

Armstrong Planning

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902

12th June 2025

Dear Sir or Madam,

Re: **Appeal against Section 5 Declaration - Reference REF9525 - 17 Killiney Gate, Church Road, Ballybrack, Co. Dublin, A96 TX64**

We act on behalf of Ms. Kay Kelly of 17 Killiney Gate, Church Road, Ballybrack, Co. Dublin, A96 TX64, in respect of the above matter and hereby seek to appeal the decision of Dún Laoghaire-Rathdown County Council (the Council) dated 11th June 2025, which declared that the proposed widening of an existing vehicular entrance is development and is NOT exempted development.

The appeal site - 17 Killiney Gate, Church Road, Ballybrack, Cio. Dublin, A96 TX64 - is a private dwelling located within a residential area and is accessed from Church Road, a public road. The proposed works involve minor alterations to the front boundary wall only, with no associated works to the driveway surface or hardstanding. The intention is solely to widen the opening to facilitate improved vehicular access and safety. The existing front boundary wall is 94 cm in height.

We understand that these works constitute “development” under Section 3(1) of the Planning and Development Act 2000, as amended (“the Act”). However, we submit that the proposed development is exempted development under the provisions of Section 4(1)(h) of the Act and Article 6(1) of the Planning and Development Regulations 2001, as amended (“the Regulations”), subject to compliance with Schedule 2, Part 1, Class 5.

THE COUNCIL'S DECISION

On 11th June 2025, the Council issued a declaration determining that the proposed widening of an existing vehicular entrance at the above property constitutes development and does NOT constitute exempted development. The proposed works involve a minimal increase in the width of an existing entrance from 2.89 metres to 3.1 metres - a mere 21 centimetres or 7.3% increase. While we accept that the works constitute “development” as defined in the Planning and Development Act 2000, the central issue in this appeal is whether such a minor alteration can properly be characterised as “material widening” within the meaning of Article 9(1)(a)(ii) of the Planning and Development Regulations 2001. This provision removes exempted development status only where works involve

the "material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width." The Council's decision effectively interprets any widening, regardless of how minor, as automatically constituting "material" widening. We respectfully submit that this interpretation is incorrect as a matter of law, renders the word "material" meaningless, and imposes an unreasonable regulatory burden for de minimis works that have no meaningful planning implications. The proper interpretation of "material" in this context requires consideration of the scale, impact and context of the proposed widening, not a blanket prohibition on any increase in width whatsoever.

GROUNDNS OF APPEAL

1. The Proposed Widening is Not "Material" Within the Meaning of Article 9(1)(a)(ii)

1.1 De Minimis Nature of the Proposal

The proposed widening involves an increase of merely 21 centimetres (from 2.89m to 3.1m), representing only a 7.3% increase. We submit that this minimal alteration is de minimis - too trivial to warrant the conclusion that it constitutes "material widening" for the purposes of the Regulations.

1.2 Ordinary Meaning of "Material"

The ordinary meaning of "material" denotes something significant, substantial, or important. A 21cm increase cannot reasonably be characterised as substantial or significant in the context of a vehicular entrance, particularly when the resulting width remains modest at 3.1 metres.

1.3 Comparison with Permitted Standards

Significantly, Dún Laoghaire-Rathdown County Council's own guidance indicates that vehicular entrances up to 3.5 metres wide are acceptable with planning permission. The proposed entrance width of 3.1 metres falls well below this maximum. It is illogical to deem a 21cm widening as "material" when the resulting width remains 40cm below what the Council itself considers acceptable.

1.4 Precedent for Minor Widening

We note that in case ABP-320023-24, an inspector indicated no objection in principle to widening an entrance from 3.0m to 3.6m (a 60cm increase), considering it "minor in nature." The current proposal involves an increase of less than one-third of that amount.

2. Purposive Interpretation Supports Exemption

2.1 Legislative Purpose

The purpose of Article 9(1)(a)(ii) is to protect public safety and traffic flow on public roads by controlling significant alterations to vehicular access. This purpose is not engaged by a minor 21cm adjustment to an existing entrance.

2.2 Proportionality

The restriction on exempted development must be proportionate to the legislative aim. Requiring planning permission for such a minimal alteration is disproportionate and contrary to the intent of the exempted development provisions.

3. Assessment of Relevant Factors

3.1 Road Classification and Context

The site is located on a residential cul-de-sac in an established residential area of Killiney. The road serving the property is a quiet residential street with minimal traffic volumes.

