

95 Ballinclea Heights,

Killiney, Co Dublin

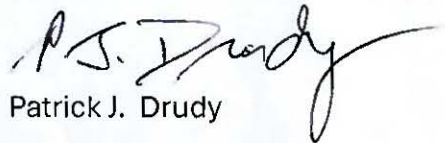
24 September 2024

Planning Appeal

I enclose an Appeal and other information in relation to a Declaration by Dun Laoghaire Rathdown County Council. REF9124.

I enclose a fee of €220 as required. Please acknowledge in due course.

With best wishes,


Patrick J. Drudy

AN BORD PLEANÁLA	
LDG-	<u>075106-24</u>
ABP-	
25 SEP 2024	
Fee: €	<u>220</u> Type: <u>Chq</u>
Time: <u>16:19</u>	By: <u>HAND</u>

Planning Appeal Form

Your details

1. Appellant's details (person making the appeal)

Your full details:

(a) Name

Professor P.J. Drudy

(b) Address

95 Ballinclea Heights,
Killiney,
Co. Dublin,
A96 V6K7

24th Sept 2024

Agent's details

2. Agent's details (if applicable)

If an agent is acting for you, please **also** provide their details below. If you are not using an agent, please write "Not applicable" below.

(a) Agent's name

Click or tap here to enter text.

(b) Agent's address

Click or tap here to enter text.

Postal address for letters

3. During the appeal we will post information and items to you **or** to your agent.
For this appeal, who should we write to? (Please tick one box only.)

You (the appellant) at the
address in Part 1

☒

The agent at the address in
Part 2

☐

Details about the proposed development

4. Please provide details about the planning authority decision you wish to appeal. If you want, you can include a copy of the planning authority's decision as the appeal details.

(a) Planning authority

(for example: Ballytown City Council)

Dun Laoghaire-Rathdown County Council

(b) Planning authority register reference number

(for example: 18/0123)

REF9124

P/1532/24

(I was unsure which reference was the correct one so I have included both above.)

(c) Location of proposed development

Killiney Golf Club, Ballinclea Road, Killiney. Fencing erected at two locations on Roches Hill, Killiney, blocking off established right of way. Length of fencing: approx 12 metres close to Golf Club Wicket Gate and 10 metres at the other end of the established right of way. No permission sought.

Appeal details

5. Please describe the grounds of your appeal (planning reasons and arguments). You can type or write them in the space below or you can attach them separately.

Summary:

Dun Laoghaire Rathdown County Council (the Council) has made a decision that the works in question constitute development and that they constitute exempted development. It is not contested that the works constitute development. However, the Council has erred in its conclusion that the fencing does not (1) fence or enclose any land habitually used by the public, and (2) does not obstruct a right of way. In addition, the Council's decision appears to confuse the different rights of way on Roches Hill, which has led the Council into error. It is requested that An Bord Pleanála examine the issue again and find that the development is not exempted because, it is not in compliance with Article 9(1)(a)(x) and (xi) of the Planning and Development Regulations 2001 (the 2001 Regulations).

Detail:

1. As is clear from the map submitted with my original application, there are several established pedestrian pathways and rights of way on Roches Hill. As noted in the decision, two different rights of way are noted in the County Development Plan, namely the Right of Way from "*Killiney Golf Club Pavilion to Roches Hill*" (the 'Golf Club ROW') and the Right of Way leading from "*Claremont Road via Roches Hill to Glenalua Road*" (the 'Claremont / Glenalua ROW'). The first half the Council's decision refers to both the Golf Club ROW and the Claremont / Glenalua ROW as being in the vicinity of the development in question, but the decision fails to correctly identify that the fenced off pedestrian pathway, which leads from the Golf Club Wicket Gate to join the Claremont / Glenalua ROW is itself both an established pedestrian

pathway and a right of way. By virtue of this error, the Council's decision should be found by the Board to be incorrect and the appeal should be allowed.

