



An
Bord
Pleanála

Board Direction
ABP-300479-17

The submissions on this file and the Inspector's report were considered at Board meetings held on 08/11/2018 and 02/05/2019.

The Board decided, as set out in the following Order, that

WHEREAS a question has arisen as to whether the erection of a gate across a road, not being a public road, is or is not development or is or is not exempted development:

WHEREAS a question has arisen as to whether the erection of advertising signage adjacent a road, not being a public road, is or is not development or is or is not exempted development:

AND WHEREAS Martina McMorrow requested a declaration on these questions from Sligo County Council and the Council issued a declaration on the 24th day of November, 2017 stating, in the case of both questions, that the matter is development and is exempted development:

AND WHEREAS Martina McMorrow referred this declaration for review to An Bord Pleanála on the 19th day of December, 2017:

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) Section 3(1) and (2) of the Planning and Development Act, 2000,
- (c) Section 4(2) and (4) of the Planning and Development Act, 2000, as amended,
- (d) Article 6(1) and (2) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 2 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) Relevant planning history; and
- (g) Relevant case law, and in particular Fingal County Council versus Cream and Signways Holdings Ltd (IEHC 148, 2001).

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of the subject gate involved the carrying out of works and is therefore:
 - (i) development under section 3(1) of the 2000 Act;
 - (ii) the gate would generally come within the scope of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, but is not exempted development in this instance by reason of the restriction on exemption provided for under Article 9(1)(a)(x) of the regulations, as the gate would consist of the fencing or enclosure of 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.
- (b) The erection of the advertising signage in question involved the carrying out of works and is therefore
 - (i) development under section 3(2) of the 2000 Act;

- (ii) this development comes with the scope of Class 13 of Part 2 of Schedule 2 of the Planning and Development Regulations, 2001, as amended, and insofar as is evidence from the inspection carried out by the Board's Senior Planning Inspector is within the size constraints set out in the conditions and limitations to which this class is subject.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 of the 2000 Act, hereby decides that the erection of a gate across a road **IS** development and **IS NOT** exempted development; the erection of advertising signage adjacent a road **IS** development that **IS** exempted development.

Note 1: In relation to the restriction on exemptions in Article 9(1)(a)(x), the Board had regard to the principles set out in the relevant case law Fingal County Council versus Cream and Signways Holdings Ltd (IEHC 148, 2001) and was not satisfied that the owner had discharged the necessary burden of proof that the restriction on exemption does not apply in this case.

Note 2: In reaching its decision, the Board did not express any view in relation to whether or not there is a public right of way in existence in this instance.

Board Member:

Date: 02/05/2019

Maria FitzGerald