



An  
Bord  
Pleanála

## Inspector's Report ABP-313409-22

### Question

Whether the gate at entrance sited on south-eastern boundary of lands in Folio MH 56744F on Local Road No. L40042 is or is not development and is or is not exempted development.

### Location

Rathcairn, Athboy, Co. Meath.

### Declaration

Planning Authority

Meath County Council

Planning Authority Reg. Ref.

KAS52214

Applicant for Declaration

Colm Griffin.

Planning Authority Decision

Is not exempted development

### Referral

Referred by

Colm Griffin.

Owner/ Occupier

Colm Griffin.

**Date of Site Inspection**

24<sup>th</sup> March 2023.

**Inspector**

Lucy Roche

## 1.0 Site Location and Description

- 1.1. The subject site is located within the development boundary of Rathcairn, a rural village in County Meath, situated c8.5km southwest of Junction 9 on the M3 and c3.7km southwest of the settlement Athboy. Rathcairn is located within the Meath Gealtacht.
- 1.2. The entrance subject to the referral consists of an agricultural gate which is located on the western side of the Local Road - L40042, where a speed limit of 50km/h applies. The entrance serves an agricultural field, which is also served by an entrance off the local road to the northwest. The lands served by the entrance fall below the level of the public road L40042.
- 1.3. The metal entrance gate to the field, is approx. 4.75m in width. The gate is attached steel girder on its northern end and a wooden post on its southern end. It is set back c3.5m from the edge of the public road, the dwell area has been surfaced and finished with compacted stone.
- 1.4. The surfaced carriageway of the road, i.e., a width of road on which a vehicle is not restricted by any physical barriers or separation to move laterally, at the location of the entrance, exceeds 4m. I note that this includes what would appear to be the original metalled road surface (with a width of c3.96 meters) and an extension of the hard surfaced area along the roads eastern edge.

## 2.0 The Question

- 2.1. Whether the gate at entrance sited on south-eastern boundary of lands in Folio MH 56744F on Local Road L40042 in Rathcairn, Athboy 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 1<sup>st</sup> of March 2022, a request for a Declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, on the above question was received by Meath County Council from Mr. Colm Griffin.

On the 25th day of March 2022 a declaration was issued by Meath County Council stating that:

*The “works” incorporate the following: construction and replacement of a gate.*

*These works constitute ‘development’ which comes within the scope of Section 3 of the Planning and Development Act 2000-2021*

*The development could be defined under Class 9 of schedule 2, Part 1 of the planning and Development Regulations 2001-2021 refer to “The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway. However, the development does not comply with Article 9(1)(a)(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.***

*I note the applicant has stated the entrance has been in use for over 100 years, however, from the photographic evidence submitted and the Google streetview from 2009 and 2018, the use of an entrance has been abandoned and hasn’t been in use for a considerable period of time and the construction of a new entrance and gate are considered as a material change of use.*

*Therefore, the proposed development is considered to be development and not exempted development under Class 9 of Schedule 2, Part 1 of the planning and development regulations 2001-2021 and Article 9(1)(a)(ii) of the planning and Development Regulations 2001-2122 and it is recommended that a Section 5 exemption Certificate be refused.*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The report of the Planning Officer (23/03/2022) includes the following comments:

- The entrance may have been in use many years ago, however, from recent Street View evidence the use as an entrance has been abandoned and hasn't been in use for a considerable period of time and the construction of a new gated entrance could represent a material change of use.

- The exemption provided under Class 9 of Schedule 2, Part 1 of the Planning and Development Regulations 2001 (as amended) is considered relevant
- With regard to Article 9 of the Planning and Development Regulations 2001 (as amended), the development consists 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. Therefore, the development cannot be considered exempted development.
- The proposed development does not trigger an EIA requirement.
- There are no flood zones in the vicinity.
- Appropriate Assessment is not required.

#### 3.2.2. Other Technical Reports

None

## 4.0 Planning History

### 4.1. Subject Site:

There is no relevant planning history pertaining to the subject site.

