

An  
Bord  
Pleanála

Board Direction  
ABP-308442-20

The submissions on this file and the Inspector's report were considered at a Board meeting held on 24/02/2021.

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

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the construction/erection of a fence, pedestrian gate/gateway and vehicular gate/gateway within the curtilage of a 'Business Premises' where part of that premises is now in use as a 'House' is or is not development, and if it is development, is it, or is it not exempted development.

**AND WHEREAS** Fiona McCarthy requested a declaration on this matter from Clare County Council and the Council did not make a declaration in this instance.

**AND WHEREAS** Clare County Council referred this declaration for determination to An Bord Pleanála on the 19<sup>th</sup> day of October 2020:

**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,



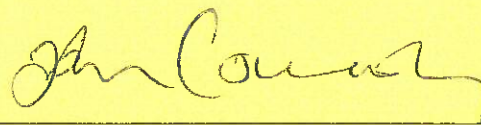
- (b) Articles 5, 6 and 9 of the Planning and Development Regulations 2001, as amended, and Part 1 of Schedule 2 to those Regulations, including Classes 5, 7, 9 & 11 including the relevant Conditions and Limitations,
- (c) the original use and absence of a planning history of the site,
- (d) the pattern of development in the area,
- (e) the submissions of the Requester, Referrer and the Owner, and
- (f) the report of the Inspector:

**AND WHEREAS** An Bord Pleanála has concluded that the construction/erection of a fence, pedestrian gate/gateway and vehicular gate/gateway within the curtilage of a 'Business Premises' where part of that premises is now in use as a 'House'-

- (a) constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000-20 as amended
- (b) comes within the scope of Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001-20 as amended, and
- (c) consists 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.

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the construction fence pedestrian, pedestrian gate/gateway and vehicular gate/gateway is development and is not exempted development.

Board Member:



Date: 24/02/2021

John Connolly