

Burnaby Residents Association

C/O Netherby

Erskine Ave

Greystones

Co Wicklow

A63 W973

An Bord Pleanála

64 Marlborough Street

Dublin 1

03 April 2025

AN BORD PLEANÁLA	
LDG-	<u>079125-25</u>
ABP-	
04 APR 2025	
Fee: €	<u>220</u> Type: <u>Chg</u>
Time:	<u>9.48</u> By: <u>Reg Bsk</u>

Section 5 Declaration

Wicklow County Council

Works at Burnaby Park, Greystones, Co Wicklow

Dear Sirs,

The Burnaby Residents Association seeks a Section 5 declaration from An Bord Pleanála as to whether certain works carried out by Wicklow County Council constitute exempted development under the Planning Acts.

1. Burnaby ACA

The Burnaby Residents Association was established to protect and preserve the built fabric and cultural heritage of the Burnaby Estate in Greystones. The Burnaby Estate is an historic place of national significance and its particular character and heritage attributes have been reflected in its designation as an Architectural Conservation Area (ACA) in the Greystones/Kilcoole LAP and the Wicklow County Development Plan.

2. Burnaby Park

Burnaby Park is situated within the Burnaby Estate in Greystones, County Wicklow, Ireland. This estate, developed between 1895 and 1910, holds the distinction of being one of Ireland's first planned housing estates.

Burnaby Park itself serves as the key public green space within the Estate enhancing the area's appeal and providing the people of Greystones and beyond with a communal area for recreation and leisure. The land was originally gifted to the people of the town by the Hawkins Whitshed family (who developed the Burnaby Estate) as an area of public amenity, it is understood with some restrictive covenants to prevent development on the Park. It is now managed by WCC, although a significant portion of the public park had been allocated to a Bowling Club in the 1980s and is now fenced off from public access.

Being in such a prominent location and as the de facto entrance to the Burnaby Estate from the town, the Park contributes to the character of the ACA with its mature trees and open aspect. It is presumably for this reason that Burnaby Park was included within the area of the ACA. The Park is heavily used by the people of Greystones (including local residents) and visitors to the town and hosts a range of broad community events and festivals over the course of the year. It is an important civic amenity located within an ACA and a core part of the character of the Burnaby ACA.

3. The works

The works that are the subject matter of this Section 5 Reference relate to works that have been carried out on the Park by or on behalf of Wicklow County Council over the last 8 months, commencing in early September 2024.

On 4th September 2024, without any public notice, fencing was erected around a grass area of the Park adjacent to Killincarrick Road. Diggers started to scrape back the grass and excavate the earth within the area – the total area that was excavated was 243 sq metres.

It subsequently transpired that this element of the works was to develop a boules or pétanque court. The attached image shows the works underway. This element of the works were not completed until March 2025 when a signboard was erected in addition to seating erected adjacent to the court. The fencing around the court was removed in March 2025. A picture of the completed works is attached.

Over the intervening period between September 2024 and March 2025, additional works were carried out in the Park by or on behalf of WCC, including the installation of two new chess tables on concrete plinths (also attached), the installation of 19 new benches on concrete plinths and new bins on concrete plinths.

Contact with WCC

When we first spotted the works we wrote to the Council on 5th September 2024 seeking clarity on what was taking place. That letter to the WCC CEO is attached and raised two issues around the absence of planning consent and the absence of consultation for the works. On the issue of planning consent, the letter noted that as the development was in an ACA, the usual planning exemptions do not apply. On the issue of consultation our letter pointed out that there was no consultation on the works and that the first that local residents knew about the proposal was when the diggers went in and the fences went up. As no substantive reply was received from WCC and the works were continuing a second letter issued on 6th September 2024 (also attached).

On 6th September 2024, the Council replied (attached) and stated that the project does not need planning consent on the basis that it does not meet the requirements for a Part 8 Process and secondly that the provision on development in an ACA does not apply as the works were not works to a structure. They also claimed (without any evidence from a conservation architect) that the works do not materially affect the character of the area, are unobtrusive with no elements above ground except for a park bench (A freestanding sign has subsequently been installed). On the issue of public consultation the Council referenced some general press releases and internal Council processes. The letter also claimed that as planning permission was not required, “this does remove the legal requirement for public consultation”.

We replied to WCC on 10 September 2024 (attached) and pointed out that their interpretation of S 82 of the Planning Acts is incorrect and that the definition of “structure” in the Section specifically references “....excavation, or other thing constructed or made on, in or under land”. We also suggested that the removal of 243 sq metres of greenspace within the park, which has been there for over a century and replacing it with hard standing does affect the character of the area, by itself of incrementally with other interventions.

We received no further reply to this correspondence. Ultimately the court remained fenced off until March 2025, and the remainder of the work on the Park continued.

On 17 February 2025 we wrote (attached) to the Planning Department of WCC seeking a Section 5 Declaration on the works in Burnaby Park as set out in the attached letter. On 13 March 2025, we received (attached) a Declaration from WCC stating that the works involved are exempted development.

