



An
Bord
Pleanála

Inspector's Report ABP-308613-20

Question

Whether the removal of a public green area and the subsequent hard coring of that portion of the green area for the purpose of providing vehicular access from the public road to the rear of a private dwelling house is or is not development or is or is not exempted development.

Location

33 Strandville Gardens, O'Callaghan Strand, Limerick

Declaration

Planning Authority

Limerick City & County Council

Planning Authority Reg. Ref.

DC-049-20

Applicant for Declaration

Limerick City & County Council

Planning Authority Decision

n/a

Referral

Referred by

Limerick City & County Council

Owner/ Occupier

Jeremiah Hogan

Observer(s)

Michael Reidy

Cora Franklin

Sylvia Considine

Avril Considine

Date of Site Inspection

29th April 2021

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located within the western inner suburbs of Limerick City in a residential area which lies between O'Callaghan's Strand, to the east, and Shelbourne Road Lower, to the west. This site is on the southern side of Clanmaurice Gardens, which connects for pedestrian purposes with O'Callaghan's Strand via Strandville Gardens and which connects for pedestrian and vehicular purposes with Shelbourne Road Lower via Clanmaurice Avenue.
- 1.2. The site itself lies within a grassed area that lies between the carriageway to Clanmaurice Gardens to the north and the side boundary treatments to residential properties at 33 Strandville Gardens and "The Chase" Clanmaurice Avenue. This grassed area is punctuated by trees and public utilities, e.g. a man-hole and telegraph/lighting poles.

2.0 The Question

- 2.1. Whether the removal of a public green area and the subsequent hard coring of that portion of the green area for the purpose of providing vehicular access from the public road to the rear of a private dwelling house is or is not development or is or is not exempted development.

3.0 Planning Authority Declaration

3.1. Declaration

Not applicable as the Planning Authority is seeking the declaration in question.

3.2. Planning Authority Reports

3.2.1. Planning Reports

None

3.2.2. Other Technical Reports

None

4.0 Planning History

- 78/275: Applicant – T. Healy Ltd: A pair of two-storey semi-detached dwelling houses at Nos. 33 & 34 Strandville Gardens: Permitted and implemented.
- 18/849: Applicant – Jerry Horan: Alterations and extension to dwelling house, re-construct plot boundary, and all associated site development works at No. 33 Strandville Gardens: Refused on the grounds that (a) the proposal would be a detached independent unit and as such it would establish an adverse precedent, which would injure amenity and depreciate property values, and (b) the applicant failed to demonstrate that he has sufficient interest in the site.
- 19/584: Applicant – Jerry Horan: Alterations and construction of an extension to the rear of the dwelling house at No. 33 Strandville Gardens: Permitted, subject to 10 conditions.
- DC-049-20:
 - Warning notice served on Jeremiah Horan on 25th March 2020 concerning, amongst other things, possible unauthorised development, i.e. the construction of an entrance driveway from the public roadway on Clanmaurice Gardens across a public grass margin.
 - Enforcement notice served on Jeremiah Horan on 13th July 2020 requiring, amongst other things, that he remove the unauthorised hardcore, and return the area to public green area by levelling, topsoiling and seeding the area to the satisfaction of the Planning Authority.

5.0 Policy Context

5.1. Development Plan

The site lies within an area that is covered by the Limerick City Development Plan 2010 – 2016 (extended).

5.2. Natural Heritage Designations

Lower Shannon (002165)

6.0 The Referral

6.1. Referrer's Case

The Planning Authority is the referrer. It begins its case by asking the referral question and by summarising the above cited planning history. It then proceeds to set out the following information:

- Construction work pursuant to permitted application 19/584 commenced prior to February 2020.
- Construction work extended to the removal of a strip of the adjoining public green area adjoining the side boundary to his residential property with Clanmaurice Gardens and the laying of stone/hardcore on the cleared strip.
- The purpose of the said construction work was to provide a vehicular access from Clanmaurice Gardens, via a pre-existing pair of gates used for pedestrian access, to an area to the rear of Nos. 33 & 34 Strandville Gardens.
- The area to the rear of Nos. 33 & 34 Strandville Gardens was not the subject of any of the permissions granted to applications 78/275, 18/849, and 19/584.
- The means of vehicular access was used to bring building materials into the rear of No. 33 Strandville Gardens.
- Hardcore was also laid on the area to the rear of Nos. 33 & 34 Strandville Gardens.

