



The submissions on this file and the Inspector's report were considered at a Board meeting held on June 20th 2017.

The Board decided, as set out in the following Order, that the erection of a gate across a laneway in Fossa, Killarney, County Kerry is development and is not exempted development.

Board Order to be as follows:-

WHEREAS a question has arisen as to whether the erection of a gate across a laneway in Fossa, Killarney, County Kerry is or is not development or is or is not exempted development.

AND WHEREAS Dr. Donal Coffey requested a declaration on this question from Kerry County Council on the 11th day of November 2016, and the Council referred this request, pursuant to Section 5(4) of the Planning and Development Act 2000, as amended, to An Bord Pleanála on the 9th day of December 2016

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

- (a) Section 2 (1) of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended

- (c) Classes 5 and 9 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, and
- (d) The submissions received from the person who requested the original declaration, including copies of historic maps and statements from other persons, and the submissions received from the owner/occupier of the subject lands, including information regarding ownership.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The erection of the subject gate constitutes development within the meaning of the Planning and Development Act, 2000, as amended;
- (b) The gate has been erected across a laneway that is indicated on historic maps of this area;
- (c) The erection of the gate would not come within the scope of Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, but would come within the scope of Class 9 of this Part, and would ordinarily be classified as exempted development on this basis; but
- (d) The erection of the gate has consisted of the fencing or enclosure of land, that is, the subject laneway, which, on the basis of the documentation submitted, was habitually open to or used by the public during the ten years preceding its erection as a means of access to the lakeshore of Lough Leane, which is a place of natural beauty and recreational utility, and therefore the restrictions on exemption, provided for in Article 9 (1)(a)(x) of the Planning and Development Regulations, 2001, as amended, apply in this instance.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5 (4) of the Planning and Development Act, 2000, as amended, hereby decides that the erection of a gate across a laneway in Fossa, Killarney, County Kerry is development and is not exempted development.

Note: In coming to its conclusion, which differed from that of the Senior Planning Inspector, the Board concurred with her that the gate was not within or bounding the curtilage of a house, and therefore did not come within the scope of Class 5 of Part 1 of Schedule 2 to the Regulations, but also considered the provisions of Class 9, which relates to development other than within or bounding the curtilage of a house (which had not been considered by the Senior Planning Inspector). The Board also had regard to the documentation submitted as part of the referral, including historic maps showing the laneway in existence prior to the construction of the houses now abutting the laneway, and also the statements of persons submitted as part of the file, indicating their prior use of the laneway as a means of access to the lakeshore for a period in excess of ten years prior to the erection of the gate.

[Please issue a copy of this Direction with the Board Order.]

Board Member:

Date: 22nd June 2017

Philip Jones