Legal position & Planning issues

From a legal perspective it is our contention that at least some, if not all, of the development by WCC at Burnaby Park since last September 2024 requires planning permission and is not exempted development. In particular we contend that the construction of a boules court on the northern part of the Park does involve the carrying out of works to the exterior of a structure located within an ACA, in a context where the

Planning Acts define a “structure” as any building, structure, excavation, or other thing constructed or made on in or under any land”.

It is noted that in the Planning Report prepared by WCC when considering the S 5 Declaration (see attached) that WCC contends that whereas previous works on the Park were deemed not to be Exempted Development, these works, because they were ostensibly carried out under Section 4 (1) (aa) of the Act are not subject to “de-exemptions” which would otherwise apply under Article 9 of the Planning Regulations. This interpretation of the Planning legislation is nonsensical and purports to give local authorities a carte blanche to do any works in a historical site without regard for conservation objectives set down in their own Development Plan or Local Area Plan, or national legislation – under this farcical interpretation, for instance the bulldozing of monastic buildings by WCC in Glendalough would be “exempted development”, which would make a mockery of the legislative intent behind the planning legislation. Of more direct relevance, the WCC Planning Report also fails to reference the clear statutory provisions of Section 82 (1) of the Planning Acts, which takes precedence over any secondary legislation. That Section makes it expressly clear that “the carrying out of works to the exterior of a structure located in an ACA shall be exempted development only if those works would not materially affect the character of the area”. There is nothing in Section 4(1) (aa) which WCC seeks to rely on, which nullifies or otherwise removes the express statutory provisions of Section 82 and WCC cannot seek to choose which elements of planning legislation it will respect, particularly in circumstances where the obligations under S 82 (1) were already expressly pointed out to them.

In this instance to avail of the exempted development provisions, and to determine if this development was “exempted development” WCC would have had to provide expert evidence to demonstrate that the works would not materially affect the character of the area. There was no such evidence provided. It is arguable that the removal of park greenspace within an ACA , which has been there for well over a century and its replacement with a hard standing surface, including upstanding signage, certainly changes the character of the Park. It removes an area of the park that was used for passive recreation as an area of greenspace in a parkland setting for generations and replaces it with an artificial surface with a specific active use purpose. While there may be a welcome for a boules court by some within the community, there are many others that regret the loss of the limited green space that is available in the Park. This development has taken a large portion of the Park green space to the north of the main path traversing the Park.

In essence the decision on the use of the Park for this purpose was not made following public consultation as the Council did not believe it was required to consult, but by Council officials through some closed process.

It is our contention that the boules court, by itself and/or in combination with other works in the Park constitute development, are not exempted development and as such should have gone through the proper planning process. This would have allowed for proper consultation and true community engagement on the development proposal. It may indeed

have been the outcome of such consultation that the public would have favoured a boules court, but it may have been the case that it could have been located elsewhere within the Park, with less of an obvious visual impact (such as adjacent to the existing bowling grounds) or indeed elsewhere on other lands owned by WCC within the town.

Regrettably the public works carried out by WCC in Burnaby Park within the ACA are like other similar engineering works carried out by WCC within the public realm in Greystones, particularly in ACAs, which have no regard for the aesthetic or heritage impact involved, nor proper consideration for the impact of public works on the character of each ACA. Proper planning and sustainable development involves recognising the legal requirements imposed by the Planning Acts and having regard to community input and consultation. The works in Burnaby Park sadly had regard to neither.

We request An Bord Pleanála to determine if the works (and in particular the construction of the boules court) were exempted development or whether they required planning consent under the Planning Acts.

We enclose a cheque for the statutory fee of €220.00 and look forward to a receipt in due course.

Yours sincerely



Liam Sweeney

Chairperson

Burnaby Residents Association

lsweeney114@gmail.com

085 1280859

List of attachments;

- 1.** Image of construction of Boules Court – September 2024
- 2.** Image of completed Boules Court with upstanding sign – March 2025
- 3.** Image of new Chess Tables on concrete plinth
- 4.** Letter of 5 September 2024 to WCC CEO
- 5.** Letter of 6 September 2024 to WCC CEO
- 6.** Letter from WCC dated 6 September 2024
- 7.** Letter to WCC 10 September 2024
- 8.** Section 5 Letter to WCC, dated 17 February 2025
- 9.** WCC S 5 Planning Report dated 13 March 2025
- 10.** Executive Order from WCC under S 5 of the Planning and Development Acts 2000
- 11.** Cheque for €220.00 to An Bord Pleanála in respect of the statutory fee



Comhairle Contae Chill Mhantáin Wicklow County Council

**Pleanáil, Forbairt Eacnamaíochta agus Tuaithe
Planning, Economic and Rural Development**

Áras An Chontae / County Buildings
Cill Mhantáin / Wicklow
Guthán / Tel: (0404) 20148
Faics / Fax: (0404) 69462
Rphost / Email: plandev@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

13th March 2025

Liam Sweeney
Chairman Burnaby Residents Assoc
Netherby
Erskine Avenue
Greystones
Co. Wicklow
A63 W973

RE: Declaration in accordance with Section 5 of the Planning & Development Acts 2000
(As Amended) – EX20/2025

I enclose herewith Declaration in accordance with Article 5 (2) (A) of the Planning & Development Act 2000.

