo.

Section 3

3.—(1) In this Act, “development” means, 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.

Section 4

Section 4(1) of the Act sets out various forms and circumstances in which development is exempted development for the purposes of the Act, including:

- Section 4(1)(f) ‘development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity.’
- Section 4(1)(h) ‘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.’
- Section 4(2) of the Act provides that ‘the Minister may, by regulations, provide for any class of development to be exempted development. The main regulations made under this provision are the Planning and Development Regulations 2001, as amended.’

4.2 Planning and Development Regulations, 2001 (as amended)

Article 5

Article 5 does defines ‘painting’ which is relevant to this Section 5.

“‘painting” includes any application of colour.’

Article 6(1)

Subject to article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development 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.

Article 9(1)(a)

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 – ...

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (ii) 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,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users, ...
- (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, ...
- (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 is 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.

Article 10 (1)

Article 10 (2) (a) states: “A use which is ordinarily incidental to any use specified in Part 4 of Schedule 2 is not excluded from that use as an incident thereto merely by reason of its being specified in the said Part of the said Schedule as a separate use.”

Schedule 2

Part 1 ‘Exempted Development’, ‘General’, of Schedule 2 sets out exempted development class for exempted development general to which Art 6(1) refers.

Schedule 2 sets out a wide range of works which can take place on a road without requiring planning permission. For example:

"Use" in relation to land, does not include the use of the land by the carrying out of any works thereon.

The pre-existing use was as on-street parking without painted lines. The use after the painted lines was/is 'on-street parking'. The external impact on the land was none. The painting of the spaces does not alter its use nor indeed constitute a use in and of itself. The on-street parking has always been a permitted use under its planning permissions. There is also no intensification of use.

BPS considers that the "works" can be deemed exempted development because:

- **Section 4(1)(f)** provides for 'development carried out on behalf of, or jointly or in partnership with, a local authority that is a planning authority, pursuant to a contract entered into by the local authority concerned, whether in its capacity as a planning authority or in any other capacity.'

Assessment:

Section 12.3.4.5 'Management Companies and Taking in Charge' of the CDP states: **"All areas not to be Taken in Charge by the Council, shall also be clearly indicated on a site layout plan, and shall be maintained and the responsibility of a properly constituted Private Management Company"** [emphasis added]. These details were submitted with the planning application.

Section 12.3.4.5 also states: "All roads ... within the privately managed areas, **irrespective of the management and maintenance regime to be put in place for these areas**, shall be satisfactorily completed to the standard for development works as set out in the Council's 'Development Works Guidance Document'" [emphasis added]. The works have been completed in accordance with this document.

Under Section 2.2 'Maintenance services' of Circular Letter PD 1/08, the Department makes clear that one of the tasks of managing a housing estate is "Maintenance of all roads and footpaths, including unallocated street car parking". Section 12.4.5.6 'Residential Parking' of the CDP states: **"There will be circumstances where parking controls may be required to be introduced on access roads and parking areas within new developments"** [emphasis added].

Under planning decision reg. ref. DLRCC planning reg. ref. D00A/0970 and An Bord Pleanála planning appeal, reg. ref. PL 06D.128126, condition no. 13 was applied. Condition no. 13 states:

*13. Prior to commencement of development, **a management scheme providing adequate measures relating to the future maintenance of private open spaces, roads and communal areas in a satisfactory manner shall be submitted to the planning authority for agreement.** Reason: To ensure the adequate future maintenance of this private development in the interest of residential amenity* [emphasis added].

On 16 Jun 2005, a compliance submission was made in good faith to DLRCC under reg. ref. D00A/0970/C9¹ and, **on the 11th of September**, a decision was made to accept this. The DLRCC decision post-dates the painting of the on-street parking spaces and, as such, this was deemed acceptable, 'and' the planning authority entered into an agreement with the OMC such that its proposals for and the ongoing maintenance of the private estate roads are included in the management scheme. The purpose of condition no. 13 is for the OMC to act as the manager of areas of the estate which would more generally be those 'taken in charge' by the DLRCC.

