



An
Bord
Pleanála

Inspector's Report ABP 314129-22.

Question

Whether the erection of a pedestrian gate in the rear boundary hedge of an existing house at Meenoline South, Templeglantine, Co. Limerick is or is not Development or is or is not Exempted Development.

Location

Meenoline South, Templeglantine, Co. Limerick.

Declaration

Planning Authority

Limerick City and County Council

Planning Authority Reg. Ref.

EC44/22

Applicant for Declaration

Rachel O'Keeffe

Planning Authority Decision

Is development

Referral

Referred by

Rachel O'Keeffe

Owner/ Occupier

Rachel O'Keeffe

Observers

None

Date of Site Inspection

30/11/2023

Inspector

Siobhan Carroll

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1.0 Site Location and Description

- 1.1. The site is located in the townland of Meenoline South at Templeglantine, Co. Limerick. Templeglantine is a small village situated to the west of Co. Limerick. It lies circa 55km from Limerick City.
- 1.2. The location of the property which is subject of the referral is to the north of Templeglantine. Vehicular access to the property is off the N21 and north for circa 600m on a narrow private road.
- 1.3. The location of the subject pedestrian gate is at the boundary hedge circa 45m to the north-west of the cottage and associates sheds properties within the property. The north-western boundary of the site adjoins the Limerick Greenway. The Limerick Greenway runs for 40km from Rathkeale to Abbeyfeale. The section of the greenway at Templeglantine where the subject pedestrian gate is proposed is relatively flat and is surface with tarmac. To either side of the surfaced cycleway there are drainage channels between the cycleway and the boundary hedges.

2.0 The Question

- 2.1. Whether the erection of a pedestrian gate in the rear boundary hedge of an existing house at Meenoline South, Templeglantine, Co. Limerick is or is not Development or is or is not Exempted Development.

3.0 Planning Authority Declaration

3.1. Declaration

- 3.1.1. Limerick City and County Council issued a declaration under Section 5 of the Planning and Development Act 2000, on the 1st of July 2021 stated that it is considered the erection of a pedestrian gate in the rear boundary hedge of an existing house at Meenoline South, Templeglantine, Co. Limerick is not exempted development.

3.2. Planning Authority Reports

- 3.2.1. Planning Reports

- The report of the Planning Officer referred to the planning history which refers to the subject property. Under Reg. Ref. 22/415 a decision to grant permission “to extend the site boundary of the previously approved glamping site (reference 21/1522 & 22/103) for the installation of ancillary facilities including a canvas tipi tent for use as a sheltered meeting area, a converted caravan for use as a shop, electric bicycle charging points, bicycle parking stands, outdoor seating and picnic area, art sculpture area, boundary fencing, hard and soft landscaping and associated site work.” Permission was refused for “the two shipping containers for use as bicycle storage and rental and pedestrian entrance gate with level access to the greenway at Meenoline South, Templeglantine, Co. Limerick. Refusal reason no. 2 states “The Planning Authority considers the creation of an access onto the greenway would constitute disorderly development and create an undesirable precedent for similar type proposals along the Greenway. In addition, the Planning Authority is not satisfied that the applicant has sufficient estate or interest in the relevant land to facilitate the creation of the access onto the Limerick Greenway.”
- It is stated in the report that regard was had to the Planning and Development Regulations 2001 (as amended) Part 2, Restrictions on exemptions Article 9(1)(a)(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act. In relation to access to the Greenway, the Local Authority did not consent or permit opening/access onto the Greenway. The Greenway is under licence to the Local Authority from Iarnrod Eireann. A report submitted with Planning Application reference 21/1522 from Community Tourism and Cultural directive indicates that the opening of the Greenway will not be permitted. While Class 5 Exempt Development of the Planning and Development Regulations considers the construction of a gateway under 2.0m in height. It does not give the person permission to open an access to another person’s property without their consent. No consent was given from Iarnrod Eireann or Limerick City and County Council to allow access onto the Greenway.

- It was concluded that the said works are considered to be development and not exempt development having regard to Part 2 Restrictions on Exemptions. Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended) and because no consent letter has been submitted or received from the adjoining landowner.