2. Insofar as the earlier part of the decision (including the Site Visit) correctly refers to the fenced off pathway, the Council has fallen into error by failing to find that article 9(1)(a)(x) of the 2001 Regulations applies. Article 9(1)(a)(x) provides that a development shall not be an exempted development if it would *'consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure ...'*. It is not relevant for the purposes of article 9(1)(a)(x) whether any alternative path to the fenced land is available; the sole question is whether the fence in question encloses land habitually open to or used by the public during the previous 10 years.

It is clear from the photographs that the enclosed path has been habitually used for more than 10 years prior to the fencing. The information that I provided in my application, based on my use of the path over many years (and many others), is also evidence that it has been habitually used for more than 10 years prior to the fencing. The Council's decision fails to reference my evidence at all.

Under 'Site Visit', the decision notes that as one enters into Roches Hill coming from the Golf Club there is a fence. This fence is close to the Wicket Gate. The decision states that the fence *"could be perceived to be blocking access to the path on the other side"*. This statement is misleading, as is demonstrated by the photographs included in my original application. The fence is blocking access to the path on the other side of the fence, as a matter of fact. Since the fence was erected, the public has created an alternative path around the fence so as to access the established pedestrian pathway.

Three issues arise. First, the fact that a new path has been created by the

public in order to mitigate the impact of the fencing does not change the fact that the original established pedestrian pathway has been fenced or enclosed. Second, the new path which mitigates the impact of the fencing is clearly not an appropriate solution for public use of the pathway. It is hazardous to users and is not an appropriate or adequate alternative. Third, the availability of an alternative route is not relevant to article 9(1)(a)(x); the fact that an established pathway has been fenced off is sufficient for that provision to apply.

On this basis alone, the exclusion in article 9(1) applies, such that the development is not capable of being exempted. By virtue of this error, the Council's decision should be found by the Board to be incorrect and the appeal should be allowed.

3. In addition, the Council has fallen into error by failing to find that article 9(1)(a)(xi) of the 2001 Regulations applies. Article 9(1)(a)(xi) provides that a development shall not be exempted where it would 'obstruct any public right of way'. It is clear from the evidence that I provided in support of my application that the established pedestrian pathway is part of the public rights of way on Roches Hill, irrespective of whether it is specifically referenced in the County Development Plan or not. The Council decision does not reference my evidence at all.

The Executive Planner on his site visit noted that there is a *"well worn path running around the fence, enabling access to the path on the other side. The case officer walked this path and although it is noted that there are overgrown briars and ferns on either side, it was a well worn and clear path. At the end of the path ..., there was also a fence, however, as before, it is a well-worn path running around the fence."* It is on the basis of this analysis that he concludes that *"there is no obstruction to this path"*. The Council has fallen into error in three respects. First, the Council decision fails to recognise that the fenced off pathway is itself a right of way. Second, the fact that a *new* path has been

created by the public in order to mitigate the impact of the obstruction of the right of way does not change the fact that the right of way has been obstructed. Third, the new path which mitigates the impact of the obstruction is clearly not an appropriate solution for public use of this right of way. This alternative is hazardous to users and is not an appropriate or adequate alternative. By virtue of this error, the Council's decision should be found by the Board to be incorrect and the appeal should be allowed.

It is submitted that it is clear from the points set out above that the Council is in error. It is submitted that the Board should find that the Council's decision is incorrect. Based on the information in my original application, the photographs with my original application and the information in the Council's report (insofar as it refers to the correct pathway), it is submitted that the Board should find that the development shall not be exempted by virtue of article 9(1)(a)(x) and (xi) of the 2001 Regulations.

I have attempted to briefly set out my appeal above, but I am happy to provide any further information or clarification that the Board may require. I enclose the fee required for my appeal.

Supporting material

6. If you wish you can include supporting materials with your appeal. Supporting materials include:
- photographs,
 - plans,
 - surveys,
 - drawings,
 - digital videos or DVDs,
 - technical guidance, or
 - other supporting materials.

Acknowledgement from planning authority (third party appeals)

7. If you are making a third party appeal, you **must** include the acknowledgment document that the planning authority gave to you to confirm you made a submission to it. ✓

Fee

8. You **must** make sure that the correct fee is included with your appeal.
You can find out the correct fee to include in our Fees and Charges Guide on our website.