The compliance submission and its acceptance by DLRCC provide that our client is in a partnership with the planning authority and this partnership allows it to carry out development to manage the estate's roads and parking areas.

Replacing haphazard on-street parking (where there are no single or double yellow lines) with painted parking spots on one defined side of the road has served to make the estate road safer.

In this case, the time to comment on these measures was prior to 2020 and no compliance concerns were raised by DLRCC. This being the case, the on-street painting of parking spaces is also covered by *Horne v Freeney* [1982 WJSC-HC 2157]. That is, DLRCC and ABP required that our client manage the scheme's roads arising from compliance with condition no. 13, it is doing so under the granted planning permission and/or by way of Section 4(1)(f).

Lastly, BPS notes how by way of condition no. 13, DLRCC has given over responsibility for the management of the estate's roads to our client. To do so and then to argue that something as minor as painting on-street parking spaces to better manage on-street parking appears to be at odds with the intention of the Oireachtas under Section 4—(1)(e) of the Act which states: "The following shall be exempted developments for the purposes of this Act—(e) development consisting of the carrying out by the corporation of a county or other borough or the council of a county or an urban district of any works required for the construction of a new road or the maintenance or improvement of a road." That is, DLRCC can build an entire new road or maintain and improve a road which is 'taken in charge' in an estate, but our client who has the same responsibility for the estate roads is alleged to have committed unauthorised development by applying some paint to an existing road.

We submit that the works are exempt under

- **Section 4(1)(h)** '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

¹ <https://planning.agileapplications.ie/dunlaoghaire/application-details/35711>

lands, is the development consistent with the provisions of that planning permission or does it represent an 'immaterial deviation' from the development granted permission? (See Section 3.2.2.1 below)." Section 3.2.2.1 'Development Consisting of Works' states:

Where works constitute development, these works will require planning permission unless they fall within the definition of exempted development under Section 4 of the 2000 Act or under the 2001 Regulations. Case law indicates that there is a certain amount of flexibility in how the permitted development is carried out. While the concept of 'immaterial deviation' is not defined in legislation, permission may not be required for a minor difference between a constructed development and what was granted under the planning permission. There are situations in enforcement cases where planning authorities have to decide whether or not a deviation from a permission is minor or trivial. The considerations and reasons for making such a decision should be carefully documented and conveyed to the relevant parties, including the complainant, at the appropriate time.

In making this point, BPS has (as the OPR advises) had regard to *Cork County Council v Cliftonhall Ltd* [2001] IEHC 85. Judge Finnegan held that the increased ridge height of the relevant block constituted an immaterial deviation in the context of the development as a whole. The Judge deemed that the increased ridge height would not result in a material non-compliance with the planning permission. As the deviations from the planning permission were found to be immaterial, Judge Finnegan refused the orders sought by Cork County Council directing the Respondent to perform certain actions in order to comply with the planning permission.

In the current case, the painted parking spaces have been in place for over 7 years and they are wholly an immaterial deviation in the context of the Cairnbrook development as a whole. There would be car parking in the same locations (there being no yellow lines and in fact no parking enforcement measures in place at all) if the paint had never been applied or if it was removed. The parking would just be more haphazard and the de facto voluntary compliance with estate parking measures could not be ensured.

5.4 Further proceedings would be statute barred

Our client's Cairnbrook Estate has been fully planning compliant for many years. The allegation received from DLRCC Enforcement Section was a surprise. Certainly, a surprise given that condition no. 13 of the parent planning permission – that pertaining to the OMC managing its own roads - was only deemed by DLRCC to be fully complied with in 2020.

In response to this allegation, BPS asked our client if they had any records of when the painting of the parking spaces took place. They provided a receipt for the works. The receipt confirmed the work to have been undertaken on the 2nd of March 2017. This is over 7 years ago. Fig. 7 provides an email from Indigo Real Estate Management which has managed Cairnbrook's common areas for over ten years – this email also confirms the date of the works (an affidavit can be provided as required).

