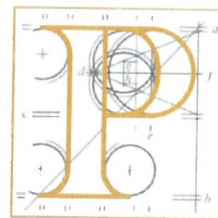


Our Case Number: ABP-322368-25

Planning Authority Reference Number: REF3125



An
Bord
Pleanála

Dun Laoghaire Rathdown County Council
County Hall
Marine Road
Dun Laoghaire
Co. Dublin

Date: 25 April 2025

Re: Whether the erection of metal fencing which blocks public access at two locations at either end of an established right of way is or is not development and is or is not exempted development.
Rocheshill, (Mullins Hill), Killiney Hill, Co.Dublin

Dear Sir / Madam,

Enclosed is a copy of a referral under the Planning and Development Act, 2000, (as amended).

In order to comply with section 128 of the Planning and Development Act, 2000, (as amended), please forward, within a period of 2 weeks beginning on the day on which a copy of the referral is sent to you, copies of any information in your possession which is relevant to the referral, including

- (i) details of previous decisions affecting the site;
- (ii) any correspondence that has taken place between the person(s) issued with a declaration under subsection (2)(a) of section 5 of the 2000 Act, (as amended), and the planning authority.
- (iii) the name and address of the owner of the land in question and the name of the occupier of the said land, if different;
- (iv) where no declaration was issued by you, indicate the date that the referral was due to be issued in accordance with subsection (2) of section 5 of the 2000 Act, (as amended)

In accordance with section 129 of the 2000 Act, (as amended), you may make submissions or observations in writing to the Board in relation to the referral within a period of 4 weeks beginning on the date of this letter.

Any submissions or observations received by the Board outside of that period shall not be considered and where none have been validly received, the Board may determine the referral without further notice to you.

Please note when making a response/submission only to the referral it may be emailed to appeals@pleanala.ie and there is no fee required.

Please quote the above referral number in any further correspondence.

| | | |
|--------------------|---------|--|
| Teil | Tel | (01) 858 8100 |
| Glaó Áitiúil | LoCall | 1800 275 175 |
| Facs | Fax | (01) 872 2684 |
| Láithreán Gréasáin | Website | www.pleanala.ie |
| Ríomhphost | Email | bord@pleanala.ie |

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Yours faithfully,

p.p. Doragh Cunniff

Faolán Bashford
Administrative Assistant
Direct Line: 01-873-7296

BPRL07

Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel
LoCall
Fax
Website
Email

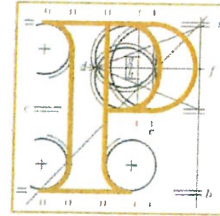
(01) 858 8100
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Our Case Number: ABP-322368-25

Planning Authority Reference Number: REF3125



An
Bord
Pleanála

Ballinclea Residents Association Ltd
187 Ballinclea Heights
Killiney
Co. Dublin

Date: 25 April 2025

Re: Whether the erection of metal fencing which blocks public access at two locations at either end of an established right of way is or is not development and is or is not exempted development.
Rocheshill, (Mullins Hill), Killiney Hill, Co.Dublin

Dear Sir / Madam,

An Bord Pleanála has received your referral and will consider it under the Planning and Development Act, 2000, (as amended). A receipt for the fee lodged is enclosed.

Please note that under section 127(3) of the Planning and Development Act, 2000, (as amended), the person by whom the referral is made shall not be entitled to elaborate in writing upon or make further submissions in writing in relation to the grounds of the referral unless requested to do so by An Bord Pleanála.

