



An  
Bord  
Pleanála

**Board Direction**  
**BD-000545-18**  
**ABP-300980-18**

The submissions on this file, including the submissions received by the Board on the 24/05/2018 (from Kerry County Council), 01/06/2018 (from Niall T. Cawley & Co. for Cornelius Anthony Dennehy), and 05/06/2018 (from Dr. Donal Coffey), and the Inspector's report were considered at a Board meeting held on the 20/06/2018.

The Board decided that the submissions on file adequately stated the positions of the parties and considered that no further cross-circulation of documents was necessary.

The Board decided, as set out in the following Order, that the erection of a gate in Fossa, Killarney, County Kerry is development and is not exempted development.

Board Order to be as follows:-

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

**AND WHEREAS** Dr. Donal Coffey requested a declaration on this question from Kerry County Council on the 11<sup>th</sup> 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 9<sup>th</sup> 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 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 erection of the gate does not come within the scope of Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, because the gate has not been erected within or bounding the curtilage of a house; but
- (c) The erection of the gate comes within the scope of Class 9 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, because the gate has been erected other than within or bounding the curtilage of a house, and would ordinarily be classified as exempted development on this basis; but
- (d) The erection of the gate consists of the fencing or enclosure of land which, it is considered 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, 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.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the erection of a gate across a laneway in Fossa, Killarney, County Kerry is development and is not exempted development.

**Board Member:**

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John Connolly

**Date:** 23/07/2018