The letter received from DLRCC Enforcement Section is dated 7th of March 2024. This arrived 7 years and 4 days after the works had been completed.

The PDA 2000 sets out statutory time limits for bringing enforcement proceedings. Planning authorities may not institute enforcement proceedings regarding an unauthorised development after seven years from the date of the commencement of the development (Section 157).

Our client accepts that, notwithstanding this restriction, even where the time limit has passed, this does not result in an unauthorised development becoming authorised instead it becomes immune from enforcement and prosecution by the planning authority and enforcement is in effect statute barred. It is for this reason that our client decided to lodge a Section 5 to confirm the painted parking spaces to constitute exempt development as set out above (and/or development which complies with condition no. 13 of the parent permission). Further, we consider the works to be immaterial or *de minimus*.

The Enforcement Section's letter refers to a recent complaint from a Third Party regarding the planning status of the parking spaces. Given that all complaints to the Enforcement Section must be investigated arising from the PDA 2000 (as amended), it is taken that no other complaints ever arose. This is because no party is impacted adversely by the spaces.



Fig. 7: Email from Indigo Real Estate Management confirming the date the painting of spaces took place

(f) The nature of the road development previously and currently on site and the pattern of development in the area which is for estate roads within on-street parking.

AND WHEREAS BPS has concluded that the painting works undertaken to maintain, improve and/or amend the previous haphazard on-street parking on the roadside of the estate's main spine road by providing defined parking spaces on only own side of the road (where there are no single or double yellow lines or any other form of parking management) constitutes "development" within the meaning of Section 3(1) of the Planning and Development Act, 2000.

The development is exempted development and/or immaterial/trivial/de minimus development.

NOW THEREFORE BPS submits that the proposed works are development, and exempted development. A planning permission requirement does not arise.

8.0 Finally

We trust that sufficient information has been provided to allow this Section 5 to be fully assessed.

Please direct all correspondence to this office.

If you have any questions, please call BPS on 01-5394960 or 087-2615871.

Best wishes,

Brendan Buck

Brendan Buck MIPI
Managing Director
BPS Planning & Development Consultants LTD
Corporate Member of the Irish Planning Institute

Encl:

1. Correspondence from and with the DLRC Enforcement Section.
2. Receipt from Markaline LTD for the paint works completed.

Planning Department
An Rannóg Pleanála
Registry Section
Direct Tel: 01 2054700

Brendan Buck
PO BOX 13658
Dublin 14
D14 RW01

Reference No: REF6324
Application Type: Declaration on Development and Exempted Development Act – Section 5, Planning & Development Act (as amended)
Registration Date: 18-Jun-2024
Decision Date: 11-Jul-2024
Location: Cairnbrook Estate, Glenamuck Road South, Carrickmines, Dublin 18
Development Works: Section 5 referral/exemption declaration. A question arises as to whether the line marking of on-street parking spaces within a privately managed housing estate road where car parking is otherwise permitted by law (there are no single or double yellow lines) is or is not development and is or is not exempted development. The on street parking spaces were line marked on 2nd of March 2017 within the Cairnbrook Estate, Glenamuck Road, Carrickmines, Dublin 18. The estate's roads and common areas are managed on behalf of Cairnbrook OMC CLG by Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18, D18 A6Y0.

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.P/1196/24 dated 11-Jul-2024 decided to issue a Declaration that:

Having regard to the plans and particulars lodged with the subject Section 5:

- Section 2(1) and 3(1) of the Planning and Development Act 2000 (as amended)
- Section 4(1) and 4(2)(a) of the Planning and Development Act 2000 (as amended)
- Article 9(1)(a)(viiB) 2001 of the Planning and Development Regulations, 2001, as amended.