The above construction works were the subject of an enforcement enquiry, which led onto the issuing of warning and enforcement notices.

Copies of photographs of the site taken on 1st & 14th July 2020 and a copy of a Google Map street view captured in July 2019 have been submitted, along with copies of relevant correspondence.

Jeremiah Horan's commentary on the construction works is summarised as follows:

- A right of way to the area to the rear of Nos. 33 & 34 Strandville Gardens was obtained by his predecessors-in-title from the owners of lands at Clanmaurice Gardens in 1978 and it was noted on the deeds of conveyance.
- He has used the said right of way for vehicular and pedestrian access since he acquired his residential property.

6.2. Owner's response

Jeremiah Hogan has responded to the Planning Authority's referral as follows:

- He and his neighbour, Michael Reidy of No. 34 Strandville Gardens, have a right of way over the portion of green area in question.
- The right of way was obtained in writing from the owners of lands at Clanmaurice Gardens. A copy of the relevant letter dated 27th November 1979 and a map showing the right of way has been submitted. The width of the gateway shown is stated as being 15 feet, i.e. a vehicular access.
- The right of way has been used for vehicular and pedestrian access each year since he purchased No. 33 Strandville Gardens in 1997. He has maintained it, by laying hardcore and gravel over it and additional topping from time-to-time.
- The aforementioned maintenance was undertaken in early 2020 to facilitate vehicular access to his building project and to prevent the soiling of the roadway, thereby complying with Conditions 2(c) and 3 of the permission granted to 19/584.
- The referrer's case inaccurately describes the gateway in question as affording only pedestrian access: As it has double gates, it was designed and used to afford vehicular access, too.
- The referrer's case cites the annoyance of local residents that their green area had been compromised by the construction works. An extract from a copy of a letter of objection to application 18/849 from the residents of

Clanmaurice is submitted. In this letter they claim ownership of the green area and so they deny LCCC's claim that it is public open space.

- In correspondence received from LCCC dated 9th July 2020, the Council claims to own the green area. He has challenged this claim and he understands that the Council does not have documentation to demonstrate that the green area has been "taken-in-charge".
- The view is expressed that the issue is essentially a civil one over a disputed right of way. LCCC supports the local residents and it is hoping via the current referral to have its actions retrospectively endorsed.

6.3. Observers

(a) Michael Reidy owner of No. 34 Strandville Gardens

- Observer (a) made the application 78/275 for the pair of semi-detached dwelling houses at Nos. 33 & 34 Strandville Gardens. This application included a means of vehicular access from Clanmaurice Gardens, as garaging/parking was envisaged for the rear of these dwelling houses. The developer of Clanmaurice Gardens, Portland Estates (Limerick) Ltd consented to this access and the application was permitted. A copy of the letter and accompanying map have been submitted.
- During the ensuing construction period, hardcore was laid to provide a permanent means of access from Clanmaurice Gardens to the rear of the new dwelling houses, although it was not black-topped. This access proved to be contentious with local residents and so it was provided with a pair of double gates.
- Initially, observer (a) and his parents resided at Nos. 34 & 33, respectively, and the access was used in relation to hobbies. Subsequently, tenants had less need to use this access, although the observer continued to use it.
- Occasionally, additional hardcore was added to the means of access. Nevertheless, this access became grassed over. Recently, the observer's son has begun to reside at No. 34 and so more frequent use of the access is anticipated.