4.0 Planning History

Reg. Ref. 22/415 – Permission was sought to extend the site boundary of the previously approved glamping site (Ref. 21/1522 and 22/103), for the installation of ancillary facilities, including a canvas tipi tent for use as a sheltered meeting area, a converted caravan for use as a shop, two shipping containers for use as bicycle storage and rental, electric bicycle charging points, bicycle parking stands, outdoor seating and picnic area, art sculpture area, pedestrian entrance gate with level access to the greenway, boundary fencing, hard and soft landscaping and associated site works.

A split decision was issued. Permission was refused for provision of two shipping containers for use as bicycle storage and rental and pedestrian entrance gate with level access to the greenway at Meenoline South, Templeglantine, Co. Limerick. Permission was refused for the following reasons;

1. The proposed bike rental units and associated car movements and car parking on a narrow substandard road would constitute a haphazard and disorderly form of development, detract from the amenity and setting of the area and set an undesirable precedent for similar type developments. The proposed development is therefore contrary to the proper planning and sustainable development of the area.
2. The Planning Authority consider the creation of an access onto the greenway would constitute disorderly development and create an undesirable precedent for similar type proposals along the Greenway. In addition the Planning Authority is not satisfied that the applicant has sufficient estate or interest in the relevant land to facilitate the creation of the access onto the Limerick Greenway.

Permission was granted to extend the site boundary of the previously approved glamping site (Ref. 21/1522 and 22/103) for the installation of ancillary facilities,

including a canvas tipi tent for use as a sheltered meeting area, a converted caravan for use as a shop, electric bicycle charging points, bicycle parking stands, outdoor seating and picnic area, art sculpture area boundary fencing, hard and soft landscaping and associated works. The permission is subject to 4 no. conditions.

Reg. Ref. 22/103 – Permission was granted for the installation of four additional glamping accommodation units on the previously approved glamping site (planning ref. 21/1522) and installation of increased capacity septic tank and percolation area and associated site works.

Reg. Ref. 21/1522 – Permission was granted for the installation of two glamping units, re-use of existing outbuilding for toilet & shower facilities, bicycle storage and bin storage, installation of waste water treatment system, percolation area and associated site works.

4.1. **Relevant Referrals**

4.1.1. There are a number of previous Board decisions which are relevant.

4.1.2. ABP 308493-20 – Whether a development opening of a pedestrian gateway from the rear of the house into a public open space is or is not development or is or is not exempted development.

Decision: Is development and is exempted development (2021)

4.1.3. ABP 302804-18 – Whether the opening of a pedestrian gate from the rear of house into a green area of Millbridge Avenue is or is not development and is or is not exempted development.

Decision: Is development and is exempted development (2019)

4.1.4. ABP Ref. RL.91 RL3586 – Whether a development opening in wall of garden to provide pedestrian entrance from road and provide gate opening into garden at 36 Vartry Avenue, Raheen, Limerick is or is not exempted development.

Decision: Is development and is not exempted development (2019)

5.0 Policy Context

5.1. Development Plan

- 5.1.1. The operative development plan is Limerick City and County Development Plan 2022 – 2028.
- 5.1.2. Section 5.9.2 refers to Rural Tourism. The Limerick Greenway's ongoing development and ambition to connect the City with West Limerick, through sustainable travel options will play a key role in the development of tourism amenities and attractions in the area as part of the West Limerick Tourism Strategy.
- 5.1.3. Objective ECON 048 – Limerick Greenways – It is an objective of the Council to support:
- (a) The provision of car parking, bike hire and ancillary facilities at suitable locations along the Limerick Greenway.
 - (b) Extend the Limerick Greenway from Rathkeale to Adare/Patrickswell.
 - (c) Extend the greenway from the University of Limerick to Annacotty.
 - (d) Develop a greenway from the University of Limerick to Montpelier.
 - (e) Support the development of the Limerick to Scariff/Tuamgraney Greenway in partnership with Waterways Ireland and Clare County Council.
 - (f) Examine the potential for a greenway from Patrickswell, Bruree to the Limerick/Cork Border (Charleville).
 - (g) Support the development of a greenway link from Limerick City to connect with the Suir Blueway in Cahir, County Tipperary, in so far as it falls within County Limerick, subject to ecological assessment and design.