Where a Declaration is used under this Section any person issued with a Declaration under subsection (2) (a) may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a declaration for review by the Board within four weeks of the date of the issuing of the declaration by the Local Authority.

Is mise, le meas,

ADMINISTRATIVE OFFICER

PLANNING ECONOMIC & RURAL DEVELOPMENT



*Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas.
This document is available in alternative formats on request.*

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe.
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development.





Comhairle Contae Chill Mhantáin Wicklow County Council

Pleanáil, Forbairt Eacnamaíochta agus Tuaithe Planning, Economic and Rural Development

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Suíomh / Website: www.wicklow.ie

DECLARATION IN ACCORDANCE WITH ARTICLE 5 (2) (A) OF THE PLANNING & DEVELOPMENT ACT 2000 AS AMENDED

Applicant: Burnaby Residents Association

Location: Burnaby Park, Greystones, Co. Wicklow

Reference Number: EX20/2025

CHIEF EXECUTIVE ORDER NO. CE/PERD/2025/250

Section 5 Declaration as to whether “a) The removal of a grass area of the park (c.243sqm) and the installation of a new playing area with hardcore surface, b) The installation of a series of concrete plinths in previously green areas throughout the park; c) The fixing of new furniture on these concrete plinths, including benches, and chess tables; and d) The installation of a new signage board directly adjacent to the new playing area” at Burnaby Park, Greystones, Co. Wicklow constitutes exempted development within the meaning of the Planning and Development Act, 2000(as amended).

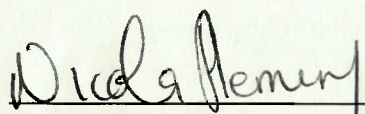
Having regard to:

1. The details submitted with this Section 5 Application,
2. Sections 2, 3 & 4 of the Planning & Development Act 2000 (as amended)

Main Reasons with respect to Section 5 Declaration:

- i. The works as described in the documents submitted, would be development having regard to the definition set out under Section 3 of the Planning and Development Act 2000 (as amended).
- ii. The works as described in the documents submitted would constitute exempted development under Section 4(1)(aa) of the Planning and Development Act 2000 (as amended) as the works comprise “*development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area)*”.

The Planning Authority considers that “a) The removal of a grass area of the park (c.243sqm) and the installation of a new playing area with hardcore surface, b) The installation of a series of concrete plinths in previously green areas throughout the park; c) The fixing of new furniture on these concrete plinths, including benches, and chess tables; and d) The installation of a new signage board directly adjacent to the new playing area” at Burnaby Park, Greystones, Co. Wicklow is development and is exempted development within the meaning of the Planning & Development Act 2000 (as amended).

Signed: 

ADMINISTRATIVE OFFICER
PLANNING ECONOMIC & RURAL DEVELOPMENT

Dated 13th March 2025



Tá an doiciméad seo ar fáil i bhformáidí eile ar iarratas.
This document is available in alternative formats on request.

Ba chóir gach comhfhreagras a sheoladh chuig an Stiúrthóir Seirbhísí, Pleanáil, Forbairt Eacnamaíochta agus Tuaithe.
All correspondence should be addressed to the Director of Services, Planning, Economic and Rural Development.









Urgent

Ms Emer O Gorman

Chief Executive

Wicklow County Council

Aras an Chontae

Wicklow Town

Co Wicklow

5 September 2024

Public Works by Greystones Municipal District within the Burnaby ACA & the Planning Acts

Dear Ms O Gorman,

Burnaby Park is a heavily used and much loved public park in the heart of Greystones. It is one of the few open green spaces within the town and is enjoyed by residents of the town and visitors throughout the year. It is also used for civic and public events from time to time.

Importantly, Burnaby Park also forms part of the Burnaby Architectural Conservation Area, covering the Burnaby Estate, and as such forms part of a historic place of national significance.

Yesterday, 4th September 2024, fencing suddenly appeared around some of the green area of the Park closest to Killincarrick Road. Later in the day, diggers and trucks appeared and started to scrape the surface and remove the green turf. There was no information presented on the nature and purpose of the works, but apparently the Council uploaded a Facebook post to advise that the "public works" were to facilitate construction of a boules court and that the work would take several weeks.

This gives rise to two significant issues which we request that you address as CEO of the Council;

Absence of planning consent -In the first instance, was planning permission obtained for these "public works"? The usual planning exemptions that apply to different works do not apply in an ACA and consequently we are legally advised that the works being carried out in the Park constitute development and as such require planning consent. Wicklow County Council must comply with the Planning Acts, particularly in circumstances where it holds others to a high standard of compliance. A planning application for the works will inter alia need to have a conservation report on how the proposed works will impact on the character and setting of the Park and the ACA.