Oral hearing request

9. If you wish to request the Board to hold an oral hearing on your appeal, please tick the "yes, I wish to request an oral hearing" box below.

Please note you will have to pay an **additional non-refundable fee** of €50. You can find information on how to make this request on our website or by contacting us.

If you do not wish to request an oral hearing, please tick the "No, I do not wish to request an oral hearing" box.

Yes, I wish to request an oral hearing

☐

No, I do not wish to request an oral hearing

☒

NALA has awarded this document its Plain English Mark
Last updated: April 2019.

Rocheshill Protection Association

C/o 95 Ballinclea Heights,
Killiney, County Dublin
A96 V6K7
9 August 2024

The Director,
Planning Department, Registry and Decisions Section,
Dun Laoghaire Rathdown County Council,
Marine Road, Dun Laoghaire

Rocheshill, Killiney : Erection of Fencing by Killiney Golf Club

Dear Director,

I provide below some additional information relevant to my Section 5 Application enclosed. Rocheshill, Killiney is an outstanding and probably unique natural amenity. It is one of the few remaining unspoiled areas of natural beauty and wilderness in the Dun Laoghaire Rathdown County Council area. As explained below, the erection of fencing on this site blocks off land habitually used by the public, and adversely affects the amenities of the area. I hope that this letter will provide some factual material which may not have been readily available to the Enforcement Section of the Council.

I disagree as a matter of fact that the enclosed land is not habitually open to or used by the public. I have been resident in Killiney, since 1980 and my wife and I have used Rocheshill regularly during our time living here. We know the established pedestrian pathways very well. I have been using the now enclosed pathway for many years. This pathway provides a significantly shorter and more convenient access for the public between Glenalua Road and to and from the Golf Course Wicket gate and Killiney Shopping Centre. As Chairperson of Rocheshill Protection Association I was personally involved with many others and in cooperation with the County Council during the course of the 1980s and 1990s in a long campaign to protect Rocheshill from development which would have an adverse impact on the amenities of the area. Indeed the Planning Authority consistently rejected such development. Through this I came into contact with many local residents and others further afield who were users of Rocheshill, some for much of their lives. I am aware from recent conversations with some of these that they have regularly used the now enclosed pathway for many years.

This was acknowledged in the County Planning Officer's Report dated 26 April 1995 which stated that the then proposed development by the Golf Club would "interfere with established rights of way across this 3.1 acre site" and that the proposed fence would "in effect cut off established rights of way between Rocheshill and the Golf Course".

Replying to An Bord Pleanála on 19 December 1995 in relation to an appeal on behalf of the Golf Club against the refusal decision of Dun Laoghaire Planning Authority, the Senior

Administrative Officer of the Planning Department stated that "the other routes (the pedestrian pathways) are still Public Rights of Way and in the case of the two routes being interfered with by the proposed development, these routes have been well documented.....". The letter also states that the appellant's statement that "no other pedestrian pathways on the property have any legal standing whatever as rights of way" is unfounded given the history of the site... A map entitled "Rocheshill Killiney Rights of Way", including the Principal Paths, was prepared for the above appeal by Brady Shipman Martin, Landscape Architects and Planners. These rights of way were certified on the map by three long-term residents of Killiney, Bridie Redmond, Kitty Redmond and Maurice Byrne.

The fences erected by the Golf Club block pathways which are "rights of way", established through long term public use. Access to and from one of the "established pedestrian pathways" was referred in the Bord Pleanala Order (PL 06D.097552) at Number 2 and the fencing is in contravention of the Order.

On the basis that the now enclosed lands are established pedestrian pathways referred to in the An Bord Pleanala Order and are rights of way which were habitually used by the public recently and for many years before, no exemption under the Planning Regulations is available and enforcement should proceed.

Furthermore, the An Bord Pleanala Order pointed out that interference with established pedestrian pathways "would seriously injure the amenities of the area and be contrary to proper planning and development of the area". As is clear from the photographs provided the erection of fencing interferes with these pathways and seriously injures these amenities and is again in contravention of the Order.