- Observer (a) objects to the how the referral question has been phrased, as it fails to reflect the underlying fact that a means of access already exists. If it was rephrased to read “Is it exempt to remove incidental grass growth over an established access as and when needed without restriction, let or hinderance for over 40 years?” he doubts whether the question would even arise.
- Observer (a) critiques the Planning Authority’s referral as follows:
 - It is incorrect to state that the access was only subject to pedestrian use when it has also been the subject of vehicular use for 40 years,
 - It is incorrect to state that topsoil was removed now to provide a vehicular access, when this occurred 40 years ago,
 - It is incorrect to refer only to No. 33 when the access serves No. 34, too,
 - It is incorrect to state that the access from Clanmaurice Gardens was not the subject of 78/275, i.e. the area to the rear of Nos. 33 & 34 would have been inoperative without this access,
 - It is incorrect to refer to the access as being public open space in connection with the “taking-in-charge” of Clanmaurice Gardens, when this access would have been evident when “taking-in-charge” occurred,
 - It is incorrect to imply that the entire grass strip is “taking-in-charge”, as, to the south of the access, others claim ownership of it and, indeed, may seek its development for garaging/parking, and
 - It is incorrect to state that Jeremiah Horan obtained a right of way in 1978, when it was his predecessor-in-title who did so.
- The rationale behind the access and the area to the rear of Nos. 33 & 34 was to provide the opportunity for parking/garaging. As such, it is consistent with the Limerick City Development Plan 2010 – 2016, which requires the provision of 2 off-street parking spaces for four-bed dwelling houses.
- Recent works to the access simply served to finish it off to a modern standard. The risk posed by the Planning Authority’s referral is that a wholly legitimate means of access would be effectively revoked and the alleged public open

space status of the land in question would be cited in opposition to any proposal to reinstate this access.

(b) Cora Franklin resident of No. 6 Clanmaurice Gardens

With reference to Jeremiah Horan's document DC-049-20/PC/CL:

- That the access was used by vehicles since 1979 is challenged.
- Jeremiah Horan first tried to lay a hardcore driveway in 2005. However, local residents complained to the Planning Authority, and the disturbed grass area was reinstated.
- Allegations are made concerning his parking practises.

With reference to Jeremiah Horan's document CRM-410632:

- Observer (b) refers to a wide range of matters to do with how recent construction works were undertaken and related matters concerning the parking of construction workers vehicles.
- Several points raised relate to the referral and these are summarised below:
 - Neither Jeremiah Horan nor his tenants have used the alleged means of access,
 - A third of the overall grassed area is owned by local residents. An earlier proposal to place garages on this area has not proceeded as they prefer to maintain it as an amenity area. (An extract from observer (b)'s deeds illustrates this pattern of ownership),
 - Attention is drawn to a former drop behind the pair of gates that made it impractical to bring a vehicle through the gates and into the area to the rear of Nos. 33 & 34.
 - Clanmaurice Gardens was constructed in 1964. Attention is drawn to the party wall between the green area and No. 33. This wall and green area existed from the outset of the Gardens and No. 33 was developed thereafter.

Boundary infractions over the years 2005 to present:

- Various matters concerning the above cited party wall are raised. The following is of relevance to the referral: Observer (b) states that the pair of gates were installed in 2005.

(c) Sylvia Considine & Avril Considine residents of Nos 5 & 3 Clanmaurice Gardens

Observer (c) outlines how she is an original resident of No. 5. She testifies to LCCC's maintenance of the green area opposite her dwelling house "for decades" and to its maintenance of the cul-de-sac, e.g. resurfacing and the painting of double yellow lines. She emphasises the long-term amenity value of this green area to local residents and to how some of them own the southern portion. She proceeds to make the following points:

- In February 2020, Jeremiah Horan removed topsoil and laid hardcore over a section of the green area to facilitate access to the rear of No. 33. He had previously attempted to do this and, following the intervention of the Planning Authority, the disturbed area was reinstated. He had neither then nor now planning permission for the works undertaken.
- Jeremiah Horan claims that he has a right of way to the rear of his property at No. 33 for vehicular and pedestrian access, which has been exercised since 1978. Observer (c) has not seen any evidence of such a right of way.
- Michael Reidy resided in No. 33 prior to Jeremiah Horan and his son now resides in No. 34. Jeremiah Horan was not, therefore, the original resident.
- Observer (c) challenges Jeremiah Horan's claim that he has used the access for vehicular and pedestrian purposes hitherto. Neither she, nor her children, nor her neighbours witnessed such usage.
- The need for pedestrian access to the rear of No. 33 did not previously arise, as it could be accessed from the front. However, with the construction of a side extension under permitted application 19/584, the previously available access route to the side of the original dwelling house has been blocked.
- The area to the rear of Nos. 33 & 34 was formerly at a lower level than the green area, i.e. there was a drop between them that would have made

vehicular access to the rear of Nos. 33 & 34 impractical. This difference in levels has been overcome by the importation of hardcore and chippings as part of recent construction works.