The Planning Authority hereby determines that the proposed works at Cairnbrook Avenue comprising line markings of on-street parking spaces are considered to **constitute development and do not constitute exempt development.**

Date of issue: 11-Jul-2024

Signed: Visin Davitt
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.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

PLANNING & DEVELOPMENT ACT, 2000 (as amended)

SECTION 5 PLANNING & DEVELOPMENT ACT 2000 (as amended)

Reference No: REF6324

Applicant: Cairnbrook OMC CLG Cairnbrook Estate, Glenamuck Road South, Carrickmines, Dublin 18

Agent: Brendan Buck PO BOX 13658, Dublin 14, D14 RW01

Registration Date: 18-Jun-2024

Location: Cairnbrook Estate, Glenamuck Road South, Carrickmines, Dublin 18

Agent: Brendan Buck PO BOX 13658, Dublin 14, D14 RW01

Description of Works: Section 5 referral/exemption declaration. A question arises as to whether the line marking of on-street parking spaces within a privately managed housing estate road where car parking is otherwise permitted by law (there are no single or double yellow lines) is or is not development and is or is not exempted development. The on street parking spaces were line marked on 2nd of March 2017 within the Cairnbrook Estate, Glenamuck Road, Carrickmines, Dublin 18. The estate's roads and common areas are managed on behalf of Cairnbrook OMC CLG by Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18, D18 A6Y0.

Report:
Laura Creagh
REF: 6324

Proposal

As per the plans and particulars submitted on 18th June 2024, the proposed works at Cairnbrook Estate, Glenamuck Road South, Carrickmines, Dublin 18 as stated, would comprise the following:

A question arises as to whether the line marking of on-street parking spaces within a privately managed housing estate road where car parking is otherwise permitted by law (there are no single or double yellow lines) is or is not development and is or is not exempted development. The on street parking spaces were fine marked on the 2nd of March 2017 within the Cairnbrook Estate, Glenamuck Road, Carrickmines, Dublin 18. The estate's roads and common areas are managed on behalf of Cairnbrook OMC CLG by Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18, D18 A6yo.

The Planning Authority notes that the line marking of on-street parking spaces within a privately managed housing estate has been already carried out.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

This Section 5 Declaration application includes:

- Completed Application Form
- Site Location Map
- Cover Letter prepared by BPS Planning and Development Consultants

The Planning Authority notes that the cover letter submitted contains discrepancies and refers to another type of development located within Fingal County Council.

Site Description

The subject site is an internal roadway located within an established residential cul-de-sac development on the southern side of Glenamuck Road South in Carrickmines area.

Zoning of Site

Under the Dún Laoghaire-Rathdown County Development Plan 2022-2028, the site is subject to zoning objective A, which seeks 'To provide residential development and improve residential amenity while protecting the existing residential amenities.'

Relevant Planning History

It is noted that there have been other planning permissions sought within the Cairnbrook Avenue residential estate, however, these are not relevant to the subject assessment.

Subject site:

D00A/0970 – Permission Granted by the Bord at site at Glenamuck Road, Carrickmines, Dublin 18. for the Construction of a residential development consisting of 3 no. 4 bed 2 storey houses, 11 no. 5 bed 2 storey houses, 4 no. 2 bed terraced houses with 3rd bed in roof space, 3 no. 1 bed apartments in end of terrace building and with 3 blocks of apartments, block A being 2 storey with 3rd level incorporated in roof space and comprising 3 no. 1 bed apartments and 12 no. 2 bed apartments. Block B being 3 storey with 4th level incorporated in roof space and comprising 3 no. 2 bed apartments and 17 no. 2 bed apartments with study. Block C being 2 storey with 3rd level incorporated in roof space and comprising 12 no. 2 bed apartments along with entrance to Glenamuck Road and all ancillary site development work associated with the development.

ABP Condition No.1 is noted which states the following:

'The development shall be carried out in accordance with the plans and particulars lodged with the application, as amended by additional information received by the planning authority on the 24th day of July 2001 and clarification of additional information received by the planning authority on the 10th day of October 2001, and by the revised plans and particulars received by An Bord Pleanála on the 15th day of February 2002, except as may otherwise be required

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

in order to comply with the following conditions. Reason: In the interest of clarity.

ABP Condition No.13 is noted which states the following:

'Prior to commencement of development, a management scheme providing adequate measures relating to the future maintenance of private open spaces, roads and communal areas in a satisfactory manner shall be submitted to the planning authority for agreement. Reason: To ensure the adequate future maintenance of this private development in the interest of residential amenity.'