5.2. Natural Heritage Designations

- 5.2.1. Lower River Shannon SAC (Site Code 002165) is situated 3km to the south-west of the subject site and 3.3km to the north of the subject site.
- 5.2.2. Stack's to Mullaghereik Mountains, West Limerick Hills and Mount Eagle SPA (Site Code 004161) is located to the north, south, east and west of the of the subject site. it the closest point it lies 700m away.

6.0 The Referral

6.1. Referrer's Case

- The referrer Rachel O'Keeffe is seeking a declaration under Section 5 of the Planning and Development Act 2000 (as amended) in relation to the erection of a pedestrian gate in the rear boundary hedge of the existing house at Meenoline South, Templeglantine, Co. Limerick.
- Limerick City and County Council concluded that the proposal "does not come within the scope of exempted development having regard to Part 2 restrictions on exemptions and Article 9(1)(a)(i)."
- The referrer submits that the proposed pedestrian gate is exempt under the Planning and Development Regulations, Schedule 2, Part 1, Class 5 which states:

"The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of bricks, stone, blocks with decorative finish, other concrete blocks or mass concrete."
- In relation to Exempted Development it is set out in Part 2, Article 6(1) states, '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.'
- The referrer submits that the erection of a gate can be exempted development under Class 5 or Class 9. It is submitted that as the proposed pedestrian gate would be within or bounding the curtilage of a house, Class 5 is relevant.
- The gate would be located on the rear boundary, it would be inward opening and it would be 1.8m in height (not exceeding 2 metres in height). It would be of timber construction (not metal palisade or other security fence). Therefore, it is submitted that it meets the criteria to be exempt development.

- In relation to Restrictions on exemption, Part 2, Article 9(1) states
“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–
(i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act.
- The Planning Authority determined that the gate is not exempt development, citing Article 9(1)(a)(i).
- The existing house pre-dates the introduction of the Planning Acts, it features on the first edition Ordnance Survey Maps. There is no planning application relating to the existing dwelling house.
- The referrer does not consider that article 9(1)(a)(i) is relevant as they state that there is no relevant planning permission and therefore the development cannot contravene a condition or be inconsistent with a use specified in a permission.
- The referrer submits that the proposed pedestrian gate would be consistent with the existing use as a dwelling house as it would facilitate direct access from the private rear garden of the house, directly onto a public pedestrian and cycle path. This would provide a safer access avoiding having to access onto the public road, and it would promote active and sustainable travel options.
- It is submitted none of the restrictions on exemptions apply in this case. Therefore, the referrer considers that the proposed gate constitutes exempt development.

6.2. Planning Authority Response

- None

7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2

7.1.2. Under Section 2, the following is the interpretation of 'works':

"...includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal..."

7.1.3. Section 3(1)

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

7.1.4. Section 4

Section 4 (1)(a) – (l) sets out what is exempt development for the purposes of this Act. Section 4(2) provides for the making of Regulations.

7.2. Roads Act, 1993

7.2.1. Public Road means a road over which a public right of way exists and the responsibility for the maintenance of which lies with the authority;

7.2.2. "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 or not designated for a particular class of vehicle), 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, verge, kerb, lay-by, hard shoulder, island, pedestrian refuge, median, central reserve, channeliser, roundabout, gantry, pole, ramp, bollard, pipe, wire, cable, sign, signal or lighting forming part of the road,

7.2.3. Section 68(1) of the Roads Act states that a 'cycleway' means "a public road or proposed public road reserved for the exclusive use of pedal cyclists or pedal cyclists and pedestrians".

7.3. **Planning and Development Regulations, 2001**

7.3.1. Article 6(1)

'Subject to article 9, development of a class specified in column 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.'