- Notwithstanding the service of warning and enforcement notices on 25th March 2020 and 13th July 2020 respectively, enabling works continued after these dates, as is shown on photographs submitted by observer (c).
- The evidence presented suggests that Jeremiah Horan is operating outside any works sanctioned by planning permissions.

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

Section 3(1): 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 2(1): Interpretation

“public road” has the same meaning as in the Roads Act, 1993, i.e. under Section 2(1) of the Roads Act, 1993, “public road” means a road over which a public right of way exists and the responsibility for the maintenance of which lies on a road authority.

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

Section 4(1): Exempted development

The following shall be exempted developments for the purposes of this Act – (ia) development (other than development consisting of the provision of access to a national road within the meaning of the Roads Act 1993) that consists of –

(i) the construction, maintenance or improvement of a road (other than a public road) that serves a forest or woodland, or

(ii) works ancillary to such construction, maintenance or improvement;

Section 5: Declaration and referral on development and exempted development

- (1) *If any question arises as to what, in any particular case, is or is not development or is or is not exempted development within the meaning of this Act, any person may, on payment of the prescribed fee, request in writing from the relevant planning authority a declaration on that question, and that person shall provide to the planning authority any information necessary to enable the authority to make its decision on the matter...*
- (4) *Notwithstanding subsection (1), a planning authority may, on payment to the Board of such fee as may be prescribed, refer any question as to what, in any particular case, is or is not development or is or is not exempted development to be decided by the Board.*

7.2. Planning and Development Regulations, 2001

Article 6(1): Exempted Development

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 the conditions and limitations specified in column 2 of the said Part 1 opposite the mention of that class in the said column 1.

Column 1 Description of Development	Column 2 Conditions and Limitations
<i>Sundry Works</i> Class 9 The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.	The height of any such structure shall not exceed 2 metres.

<p>Class 13</p> <p>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.</p>	<p>The width of any such private footpath or paving shall not exceed 3 metres.</p>
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Article 9(1): Restrictions on exemption

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. Site history

- 8.1.1. The owners of Nos. 33 & 34 Strandville Gardens both refer to planning application 78/275 under which the pair of two-storey semi-detached dwelling houses, which they currently own, were permitted on 11th January 1979 and subsequently built. This application was accompanied by a letter, dated 27th November 1978, from Portland Estates (Limerick) Ltd, the then owner of the land adjoining the southern side of the carriageway to Clanmaurice Gardens. This letter was accompanied by a drawing that showed “an entry” across part of this land to a strip of land to the rear of Nos. 33 & 34 Strandville Gardens. Both owners understand the letter to confer upon their properties a private right of way from Clanmaurice Gardens to this strip of land.
- 8.1.2. The owner of No. 34 Strandville Gardens (Observer (a)) explains that the above cited means of access would have served garaging/parking to the rear of the pair of semi-detached dwelling houses, which was originally envisaged as being provided. He states that, during the construction period for these dwelling houses, hardcore was laid over the means of access, although it was not provided with a sealed finish.

He also states that the existing pair of vehicular gates were erected at the entrance to the said strip of land at around this time. These gates, at a combined width of 15 feet, are wide enough to facilitate vehicular access.

- 8.1.3. Both owners state that they occasionally added to the hardcore originally laid to form the means of access, although they acknowledge that it had become grassed over in more recent years prior to the actions of the owner of No. 33 Strandville Gardens (User), which are the subject of this referral.
- 8.1.4. Observer (b), who resides at No. 6 Clanmaurice Gardens, states that the owner of No. 33 Strandville Gardens attempted to lay hardcore over the means of access in 2005. The Planning Authority was alerted, and he subsequently reinstated the portion of the grassed area that had been disturbed. She also states that it was in this year that the pair of gates were erected.
- 8.1.5. Both owners state that the means of access was used by pedestrians and vehicles over the years. The owner of No. 33 Strandville Gardens has done so since his purchase of this residential property in 1997. The owner of No. 34 Strandville Gardens has done so since this means of access was first provided, along with his parents who formerly resided in No. 33 Strandville Gardens. More recently, tenants, who resided in No. 34 Strandville Gardens, had less need to use it, but since his son began residing therein, more frequent usage is now anticipated.
- 8.1.6. Observer (b) and Observers (c), who reside at Nos. 5 & 3 Clanmaurice Gardens, challenge the owners' contention that they have used the gates as a means of vehicular access. In this respect, Observers (b) and (c), draw attention to a drop in levels which formerly existed in progressing from one side of these gates to the other and which would have militated against their use as a vehicular means of access.
- 8.1.7. The Planning Authority, the User, and the Observers are all agreed that the User, before/during February 2020, laid hardcore over a strip of the grassed area forward of the pair of gates and extending to the nearside kerb with the carriageway to Clanmaurice Gardens. Hardcore was also laid to the rear of these gates over the strip of land to the rear of Nos. 33 & 34 Strandville Gardens.
- 8.1.8. The User considers the laying of hardcore to be maintenance of the pre-existing means of access. The impetus for this maintenance was a construction project that he undertook to the rear of his dwelling house at No. 33 Strandville Gardens. This

