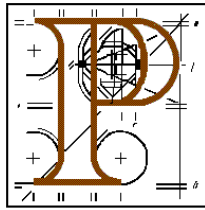


# An Bord Pleanála



PLANNING AND DEVELOPMENT ACTS 2000 TO 2015

**Fingal County**

**Planning Authority Reference Number: FS5/014/13**

An Bord Pleanála Reference Number: 06F.RL.3131

**WHEREAS** a question has arisen as to whether the erection of a gate, at Heather Cottage, Cliff Road, Howth, County Dublin is or is not development or is or is not exempted development:

**AND WHEREAS** this question was referred to An Bord Pleanála by Fingal County Council on the 16<sup>th</sup> day of August, 2013:

**AND WHEREAS** An Bord Pleanála has decided, in the light of the material alterations that have taken place to the site since the lodgement of this case, as noted in the inspection carried out by the Inspector on the 15<sup>th</sup> day of December 2015, to reformulate the question as follows:-

Whether the erection of gateposts at Heather Cottage, Upper Cliff Road, Howth, County Dublin is or is not development and is or is not exempted development:

**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 Planning and Development Regulations, 2001, as amended,
- (c) Classes 5 and 9 of Part 1 of Schedule 2 to these Regulations,
- (d) the location of the site, within a designated Special Amenity Area, and the provisions of the Special Amenity Area Order in respect of this area,
- (e) the provisions of the Fingal County Development Plan 2011–2017, as they apply to this site, and
- (f) the submissions made by the referrer and the owner/occupier of the land around Heather Cottage:

**AND WHEREAS** An Bord Pleanála has concluded that -

- (a) the erection of the gateposts consists of the carrying out of works and therefore constitutes development as defined in Section 3 of the Planning and Development Act, 2000,
- (b) the gateposts come within the scope of Class 9 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, which exemption is not prevented or limited by the provisions of the Special Amenity Area Order,
- (c) the gateposts do not, of themselves, involve the fencing or enclosure of land that was habitually open to and used by the public during the 10 years preceding such enclosure for recreational purposes and as a means of access to a place of natural beauty and recreational utility, and accordingly the restrictions on exempted development status provided for in Article 9 (1)(a)(x) of the Planning and Development Regulations, 2001, as amended, do not apply in this instance,

- (d) by reason of the limited scale of the gateposts, they do not interfere with the character of the landscape whose preservation is an objective of the Fingal County Development Plan 2011-2017, and accordingly the restrictions on exempted development status provided for in Article 9 (1)(a)(vi) of the Planning and Development Regulations, 2001, do not apply in this instance:

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the erection of gateposts at Heather Cottage, Upper Cliff Road, Howth, County Dublin is development and is exempted development.

In deciding not to accept the recommendation of the Inspector, the Board considered that the situation had materially changed since the making of the request by the Planning Authority to the Board in August 2013, by reason in particular of the removal of the former gate and also of the reduction in height of the gateposts formerly with this gate, and considered that this changed situation distinguished the case from that decided by the Board under file reference 06F.RL3078. In reformulating the question, the Board made such a distinction, and concluded, on the evidence submitted (including the inspection (and measurements) carried out by the Inspector), that the development now on site is development and is exempted development. The Board also considered that it was not precluded from determining a question that has been referred to it, pursuant to Section 5 (4) of the Act, by a Planning Authority, irrespective of whether or not the Planning Authority had issued a declaration under Section 5 (2)(a).

## **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.

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

**Dated this            day of            2016.**