



An  
Bord  
Pleanála

## Inspector's Report ABP-301137-18

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### Question

Whether works involving alterations to existing farm gate field entrances to form a vehicular entrance, including winged walls and gate and construction of a road is or is not development or is or is not exempted development within the meaning of the Act.

### Location

Gowran Demense, Gowran, Co. Kilkenny.

### Declaration

Planning Authority

Kilkenny County Council

Planning Authority Reg. Ref.

DEC471

Applicant for Declaration

Joseph Connolly

Referred by

Joseph Connolly

Owner/ Occupier

Kieran & Caroline Carey

Date of Site Inspection

28<sup>th</sup> June 2018

**Inspector**

Colin McBride

## **1.0 Site Location and Description**

1.1 The lands subject to the referral are located in a rural area approximately 1.2 kilometres south east of the village of Gowran in County Kilkenny. The lands subject to the referral have relatively small section of roadside frontage onto a local road in close proximity to a junction of the local road with the R702 Gowran Goresbridge Regional Route. The access to the public road is located in the north eastern corner of the lands. The lands are currently in agricultural use with fenced off areas for paddocks in the northern section of the site. The lands are also bisected by a watercourse, the Gowran River, over which a bridge has been constructed. There is a surfaced road from the vehicular entrance running roughly parallel to the eastern boundary of the lands, which veers south-westerly to the bridge and then continues southwards terminating over half way down into the lands in question. The lands have a gentle fall in a southerly direction and south of the river they are relatively flat. In relation to development there is a dwelling the rear of which has a boundary with the lands in question located between the access and the river. The internal access road is within 3 metres of common boundary of this dwelling and the lands in question.

## **2.0 The Question**

2.1. Whether works involving the alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and gate and construction of a road is or is not development or is or is not exempted development within the meaning of the Act.

## **3.0 Planning Authority Declaration**

### **3.1. Declaration**

On the 13<sup>th</sup> day of February 2018 a declaration was issued by Kilkenny County Council stating that

Alterations to existing farm gate field entrance to form a vehicular entrance including winged wall is development and not exempted development having regard to the width of the public road which is more than 4m and do not fall under Article 9(1)(a)(ii)

& (iii) of the Planning and Development (Amendment) Regulations 2001-2018, & whereas Kilkenny County Council has concluded that construction of a road is development and is exempted development having regard to Section 4(1)(h) of the Planning & Development (Amendment) Regulations 2001-2018.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planning report (12/02/18): The creation of an access where the public road is wider than 4m due to Article 9(1(a)(ii) which states that development under Article 6 shall not be exempted development, would consist of material widening of an access to a public road which exceeds 4m in width. In the case of the construction of an internal road it was concluded that that the road was already in existence and had been resurfaced with reference to conditions attached to permission ref no. PL10 .247676 (16/75). It was concluded that the construction of a new road did not take place and this element should not form part of the declaration. It was considered that the works relating to the access would not constitute exempted development, however such works may have been carried out under permission ref no. P16/75 condition no. 3.

## **4.0 Planning History**

PL10 .247676: Outline planning permission to construct a house and permission for the construction of stables, hay barn, horse walker building, and all associated site works.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant Development Plan is the Kilkenny County Development Plan 2014-2020.

## 5.2. Natural Heritage Designations

None in the vicinity

## 6.0 The Referral

### 6.1. Referrer's Case

A referral has been submitted by Peter Thomson Planning Solutions on behalf of Joseph Connolly, Grange Lower, Goresbridge, Co. Kilkenny.

- The referrer notes the Council declaration is unclear what is being declared in relation to the road due to the planning reports conclusions.
- The referrer notes that the Planning Authority's' assessment is incorrect as photographic evidence indicates that there was no road at the location and that the historic road referred to by the Inspector under ref no. PL10 .247676 is much further from the boundary and the referrers property.
- It is noted that no permission has been granted for the road in place and the development permitted under ref no. 16/75 claimed to be repair and not the level of construction that has taken place to create the new access road.
- The declaration issued is incorrect as Section 4(1)(h) of the Act relates to development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure. It is noted that the road structure that was existing at this location was long since removed and there was no access track along the boundary to rear of the referrer's property. The works undertaken in regards to provision of the access road on the lands in question were not exempted development under Section 4(1)(h).
- The referrer does not object to a road to serve the equestrian facilities at this location but notes that the access road under ref no, 16/75 should be constructed in the location shown on the drawings submitted.
- The Board is required to overturn the declaration and declare that both the alterations the existing farm gate and construction of a road is development and is not exempted development.