### 4.2. Referral History (Precedent Cases)

The following precedent referrals are also of relevance:

- ABP303326-18 (June 2019) The question here referred to whether the relocation of an existing gate and gate posts to an existing agricultural entrance is or is not development or is or is not exempted development within the townland of Mylerstown, Two Mile House. Naas, County Kildare: The Board decided that under Class 9 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations 2001 (as amended), the works were exempted development.
- 93.RL.3538 (January 2018) - The question here referred to whether 'the erection of a new gate and gate post, and the replacement of an existing gate to existing vehicular entrances is or is not development and is or is not

exempted development along an agricultural lane in Coolbunia, Cheekpoint, Co. Waterford. The Board decided that under Classes 9 and 11 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations 2001 (as amended), the works were exempted development.

- 15.RL2640 (February 2010) – This referral related to the erection of a new gate, gate posts and planted earth bank at an agricultural site near Dundalk, Co. Louth. The Board decided that under Classes 9 and 11 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations 2001 (as amended), the works were exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

Operative Plan: Meath County Development Plan 2021- 2027

Zoning: G1 - Community Infrastructure. The objective for this zone is to provide for necessary community, social and educational facilities.

Landscape: West Navan Lowlands Landscape Character Area with moderate value and moderate sensitivity to development

### 5.2. Natural Heritage Designations

None in the vicinity

## 6.0 The Referral

### 6.1. Referrer's Case

The referral to the Board has been submitted by Jim Brogan Planning and Development Consultant, on behalf of Mr. Colm Griffin, Rathcairn, Athboy, Co. Meath.

The points raised in the referral submission can be summarised as follows:

- It is understood that the entrance in question has been in existence for about 100 years.
- The entrance known locally as “Geata na Sli” (the resting gate) was used by farmers and passing trade who would let their livestock drink from the watering hole on the land.
- It is the applicant’s sworn declaration that an entrance has always existing at this location and that he cleaned up the entrance and fitted a new gate and hanging posts to replace the original gate along with some ‘stone way’ for ease of access.
- The photograph and streetside photograph submitted by the applicant show a clear gap in the hedgerow which delineates the fields boundary, the extent of which coincides with the width of the gate.
- On the issue of abandonment – the Council in its determination of this issue concluded based on two street views of the area of the entrance from 2009 and 2018, that the entrance was abandoned. Only one image (2018) was presented in the report. it is suggested that if reference is made to a particular street view to support a position being presented in a report that it should be included, otherwise the point grounded on it should be disregarded.
- It is accepted that the entrance has not been in active use for a period of time, and that poor maintenance of the roadside area in its vicinity resulted in it becoming overgrown.
- The retention of the gate at this location (as shown in the photograph attached to the referrer’s affidavit) represents clear evidence that it was not the intention to cease the use of the entrance. The gate was retained to allow the entrance to used, should its use become necessary.
- It is accepted that the erection of the new gate is ‘development’.
- The gate is c4.75m in width and 1.2m in height. it is hanging on a wooden post c1.5m high and a steel girder, 1.9m in height. It is set back c3.5m from the road edge. The area of the gate i.e. the gateway has been re-surfaced with compacted stone to facilitate agricultural traffic movements into and out of the field

- The development comes within the scope of Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations (as amended)
- The development comprises the replacement of an existing gate by a new gate – it does not “comprise the formation, laying out or material widening of access to a public road”, as the entrance already exists.
- The width of the metalled carriageway of the road in the vicinity of the entrance is 3.96m.
- Supplementary documentation included in the referral includes:
  - Affidavit of Mr. Colm Griffin (referrer)
  - Land registry map
  - A photograph taken from within the referrer’s lands of the gate at the entrance prior to it being replaced.
  - A copy of a street view of the roadway, dated 2018 showing the gap in the treeline along the roadside boundary.