Absence of consultation - Secondly, where was the community consultation around these works? Why is it that the first the residents heard about the works was when the fences went up and the diggers arrived? Sadly this seems to be an increasing feature of public works by the Council within our Municipal District, when the last people to hear about works are the people

living close to them. Is that the way that well run and award winning local authorities should operate?

In light of the above, we request you as Chief Executive to ensure that the public works at Burnaby Park are ceased immediately, the park reinstated to its original condition and made good. In the meantime the planning position can be regularised and there can be proper consultation with the local community within the town on the proposal. It may be that a boules court is a great idea and it could be that Burnaby Park is the right location for it (even if a quarter of the original park is already given over to bowling) – but lets get the views of local stakeholders on the matter rather than just foisting proposals on the local community without consultation, input or engagement.

In light of the planning issue identified above, we wish to advise that unless we receive confirmation by close of business today (5.30 pm at 5 September 2024) that the works will cease and the area will be reinstated to its original condition, pending consultation and regularisation of the planning situation, we will be instructing solicitors to address the matter on our behalf to include seeking interim relief from the Courts. This letter may be used in the context of any such proceedings when addressing the issue of costs.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Liam Sweeney', with a long horizontal flourish extending to the right.

Liam Sweeney

Chairperson

Burnaby Residents Association

Urgent

Ms Emer O Gorman

Chief Executive

Wicklow County Council

Aras an Chontae

Wicklow Town

Co Wicklow

6 September 2024

Public Works by Greystones Municipal District within the Burnaby ACA & the Planning Acts

Dear Ms O Gorman,

I refer to my letter dated 5th September 2024.

While the receipt of the note has been acknowledged by WCC, there has been no reply to the substantive issues raised, particularly in relation to compliance with the Planning Acts. In the meantime we note that the works in the Park are continuing involving the installation of hard core filling on a formally greenspace at a prominent part of the Park.

As the planning authority for the area, WCC should fully recognise and comply with the planning rules that apply within Architectural Conservation Areas - works that might benefit from planning exemptions require planning consent when carried out within an ACA.

Given the absence of any substantive response from the Council on the urgent issues raised in our correspondence, and the fact that the works are continuing we now have no alternative but to place the matter in the hands of solicitors.

This letter and our previous correspondence will be relied upon in any application for legal costs that arises in the context of proceedings.

Yours sincerely



Liam Sweeney

Chairperson

Burnaby Residents Association



Comhairle Contae Chill Mhantáin Wicklow County Council

Ceantar Bardasach na Cloche Liatha
Municipal District of Greystones

Oifigi Cathartha / Civic Offices
Bóthar an Mhuilinn / Mill Road
Na Clocha Liatha / Greystones
Contae Chill Mhantáin / County Wicklow
Guthán / Tel: (01) 2876694
Faics / Fax: (01) 2877173
Rphost / Email: greystonesmd@wicklowcoco.ie
Suíomh / Website: www.wicklow.ie

Mr Liam Sweeney
Chairperson Burnaby Residents Association

6th September 2024

By Email: lsweeney114@gmail.com

Re: Public works by Greystones Municipal District in Burnaby Park

Dear Liam Sweeney

I refer to your correspondence sent by email on 5th September 2024 to the Wicklow County Council Chief Executive. Your correspondence has been sent to the Greystone Municipal District office for response.

The correspondence raises two main issues:

1. No planning consent for the works
2. No public consultation / advance warning of the works.

1. Planning Consent

Contrary to the assertion in the letter from the Burnaby Residents Association planning permission for the project is not required.

Firstly the project does not meet any of the requirements for the carrying out of a Part 8 planning process as per Section 179 of the Planning and Development Act.

Secondly, whilst the Burnaby Park is located within the Burnaby Architectural Conservation Area, planning permission is not required as per Section 82 of the Planning and Development Act, see below for reference.

Development in
architectural
conservation areas

82.—(1) Notwithstanding section 4 (1)(h), the carrying out of works to the exterior of a structure located in an architectural conservation area shall be exempted development only if those works would not materially affect the character of the area

In this regard, firstly there is no work being carried out to a structure as the works involve the construction of a petanque court which is situated on the ground. Secondly, and notwithstanding the above, the works do not materially affect the character of the area. The park is a town centre



park which caters for many urban centre park activities, functions and events. The park is also already home to a lawn bowls club as well as a number of fixed chess tables and chairs. The courts are unobtrusive being at ground level, with no elements above ground save for an associated park bench, of which there are already many within the park. The space also only measures 9m wide by 17m long.

2 Public Consultation

In January 2023 – Government announces the Community Recognition Fund.

15th February 2023, WCC issued a press release advertising the scheme and seeking feedback from the public on potential scheme that meet the scheme criteria.

