

An
Bord
Pleanála

Board Direction
BD-014583-23
ABP-314225-22

The submissions on this file and the Inspector's report were considered at a Board meeting held on 15/11/2023.

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

WHEREAS a question has arisen as to whether the pedestrian gateway means of access to a public road that was formed in the shared boundary wall between Dosel Drive and the rear of No. 11 Arbour Court, is or is not exempted development:

AND WHEREAS Alan Duggan requested a declaration on this question from Cork City Council and the Council issued a declaration on the 20th day of July 2022 stating that the matter was development and was exempted development:

AND WHEREAS Alan Duggan referred this declaration for review to An Bord Pleanála on the 28th day of July 2022:

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,
- (b) articles 6 and 9 of the Planning and Development Regulations, 2001,
- (c) class 5 of part 1 of Schedule 2 to the said Regulations,


- (d) the definition of 'public road' within the meaning of the Planning and Development Act, 2000 and the definition of 'public road' within the meaning of the Roads Act, 1993,
- (e) the meaning of the word "access" as applied at Article 9(1)(a)(ii) of Planning and Development Regulations, 2001, and
- (f) the location of the 5m wide public open space area, outside of the rear curtilage of No. 11 Arbour Court, onto which the pedestrian gate accesses.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the formation of a pedestrian doorway is development which comes within the scope of the exempted development provisions of Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001,
- (b) the restrictions on exempted development contained at Article 9(1)(a)(ii) of Planning and Development Regulations, 2001, do not affect the exemption under the said Class 5 for a solely pedestrian access onto open space amenity area and
- (c) the formation of the doorway for pedestrian use is, therefore, exempted development.

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 said formation of the doorway is development and is exempted development.

Board Member:


Martina Hennessy

Date: 15/11/2023