



An
Bord
Pleanála

Board Direction
ABP-304134-19

The submissions on this file and the Inspector's report were considered at a Board meeting held on November 26th, 2019.

The Board decided, as set out in the following Order, that the creation of an access road and associated entrances at Rathmoylan, Dunmore East, Co. Waterford is development and is not exempted development.

Board Order as follows:-

WHEREAS a question has arisen as to whether the creation of an access road and associated entrances at Rathmoylan, Dunmore East, Co. Waterford is or is not development or is or is not exempted development.

AND WHEREAS Ciaran and Jane Bailey of Rathmoylan, Dunmore East, Co. Waterford requested a declaration on this question from Waterford City and County Council, and the Council did not issue a declaration.

AND WHEREAS Ciaran and Jane Bailey referred this question to An Bord Pleanála, on the 27th day of March 2019 for determination.

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

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,

- (b) Articles 6 and 9 of the planning and Development regulations 2001, as amended, and Classes 6 and 13 of part 1 of the Second Schedule to those Regulations,
- (c) The planning history of the lands under planning permission register reference number 16/21,
- (d) The submissions on file from the referrers, the planning authority and from the developers of the dwelling permitted under planning permission register reference number 16/21, and
- (e) The report of the Inspector.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of the subject access road and associated entrances involved the carrying out of works and is therefore development under Section 3 of the Planning and development Act, 2000, as amended;
- (b) This development does not come within the scope of the exemption provided in Class 6 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, not being development within the curtilage of the dwelling house permitted under planning permission register reference number 16/21, or any other dwelling house;
- (c) This development does not come within the scope of the exemption provided in Class 13 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, as it does not come within the boundary of any private street, road or way, and does not comprise a footpath by reason of its configuration and construction;

- (d) There are no other provisions, in Section 4 of the Planning and Development Act 2000, as amended, and in the Planning and Development Regulations, 2001, as amended, whereby the development in question would be classified as exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(b) of the Planning and Development Act, 2000, as amended, hereby decides that the creation of an access road and associated entrances at Rathmoylan, Dunmore East, Co. Waterford is development and is not exempted development.

Note: The Board had regard to the planning history under planning permission register reference number 16/21, and concurred with the reasoning of the Inspector that the development that is the subject of this referral is not an “immaterial deviation” from this planning permission, as suggested by the developers in their submissions on file. In this regard, the Board noted the documentation on file, and the content of that planning permission (including the drawings on which the planning permission was based), and was satisfied, from these drawings, that the works that are the subject matter of the referral were not undertaken within the curtilage of the permitted dwellinghouse, and were not part of the construction works that were envisaged under that permission (the access road permitted being limited to the part of the overall landholding south of the then existing private laneway, as shown on drawing number JP/14A, as submitted by the developers’ agent to An Board Pleanála on the 29th April 2019). Furthermore, the Board considered that the referral under Section 5 was a valid referral, and accordingly did not dismiss it as vexatious.

[Please issue a copy of this Direction with the Board Order to the parties]

Board Member

Date: 27th November 2019

Philip Jones