28th February 2023, Community Recognition Fund 2023 was announced at the GMD meeting. The District Manager, Mr Michael Nicholson, advised the Publicly Elected Members to forward potential proposals for consideration, to be sent to CCSD by 3rd March 2023.

5th March 2023, Cllr Lourda Scott submitted a proposal for the Community Recognition Fund, which, amongst other things, included a Petanque Court in the Burnaby Park. The proposal was accompanied by a Greystones Tidy Towns plan from 2011 for the Burnaby Park that included two Petanque Courts. The Tidy Towns at that time had a €100,000 grant to carry out works in the park but these works did not proceed at that time. Cllr Scotts proposal referred to a sizeable boules playing community in the area that were requesting these petanque courts and that similar courts were being established in many of the neighbouring local authorities.

18th May 2023, WCC issued a press release indicating what projects in each municipal district the funding was being allocated to. There was also a press release from Central Government on the countrywide project allocation, in which the Greystones Projects, including the works in the Burnaby Park, were listed. See item 3 on <https://www.gov.ie/en/service/e626a-community-recognition-fund-2023/>

In summary, planning permission is not required and as such this does remove the legal requirement for public consultation, however, it can be seen that there was significant public engagement by both Central and Local Government on this funding scheme. As such the Burnaby Residents Associations two main objections to the project do not stand up to scrutiny.

It should be noted that the petanque courts are the latest addition to many improvements to the park over the last 10 years which have included:


- A 1916 memorial
- A sensory garden
- Landscaping of the northern and eastern planter beds along the boundary of the park
- Replacement of a poor quality tarmacadam footpath around the circumference of the park with a more aesthetic parkland gravel path which is still wheelchair accessible.
- Provision of two fixed chess tables and seats. Two more of which are to be provided in 2024 under this scheme.
- Provision of 4 new high quality park benches. 6 more of which are to be provided under this scheme.

From what can be established, Petanque courts nationally are growing in popularity. They are largely public amenities, in public parks, and it would appear that this will be possibly the first one in Co Wicklow. The design of the Burnaby Park courts will also provide wheelchair accessibility, which is a beneficial added feature.

Trusting the above information provides the clarifications sought.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J. Keen' or similar, with a long horizontal flourish extending to the right.

 Marc Devereux
Greystones District Manager

Marc Devereux
District Manager
Greystones Municipal District

10 September 2024

RE: Public Works by Greystones Municipal District within the Burnaby ACA & the Planning Acts

Dear Mr Devereux,

First of all can I congratulate you on your appointment as the new District Manager for the Greystones Municipal District and wish you the best in that role. I hope that your appointment will herald a fresh approach in how the Municipal District and the Council generally interact and engage with local stakeholders.

The core of our correspondence about the public works in the Park concerns the lack of engagement, consultation and input from the broader local community (and residents) about these works. With respect, the consultations that you outline in your letter provided no notice or engagement on the works that commenced without warning – with the last general engagement on the issue being in May 2023!

Burnaby Park is a much loved and much used public amenity and consequently when diggers start ripping up the turf on the Park people get concerned and worried. Communication and engagement goes a long way to assuaging concerns, but in this instance was sadly lacking.

When engaging with the local councillors on the issue it was concerning that some of the elected members confirmed that they had no idea about the works or the proposal. Some stated that unfortunately they often only hear about the Council's public works in the area when they are contacted by residents asking what is going on. Hopefully your appointment will herald a new approach to communication and engagement, which would be broadly welcomed by all local stakeholders.


In the absence of voluntary engagement by WCC, the only processes available to the public to input on proposals of this nature is through the planning process. We will take legal advice on your response on the question of whether planning permission is required for the works. Initial legal feedback does not concur with the position you have outlined.

In the first instance these works do not fall to be considered under Part 8 or Section 179 and fall to be determined in accordance with S 32 of the Planning Acts. I am also advised that WCC's interpretation of Section 82 is not correct. The Act defines a structure to include; "any building, structure, excavation, or other thing constructed or made on, in or under any land". As such the works do come within S82. The question as to whether the works materially affect the character of the area will need to be determined. Some might contend that ripping up a greenspace of 243

sq metres in a Park within an ACA which has been there for over a century to replace it with hard standing, does affect the character of the area, either by itself or incrementally with other interventions. That is ultimately a matter that can be addressed by either the Courts or An Bord Pleanala depending on the detailed legal advice we receive.

As a local Community Stakeholder we have no desire to be at loggerheads with Wicklow Council. But the Council must demonstrate a willingness to engage with local stakeholders in a partnership way. That was not what happened in this instance, when the first that the local community heard about the public works was when fences were erected and the JCB went in. Surely that is not how award winning and well run local authorities operate.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Liam Sweeney', with a long horizontal stroke extending to the right.