I find it to be surprising that the Enforcement Section of the Council would conclude that the now enclosed land does not block off habitually used land. During fire break work in 2022 the Council and the Golf Club together blocked off access to the land with plastic barriers on a temporary basis for health and safety reasons when contractors were carrying out work subsequent to a fire on the hill. This was specifically on the basis that the land was being used as a pathway by members of the public. It seems remarkable to then conclude that the land was not being so used.

Rocheshill together with Killiney Hill is within the proposed Natural Heritage Area (pNHA) of Dalkey and Killiney and therefore subject to a potential Special Area Amenity Area Order. A key objective of the *Dun Laoghaire Rathdown Development Plan, 2022- 28* is "to retain and preserve the natural environment and biodiversity on Roches/Mullins Hill, Killiney". This fencing is at variance with this objective.

For all the above reasons, I respectfully ask you to conclude that the erection of fencing on Rocheshill is not exempted development.



Professor P.J. Drudy

Dún Laoghaire-Rathdown County Council

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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 Professor P. J Drudy, Professor P.J. Drudy on behalf of Rocheshill Protection Association 95, Ballinclea Heights, Killiney, Co.Dublin, A96V6K7, that:

I recommend that Dún Laoghaire – Rathdown County Council advise the Applicants' Agent that, having regard to:

a) Sections 2, 3, 4(2)(a) and 208 of the Planning and Development Act 2000, as amended the proposed works constitute development, and constitute exempted development.

b) Class 9 & 11, Schedule 2, Part 1 Articles 6(1), 9 (1)(a) of the Planning and Development Regulations, as amended that

It is considered that the proposed works constitute development and constitute exempted development.

Signed:


Approved Officer

Date: 29/8/24

Thereunto empowered by order of Príomhfhéidhmeannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 2513, dated 29/9/23, delegating to me all his powers, functions and duties in relation to the County Council of Dún Laoghaire-Rathdown in respect of this matter.

Planning Department

Rannóg Pleanála

Registry Section

Direct Tel: 01 2054863

Professor P. J Drudy,
Professor P.J. Drudy on behalf of Rocheshill Protection Association
95, Ballinclea Heights
Killiney
Co.Dublin
A96V6K7

Reference No: REF9124
Application Type: Declaration on Development and Exempted Development
Act – Section 5, Planning & Development Act (as amended)
Registration Date: 09-Aug-2024
Decision Date: 29-Aug-2024
Location: Killiney Golf Club, Ballinclea Road, Killiney, Co. Dublin.
Development Works: Fencing erected at two locations blocking off established
right of way. See Map.
Length of fencing : approx. 12 metres close to Golf Club Wicket Gate and 10
metres at the other end of an established right of way . No permission sought.
See separate letter for detail.

**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. P/1532/24 Dated 29-Aug-2024 decided to issue a Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), to, Professor P. J Drudy, Professor P.J. Drudy on behalf of Rocheshill Protection Association 95, Ballinclea Heights, Killiney, Co.Dublin, A96V6K7 that:

I recommend that Dún Laoghaire – Rathdown County Council advise the Applicants' Agent that, having regard to:

- a) Sections 2, 3, 4(2)(a) and 208 of the Planning and Development Act 2000, as amended the proposed works constitute development, and constitute exempted development.
 - b) Class 9 & 11, Schedule 2, Part 1 Articles 6(1), 9 (1)(a) of the Planning and Development Regulations, as amended that
- It is considered that the proposed works constitute development and constitute exempted development.

Dated: 29-Aug-2024

Signed: Najia Nusrat Malik
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

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RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

PLANNING & DEVELOPMENT ACT 2000, AS AMENDED

Section 5 – Planning and Development Act 2000 (as amended)

Reference No.: REF9124

Date Received: 09-Aug-2024

Name & Address: Professor P.J. Drudy on behalf of Rocheshill
Protection Association 95, Ballinclea Heights, Killiney, Co.Dublin, A96V6K7

Applicant: Professor P.J. Drudy on behalf of Rocheshill
Protection Association 95, Ballinclea Heights, Killiney, Co.Dublin, A96V6K7

App. Type: Section 5

Location: Killiney Golf Club, Ballinclea Road, Killiney, Co.
Dublin.

