



Planning and Development Acts 2000 to 2019

Planning Authority: Kerry County Council

Planning Register Reference Number: EX810

WHEREAS a question has arisen as to whether development resulting in the construction of two gates Gate (A) and Gate (B) in a farmer's field for the purposes of agriculture and the user for that purpose of the farm gates occupied together with the land so used for agricultural purposes (foliage including eucalyptus and decorative fir trees/forest produce) at Dromin Upper, Listowel, County Kerry is exempted development:

AND WHEREAS Eilín Enright care of Pierse Fitzgibbon Solicitors of Market Street, Listowel County Kerry, requested a declaration on this question from Kerry County Council, and the Council reformulated the question to: whether the two gates which have been erected to provide access to an agricultural field from the ends of two private cul-de-sac service roads in an unfinished residential estate at Dromin Upper, Listowel, County Kerry is or is not development or is or is not exempted development.

AND WHEREAS the said reformulated question was referred to An Bord Pleanála by Kerry County Council on the 6th day of February, 2020:

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

- (a) sections 2(1), 3(1), and 4(1)(a) of the Planning and Development Act 2000 (as amended),
- (b) articles 5, 6, 7, 8, 9, 10 and 11 of the Planning and Development Regulations 2001 (as amended), with more particular reference to articles 6(1) and 9(1)(a)(iii),
- (c) Part 1 of Schedule 2 Exempted Development – General of the Regulations, with more particular reference to Class 9,
- (d) the planning history of the site, and
- (e) the submissions of the parties to the referral.

AND WHEREAS An Bord Pleanála has concluded that -

- (a) the construction of the gates would constitute ‘works’ for the purpose of section 2, and ‘development’ for the purpose of section 3, of the Act,

- (b) the construction of the gates would not come within the scope of Class 9 of Part 1 of Schedule 2 of the Regulations as the height of the gateposts, which form part of the gates or gateways, exceed two metres,
- (c) the gates and gateways would endanger public safety by reason of traffic hazard or obstruction of road users,
- (d) the use of the gates for the purpose of agriculture would not come within the scope of section 4(1)(a) of the Act, which is restricted to the use of land and any building occupied together with land.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that -

- (1) the construction of two gates - Gate (A) and Gate (B) in a farmer's field, for the purposes of agriculture and the user for that purpose of the farm gates occupied together with the land so used for agricultural purposes (foliage including eucalyptus and decorative fir trees/forest produce) at Dromin Upper, Listowel, County Kerry, is development and is not exempted development, and
- (2) the two gates which have been erected to provide access to an agricultural field from the ends of two private cul-de-sac service roads in an unfinished residential estate at Dromin Upper, Listowel, 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 2020.