Liam Sweeney

Burnaby Residents Association

Netherby

Erskine Avenue

Greystones Co Wicklow

Planning Department

Wicklow County Council

County Building

Wicklow Town

Co Wicklow

17 February 2025

Section 5 Declaration concerning works being undertaken in Burnaby Park, Greystones County Wicklow.

Dear Sirs,

1. The Burnaby Residents Association seeks a declaration from the planning authority as to whether the works being carried out by Wicklow County Council in Burnaby Park, Greystones, Co.Wicklow, constitute development within the meaning of the Planning Acts and as such should have been subject to the relevant planning consent processes in the Acts.
2. Burnaby Park is a much-used public park in Greystones Town, which is within the boundaries of the Burnaby Architectural Conservation Area.
3. The works have been ongoing since last Autumn and are not yet concluded but include;
 - a. The removal of a significant grass area of the park (c243 sq metres) and the installation of a new playing area with a hardcore surface.
 - b. The installation of a series of concrete plinths in previously green areas throughout the park
 - c. The fixing of new furniture on these concrete plinths, including benches, and chess tables.
 - d. The installation of a new signage board directly adjacent to the new playing area.

- e. Ancillary works connected with the above.
4. Given the nature of the works and the location where they are being carried out, the Burnaby Residents Association believes that these works constitute development and are not exempted development.
 5. In particular it is clear that in the context of these works, the installation of the new pétanque playing area within the Park represents “development” and does not constitute “exempted development.
 6. It is our contention that the works fall to be determined in accordance with S 32 of the Planning Acts and that the works, being within an ACA also fall to be assessed within the scope of S 82 of the Act involving works to a structure, which includes “any building, structure, excavation, or other thing constructed or made on, in or under any land”. As such the works do come within S82 and would not automatically benefit from exempted development provisions.
 7. The question as to whether the works materially affect the character of the area will need to be determined by reference to expert conservation architect input. It is arguable that ripping up a greenspace of 243 sq metres in a Park within an ACA which has been there for over a century to replace it with hard standing, does affect the character of the area, either by itself or incrementally with other interventions.

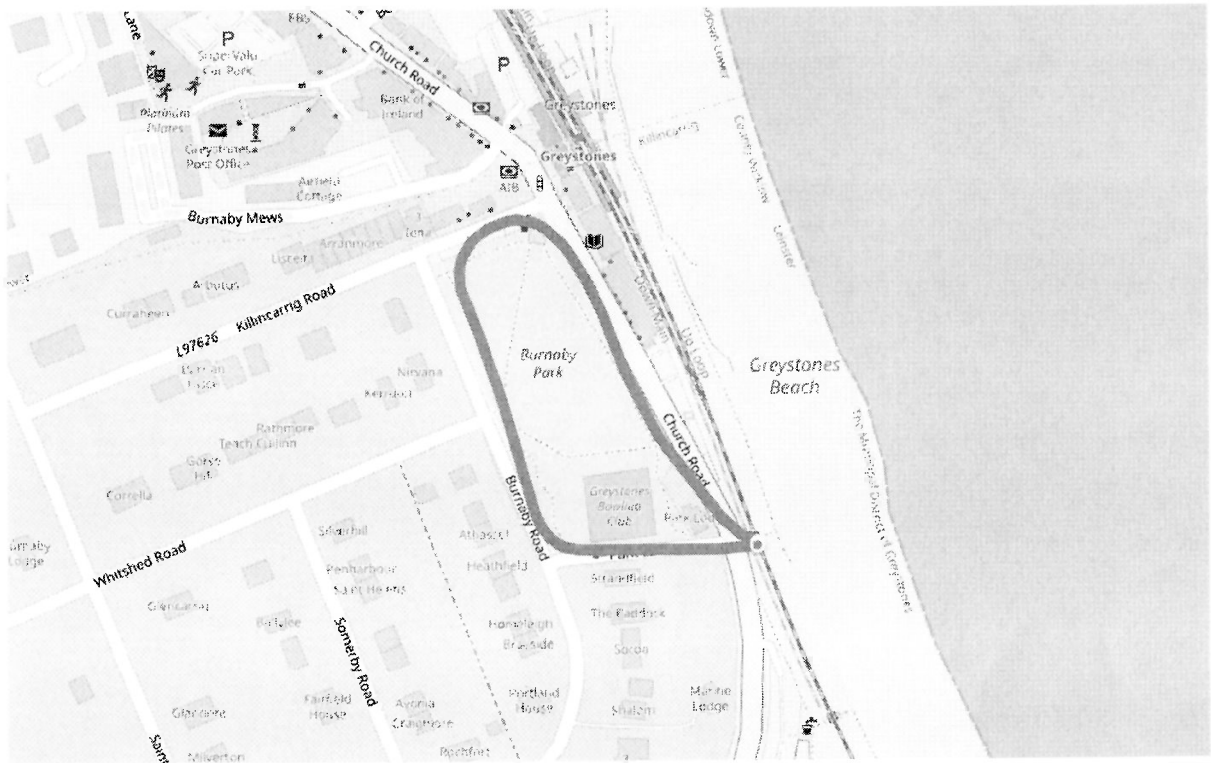
If works of this nature are to be proposed within an ACA, the local authority should comply with the Planning Acts and ensure that any development proposals take account of the character of the area and are the subject of proper consultation with the local community before being foisted as engineered solutions, without any proper consultative input.