Yours faithfully,

Faolán Bashford
Administrative Assistant
Direct Line: 01-873-7296

BPRL01

Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

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D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Validation Checklist

Lodgement Number : **LDG-079503-25**
Case Number: **ABP-322368-25**
Customer: **Ballinclea Residents Association Ltd**
Lodgement Date: **22/04/2025 12:31:00**
Validation Officer: **Daragh Cassells**
PA Name: **Dun Laoghaire Rathdown County Council**
PA Reg Ref: **REF3125**
Case Type: **Section 5 Referrals**
Lodgement Type: **Referral**



An
Bord
Pleanála

| Validation Checklist | Value |
|---|---------------------|
| Confirm Classification | Confirmed - Correct |
| Confirm PA Case Link | Confirmed-Correct |
| Confirm ABP Case Link | Confirmed-Correct |
| Fee/Payment | Valid – Correct |
| Name and Address available | Yes |
| Agent Name and Address available (if engaged) | Not Applicable |
| Subject Matter available | Yes |
| Question | Yes |
| Sufficient Fee Received | Yes |
| Received On time | Yes |
| Eligible to make lodgement | Yes |
| Completeness Check of Documentation | Yes |
| Valid Lodgement Channel | Yes |

S.5 Referral

BPRL01 to applicant with receipt ✓ 25/04 dc.

BPRL07 to PA with copy referral ✓ 25/04 dc.

(PA emailed 25/04) dc ✓

Run at: 25/04/2025 16:19

Run by: Daragh Cassells

Daragh Cassells

From: Daragh Cassells
Sent: Friday 25 April 2025 15:46
To: Appeals
Subject: Referral DLR REF3125 / ABP 322368-25

A Chara,

The Board has received a section 5 referral under DLRCoCo REF: REF3125.
In order for the Board to validate the referral, could you please provide the following information.

1. The date the question/request for declaration under Section 5 was submitted to the planning authority.
2. The question put to the planning authority.
3. The date the declaration was due to be issued by the planning authority.
4. The names and addresses of the owners of the land and occupier, if different, and any other parties involved in the case.

Please note our reference is ABP 322368-25

Kind regards,
Daragh

Lodgement Cover Sheet - LDG-079503-25

Details

DD: 021231-25

| | |
|----------------------------------|--------------------------------------|
| Lodgement Date | 22/04/2025 |
| Customer | Ballinclea Residents Association Ltd |
| Lodgement Channel | In Person |
| Lodgement by Agent | No |
| Agent Name | |
| Correspondence Primarily Sent to | |
| Registered Post Reference | |

Categorisation

| | |
|----------------|------------------------|
| Lodgement Type | Appeal <u>Referral</u> |
| Section | Processing |

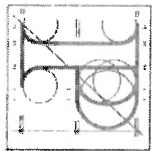
Fee and Payments

| | |
|------------------------|--------|
| Specified Body | No |
| Oral Hearing | No |
| Fee Calculation Method | System |
| Currency | Euro |
| Fee Paid | 220.00 |
| Refund Amount | |

Appeal

ABF: 322368.25

S.S Referral



An Bord Pleanála

| | |
|---------------------------------|---------------|
| Lodgement ID | LDG-079503-25 |
| Map ID | |
| Created By | Anthony Kelly |
| Physical Items included | No |
| Generate Acknowledgement Letter | |
| Customer Ref. No. | |
| PA Reg Ref | REF3125 |

DATE DECISION: 24-03-25
LAST DAY APPEALS: 22-04-25

| | |
|--------------------------------|---------------------------------------|
| PA Name | Dun Laoghaire Rathdown County Council |
| Case Type (3rd Level Category) | |

| | |
|--------------------------------|---------------|
| Observation/Objection Allowed? | |
| Payment | PMT-062184-25 |
| Related Payment Details Record | PD-062031-25 |

BPRLO1 to appeal + recall
BPRLO1 to PA + call referral

Due received 25/04, (X)

| | |
|-------------------------|--|
| PA Case Details Manual | |
| PA Case Number | |
| PA Decision | |
| PA Decision Date | |
| Lodgement Deadline | |
| Development Description | |
| Development Address | |

| | |
|--------------|--|
| Appeals Type | |
|--------------|--|

Planning Department
Rannóg Pleanála
Registry Section
Direct Tel: 01 2054863

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

Reference No:
Application Type:

Registration Date:
Decision Date:
Location:
Development Works:

REF3125

Declaration on Development and Exempted
Development Act – Section 5, Planning &
Development Act (as amended)

03-Mar-2025

24-Mar-2025

Rocheshill (Mullins Hill), Killiney Hill, Co.Dublin
Erection of metal fencing which blocks public access
at two locations at either end of an established right
of way.

