

An
Bord
Pleanála

Board Order
ABP-312182-21

Planning and Development Acts 2000 to 2021

Planning Authority: Clare County Council

Planning Register Reference Number: R21-59

WHEREAS a question has arisen as to whether the erection of a 1.2-metre fence at Riverdale, Westbury, County Clare is or is not development or is or is not exempted development,

AND WHEREAS Gerard Madden of I.M. Properties Limited, Greengate House, Carr Street, Limerick requested a declaration on this question from Clare County Council and the Council issued a declaration on the 15th day of November, 2021 stating that the development is development and is not exempted development,

AND WHEREAS Gerard Madden care of Kieran O'Brien and Associates of 25 Barrington Street, Limerick referred this declaration for review to An Bord Pleanála on the 13th day of December, 2021,

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

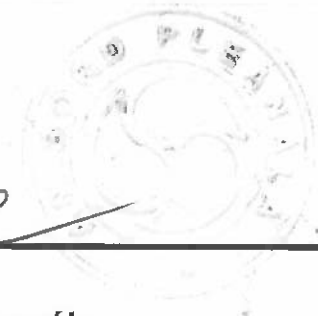
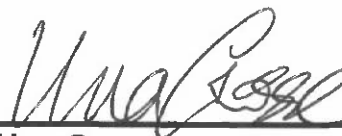
- (a) Sections 2, 3 and 4 of the Planning and Development Act 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations 2001, as amended, and Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and
- (c) the planning history of the site and environs,

AND WHEREAS An Bord Pleanála has concluded that:

- (a) the erection of the proposed fence falls within the definition of works under Section 2 of the Planning and Development Act 2000, as amended, and constitutes development within the meaning of Section 3(1) of the Act,
- (b) the erection of the proposed fence falls within the scope of Class 11 of Part 1 of the Second Schedule to the Planning and Development Regulations 2001, as amended, and under Article 6(a) of the Planning and Development Regulations 2001, as amended, and
- (c) in the absence of any evidence presented on file, the Board considered that it could not be concluded that the said fence would enclose land which has been habitually open to, or used by, the public during the ten years preceding such fencing or enclosure for recreational purposes, or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility, and, therefore, it is considered that the provisions of Article 9(1)(a)(x) of the Planning and Development Regulations 2001, as amended, do not apply in this instance,

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by Section 5(3)(a) of the Planning and Development Act 2000, as amended, hereby decides that the erection of a 1.2-metre fence at Riverdale, Westbury, County Clare is development and is exempted development.

In deciding not to accept the Inspector's recommendation that the development is not exempted development, the Board considered that there was an absence of evidence on file which would allow the Board to conclude that the said fence would enclose land which has been habitually open to, or used by, the public during the ten years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility, and, therefore, it is considered that the provisions of Article 9(1)(a)(x) of the Planning and Development Regulations, 2001, as amended, would not apply in this instance.



Una Crosse

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

Dated this 15th day of May 2023.