Development Works: Fencing erected at two locations blocking off
established right of way. See Map.
Length of fencing : approx. 12 metres close to Golf Club Wicket Gate and 10
metres at the other end of an established right of way . No permission sought.
See separate letter for detail.

Report
(Ciaran Power)

s.5 REF: 91 24

Query

A section 5 referral has been submitted in relation to the works at Killiney Golf
Club, Ballinclea Road, Killiney, Co. Dublin.

Proposal

The submitted declaration as stated in the submitted documentation, seeks a
determination as to whether or not the proposed works are development and if
so, are they exempted development. The following works are proposed:

- a) Fencing erected at two locations blocking off established right of way.
- a) Length of fencing: approx. 12 metres close to Golf Club Wicket Gate and 10
metres at the other end of an established right of way.

Submission

This Section 5 Declaration application includes:

- completed application form,

Dún Laoghaire-Rathdown County Council

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- supporting documentation prepared by P.J Drudy, Chairperson of Roacheshill protection association, which includes a cover letter and a description of the fencing.
- site Location Map.
- Photographs of the fencing.

Matter for Determination

The matter for determination is whether the fencing at on lands that form part of Roacheshill but are under the ownership of Killiney Golf Club, would or would not constitute development, and whether the proposal would or would not constitute exempted development. o/

Site Description

The subject site is held under the ownership of the Killiney Golf Club, however the subject lands, pertinent to this application, do not form part of the Golf Club golfing lawns, in that this area is overgrown with scrub and vegetation similar to that of rest of the lands of Roacheshill, which is held under the ownership of Dun Laoghaire Rathdown County Council.

- X Publicly accessible historical aerial photography of the lands, pertinent to this section 5 application, indicate that there is, and has been, a path on them.

The stated site area is 3.1 Ha.

Zoning of Site

- X Under the Dún Laoghaire-Rathdown County Development Plan 2022-2028, the site is subject to zoning objective F, which seeks 'To preserve and provide for open space with ancillary active recreational amenities.'

- X The subject lands are covered by the proposed Dalkey Coastal Zone and Killiney Hill/Roacheshill Natural Heritage Area (pNHA)

The part of the Roacheshill owned by Dun Laoghaire Rathdown County council is covered with Special Local Objective 70 which states:

- X *'To prepare a management plan for Killiney Hill Park and to include the area comprising the entire pNHA of Killiney Hill and Roches/Mullins Hill in consultation and liaison with the National Parks and Wildlife Service, and to retain and preserve the natural environment and biodiversity on Roches/Mullins Hill, Killiney.'*

Public Rights of Way

The County Development Plan 2022-2028 maps and the plans' Appendix 11, indicate that there is a Public Right of Way leading from the Killiney Golf Club car park through to Roacheshill. This Right of Way is listed under of the County Development Plan 2022-2028 as *'Killiney Golf Club Pavilion to Roches Hill.'*

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On Roacheshill itself, the County Development Plan 2022-2028 maps and the plans' Appendix 11, indicate that there is a Public Right of Way leading from Claremont Road via Roches Hill to Glenalua Road. This Right of Way is listed under of the County Development Plan 2022-2028 as 'Claremont Road via Roches Hill to Glenalua Road.'

Relevant Planning History

The following has been extracted from Arbitration Proceedings dated 11th of March 1987 from the evidence of Mr C.M. Tracy Acting Senior Planning Assistant.