We would be grateful for a Section 5 declaration as to whether the works identified above in Burnaby Park constitute “development” or are “exempted development. We look forward to receiving this response within the statutory period.

We enclose the statutory fee.

Yours sincerely

Liam Sweeney





**WICKLOW COUNTY COUNCIL
PLANNING DEPARTMENT**

Section 5 – Application for declaration of Exemption Certificate

TO: FERGAL KEOGH SE
FROM: SUZANNE WHITE, SENIOR EXECUTIVE PLANNER
REF: EX20/2025
NAME: BURNABY RESIDENTS ASSOCIATION
DEVELOPMENT: WORKS BY WCC IN BURNABY PARK, GREYSTONES
LOCATION: BURNABY PARK, GREYSTONES
DATE DUE: 16/03/2025
SITE VISIT: 07/03/2025

The site

The subject site is located within the development boundary of Greystones /Delgany. The site relates to Burnaby Park and is located with the Burnaby ACA.

Planning History

EX 06/2025 – retention of gate.

Applicant: Greystones Bowling Club

Decision: is development and is not exempted development

EX24/12 – Renovation works to Burnaby Park

Applicant: Greystones Tidy Towns

Decision: not exempted development as it would come within the restrictions on exemption set out in Article 9 (a)(vii) (ACA).

EX26/12 – Renovation works to Burnaby Park

Applicant: Burnaby Residents Association

Decision: not exempted development as it would come within the restrictions on exemption set out in Article 9 (a)(vii) (ACA).

22/704 Greystones Lawn Bowling Club – permission granted for (a) relocation of existing western boundary to extend the bowling green area (b) provision of 1 no. multistore garden shed to North East corner of bowling green (c)all together with ancillary site development works, landscaping and service connections

18/52 Greystones Lawn Bowling Club - permission granted for 1. removal of 2 no. existing timber structures used as changing areas. 2 Provision of 1 no. steel structure to be used as changing area. 3. All necessary ancillary works to serve this development

15/388 Greystones Lawn Bowling Club – permission granted for 1. removal of 2 no. existing timber structures used as changing areas. 2 Provision of 1 no. steel structure to be used as changing area. 3. All necessary ancillary works to serve this development

12/6871 Greystones Tidy Towns – permission granted for widening of existing openings in boundary wall on Mill Road and at killincarrig Road junction, the upgrade of park internal footpaths, together with street

furniture and lighting, revisions to public footpath and car parking spaces, together with associated siteworks and landscaping

08/36 Aidan Kelly – Permission granted for the demolition of existing 62 sqm split level timber clubhouse and the construction of a 180 sqm single storey clubhouse incorporating indoor bowling hall, kitchen, storage and sanitary facilities together with revisions to site boundaries, connection to existing services and all associated landscaping and ancillary site works

89/4511 Martin Horan – Permission granted for the Construction of bowling green with surrounding fence and timber chalet Burnaby Park, Greystones

Question

The applicant has applied to see whether or not the following works being carried out by Wicklow County Council at the Burnaby Park is or is not exempted development:

- a) The removal of a significant grass area of the park (c.243sqm) and the installation of a new playing area with hardcore surface
- b) The installation of a series of concrete plinths in previously green areas throughout the park
- c) The fixing of new furniture on these concrete plinths, including benches, and chess tables
- d) The installation of a new signage board directly adjacent to the new playing area
- e) Ancillary works connected with the above

Legislative Context

Planning and Development Act 2000 (as amended)

Section 2 (1) of the Planning and Development Act 2000 defines “works” as including 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.”

Section 2 (1) of the Planning and Development Act 2000 defines “use” “in relation to land, does not include the use of the land by the carrying out of any works thereon”

Section 3 (1) of the Planning and Development Act 2000 “In this Act “development” means, except where the concept 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 other structures or other land.”

Section 4(1) – the following shall be Exempted Development for the purposes of this Act:

(aa) development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area);

(f) development carried out on behalf of, or jointly or in partnership with, a local 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;

(1B) Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an environmental impact assessment of the development is required.

(1C) Development referred to in paragraph (a), (d), (e) or (g) of subsection (1A) shall not be exempted development if an appropriate assessment of the development is required.]

4. (4) Notwithstanding *paragraphs (a), (i), (ia) and (l) of subsection (1) and any regulations under subsection (2)*, development shall not be exempted development if an environmental impact assessment or an appropriate assessment of the development is required.