AN BORD PLEANALA

LDG- 079503-25
ABP- _____

22 APR 2025

Fee: € 270.00 Type: CO2
Time: 12.21 By: HAND

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 Musrat 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.

Ballinclea Residents Association Ltd.,
c/o Stephen Jenkins,
187 Ballinclea Heights,
Killiney,
Co. Dublin

19/04/2025

A Chara,

We the Ballinclea Residents Association Ltd., wish to refer the declaration of Dun Laoghaire Rathdown County Council under reg. ref REF3125, to An Bord Pleanála under section 5(3)(a) of the Planning and Development Act 2000, as amended. This referral is lodged to the Board within four weeks of the date of the declaration by Dun Laoghaire Rathdown County Council.

Background

The Ballinclea Residents Association sought a declaration from Dun Laoghaire Rathdown County Council on 'whether the erection of metal fencing that blocks public access on an established right of way at two locations is or is not development and is or is not exempted development'.

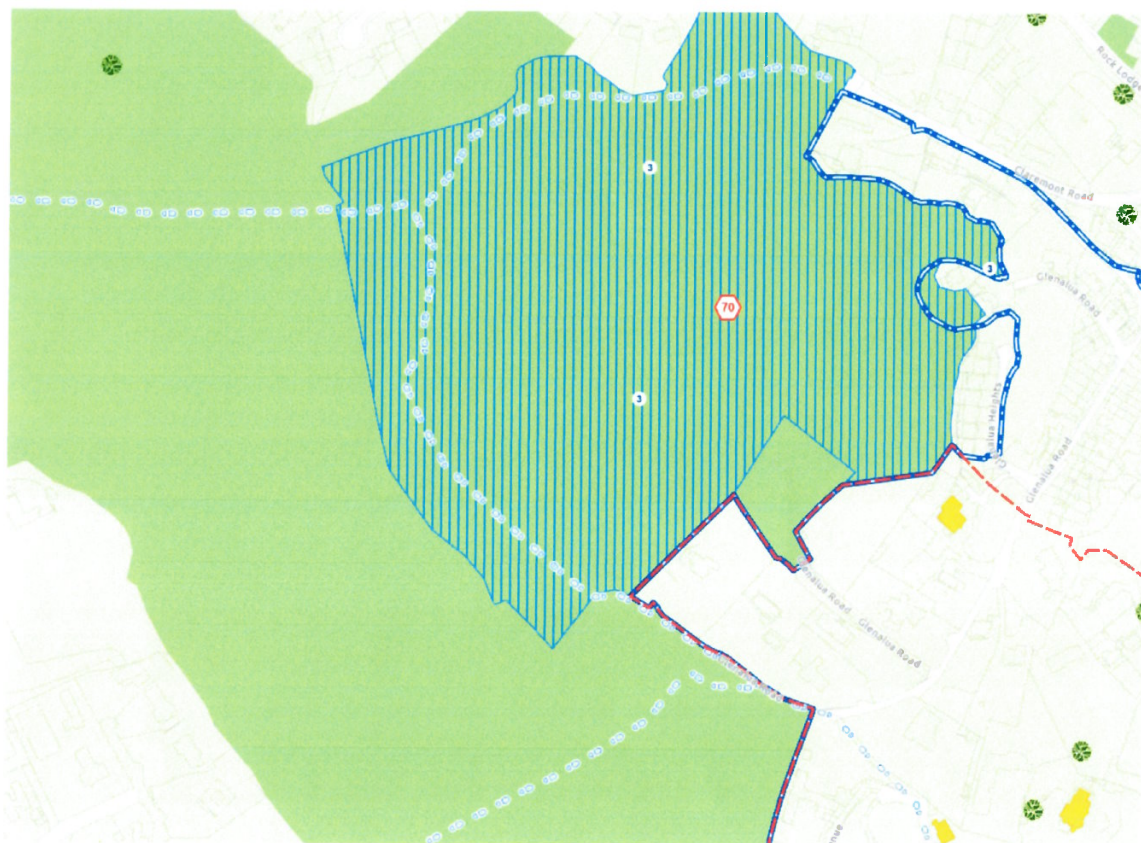
We note that the Planning Authority accepted that the works constitute 'development' and that this is not disputed by any party.

