

## Faolán Bashford

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**From:** Appeals <appeals@DLRCOCO.IE>  
**Sent:** Tuesday 29 April 2025 10:12  
**To:** Appeals2  
**Subject:** ABP-322368-25 (ERF3125)  
**Attachments:** REF3125 Dec Letter\_v1.pdf; REF3125 PLANNERS REPORT\_v1.pdf; REF3125 \_Application\_Cover\_letter\_v1.pdf; REF3125\_Application-Copy\_v1.pdf; REF3125-Ack-Letter.pdf; REF3125-BCHRA\_Ltd\_appendix\_1\_Rocheshill\_Images\_v1.pdf

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**Reg. Ref:** REF3125  
**App. Type:** Section 5  
**Development:** Erection of metal fencing which blocks public access at two locations at either end of an established right of way.  
**Location:** Rocheshill (Mullins Hill), Killiney Hill, Co.Dublin  
**Applicant:** Ballinclea Residents Association Ltd  
**Date Appeal Lodged:** 22-Apr-2025  
**Bord Pleanála Ref:** ABP-322368-25

Dear Sir/Madam

With reference to the referral on the above mentioned Section 5 application I attach herewith all documents in relation to this referral.

Kind regards

Michelle

**Michelle Whyte**

**Oifigeach Foirne – Staff Officer | Registry and Decisions Section | An Roinn Pleanála - Planning Department**

Dún Laoghaire-Rathdown County Council, County Hall, Marine Road, Dún Laoghaire, Co. Dublin, A96 K6C9

Comhairle Contae Dhún Laoghaire-Ráth an Dúin, Halla an Chontae, Bóthar na Mara, Dún Laoghaire, Contae Átha Cliath.

✉ [mwhyte@dlrcoco.ie](mailto:mwhyte@dlrcoco.ie) | Fón/Phone: 01 205 4700 | Láithreán Greasáin/Website: [www.dlrcoco.ie](http://www.dlrcoco.ie)



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**Planning Department**  
Rannóg Pleanála  
Registry Section  
Direct Tel: 01 2054863

Ballinclea Residents Association Ltd  
187, Ballinclea Heights  
Killiney  
Co. Dublin

**Reference No:** REF3125  
**Application Type:** Declaration on Development and Exempted  
Development Act – Section 5, Planning &  
Development Act (as amended)  
**Registration Date:** 03-Mar-2025  
**Decision Date:** 24-Mar-2025  
**Location:** Rocheshill (Mullins Hill), Killiney Hill, Co. Dublin  
**Development Works:** Erection of metal fencing which blocks public access  
at two locations at either end of an established right  
of way.

#### **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/0507/25 Dated 24-Mar-2025 decided to issue a Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), to, Ballinclea Residents Association Ltd 187, Ballinclea Heights, Killiney, Co. Dublin that, having regard to:

- a) Sections 2, 3, 4(1)(h) and 4(2)(a) of the Planning and Development Act 2000, as amended,
- b) Section 208 of the Planning and Development Act 2000, as amended,
- c) Articles 6 (1) and 9 (1) of the Planning and Development Regulations, as amended.

It is considered that the proposed works constitute **DEVELOPMENT** and constitute **EXEMPTED DEVELOPMENT**.

Dated: 24-Mar-2025

Signed: Najia Nasrat 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

LOCAL GOVERNMENT ACTS 1925 - 2014

## 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.:** REF3125

**Date Received:** 03-Mar-2025

**Name & Address:** Ballinclea Residents Association Ltd 187, Ballinclea Heights, Killiney, Co. Dublin

**Applicant:** Ballinclea Residents Association Ltd Ballinclea Residents Association Ltd 187, Ballinclea Heights, Killiney, Co. Dublin

**App. Type:** Section 5

**Location:** Rocheshill (Mullins Hill), Killiney Hill, Co.Dublin

**Development Works:** Erection of metal fencing which blocks public access at two locations at either end of an established right of way.

**Report**  
(Aisling Cleary)

**S.5 REF: 3125**

#### **Query**

A section 5 referral has been submitted in relation to the works at *Rocheshill (Mullins Hill), 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 completed application detailing the works states:

*'Erection of metal fencing which blocks public access at two locations at either end of an established right of way.'*

#### **Submission**

This Section 5 Declaration application includes:

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- Completed application form,
- Supporting documentation prepared by Stephen Jenkins on behalf of Ballinclea Height Residents Association Ltd, which includes a description of the proposed works.
- Photographs of the fencing.
- Site Location Map.

### Matter for Determination

The matter for determination is whether the proposed fencing at lands that form part of Roacheshill, would or would not constitute development, and whether the proposal would or would not constitute exempted development.

### Site Description

The subject site is held under the ownership of Killiney Golf Club, however, the subject land, 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 the rest of the lands of Roacheshill, which is held under the ownership of Dun Laoghaire Rathdown County Council.

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 1.29499 Ha.