- The referrer notes their earlier submission to the Council.
- The referrer outlines the history and background of the site and notes that the permission granted requires realignment of the access road. The referrer notes that such did not take place and works were carried out to upgrade an agricultural access and not build a new road as permitted.
- The referrer relates to the vehicular entrance off the public road and the internal access road which has been developed.
- The referrer outlines the definition of works under the Planning and Development Acts and provision for exempted development under the Planning and Development Regulations.
- The referrer notes that the access road that has been constructed on site in close proximity to the referrer's property is a new access road and is not existing road that has been repaired as claimed by the property owners. The referrer has submitted a number of documents to demonstrate that this is the case including an extract from the application documents under ref no. 16/75, aerial photographs and on the ground photographs. It is noted that the road that was developed could not be exempted development as it was not an existing road.
- In relation to the vehicular access it is noted there were two field entrances in place prior to works carried out (photo submitted). It is noted that works granted under ref no. 16/75 have not commencement. It is noted that Class 9 of Part 1 of Schedule 2 of the Regulations provide for an exemption for the construction, erection, renewal or replacement, other than within the curtilage of a house, of any gate or gateway. It is noted the works have taken place are not in accordance with the term of ref no. 16/75 as it provided for the existing entrance to be upgraded. It is noted that the new entrance cannot be exempted due to Article 9(1)(a)(viii) as the entrance is part of an unauthorised roadway.
- It is noted that the works to the gate cannot be claimed to be exempt development for the purposes of providing the sand area as exempted development as (Article 9(1)(ii) as this provision relates to the carry out of works and not the permanent widening of the entrance. The referrer also

notes the provision of Article 9(1)(a)(ii) which de-exempts works to an entrance where it is on a public road exceeding 4m in width as in this case.

## 6.2. **Planning Authority Response**

Response by Kilkenny County Council

- The Local Authority have no additional comments to make.

## 6.3. **Owner/ occupier's response**

A response has been submitted by the landowner, Kieran Carey.

- The landowner outlines the planning history of the site.
- The landowner notes that in response to further information that he suggested upgrading the entrance with an electric gate and that both Kilkenny County Council and An Bord Pleanala agreed to this.
- The landowner notes that they submitted proof that the laneway was a long established element at this location. The landowner upgraded the laneway with filling and questions why the Council and the Board would grant permission for a development for which he has no access to and the laneway is the only means of access to his lands.
- The landowner notes various issues that he has had with the referrer.

## 7.0 **Statutory Provisions**

### 7.1. **Planning and Development Act, 2000**

Section 2 (1) of the Act provides the following definitions:

“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal...

“structure” means any building, structure, excavation, or other thing constructed or made on, in or under land, or any part of a structure so defined.”

Section 3(1) of the Act states the following in respect of 'development':

"In this Act, 'development' means, except where the context otherwise requires, the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 4 (1) sets out various forms and circumstances in which development is exempted development for the purposes of the Act.

Section 4 (2)(a) of the Act enables certain classes of development to be deemed exempted development by way of regulation.

Schedule 2 Part 1

CLASS 13

The repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street road or way, and the construction of any private footpath or paving.

Conditions and limitations

The width of any such private footpath or paving shall not exceed 3 metres.

## 7.2. **Planning and Development Regulations, 2001**

Article 6(1), subject to Article 9, development of a class specified in column 1 of Part 1 of Schedule 2 shall be exempted development for the purposes of the Act, provided that such development complies with certain conditions and limitations.

Article 9 (1) of the regulations sets out various restrictions on works that would otherwise be exempted development under Article 6.

Article 9(1)(a)(ii)

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—



- (a) if the carrying out of such development would—
- (ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

## 8.0 **Assessment**

8.1. The question at issue is whether works involving the alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and gate and construction of a road is or is not development or is or is not exempted development within the meaning of the Act.

8.2. In carrying out this assessment, the planning referrals data base was consulted. The following referrals of relevance were found.

RL2806: Whether the creation of a laneway using hardcore material to access an agricultural shed is or is not development or is or is not exempted development. It was determined that the laneway constituted development and is not exempted development being in excess of three metres in width, exceeds the Conditions and Limitations of Class 13 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001.

### 8.3. **Is or is not development**

8.3.1 Firstly the question is whether the works in question constitute development.

8.3.2 The alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and gate, construction of a road or resurfacing and widening of a road would fall within the definition of 'works' under Section 2 of the Act and thus are considered to constitute 'development' for purposes of Section 3 of the Planning and Development Act.

### 8.4. **Is or is not exempted development**

8.4.1 Article 6(3) of the Planning and Development Regulations 2001, as amended makes provision for classes of development set out in Part 3 of the Regulations to be exempted development subject to any provisions of Article 9.

In the case of the alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and gate Article 9(1)(a)(ii) states...

9. (1) Development to which article 6 relates shall not be exempted development for the purposes of the Act—

(ii) consist of or comprise the formation, laying out or material widening of a means of access to a public road the surfaced carriageway of which exceeds 4 metres in width,

In this case the alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and gate is in relation to an access onto a public road that exceeds 4m in width. It is therefore considered that the alteration to an existing farm gate field entrances to form a vehicular entrance including winged walls and gate constitutes development and is not exempted development.

8.4.2 The second aspect of the referral is the construction of a road. The road is located on agricultural lands and serves such. The Planning Authority in their assessment noted that the under ref no. PL10 .247676 that The Board accepted that a road had already been in existence and that this element should not form part of the declarations as there was no construction of a road. The Planning Authority determined that construction of a road is development and is exempted development having regard to Section 4(1)(h) of the Planning & Development (Amendment) Regulations 2001-2018. The question asked is whether construction of a road constitutes development and whether such is or is not exempted development. There is clear dispute in facts between the referrer and the landowner and a difference of opinion on whether the road on site was in existence and has been upgraded or is a new road that requires permission.

