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**Planning and Development Acts 2000 to 2017**

**Planning Authority: Kildare County Council**

**Planning Register Reference Number: ED/00592**

**WHEREAS** a question has arisen as to whether the erection of an unroofed fenced area for the exercising and training of horses or ponies together with a drainage bed or soft surface material to provide an all-weather surface at Palmerstown House, Johnstown, County Kildare is or is not development or is or is not exempted development:

**AND WHEREAS** Luke Comer care of Plus Architecture Limited of Chancery Lane, Dublin requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 4<sup>th</sup> day of September, 2017 stating that the matter is development and is not exempted development:

**AND WHEREAS** Luke Comer care of Plus Architecture Limited of Chancery Lane, Dublin referred this declaration for review to An Bord Pleanála on the 29<sup>th</sup> day of September, 2017:

**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) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended,

- (c) Class 10 of Part 3 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) the nature of the works, the enforcement history of the site and the Determination by the Environmental Protection Agency under Article 27 of the European Communities (Waste Directive) Regulations 2011 issued on the 1<sup>st</sup> day of March 2017, and
- (e) the reports of inspections on file from officials of the planning authority and the report of the Board's Senior Planning Inspector:

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

- (a) the construction of an unroofed fenced area constitutes works, and these works constitute development within the meaning of Section 3 of the Planning and Development Act, 2000, as amended,
- (b) having regard to the Environmental Protection Agency Determination, and to the nature of the infill that forms part of the unroofed fenced area, which infill includes builders waste, rubbish and debris, the deposition of which on the subject land comes within the scope of the provisions of Section 3(2)(b)(iii) of the Planning and Development Act 2000, as amended, the use of the land in question has materially changed and such material change of use is development,
- (c) this development would generally come within the scope of Class 10 of Part 3 of the Second Schedule to the Planning and Development Regulations 2001, as amended, but does not comply with conditions and limitation number 4 of this Class, as, based on the inspections carried out, the subject unroofed fenced area is more than two metres in height above existing ground level at certain locations along its length, and