project entailed the construction of a single storey rear extension, under permitted planning application 19/584, and access to the construction site was needed from the rear of his property. Observer (a) considers that the works undertaken simply finished off the means of access to a modern standard, i.e. they were works of improvement.

- 8.1.9. Observers (b) and (c) consider the laying of hardcore to constitute the provision of a new means of access over an area of public open space. The amenity value of this space has thereby been prejudiced. Observers (c) also consider that the laying of hardcore to the rear of the pair of gates serves to overcome the former drop in levels that militated against vehicular access. The Planning Authority has concurred with this account and so it has served warning and enforcement notices upon the User.
- 8.1.10. The User has contested the description of the grassed area as public open space. He has challenged the Planning Authority to demonstrate that this area has been taken-in-charge. He states that, to date, the Authority has failed to provide documentary proof that it has been taken-in-charge. Observer (c) testifies to the Planning Authority's maintenance of the area over decades. Observer (b) states that one-third of it is owned by local residents.

8.2. **Commentary**

- 8.2.1. The planning history of Nos. 33 & 34 Strandville Gardens is summarised above under Section 4.0 of my report. Permitted application 78/275 for the pair of semi-detached dwelling houses at these addresses bore the description "proposed erection of two-storey semi-detached dwellings" and the submitted plans showed the current site highlighted as a private right of way within the red edge of the application site. This description did not refer to the provision of a means of access and the submitted plans appear only to have shown a private right of way rather than how such a right of way would function, i.e. the provision of a means of access. I, therefore, take the view that any means of access that may have been provided did not receive planning permission under this permitted application. Likewise, the more recently permitted application 19/584 did not refer to it within the description of the proposal and the application site did not encompass the current site.

8.2.2. During my site visit, I observed the following facts upon the ground:

- The pair of gates are in-situ and in use and they are of sufficient width to admit a vehicle.
- The presence of hardcore in front of these gates and to their rear. Grass is beginning to colonise the former hardcore and the latter forms part of a ramp that runs downwards into the strip of land to the rear of Nos. 33 & 34 Strandville Gardens. From within No. 33 Strandville Gardens, the exposed side of this ramp shows signs of having been recently worked. Evidence exists thereby to corroborate Observers (b) and (c)'s assertion that there was a previous drop in levels.
- There is no dished kerb corresponding to the gates.
- The grassed area is open to Clanmaurice Gardens and so it is readily accessible to the public. This area has semi-mature trees within it and public utilities, e.g. a man-hole and telegraph/public lighting poles.

8.2.3. Photographic materials have been submitted by the Planning Authority and Observers (b) and (c).

- The former includes Google Street-View from July 2019, which shows the referral site before the recent works were undertaken. This View shows a continuous area of grass over this site with no discernible difference in the pattern of grass coverage on the site or to either side of the site. By contrast, the photographs that accompany the Enforcement Report dated 8th July 2020, which were taken on 1st July 2020, show the hardcore forward of the pair of gates as it is visible now and significant earthworks to the rear of these gates in conjunction with the laying of hardcore there. The evidence of these earthworks adds further support to Observers (b) and (c)'s contention that there was a drop in levels.
- The latter includes a photograph (on Page 11 of Observer (b)'s submission), which shows the mounding of earth on either side of the outer face of the pair of gates. The position of these mounds would be consistent with soil stripping in conjunction with the laying of hardcore in front of these gates. A further photograph dated 30th June 2020 in Observer (c)'s submission shows soil

being excavated from the grassed area forward of the pair of gates, although this could be for the purpose of widening any pre-existing hardcore means of access.