- 'The site has been zoned for open space uses since the earliest development plan for the borough. The 1976 development plan ... shows the site zoned as open space and this was reaffirmed in the 1984 development plan.'
- On the 30th of September 1964, the owner of the site, Lord Talbot, applied for a special general permission under section 57 of the 1934 town and Regional Planning Act. This application was for the development of a motel, chalets and associated car parking on a portion of the site. In the letter of application, it was stated that 1 acre of the site (adjoining Claremont Road) would be developed and that the balance of the site (approximately 26 acres at the time) would be kept as an amenity available to the public. This application was refused on the grounds that insufficient information was submitted with the application. The proposal showed a development of approximately 1400m² on site and the provision of a public car park in addition to the provision of patrons parking.'
- XJS Investments Ltd applied to the council on 19 November 1982 for an application for 18 apartments located in 3 no. three storey blocks 10 no. 2 storey dwellings and 4 no. single storey dwellings. In their application the applicants offered to cede 16 acres of land to the Planning Authority as public open space. The application was also refused by the Planning Authority. The decision was appealed to An Bord Pleanála and the refusal upheld in May 1986.

Enforcement History

ENF14224: An Enforcement File was opened pertaining to the erecting of mesh fencing without the benefit of a planning permission and that may not constitute exempt development under the Planning and Development Regulations 2001 (as amended) consequent to Article 9 (1)(a)(x) in that the development consists of the fencing or enclosure of lands habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes.

The Planning Enforcement Inspector stated:

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'Based on the information available to planning enforcement, there is no act of unauthorised development and therefore no enforcement action available.'

Site Visit

A site visit was undertaken by the case officer on the 29th of August to Roacheshill. The site visit began in the car park of the Killiney Golf Club walking along the dedicated Right Of Way to the Roacheshill proposed Natural Heritage Area. It was noted that there were a number of paths throughout the pNHA. The general landscape is overgrown with ferns and briars, save for those areas that were recently affected by fire, however it was evident that the paths throughout are regularly used. It is noted that as one enters into the Roacheshill proposed Natural Heritage Area from the dedicated Right Of Way leading from the Killiney Golf Club car park, there is a fence.

X It is possible that this fence could be perceived to be blocking access to the path on the other side, however there is a well-worn path running around the fence enabling access to the path on the other side. The case officer walked this path and although it is noted that there are overgrown briars and ferns on either side, it was a well-worn and clear path.

At the end of the path pertinent to this application, there was also a fence, however as before, it there is a well-worn path running around the fence.

Therefore, there is no obstruction to this path and the lands owned by Killiney Golf Club.

Proposed works

The application form included a cover letter prepared by Professor P.J Drudy, Chairperson of Roacheshill protection association and one section of same states:

X *'The fences erected by the Golf Club block pathways which are "rights of way", established through long term public use. Access to and from one of the "established pedestrian pathways" was referred in the Bord Pleanala Order (PL 06D.097552) at Number 2 and the fencing is in contravention of the Order.'*

Planning Comment

The Council is requested to determine, in accordance with Section 5 of the Planning and Development Act 2000 (as amended) whether or not the erection of the fence constitute development or not, and if so, whether said works are exempted development.

Legislative Context

Planning and Development Act 2000 (as amended)

Consideration as to whether a development constitutes exempted development or not is governed by Sections 2, 3, and 4 of the Planning and Development Act 2000 (as amended).

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Under Section 2(1), the following is the interpretation of 'works':

"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

Section 3 (1) states as follows:

"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 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Supplemental provisions with respect to public rights of way.

Section 208

"(1) Where a public right of way is created pursuant to this Act, or where a provision in a development plan F1103[or local area plan] in force on the commencement of this section relates to the preservation of a public right of way, the way shall be maintained by the planning authority."

(2) (a) Where a right of way is required by this section to be maintained by the planning authority, a person shall not damage or obstruct the way, or hinder or interfere with the exercise of the right of way.

(b) A person who contravenes this subsection shall be guilty of an offence.

(3) Where, in the case of a right of way required by this section to be maintained by the planning authority, the way is damaged or obstructed by any person, the planning authority maintaining the right of way may repair the damage or remove the obstruction, and the expenses incurred by it in the repair or removal shall be paid to them by that person and, in default of being so paid, shall be recoverable from him or her as a simple contract debt in any court of competent jurisdiction."