3.2 Traffic Safety Implications

Far from creating any traffic safety concerns, the proposed minor widening will actually improve vehicular access and safety. The additional 21cm will facilitate safer vehicle movements by providing marginally more space for manoeuvring, particularly beneficial when entering or exiting the property. There will be no negative impact on visibility splays or manoeuvrability for other road users, and pedestrian safety remains entirely unaffected. Indeed, by allowing vehicles to enter and exit the property more efficiently, the proposal reduces the time vehicles spend partially on the public road during turning movements.

3.3 Visual Impact

The proposed alteration is so minor as to be virtually imperceptible to the casual observer. A 21cm increase in entrance width will have no discernible impact on the streetscape or the residential character of the area. The entrance will remain modest and entirely proportionate to its residential context, maintaining the established pattern of development in the area. The visual change is so minimal that most passers-by would be unable to detect any difference between the existing and proposed arrangements.

3.4 Functional Impact

Critically, the proposed widening involves no change whatsoever in the function or use of the entrance. It will continue to serve solely as vehicular access to a single dwelling house, with no intensification of use proposed or enabled by the minor adjustment. The entrance's capacity and purpose remain unchanged - this is simply a minor improvement to an existing residential access, not a fundamental alteration that would enable different or more intensive use of the property.

4. Legal Interpretation Principles

4.1 Narrow Construction of Restrictions

It is a well-established principle of statutory interpretation that provisions which restrict rights should be construed narrowly. The exempted development provisions represent valuable rights for property owners to carry out minor improvements without the burden of a full planning application. Any restriction on these rights should therefore be interpreted restrictively. The Council's interpretation, which effectively treats any widening as "material" regardless of scale, adopts an overly broad construction that undermines the purpose of the exempted development regime. Such an interpretation imposes unnecessary regulatory burden for truly minor works that have no meaningful planning implications.

4.2 Distinction Must Have Meaning

The legislature's deliberate choice to use the phrase "material widening" rather than simply "widening" must be given proper effect. If every widening, no matter how minor, is automatically deemed to be material, then the qualifying word "material" becomes entirely redundant. This cannot have been the legislative intent. The inclusion of "material" as a qualifier clearly indicates that some widening may be non-material and therefore not caught by the restriction. To hold otherwise would

be to ignore a key word in the provision and violate fundamental principles of statutory interpretation. The Board must give meaning to every word used by the legislature, and this requires distinguishing between material and non-material widening based on the scale and impact of the proposed works.

5. Planning Authority's Reasoning is Flawed

The Council's decision fails to:

- Provide any rationale for why 21cm constitutes "material" widening
- Consider the de minimis nature of the proposal
- Apply any proportionality test
- Distinguish between material and non-material widening

CONCLUSION

We respectfully submit that:

1. The proposed widening of 21cm is not "material" within any reasonable interpretation of that term
2. The development falls within Class 5 exempted development
3. None of the restrictions in Article 9(1)(a)(ii) apply as the widening is not material
4. The Council's decision represents an overly restrictive interpretation that frustrates the purpose of exempted development provisions

We therefore request that An Bord Pleanála:

- Reverse the Council's declaration
- Declare that the proposed works constitute exempted development
- Find that Article 9(1)(a)(ii) does not apply as the widening is not material

We enclose:

- Copy of the Council's decision
- Copy of our original Section 5 application and supporting documentation
- Cheque for €220 in respect of the appeal fee

We trust this appeal will receive your favourable consideration and look forward to the Board's determination.

Yours faithfully,

DAVID ARMSTRONG BA MRUP MPI MRTPI

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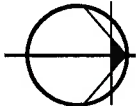


AN BORD PLEANÁLA

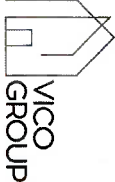
12 JUN 2025

LTR DATED FROM 1st PARTY

LDG- ABP- 322810-25



TITLE: Site Location Map				CLIENT: Kay Kelly	DATE: 20/05/2025	SCALE: 1:1000 @ A3
JOB No P498	STATUS PL	DWG No E000	REV -	SITE: 17 Killiney Gate, Church Road, Ballybrack, Co. Dublin, A96 TX64	DRAWN BY: Priyanka Srinivasa	
GRADE: Planning				PROJECT: Proposed Widening of Vehicular Entrance	DESCRIPTION:	



Existing Site Layout Plan



Proposed Site Layout Plan



TITLE: Site Layout Plan				CLIENT: Kay Kelly	
JOB No	STATUS	DWG No	REV	SITE:	
P498	PL	E100	-	17 Killiney Gate, Church Road, Ballybrack, Co. Dublin, A96 TX64	
GRADE: Planning				PROJECT:	Proposed Widening of Vehicular Entrance

DATE: **20/05/2025**

DRAWN BY: **Priyanka Srinivasa**

DESCRIPTION:

SCALE: **1:200 @ A3**

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20m