8.2.4. From the evidence before me, I am unable to establish definitively if there was a pre-existing hardcore means of access over the site that became grassed over.

However, the consistency of the grass cover and its uninterrupted nature prior to the recent works indicates to me that, if there was such a means of access, then it had been abandoned as a functioning access. I, therefore, take the view that the recent works served to either reinstate, as distinct from maintain or improve, or construct in the first instance a means of access.

8.2.5. The question as to whether the User has a private right of way over the site conferred by the letter that he cites from the developer of Clanmaurice Gardens is a separate legal matter to the planning issue posed by the LCCC's question to the Board.

8.2.6. Likewise, the question as to whether the site is a public grassed area through having been formally taken-in-charge is a separate matter to the planning issue posed by the LCCC's question to the Board. For the purpose of this question the reference to it as a "public green area" is not one that I propose to alter, insofar as it both "reads" and functions as a publicly accessible strip of land alongside the carriageway to Clanmaurice Gardens.

8.3. **Is or is not development**

8.3.1. Under Section 3(1) of the Planning and Development Act, 2000 – 2021, "development" means "the carrying out of any works on, in, over or under land" and, under Section 2(1) "works" includes "any act or operation of construction, excavation..."

8.3.2. The works recently undertaken on the site entailed the removal of grass and associated top-soil and the laying of hardcore and other materials to form a means of access across the site from the carriageway to Clanmaurice Gardens to the strip of land to the rear of the residential properties at Nos. 33 & 34 Strandville Gardens. Such removal and laying constitute acts/operations of excavation and construction,

respectively. “Works” have thus been undertaken and so I conclude that “development” has occurred.

8.4. Is or is not exempted development

- 8.4.1. The site is not within any residential curtilage. Classes 1 – 8 of the Planning and Development Regulations, 2001 – 2020, relate to development within residential curtilages and so they are not applicable to the development that has occurred. Classes 9 – 13 of these Regulations relate to sundry works and so they are potential applicable to this development. I will discuss these Classes below.
- 8.4.2. Class 9 relates to “The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway.” The development relates to a means of access to a pre-existing gated gateway and so it does not come within the ambit of this Class.
- 8.4.3. Class 13 relates to “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 development relates to a means of access from a public road over land that is within the boundary of this road, rather than that of any private street, road or way, and this means of access is expressly for vehicles, rather than simply pedestrians. Thus, it does not come within the ambit of this Class.
- 8.4.4. The remaining Classes 10, 11, and 12 would be self-evidently not applicable to the development.
- 8.4.5. Exempted development is also conferred by Section 4 of the Planning and Development Act, 2000 – 2021. Where accesses or new roads are referred to in this Section, it is in conjunction with either their provision by local authorities (Item (e)) or their provision to serve forests or woodlands (Item (ia)). Neither of these two pre-conditions pertain to the development in question.
- 8.4.6. I, therefore, conclude that the development is not exempted development.

9.0 Recommendation

9.1. 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 removal of a public green area and the subsequent hard coring of that portion of the green area for the purpose of providing vehicular access from the public road to the rear of a private dwelling house is or is not development or is or is not exempted development:

AND WHEREAS Limerick City & County Council referred this declaration for review to An Bord Pleanála on the 6th day of November, 2016:

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) Part 1 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) The site was either the subject of a hardcore means of access that was abandoned, or no such means of access existed hitherto.
- (b) The removal of grass and the laying of hardcore and other materials to form a means of access were works of excavation and construction, rather works of maintenance and improvement, and so these works constitute development.
- (c) The means of access is from a public road and over an adjoining public green area that is within the boundary of this road.
- (d) The means of access is for vehicular and pedestrian use.
- (e) The means of access was not provided by a local authority and it serves one of two private dwelling houses.
- (f) Accordingly, the development is not exempted development under either Classes 9 or 13 of the Planning and Development Regulations, 2001 – 2020, or Section 4(1)(e) or (ia) of the Planning and Development Act, 2000 – 2021.

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 removal of a public green area and the subsequent hard coring of that portion of the green area for the purpose of providing vehicular access from the public road to the rear of a private dwelling house is development and is not exempted development.

Hugh D. Morrison
Planning Inspector

10th May 2021