Assessment

The applicants, Burnaby Residents Association, have sought a declaration in accordance with section 5 of the Planning and Development Act 2000 (as amended) to determine whether or not:

‘Works being carried out by Wicklow County Council in Burnaby Park, Greystones, consisting of

- a) The removal of a significant grass area of the park (c.243sqm) and the installation of a new playing area with hardcore surface
- b) The installation of a series of concrete plinths in previously green areas throughout the park
- c) The fixing of new furniture on these concrete plinths, including benches, and chess tables
- d) The installation of a new signage board directly adjacent to the new playing area
- e) Ancillary works connected with the above.

Is or is not development and is or is not exempted development.’

A site location plan has been submitted, showing the subject lands outlined in blue. No other details, drawings or images have been submitted to describe the elements of the proposal. A site visit was undertaken on 7th March, which provided clarity on items a-d above. The nature and extent of works under item (e) above is unclear. Consequently, it is considered appropriate to re-word the query as follows:

‘Whether or not works being carried out by Wicklow County Council in Burnaby Park, Greystones consisting of

- a) The removal of a grass area of the park (c.243sqm) and the installation of a new playing area with hardcore surface;*
- b) The installation of a series of concrete plinths in previously green areas throughout the park;*
- c) The fixing of new furniture on these concrete plinths, including benches, and chess tables; and*
- d) The installation of a new signage board directly adjacent to the new playing area.*

Is or is not development and is or is not exempted development.’

The first assessment must be whether or not such works are development within the remit of Section 3 of the Planning and Development Act 2001. In this regard, Section 3 of the Planning and Development Act provides that:

“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.

It should be noted that Section 2 of the Act defines works as:

“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.

I am satisfied that the proposals as described would involve works and therefore the proposals would constitute development.

It is considered that the works detailed in the section 5 declaration would fall under the description of exempted works at Section 4(1) (aa) of the Planning and Development Act 2000 (as amended), being *'development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area)'*.

It is noted that previous regeneration works within the Park (EX 24/12 & EX26/12) were deemed not to be exempt as they would come within the restrictions on exemption set out in Article 9 (a)(vii) (ACA). In that case, the works were not being carried out by the local authority and were considered under the classes of exempted development (Class 11 & Class 33 of Part 1, Schedule 2) provide for under Article 6 of the Planning and Development Regulations 2001 (as amended). However, Article 9 of the Regulations lists a number of circumstances whereby development which falls within the scope of the classes under Article 6 will not be exempt. Article 9 (a)(vii) 'de-exempts' development which would alter places or sites of historical interest (such as ACAs), the preservation, conservation and protection of which is an objective of a development plan or local area plan.

Development which is exempt under Section 4(1)(aa) of the Planning and Development Act 2000 (as amended) is not subject to the 'de-exemptions' set out under Article 9 of the Planning and Development Regulations 2001 (as amended).

EIA and Appropriate Assessment

The EIA and AA requirements set out under Section 4(1A) do not apply to Section 4(1) of the Act. In any case, having regard to the nature and scale of the works as described and observed on site, the urban location of the site and its distance from designated Natura 2000 Sites, it is not considered that the development as described would give rise to any adverse impacts on the qualifying interests and conservation objectives of any Natura Site and therefore the proposed development would not necessitate the carrying out of an Appropriate Assessment in accordance with the requirements of Article 6(3) of the EU Habitats Directive. Similarly, having regard to the modest scale and nature of the development, and the developed urban location of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination.

Recommendation

With respect to the query under Section 5 of the Planning and Development Act 2000, as to:

'whether or not works being carried out by Wicklow County Council in Burnaby Park, Greystones consisting of

- a) The removal of a grass area of the park (c.243sqm) and the installation of a new playing area with hardcore surface;*
- b) The installation of a series of concrete plinths in previously green areas throughout the park;*
- c) The fixing of new furniture on these concrete plinths, including benches, and chess tables; and*
- d) The installation of a new signage board directly adjacent to the new playing area.*

Is or is not development and is or is not exempted development.'

The Planning Authority considers that:

'works being carried out by Wicklow County Council in Burnaby Park, Greystones consisting of

- a) The removal of a grass area of the park (c.243sqm) and the installation of a new playing area with hardcore surface;
- b) The installation of a series of concrete plinths in previously green areas throughout the park;
- c) The fixing of new furniture on these concrete plinths, including benches, and chess tables; and
- d) The installation of a new signage board directly adjacent to the new playing area.'

is development and is exempted development.

Main Considerations with respect to Section 5 Declaration:

- The details submitted with this Section 5 Application,
- Sections 2, 3 & 4 of the Planning & Development Act 2000 (as amended)

Main Reasons with respect to Section 5 Declaration:

- i) The works as described in the documents submitted, would be development having regard to the definition set out under Section 3 of the Planning and Development Act 2000 (as amended).
- ii) The works as described in the documents submitted would constitute exempted development under Section 4(1)(aa) of the Planning and Development Act 2000 (as amended) as the works comprise "development by a local authority in its functional area (other than, in the case of a local authority that is a coastal planning authority, its nearshore area)".



Suzanne White
Senior Executive Planner
13/03/2025

