



An  
Bord  
Pleanála

**Board Direction**  
**ABP-306614-20**

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 07/07/2020.

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

Board Order as follows:-

**WHEREAS** a question has arisen as to whether development resulting in the construction of two gates Gate (A) and Gate (B) in a farmer's field for the purposes of agriculture and the user for that purpose of the farm gates occupied together with the land so used at Dromin Upper, Listowel, Co. Kerry, for agricultural purposes (foliage including eucalyptus and decorative fir trees/forest produce) is exempted development.

**AND WHEREAS** Eilín Enright, c/o Pierse Fitzgibbon Solicitors, Market Square, Listowel Co. Kerry, requested a declaration on this question from Kerry County Council, and the said Council reformulated the question to: whether the two gates which have been erected to provide access to an agricultural field from the ends of two private cul-de-sac service roads in an unfinished residential estate is or is not development or is or is not exempted development.

**AND WHEREAS** the said Council referred the reformulated question, for decision by the Board, on the 6<sup>th</sup> day of February 2020.

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

- (a) sections 2(1), 3(1), and 4(1)(a) of the Planning and Development Act 2000 (as amended),
- (b) articles 5-11 of the Planning and Development Regulations 2001 (as amended), with more particular reference to articles 6(1) and 9(1)(a)(iii),
- (a) Part 1 of Schedule 2 *Exempted Development – General* of the Regulations, with more particular reference to Class 9,
- (b) the planning history of the site, and
- (c) the submissions of the parties to the referral,

**AND WHEREAS** An Bord Pleanála has concluded that:

- (a) the construction of the gates would constitute ‘works’ for the purpose of section 2, and ‘development’ for the purpose of section 3, of the Act;
- (b) the construction of the gates would not come within the scope of Class 9 of Part 1 of Schedule 2 of the Regulations as the heights of the gateposts, which form part of the gates or gateways, exceed 2 metres;
- (c) the gates and gateways would endanger public safety by reason of traffic hazard or obstruction of road users;
- (d) the use of the gates for the purpose of agriculture would not come within the scope of section 4(1)(a) of the Act, which is restricted to the use of land and any building occupied together with land.

**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 construction of two gates Gate (A) and Gate (B) in a farmer's field for the purposes of agriculture and the user for that purpose of the farm gates occupied together with the land so used at Dromin Upper, Listowel, Co. Kerry, for agricultural purposes (foliage including eucalyptus and decorative fir trees/forest produce) is development and is not exempted development

and

the two gates which have been erected to provide access to an agricultural field from the ends of two private cul-de-sac service roads in an unfinished residential estate is development and is not exempted development.

**Board Member:**

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John Connolly

**Date:** 08/07/2020