



An
Bord
Pleanála

Board Order 08.RL.3525

Planning and Development Acts 2000 to 2016

Planning Authority: Kerry County Council

Planning Register Reference Number: EX525

WHEREAS a question has arisen as to whether the erection of a gate across a laneway at Fossa, Killarney, County Kerry is or is not development or is or is not exempted development:

AND WHEREAS Donal Coffey requested a declaration on this question from Kerry County Council on the 11th day of November, 2016, and the Council referred this request, pursuant to Section 5(4) of the Planning and Development Act, 2000, as amended, to An Bord Pleanála on the 9th day of December, 2016:

AND WHEREAS An Bord Pleanála, in considering this referral, had regard particularly to -

- (a) Section 2 (1) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,

- (c) Classes 5 and 9 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (d) the submissions received from the person who requested the original declaration, including copies of historic maps and statements from other persons, and the submissions received from the owner/occupier of the subject lands, including information regarding ownership:

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the erection of the subject gate constitutes development within the meaning of the Planning and Development Act, 2000, as amended;
- (b) the gate has been erected across a laneway that is indicated on historic maps of this area;
- (c) the erection of the gate would not come within the scope of Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, but would come within the scope of Class 9 of this Part, and would ordinarily be classified as exempted development on this basis; but
- (c) the erection of the gate has consisted of the fencing or enclosure of land, that is, the subject laneway, which, on the basis of the documentation submitted, was habitually open to or used by the public during the ten years preceding its erection as a means of access to the lakeshore of Lough Leane, which is a place of natural beauty and recreational utility, and, therefore, the restrictions on exemption, provided for in Article 9 (1)(a)(x) of the Planning and Development Regulations, 2001, as amended, apply in this instance:

Matters Considered

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2017