Planning and Development Regulations 2001 (As amended)

Article 6 (1) of the Planning and Development Regulations 2001, (as amended), states:

'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'

Restrictions on exemption

Article 9 (1) of the Planning and Development Regulations 2001, (as amended), states:

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'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)

(x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years 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,

Under 'Sundry Works' Class 9, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), it states:

"The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway."

is considered to comprise exempted development subject to the following Conditions and Limitations:

"The height of any such structure shall not exceed 2 metres."

Under Class 11, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), it states:

"The construction, erection, lowering, repair or replacement, other than within or bounding the curtilage of a house, of

(a) any fence (not being a hoarding or sheet metal fence), or

(b) any wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete"

is considered to comprise exempted development subject to the following Conditions and Limitations:

1. *The height of any new structure shall not exceed 1.2 metres or the height of the structure being replaced, whichever is the greater, and in any event shall not exceed 2 metres.*
2. *Every wall, other than a dry or natural stone wall, constructed or erected bounding a road shall be capped and the face of any wall of concrete or concrete blocks (other than blocks of a decorative finish) which will be visible from any road, path or public area, including a public open space, shall be rendered or plastered.*

Assessment

Having regard to the submitted details, it is considered that the fencing blocking a public Right of Way at Roacheshill in Killiney shall be assessed under Sections 2(1), 3(1) 4(2)(a) and Section 208 of the Planning and Development Act 2000 (as amended),

and can be assessed under 'Sundry Works' Class 9 and Class 11, Part 1, Schedule 2 and article 6 & 9 of the Planning and Development Regulations 2001 (as amended).

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Is the proposal development?

The first matter for determination is whether the proposal would or would not constitute development.

Having regard to Sections 2(1) and 3(1) of the Planning and Development Act 2000 (as amended), it is considered that the proposed development as detailed in the Section 5 Declaration submission would constitute the carrying out of works and can therefore be considered to comprise 'development'.

Is the proposal exempted development?

The second matter for determination is whether the proposal would or would not constitute exempted development.

Planning Assessment:

In consideration of the documentation submitted, the question posed to the Planning Authority queries to whether the fencing on Roacheshill, which is stated to be blocking an established right of way is exempted development. As per the documentation submitted the query specifically relates to the 'Claremont Road via Roches Hill to Glenalua Road' Right of Way.

NO

Section 208 of the Planning and Development Act (as amended)

Having regard to the public available archived County Development Plans of Dun Laoghaire Rathdown County Council, the Planning Authority recognise that there is a dedicated Right of Way leading from Claremont Road to Glenalua Road over Roacheshill.

Reviewing publicly available aerial photography, and walking the routes during the site visit, it is noted that there are multiple paths that can be taken across Roacheshill (Dun Laoghaire Rathdown County Council owned lands), conveying routes from Claremont Road via Roacheshill to Glenalua Road.

In the absence of a deed and/or title plan map documentation submitted as part of the plans and particulars, delineating the exact location of the Right of Way, for example on a deed plan annotated by way of a 'wayleave' in yellow (as is standard), it is not clear exactly where the dedicated right of way is located.

The Planning Authority acknowledge that the dedicated Right of Way could be located on the lands under the ownership of the Killiney Golf Club, however the Planning Authority also recognise that dedicated Right of Way could be on the lands owned by Dun Laoghaire County Council.

Notwithstanding this, the site visit undertaken by the case planner has demonstrated that there was no obstruction on any pathways leading from Claremont Road to Glenalua Road via Roacheshill. Therefore, the 'Claremont Road via Roches Hill to Glenalua Road' Right of Way is considered to be intact and unobstructed.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

The Planning Authority consider that section 208 of the Planning and Development Act (as amended) is upheld.

Planning and Development Regulations 2001 (As amended)

Having regard to 'Sundry Works' Class 9, Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended), the fence does not exceed 2 metres in height and Under Class 11, Schedule 2, Part 1, the fencing is considered to comprise exempted development because the fence does not exceed 1.2m in height.

Article 9 assessment

Article 9 of the Planning and Development Regulations 2001 (as amended) discusses Restrictions on Exemption.

