



An  
Bord  
Pleanála

Board Direction  
ABP-312182-21

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The submissions on this file and the Inspector's report were considered at a Board meeting held on 04/05/2023.

The Board decided, as set out in the following Order, that the erection of a 1.2m fence is development and is exempted development:

Board Order as follows:-

**WHEREAS** a question has arisen as to whether the erection of a 1.2m fence is or is not development or is or is not exempted development:

**AND WHEREAS** Gerard Madden requested a declaration on this question from Clare County Council and the Council issued a declaration on the 15<sup>th</sup> day of November, 2021 stating that the matter was development and was not exempted development:

**AND WHEREAS** Gerard Madden referred this declaration for review to An Bord Pleanála, on the 13<sup>th</sup> day of December, 2021.

**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 Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and
- (c) the planning history of the site and environs

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

- (a) the erection of the proposed fence falls within the definition of works under section 2 of the Planning and Development Act, 2000, as amended, and constitutes development within the meaning of Section 3(1) of the Act,
- (b) the erection of the proposed fence falls within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended, and under Article 6(a) of the Planning and Development Regulations, 2001, as amended, and
- (c) in the absence of any evidence presented on file, the Board believed that it could not be concluded that the said fence would enclose land which has been habitually open to, or used by, the public during the ten 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, and therefore it is considered that the provisions of Article 9(1)(a)(x) of the Planning and Development Regulations, 2001, do not apply in this instance;

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (3)(a) of the Planning and Development Act, 2000, as amended, hereby decides that the erection of a 1.2m fence at Riverdale, Westbury, County Clare is development and is exempted development.

Note

In deciding not to accept the Inspectors recommendation, that the development is not exempted development, the Board considered that there was an absence of evidence on file which would allow the Board to conclude that the said fence would



enclose land which has been habitually open to, or used by, the public during the ten 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, and therefore it is considered that the provisions of Article 9(1)(a)(x) of the Planning and Development Regulations, 2001, would not apply in this instance.

Board Member:

  
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Una Crosse

Date: 08/05/2023

