

An
Bord
Pleanála

Board Direction
ABP-313930-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15/02/2024.

The Board decided as follows:-

WHEREAS a question has arisen as to whether the construction of a fence, a pedestrian gate and a vehicular gate on the road is or is not development or is or is not exempted development:

AND WHEREAS Fiona MacCarthy requested a declaration on this question 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 by An Bord Pleanála, received on the 19th 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 existing use and planning history of the site,
- (d) the pattern of development in the area,

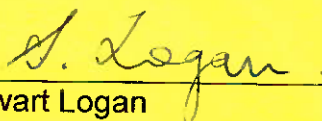
- (e) the submissions of the Requester, the Referrer and the Owner/Occupier, and
- (f) the report of the Inspector:

AND WHEREAS An Bord Pleanála has concluded that the construction of a fence, a pedestrian gate and a vehicular gate on the road

- (a) Does constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000 as amended
- (b) Does come within the scope of Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 as amended, and
- (c) The development would not be exempted development, having regard to Article 9(1)(a)(x) as it would constitute the construction of a fence, a pedestrian gate and a vehicular gate on the road which encloses land habitually open to or used by the public during the 10 years preceding the construction of the fence, a pedestrian gate and a vehicular gate on the road for recreational purposes or as a means of access to any riverbank or other place of recreational utility,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the construction of the fence, a pedestrian gate and a vehicular gate on the road subject to this referral is development and is not exempted development.

Board Member:


Stewart Logan

Date: 16/02/2024