### Zoning of Site

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.'*

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:

*'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 Dun Laoghaire-Rathdown 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



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No. P/0507/25

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under of the County Development Plan 2022-2028 as '*Killiney Golf Club Pavilion to Roches Hill.*'

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.*'

#### 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 1400m<sup>2</sup> 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

No current enforcement files found.

#### Site Visit

A site visit was undertaken by the case officer on the 20th of March 2025 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 of ferns and gorse had been recently cut back, save for those areas that were affected by fire, however it was evident that the paths

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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.

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 shrubbery and gorse bushes 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, there is a well-worn path running around the fence. Therefore, there is no obstruction to this path on the lands owned by Killiney Golf Club.

### Departmental Reports

No referrals made.

### Proposed works

The application form received states the following:

*'Erection of metal fencing which blocks public access at two locations at either end of an established right of way.'*

### 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).

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."*



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Section 4(1) of the Act states that the following shall be exempted developments for the purposes of this Act:

*"(h) development consisting of the use 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)(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).

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### **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.

### **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 the dedicated Right of Way could be on the lands owned by Dun Loaghaire 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.



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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. amended).

### **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.

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 public access to the established Right of Way subject of this Section 5 Declaration, constitutes development and constitutes exempt development. The applicant shall be advised accordingly.

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### **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.

### **Environmental Impact Assessment (EIA) Screening**


Having regard to the nature of the development subject to this assessment, which comprises of the erection of a metal fence, 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, Ballinclea Residents Association Ltd 187, Ballinclea Heights, Killiney, Co. Dublin that, having regard to:

- a) Sections 2, 3, 4(1)(h) and 4(2)(a), of the Planning and Development Act 2000, as amended,
- b) Section 208 of the Planning and Development Act 2000, as amended,
- c) Articles 6 (1) and 9 (1) of the Planning and Development Regulations, as amended.

It is considered that the proposed works constitute **DEVELOPMENT** and constitute **EXEMPTED DEVELOPMENT**.

  
Administrative Officer.

\_\_\_\_\_  
Executive Planner.

## Dún Laoghaire-Rathdown County Council

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## ORDER

The issuing of a Declaration pursuant to Section 5 of the Planning & Development Act 2000 (as amended), to Ballinclea Residents Association Ltd 187, Ballinclea Heights, Killiney, Co. Dublin, that, having regard to:

- a) Sections 2, 3, 4(1)(h) and 4(2)(a), of the Planning and Development Act 2000, as amended,
- b) Section 208 of the Planning and Development Act 2000, as amended,
- c) Articles 6 (1) and 9 (1) of the Planning and Development Regulations, as amended.

It is considered that the proposed works constitute **DEVELOPMENT** and constitute **EXEMPTED DEVELOPMENT**.

Signed:

Samuel Derratt  
Approved Officer

Date: 24/3/25

Thereunto empowered by order of Príomhíndia Meannach, Comhairle Contae Dhún Laoghaire-Ráth An Dúin, Order No. 2513, dated 27/9/23, 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**  
An Rannóg Pleanála  
Decisions and Registry

Ballinclea Residents Association Ltd  
187, Ballinclea Heights  
Killiney  
Co. Dublin

03-Mar-2025

**Our Ref.** REF3125

**Re: Declaration pursuant to Section 5 of the Planning & Development Act,  
2000-2009 in respect of:** Rocheshill (Mullins Hill), Killiney, Co.Dublin

**Proposal:** Erection of metal fencing which blocks public access  
at two locations at either end of an established right  
of way.

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 03-Mar-2025 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 24<sup>th</sup> December, and the 1<sup>st</sup> January, both days inclusive shall be disregarded.'

Yours Sincerely

*Najia Nusrat Malik*

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



Registry and Decisions Section, PLanning Department, DL Rathdown  
County Council, Marine Road, Dun Laoghaire, Co Dublin

A chara,

Please find enclosed aerial images, maps and drawings to support our submission that the erection of fencing on Rocheshill/Mullins Hill by Killiney Golf Course is development and is not exempted development.

The erection of fencing constitutes development as per section 3(1) of the Planning and Development Act 2000, as amended, wherein "development" is defined as the carrying out of any works on, in, or under land or the making of any material change in the use of any such structures or other land. There can be no dispute that the erection of the fencing is works and therefore is development.

The development in question cannot be considered exempted development as per the restrictions on exemption provided for in article 9 of the Planning and Development Regulations 2001. Article 9 states that 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 fall under one or more of the criteria listed under article 9.

The subject path is blocked, as can be seen in the accompanying photographs by black post and rail metal fencing which is incongruous in the wild, unspoilt landscape of Mullins Hill. The special character and landscape of Mullins Hill is recognised in its designation as a pNHA in the Dun Laoghaire Rathdown County Development plan 2022-2028. Therefore the development is not exempted development having regard to article 9(1)(a)(vi) of the 2001 Regulations.