Previous Declarations

REF 3124 - Section 5 Declaration sought concerning 'a question arises as to whether the line marking of on-street parking spaces within a privately managed housing estate road where car parking is otherwise permitted by law (there are no single or double yellow lines) is or is not development and is or is not exempted development. The on street parking spaces were line marked on the 2nd March 2017 within Cairnbrook Estate, Glenamuck Road, Carrickmines, Dublin 18. The estate's roads and common areas are managed on behalf of Cairnbrook OMC CLG by Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18 D18A6YO'.

The Section 5 application was received on 28th March 2024. The decision date was 23rd April 2024, decision 'S5 DEC NOT EXEMPT', reason:

'I recommend that Dún Laoghaire-Rathdown County Council advise the Applicant that, Having regard to the plans and particulars lodged with the subject Section 5: • Section 2(1) and 3(1) of the Planning and Development Act 2000 (as amended) • Section 4(1) and 4(2)(a) of the Planning and Development Act 2000 (as amended) • Article 9(1)(a)(viiB) 2001 of the Planning and Development Regulations, 2001, as amended. The Planning Authority hereby determines that the proposed works at Cairnbrook Avenue comprising line markings of on-street parking spaces are considered to constitute development and do not constitute exempt development'.

The Application cover letter submitted as part of this Section 5 application states 'this Section 5 arises as BPS was not notified of the decision of the previous one' because of a wrong address.

The Applicant states that they did not receive the decision in time to appeal the decision to An Bord Pleanála.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

It is understood that the subject Declaration is being sought to rectify this matter.

Enforcement History

ENF GC07524 - Enforcement case opened on 13.02.2024, in respect of 'installation of car-parking spaces along internal access roads of Cairnbrook Estate without the benefit of planning permission. File still open to date.

Departmental Reports

None.

ASSESSMENT

The Council is requested to determine in accordance with Section 5 of the Planning and Development Act, 2000 (as amended), hereafter referred to as the Act, whether the proposed works would or would not constitute development, and whether or not the proposal would constitute exempted development.

Is the proposal 'development'?

The first matter for determination is whether the proposal would constitute development or not. Regard is had to Section 2(1) of the Planning and Development Act 2000 (as amended), where -

"structure" means any building, structure, excavation, or other thing constructed or made on, in or under any land, or any part of a structure so defined, and—

'works' includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure.'

In addition, Section 3(1) of the Act states that *'development means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land'*.

Having regard to the above and the documentation submitted, the development under question relates to line marking carried out on an existing internal road [structure] within a residential estate to address 'haphazard parking'. Therefore, the road is considered a 'structure', the painting of parking lines is considered 'works' and the overall works are considered development as per Section 2(1) and Section 3(1) as defined in the Planning and Development Act 2000 (as amended).

Exempt Development or not?

The second matter to be determined is whether the proposal would constitute exempted development or not.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

The following legislation is considered relevant when assessing the subject application.

Section 4(1) of the Planning and Development Act 2000 (as amended) lists certain developments that are regarded as exempt development by the Act.

Section 4(2)(a) of the Planning and Development Act provides that the Minister may by regulations provide for any class of development to be exempted development for the purposes of the Act.

Article 6(1) of the Planning and Development Regulations 2001 (as amended) sets out classes of development to be deemed exempted development by way of regulation.

Assessment

It is noted that the subject road is managed privately by the Owners Management Company (the "OMC") for the residential estate. The development, namely line markings of the on-street parking spaces on internal roadway was carried out to address the 'haphazard parking' taking place. It is considered that the development described constitutes a material change of use of the subject structure and that there are no exemptions provided for such a change of use under any of the aforementioned legislative criteria, therefore it is considered that the marking out of car-parking spaces on an internal road of the residential estate is development and is not exempted development.