## 6.2. Planning Authority Response

- The planning authority is satisfied that all matters raised in the referral to the Board were considered in its assessment of the exemption declaration as detailed in the planning officers report dated 23<sup>rd</sup> March 2022 and they request that the Board uphold their decision.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000

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

“agriculture” includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the training of horses and the rearing of bloodstock, the use of land as

grazing land, meadow land, osier land, market gardens and nursery grounds, and “agri-cultural” shall be construed accordingly;

- “public road” has the same meaning as in the Roads Act, 1993;
- “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.” and- (a) Where the context so admits, includes the land on, in or under which the structure is situate,”

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

“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)(i) “The Minister may by regulations provide any class of development to be exempted development for the purposes of this Act where he or she is of the opinion that – (i) By reason of the size, nature or limited effect on its surroundings, of development belonging to that class, the carrying out of such development would not offend against principles of proper planning and sustainable development, or ....”

## 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 the conditions and limitations specified in column 2 of the



said Part 1 opposite the mention of that class in the said column 1.”

Schedule 2, Part 1- (Exempted Development General) Class 9

The relevant section of the Regulations which is referred to herein is Class 9. Class 9 and its conditions and limitations are as follows:

<b>Column 1:</b> <b>Description of Development</b>	<b>Column 2:</b> <b>Conditions and Limitations</b>
Sundry Works  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

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,
  - (iii) endanger public safety by reason of traffic hazard or obstruction of road users,
  - (vii B) comprise development in relation to which a planning authority or An Bord Pleanala is the competent authority in relation to appropriate assessment because it would be likely to have a significant effect on the integrity of a European site

### 7.3. Roads Act, 1993

#### Section 2(1)

““ 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;”

““ road” includes- (a) any street, lane, footpath, square, court, alley, or passage,

(b) any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (whether single or multiple), pavement or footway,

(c) any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facility for the collection of tolls, service area, emergency telephone, first aid post, culvert, arch, gully, railing, fence, wall, barrier, guardrail, margin, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channelliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road, and

(d) any other structure or thing forming part of the road and-

(i) necessary for the safety, convenience or amenity of road users or for the construction, maintenance, operation or management of the road for the protection of the environment, or

(ii) prescribed by the Minister;”

### 8.0 Assessment

#### 8.1. Introduction

- 8.1.1. It should be stated at the outset that the purpose of this referral is not to determine the acceptability or otherwise of the development in respect of the proper planning and sustainable development of the area, but rather whether or not the matter in question constitutes development, and if so, falls within the scope of exempted development.
- 8.1.2. The main parties to this referral are as follows:
- Colm Griffin (the referrer)
  - Meath County Council
- 8.1.3. Colm Griffin (the referrer) has sought declaration from An Bord Pleanála in respect of whether the gate at entrance sited on south-eastern boundary of lands in Folio MH 56744F on Local Road L40042 in Rathcairn, Athboy, Co. Meath is or is not development and is or is not exempted development within the meaning of the Act.
- 8.1.4. From my site inspection, and as indicated on the plans and particulars on file, it is evident that a new gate (and associated gate posts etc) has been erected at the referral site. In the interests of clarity, I propose to redefine the question as to:
- ‘Whether the gate **erected at the** entrance sited on south-eastern boundary of lands in Folio MH 56744F on Local Road L40042 in Rathcairn, Athboy, Co. Meath is or is not development or is or is not exempted development within the meaning of the Act’.
- 8.1.5. I note that a gateway can be defined as ‘*an opening that can be closed by a gate*’. Based on this definition and the information available, including the report from the planning authority, I am satisfied that the gate the subject of this referral, relates to a pre-existing gateway / entrance and not to the formation of a new entrance.
- 8.1.6. The issue of abandonment of the use of the entrance in my opinion is not a material consideration in this case, as the land which the entrance serves has remained in agricultural use. While the entrance itself may not have been in active use for some time, thereby resulting in the roadside area in the vicinity of the site becoming overgrown, the evidence as presented would suggest that the gateway opening was

retained and not closed off. In accordance with the details submitted with the referral, 'the gate was retained to allow the entrance to be used, should its use become necessary for any particular reason'.

