

An
Bord
Pleanála

Board Direction
BD-019325-25
ABP-318166-23

The submissions on this file and the Inspector's report were considered at a Board meeting held on 26/03/2025.

The Board decided as indicated hereunder.

WHEREAS a question has arisen as to whether the construction of a field access and associated roadway onto a cul-de-sac at Upper Burncourt, Burncourt, Cahir, Co. Tipperary is or is not development or is or is not exempted development:

AND WHEREAS Sharon Duke and James Joseph Kearney requested a declaration on this question from Tipperary County Council and the Council issued a declaration on the 20th day of September, 2023 stating that the matter was development and was exempted development:

AND WHEREAS Sharon Duke and James Joseph Kearney referred this declaration for review to An Bord Pleanála on the 2nd day of October 2023:

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

- (a) the nature, extent and scope of the works,
- (b) sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,

- (c) articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (d) Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;
- (e) Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended;
- (f) the interpretation of 'road' as contained with the Roads Act, 1993
- (g) the provisions of the Tipperary County Development Plan 2022-2028 as they apply to the referral site,
- (h) the documentation on file, including submissions from the referrer, the land owner and the Planning Authority;
- (i) the planning history of the referral site, specifically planning reg. reference S5/23/16, and
- (j) relevant precedent referrals and judgements;

AND WHEREAS An Bord Pleanála has concluded that:

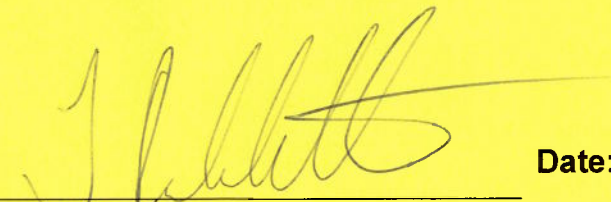
- (a) the question is not the same, or substantially the same, as the question previously considered and determined by the planning authority under planning reg. reference S5/23/16 as a 'roadway' did not form part of the question or Determination in that instance;
- (b) the roadway does not come within the scope of Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended, as the roadway works do not relate to the repair or improvement of an existing roadway;
- (c) there are no other exemptions applicable to the roadway in question either in the Planning and Development Act 2000, as amended, or the Planning and Development Regulations 2001, as amended;
- (d) the field access comes within the scope of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001, as amended;

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 a field access on to a cul-de-sac is development and is exempted development

AND

The construction of the associated roadway is development and is not exempted development at Upper Burncourt, Burncourt, Cahir, Co.Tipperary.

Board Member

A handwritten signature in black ink, appearing to read 'Tom Rabbette', written over a horizontal line.

Tom Rabbette

Date: 28/03/2025