Restrictions to Exempted Development

Article 9 of the Planning and Development Regulations 2001 (as amended) regarding Restrictions on Exemption. Article 9(1)(a)(viiB) of the Planning and Development Regulations, 2001 (as amended) states that a restriction on exempted development provisions would apply where the proposed development, in relation to which a planning authority or An Bord Pleanála is the competent Authority in relation to appropriate assessment, would require an appropriate assessment because it would be likely to have a significant effect on the integrity of a European site.

While the subject site would be located within approximately c.4.1 km of Knocksink Wood SAC 000725, having regard to the nature and extent of works, the development would not significantly impact upon a Natura 2000 Site. In addition, having regard to the nature and extent of works, there is no real likelihood of significant effects on the environment arising from development. The need for environmental impact assessment can, therefore, be excluded at the preliminary examination and as such a screening determination is not required.

Restrictions to exempted development under Article 9 of the Planning and Development Regulations 2001 (as amended), would not therefore apply to the development in this instance.

No. **P/1196/24**

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

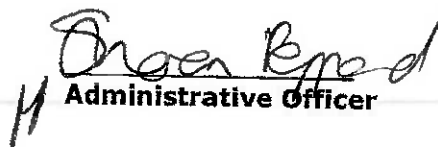
RECOMMENDATION

I recommend that the applicants agent, Brendan Buck PO BOX 13658, Dublin 14, D14 RW01, be informed that:

Having regard to the plans and particulars lodged with the subject Section 5:

- Section 2(1) and 3(1) of the Planning and Development Act 2000 (as amended)
- Section 4(1) and 4(2)(a) of the Planning and Development Act 2000 (as amended)
- Article 9(1)(a)(viiB) 2001 of the Planning and Development Regulations, 2001, as amended.

The Planning Authority hereby determines that the proposed works at Cairnbrook Avenue comprising line markings of on-street parking spaces are **considered to constitute development and do not constitute exempt development.**


Administrative Officer

Executive Planner

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

ORDER

The issuing of a Declaration pursuant to Section 5 of the Planning & Development Act 2000, (as amended) to Brendan Buck PO BOX 13658, Dublin 14, D14 RW01, that

Having regard to the plans and particulars lodged with the subject Section 5:

- Section 2(1) and 3(1) of the Planning and Development Act 2000 (as amended)
- Section 4(1) and 4(2)(a) of the Planning and Development Act 2000 (as amended)
- Article 9(1)(a)(viiB) 2001 of the Planning and Development Regulations, 2001, as amended.

The Planning Authority hereby determines that the proposed works at Cairnbrook Avenue comprising line markings of on-street parking spaces are **considered to constitute development and do not constitute exempt development.**

Signed: 
Approved Officer

Dated: 11/07/24

Thereunto empowered by order of Príomhfheidhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 2461, dated 24th Nov 22, delegating to me all his powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.



Comhairle Contae County Council

**Dun Laoghaire-Rathdown County Council
APPLICATION FOR SECTION 5
Planning and Development Act 2000, (as amended)**

The purpose of a Section 5 of the Planning and Development Act 2000, (as amended), is to establish if a particular development is or is not an exempted development within the meaning of the Act.

If detailed information / drawings are not provided, we may not be in a position to make a decision.

NOTES:

- (a) Application must be accompanied by fee of €80.00
- (b) Application must be accompanied by 3 Copies of:
 - (1) site location map with site clearly outlined in red,
 - (2) site layout plan including all existing structures on site (this is required as conditions and limitations of exempted development include location of development and distances from site boundaries),
 - (3) scale floor plans and elevations (this is required as conditions and limitations of exempted development include height of structure and distances of windows from boundaries).
 - (4) Any other additional information so as to inform the decision.

Forward your application to: Dun Laoghaire-Rathdown County Council,
Planning and Organisational Innovation, Registry and Decisions Section,
Marine Road, Dan Laoghaire, County Dublin.
Telephone: 01-2047240

1 Applicant Details:

NAME OF APPLICANT: Cairnbrook OMC CLG

ADDRESS OF APPLICANT: c/o Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18, D18 A6yo.