On the 24th March 2025, the County Council issued their declaration that the development was development and was exempted development. The planning report for the referral notes that the planner walked the route and noting that scrub had been cut back, was able to 'walk around' the fencing. The report notes that the fence blocks the path but concludes that the route 'has not been obstructed'. The planners report refers to a lack of wayleave delineating the route and they conclude that 'it is not clear where exactly the dedicated right of way is located'.

I draw the Boards attention to Dun Laoghaire Rathdown reg. ref.s REF12624, REF10424 and REF12724 wherein the identical planning report is used on all three section 5 referrals. This same planning report was used for the subject declaration, without reference to the previous referrals or that the same report was being re-used.

Subject Referral to An Bord Pleanála

I draw the Boards attention to the following extract from Map 7 of Dun Laoghaire Rathdown County Development Plan 2022-2028 showing the location of the public ROW from the Golf Course through Mullins Hill. The map is clear and unambiguous, delineating the public right of way in its entirety.



Further, I attach two aerial images, showing 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.



Killiney Golf Course (left), Mullins Hill (right). The Board will note that the names Mullins Hill and Roches Hill are used interchangeably, with both referred to in the development plan. SLO 70 (chapter 14 of the 2022-2028 development plan) refers:

SLO 70 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.

Regarding the statement of the Planning Officer that 'there is a well-worn path running around the fence enabling access to the path on the other side' we invite the Board Inspector to visit the site in Autumn or Winter when growth around the fencing is such that it is not possible to simply "walk around" the fence. The position of the site at a single moment in time cannot be used as a determination that the path is accessible year round.

Notwithstanding that, the legislation is clear – article 9(1)(a)(x) provides that the enclosure of a path habitually used by the public for a period exceeding ten years, cannot be considered exempted development. The law does not provide for the provision of an alternative route. That another route existed on the single day the Dun Laoghaire Rathdown County Council Planning officer carried out a site visit does not negate the fact that the designated route is blocked. The Board will note that the planning officer acknowledges in their report that the fence blocked access to the path.

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

Nor did the Planning Authority address article 9(1)(a)(vii) of the 2001 Regulations. It is the submission of the Residents Association that 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. This specific objective 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.

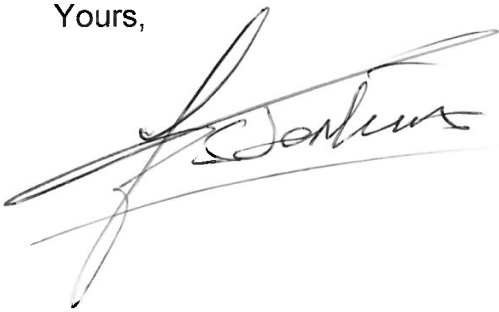
The Planning Authority considered the development in the context of Class 9 of Schedule 2 of Part 1 of the Regulations. Class 9 refers to 'the construction, erection,

renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway'. The Board will note that the development in question is a fence, not a gate or a gateway and so, the exemption provided in class 9 is not applicable to the development.

The Planning Authority stated that the fence could be considered exempted development under Class 11 of Part 1 of Schedule 2. Class 11 provides that: "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), shall be exempted development where the height of a new structure shall not exceed 1.2m". The fence does exceed 1.2m at points and therefore the exemption provided under class 11 is not applicable.

The Ballinclea Residents Association invite the Board to declare that 'the erection of metal fencing that blocks public access on an established right of way at two locations' is development and is not exempted development subject to articles 9(1)(a)(vi), 9(1)(a)(vii) and 9(1)(a)(x) of the 2001 Regulations.

Yours,

A handwritten signature in black ink, appearing to read 'Stephen Jenkins', with a large, sweeping flourish extending from the end of the signature.

Stephen Jenkins on behalf of Ballinclea Residents Association Ltd.

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