The development in question does not benefit from exempted development restrictions as it consists of the alteration of a place of ecological interest as provided for in SLO no. 70 which seeks to preserve and retain the natural environment and biodiversity of Mullins Hill in consultation and liaison with the National Parks and Wildlife Service. Therefore the development is not exempted development having regard to article 9(1)(a)(vii) of the 2001 Regulations.

The development in question cannot be considered to be exempted development having regard to article 9(1)(a)(x) as it encloses a path habitually used by the public for a period exceeding ten years, which is also a means of access to place of natural beauty or recreational utility. Therefore the development is not exempted development having regard to article 9(1)(a)(x) of the 2001 Regulations.

Dun Laoghaire Rathdown are requested to declare that the fencing off of a path on Mullins Hill is development and is not exempted development.

The fee of €80 is provided.

Yours,

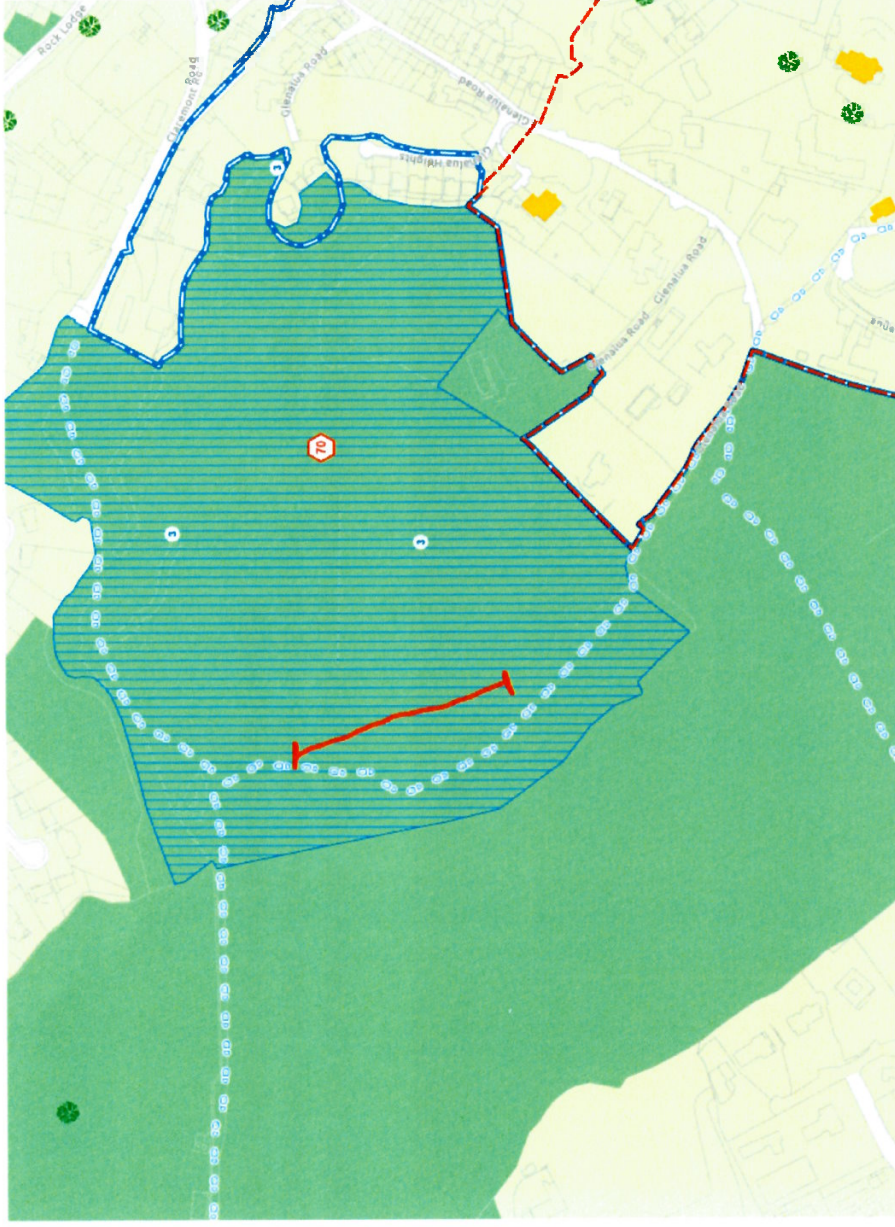
Stephen Jenkins on behalf of Ballinclea Height Residents Association Ltd





Killiney Golf Course on left, Mullins Hill on right. Approx. location of established pedestrian path running to the east of the Golf Course lands clearly shown on Google earth images. Path shown in yellow, with green arrows showing approx. location of two areas at fencing at north and south of the path.





Extract from Map 7 of Dun Laoghaire Rathdown County Development Plan 2022-2028 showing designation of Mullins Hill as a pNHA, showing the location of a public ROW from the Golf Course through Mullins Hill and SLO no. 70 which provides for the preparation of 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.



Photo 1, showing black metal post and rail fencing adjoining pedestrian public right of way into Killiney Golf Course, at northern end of subject path



Photo 2, showing black metal post and rail fencing at southern end of subject path