## **8.2. Is or is not development:**

- 8.2.1. The first question before the Board relates to whether or not the activities undertaken comprises development. The erection of a gate would constitute "works", as defined by Section 2 of the Planning and Development Act, as it would involve of excavation (for the gate posts) and the construction of the gate and gate posts. It is evident, therefore, that the erection of the gates constitutes "development" for the purposes of the Planning and Development Act under section 3, involving the carrying out of works on, in, over and under land.

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

- 8.3.1. Development can be exempted from the requirement for planning permission by either Section 4 of the Planning and Development Act, 2000 (the Act), or Article 6(1) and 9(1) of the planning and Development Regulations 2001 (as amended) (the Regulations).
- 8.3.2. Section 4(1) of the Act sets out provisions in relation to exempted development. There is no exemption under Section 4.
- 8.3.3. Article 6(1) Class 9 (Schedule 2, Part 1) refers to 'the construction, erection renewal or replacement, other than within or bounding the curtilage of a house, of any gate or gateway'. The condition limitation in Column 2 is that 'the height of any such structure does not exceed 2-metres'.
- 8.3.4. In this case the gate serves an agricultural field and is not within or bounding the curtilage of a house. On the date of inspection, the gate itself was found to have been erected to a height of c1.56 meters; however, the height of the gate post (steel girder) on the northern side of the gate, measured 2.09 metres. As the gate post which forms part of the gate/ gateway exceeds the 2-metre limitation, the gate therefore does not fall within the terms of Class 9.

8.3.5. Having reviewed Section 4 of the Act and Article 6 and associated schedules of the Regulations, I do not consider there is any other provision which allows for the erection of a gate to an agricultural field to constitute exempted development.

#### **8.4. Conclusion on Exempted Development**

8.4.1. Having regard to the foregoing, the gate erected at the entrance sited on south-eastern boundary of lands in Folio MH 56744F on Local Road L40042 in Rathcairn, Athboy, Co. Meath is development and is not exempted development.

#### **8.5. Restrictions on exempted development**

8.5.1. I have concluded that the development cannot benefit from the exempted development provisions under Article 4 of the Act or Article 6 and related schedules of the Regulations. Accordingly, consideration of restrictions on exemptions under Article 9 of the Regulations is not relevant.

#### **8.6. Appropriate Assessment**

8.6.1. Notwithstanding the conclusion arrived at that the development in question is not exempted development and as such the restriction in respect of Appropriate Assessment is not relevant, I have considered the potential for significant effects on European sites in the interests of completeness.

8.6.2. Having regard to the nature and scale of the proposed development which relates to the erection of a gate at an entrance which is not within or in close proximity to any European sites, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **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 gate erected at the entrance sited on south-eastern boundary of lands in Folio MH 56744F on Local Road L40042 in Rathcairn, Athboy, Co. Meath is or is not development or is or is not exempted development:

**AND WHEREAS** Colm Griffin requested a declaration on this question from Meath County Council and the Council issued a declaration on the 25 day of March, 2022 stating that the matter was development and was not exempted development:

**AND WHEREAS** Colm Griffin referred this declaration for review to An Bord Pleanála on the 21 day of April, 2022:

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

- (a) Sections 2(1), 3(1) and 4(1) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 9 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (d) The submissions on file and the report of the planning authority

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

- (a) the erection of the gate constitutes works, which in turn constitutes development within the meaning of the Planning and Development Act 2000, as amended.

(b) the gate erected does not come within the scope of Class 9 of Part 1 of Schedule 2 of the Regulations as the height of the gatepost (steel girder), which forms part of the gate or gateway, exceeds 2 metres,

**NOW THEREFORE** An Bord Pleanála, in exercise of the powers conferred on it by section 5 (3) (a) of the 2000 Act, hereby decides that the gate constructed at entrance sited on south-eastern boundary of lands in Folio MH 56744F on Local Road L40042 in Rathcairn, Athboy, Co. Meath is development and is not exempted development.

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Lucy Roche  
Planning Inspector

3<sup>rd</sup> April 2023