EMAIL ADDRESS: [REDACTED]

TELEPHONE NO. Day: [REDACTED]

MOBILE: [REDACTED]

2. Agent Details:

NAME OF AGENT: Brendan Buck

AGENT'S ADDRESS: PO BOX 13658, Dublin 14, D14 RW01.

TELEPHONE NO. Day: (01) 5394960 **MOBILE:** (087) 2615871

3. Correspondence Details:

ADDRESS FOR CORRESPONDENCE (if different from above)

N/A (Please use the BPS address)

5. Site Details:

LOCATION OF SUBJECT SITE:

Cairnbrook Estate is located off the Glenamuck Road South at Carrickmines, Dublin 18. Section 5 refers to on-street painting which has marked out parking spaces. The precise area of the estate was not provided under the parent permission. The area given was and is just over 2.5ha.

(a) area of site: 2.5ha +

(b) floor area of existing extension(s) (if any): N/A

(c) floor area of proposed development: N/A

(d) area of rear garden remaining: N/A

Please state applicant's interest in this site: Cairnbrook OMC CLG is the owner and manager of all common areas including roads as the scheme's management company. The OMC operates as the statutory undertaker for the scheme under contracts agreed with DLRCC.

If applicant is not the owner of site, please provide name & address of owner: N/A

Is the above site located within the curtilage of a Protected Structure or within a Candidate Architectural Conservation Area or Architectural Conservation Area?

No

If yes, has a Declaration under Section 57 of the Planning and Development Act 2000, (as amended) been requested or issued for the property by the Planning Authority?

5. Details of works (where applicable) or proposed development. (Note: Only works listed and described under this Section will be assessed under this Section 5 application. Use additional sheets if required.)

Section 5 referral / exemption declaration. A question arises as to whether the line marking of on-street parking spaces within a privately managed housing estate road where car parking is otherwise permitted by law (there are no single or double yellow lines) is or is not development and is or is not exempted development. The on street parking spaces were line marked on the 2nd of March 2017 within the Cairnbrook Estate, Glenamuck Road, Carrickmines, Dublin 18. The estate's roads and common areas are managed on behalf of Cairnbrook OMC CLG by Indigo Real Estate Management, 30 The Mall, Beacon Court, Sandyford, Dublin 18, D18 A6yo.

6. List of plans, drawings, etc. submitted with this application.

Please refer to the attached letter prepared by BPS.

This Section 5 is accompanied by OS Maps, aerial photographs, and other details sufficient to identify and to assess the lines painted onto the Cairnbrook private housing estate road.

This matter does not pertain to existing structures on site and no scaled floor plans and elevations are required.

Any other additional information can be provided on request so as to inform the decision of DLRCC.

7. Are you aware of any enforcement proceedings connected to this site? If so please supply details:

A letter has been received by Cairnbrook OMC CLG from the Enforcement Section of Dun Laoghaire-Rathdown County Council. A copy of this letter is attached to the accompanying letter prepared by BPS. The reg. ref. of the Enforcement Section letter is ENF GC 07524.

8. Were there previous planning application/s on this site? If so please supply details:

Cairnbrook private housing estate's parent planning permission is reg. ref. D00A/0970 and this is the planning permission relevant to this Section 5.

There have been other individual planning permissions pertaining to private properties within the estate which are not relevant to this matter.

Signed: *Brendan Buck* (agent). Date: 28/3/2024.

Planning Pack Map

723481

720888

721571

723481



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Éireann

CENTRE COORDINATES:
ITM 721280,723268

PUBLISHED: 27/03/2024
ORDER NO.: 50391333_1

MAP SERIES: 1:2,500
MAP SHEETS: 3458-C

COMPILED AND PUBLISHED BY:

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Phoenix Park,
Dublin 8,
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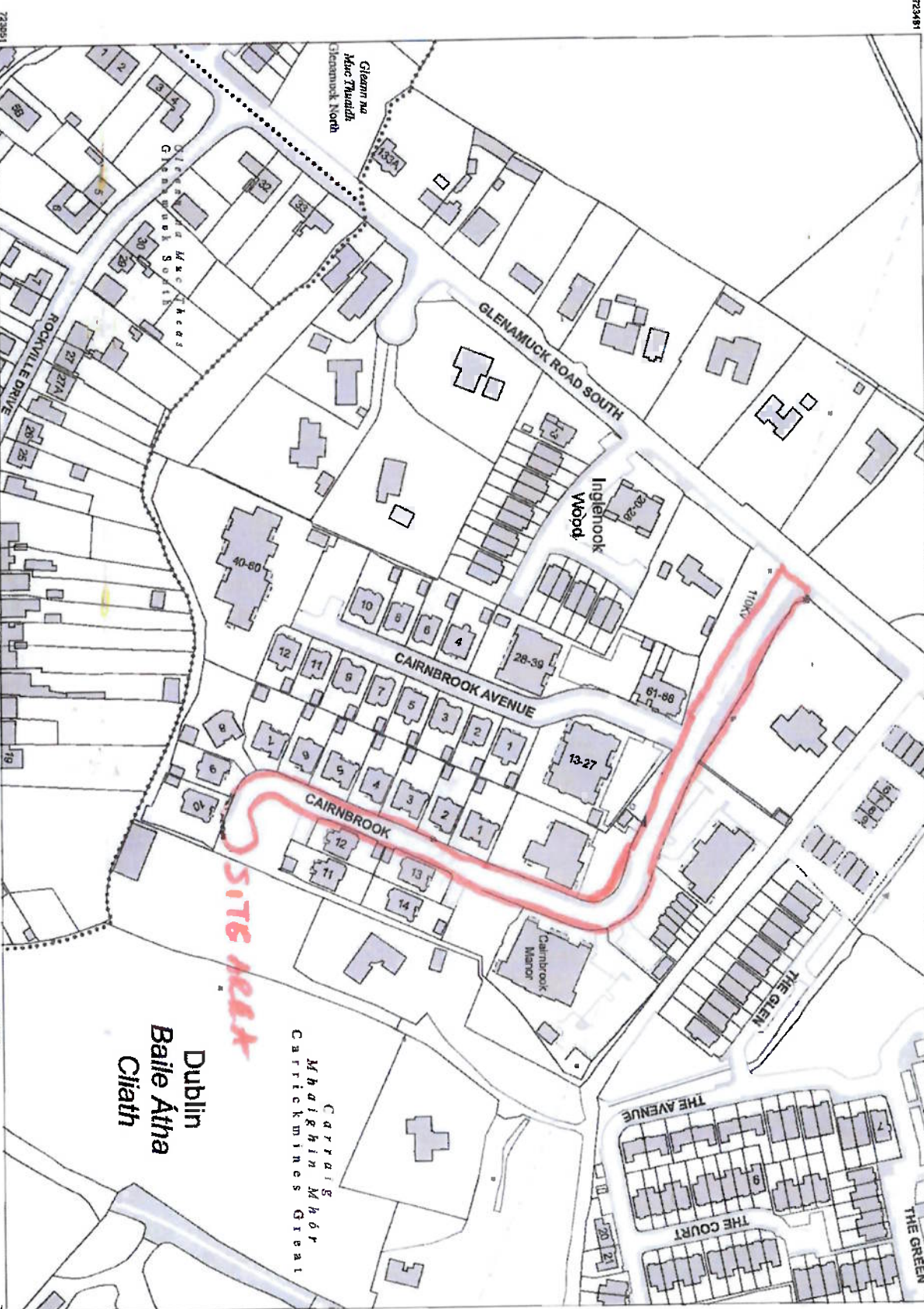
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LEGEND:

To view the legend visit www.taite.ie and search for 'Large Scale Legend'.



723054

720688

723054

723051

720671

Site Location Map



**Tailte
Éireann**

**CENTRE
COORDINATES:**
ITM 721280,723288

PUBLISHED: 27/03/2024
ORDER NO.: 50391333_1

MAP SERIES: 6 Inch Raster
MAP SHEETS: DN028
WM003

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