



Planning and Development Acts 2000 to 2018

Planning Authority: Kerry County Council

Planning Register Reference Number: EX525

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 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 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 erection of the gate does not come within the scope of Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, because the gate has not been erected within or bounding the curtilage of a house; but
- (c) The erection of the gate comes within the scope of Class 9 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended, because the gate has been erected other than within or bounding the curtilage of a house, and would ordinarily be classified as exempted development on this basis; but
- (d) The erection of the gate consists of the fencing or enclosure of land which, it is considered 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, 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.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

John Connolly

**Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.**

Dated this day of 2018.