8.4.3 Under PL10.247676 the Planning Inspector noted the following...

“In relation to the presence of an internal road there is, I consider no dispute, that historically a road/track of some form was located in the approximate location of the current road. It was located in a wooded area and part of a historic demesne. The historic landscape has altered, much of the woodland is removed and replaced with open pasture. The 2005 aerial photograph of the area would appear to indicate some form of track/roadway again in the approximate location of the current road. It is at the scale impossible to determine proximity to the common boundary of the applicant and appellant. It is reasonable to consider that such a track would be located in proximity to the boundary for efficient use of agricultural land and provide access to lands to the south”. Based on the planning history and previous assessment of the proposal the road on site does not constitute a new road, but it does appear that it has been resurfaced, improved and widened based on the information on file.

8.4.4 Under Planning and Development Regulations, 2001 there is provision under Part 1, Schedule 2, Class 13 for “the repair or improvement of any private street, road or way, being works carried out on land within the boundary of the street road or way, and the construction of any private footpath or paving”. The conditions and limitations of such are “that the width of any such private footpath or paving shall not exceed 3 metres”. This Class relates to the repair and improvement of any private street, road or way and the construction of any private footpath of paving. It appears that this provision only relates to a road or laneway over which vehicles access if such is already in existence and the repair or improvements mean the width of such does not exceed 3m. I would consider that given the assessment that there was a private road in existence previously the question should be altered to whether the upgrading, resurfacing and widening of an existing private road constitutes development and is or is not exempted development.

8.4.5 If it is considered that there was an existing road in existence, which appears to have been accepted as being the case under PL10/247676, then its upgrade and widening would be exempted development under Part 1, Schedule 2, Class 13 provided it did not exceed 3m in width. I would note that for most of its length the laneway is less than 3m in width, but does exceed such where it leads up to the

vehicular access onto the public road. Based on this provision the upgrading, resurfacing and widening of an existing private road would not be exempted development.

8.4.6 It is notable that there is a permission granted on site under PL10 .247676 for outline planning permission to construct a house and permission for the construction of stables, hay barn, horse walker building, and all associated site works. Both the referrer's and landowner submission refer to such and what is or is not permitted. Having inspected the file PL10.247676 I would note it permits outline permission for a dwelling and permission for the construction of stables, hay barn, horse walker building and all associated site works. In regards to the entrance the plans approved indicate the intention of upgrade the entrance with no specific detail or plans for the entrance treatment. What is in place is laid out different than that on the layout plan. In relation to the road it is noted that it is proposed to reuse the existing driveway including hardcore surfacing. In granting permission condition no. 2 notes that the internal road shall be realigned as per the plans submitted, which shows it realigned to the west of its current location. It appears that permission has not been implemented on site and that works to upgrade, resurface and widen the road were carried out prior to the granting of permission on site, which entails realignment of the road. In relation to the entrance, the layout on site does not match that in the plans submitted and no details were provided regarding entrance structures.

Recommendation

## 8.5 EIA Assessment

8.5.1 Having regard to nature and scale of the development there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.6 I recommend that the Board should decide this referral in accordance with the following draft order.

**WHEREAS** a question has arisen as to whether the alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and gate and whether upgrading, resurfacing and widening a road at Gowran Demense, Gowran, Co. Kilkenny is or is not development or is or is not exempted development within the meaning of the Act:

**AND WHEREAS** Joseph Connolly requested a declaration from Kilkenny County Council and the Council issued a declaration on the 13<sup>th</sup> day of February, 2018 stating that the alterations to existing farm gate field entrance to form a vehicular entrance including winged wall is development and not exempted development, and concluded that construction of a road is development and is exempted development.

**AND WHEREAS** Joseph Connolly referred this declaration for review to An Bord Pleanála on the 13<sup>th</sup> day of March, 2018:

**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) Section 3(1) of the Planning and Development Act, 2000,
- (c) Section 4(1)(a) of the Planning and Development Act, 2000, as amended,
- (d) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (e) Parts 1 and 3 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (f) the planning history of the site,
- (g) the pattern of development in the area:

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

- (a) alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and the upgrading, resurfacing and widening of a private road a constitutes works;
- (b) the works constitute development pursuant to section 3 of the Planning and Development Act, 2000;
- (c) the development does not come within the scope of Class 13 of Part 1 of Schedule 2 to the Planning and Development Regulations 2001; due to the width of sections of the road exceeding 3m.
- (d) the restrictions on exemptions outlined in Article 9(1)(a)(ii) are applicable 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 alteration to existing farm gate field entrances to form a vehicular entrance including winged walls and gate and the upgrading, resurfacing and widening of a private road is development and is not exempted development.

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Colin McBride  
Planning Inspector

24<sup>th</sup> October 2018