Having regard Article 6 (1) which refers to Article 9 (1), development shall not be exempted development if the carrying out of such development would obstruct any public right of way and consist of fencing or enclosure of any land habitually open to or used by the public for recreational purposes or other place of natural beauty or recreational utility (sic).

Having regard to the above, evidenced by the site visit, the Planning Authority do not consider that the 'Claremont Road via Roches Hill to Glenalua Road' Right of Way has been obstructed, nor is it considered that the fencing prevents the land from being used for recreational purposes.

Not relevant

Article 9(1)(a)(viiB) 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.

The Planning Authority do not consider that the fencing will have an impact on the integrity of any European site

Conclusion

Having regard to the documentation submitted in support of the application, and to the above assessment, it is considered it is considered that the fencing on lands owned by Killiney Golf Club, does not obstruct the 'Claremont Road via Roches Hill to Glenalua Road' Right of Way subject of this Section 5 Declaration, constitutes development and constitutes exempt development. The applicant shall be advised accordingly.

Not relevant

Appropriate Assessment (AA) Screening

The development subject to this assessment has been screened for AA (report on file) and it has been determined that the development would not significantly impact upon a Natura 2000 Site.

Dún Laoghaire-Rathdown County Council

LOCAL GOVERNMENT ACTS 1925 - 2014

RECORD OF EXECUTIVE BUSINESS CHIEF EXECUTIVE'S ORDERS

Environmental Impact Assessment (EIA) Screening

Having regard to the nature of the development subject to this assessment, it is considered that there is no real likelihood of significant effects on the environment arising from the development. The need for environmental assessment can, therefore, be excluded at preliminary examination and as such a screening determination is not required.

RECOMMENDATION:

I recommend that Dún Laoghaire-Rathdown County Council advise the Applicant, Professor P. J Drudy, on behalf of Rocheshill Protection Association 95, Ballinclea Heights, Killiney, Co.Dublin, A96V6K7

that, having regard to:

a) Sections 2, 3, 4(2)(a) and 208 of the Planning and Development Act 2000, as amended the proposed works constitute development, and constitute exempted development.

b) Class 9 & 11, Schedule 2, Part 1 Articles 6(1), 9 (1)(a) of the Planning and Development Regulations, as amended that

It is considered that the proposed works **constitute development and constitute exempted development.**


Administrative Officer.


Executive Planner.

Planning Department
An Rannóg Pleanála
Decisions and Registry

Professor P. J Drudy,
Professor P.J. Drudy on behalf of Rocheshill Protection Association
95, Ballinclea Heights
Killiney
Co.Dublin
A96V6K7

13-Aug-2024

Our Ref. REF9124

**Re: Declaration pursuant to Section 5 of the Planning & Development Act,
2000-2009 in respect of: Killiney Golf Club, Ballinclea Road, Killiney,
Co Dublin**

Fencing erected at two locations blocking off established right of way. See Map.
Length of fencing : approx. 12 metres close to Golf Club Wicket Gate and 10 metres
at the other end of an established right of way . No permission sought.

Dear Sir / Madam

I wish to acknowledge receipt of your submission requesting Declaration pursuant to
Section 5 of the Planning and Development Acts 2000 (as amended), in respect of the
above mentioned location.

Your submission was received in this office on 13-Aug-2024 and a decision will issue
within 4 weeks from this date.

I acknowledge receipt of the amount of €80 euro, being the correct fee payable.

Please note that in accordance with Section 251 of the Planning and Development Act
2000 (as amended) 'where circulating any appropriate period or other time limit referred
to in this Act or in any regulations made under this Act, the period between 24th
December, and the 1st January, both days inclusive shall be disregarded.'

Yours Sincerely

Najia Nusrat Malik

Najia Nusrat Malik
Asst. Staff Officer
Planning Dept.
Tel: 01-2054 863

Planning Department
An Rannóg Pleanála
Decisions and Registry

Professor P. J Drudy,
Professor P.J. Drudy on behalf of Rocheshill Protection Association
95, Ballinclea Heights
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