7.3.2. Article 9(1)

Sets out restrictions on exemption to which article 6 relates shall not be exempted development for the purposes of the Act including:-

(a) If the carrying out such development would-

- (i) Contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under 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,
- (iii) endanger public safety by reason of traffic hazard or obstruction of road users,

7.3.3. Schedule 2 Part 1 Class 5

Part 1

Exempted Development – General

Column 1 Description of Development	Column 2 Conditions and Limitations

<p>The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</p>	<ol style="list-style-type: none"> 1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. 2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered. 3. No such structure shall be a metal palisade or other security fence.
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8.0 Assessment

8.1. Is or is not development

- 8.1.1. Firstly, it is necessary to establish if the subject works constitutes development. 'Works' as defined under Section 2 of the Act includes any act of construction, extension, repair or renewal. The 'works' subject of this Section 5 referral comprise the erection of a pedestrian gate in the rear boundary hedge of an existing house.
- 8.1.2. Section 3 (1) of the Planning and Development Act, 2000, as amended defines 'development' as follows:
- 8.1.3. "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."

8.1.4. Accordingly, the proposed works as set out above therefore constitutes 'development' as defined under Section 3 (1) of the Act.

8.2. Is or is not exempted development

8.2.1. Schedule 2 Part 1 Class 5 of the Planning and Development Regulations, 2001, (as amended), refers to the construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.

8.2.2. The conditions and limitations for Class 5, which is relevant to the subject erection of a pedestrian gate, is the first item. It states, "The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres. As detailed by the referrer the subject gate would be located on the rear boundary, it would be inward opening and it would be 1.8m in height.

8.2.3. Accordingly, I would consider that the proposed erection of the subject 1.8m pedestrian gate is covered under the provisions of Class 5.

8.3. Restrictions on exempted development

8.3.1. The Planning Authority in their decision in respect of the Section 5 referral concluded that while the subject 1.8m pedestrian gate come under the provisions of Class 5 of Part 1 of the Second Schedule of the Planning and Development Regulations, 2001 (as amended) and constituted exempted development that the provisions of Article 9(i)(a)(i) applied as an restriction on the exemption. The declaration issued by the Planning Authority stated that 'the erection of a pedestrian gate in the rear boundary hedge of an existing house at Meenoline South, Templeglantine, Co. Limerick does not come within the scope of exempted development having regard to Part 2 Restrictions on exemptions and Article 9(1)(a)(i) of the Planning and Development Regulations, 2001, as amended.'

8.3.2. The report of the Planning Officer noted that the subject pedestrian gate would access onto the Newcastle West to Abbeyfeale part of the Limerick Greenway. The report referred to recent planning history which referred to the subject pedestrian gate. Under Reg. Ref. 22/415 permission was sought for to extend the site boundary of the previously approved glamping site (Ref. 21/1522 and 22/103), for the

installation of ancillary facilities, including a canvas tipi tent for use as a sheltered meeting area, a converted caravan for use as a shop, two shipping containers for use as bicycle storage and rental, electric bicycle charging points, bicycle parking stands, outdoor seating and picnic area, art sculpture area, pedestrian entrance gate with level access to the greenway, boundary fencing, hard and soft landscaping and associated site works.

- 8.3.3. The Planning Authority issued a split decision in respect of this application. Permission was granted for the following aspects of the proposals, to extend the site boundary of the previously approved glamping site (Ref. 21/1522 and 22/103) for the installation of ancillary facilities, including a canvas tipi tent for use as a sheltered meeting area, a converted caravan for use as a shop, electric bicycle charging points, bicycle parking stands, outdoor seating and picnic area, art sculpture area boundary fencing, hard and soft landscaping and associated site works, subject to 4 no. conditions. Permission was refused for two shipping containers for use as bicycle storage and rental and the development of a pedestrian entrance gate with level access to the greenway.
- 8.3.4. Permission was refused for the two shipping containers for use as bicycle storage and rental and the development of a pedestrian entrance gate with level access to the greenway for two reasons. The second reason for refusal referred to the pedestrian entrance gate with access to the greenway. It states, "The Planning Authority considers the creation of an access onto the greenway would constitute disorderly development and create an undesirable precedent for similar type proposals along the Greenway. In addition the Planning Authority is not satisfied that the applicant has sufficient estate or interest in the relevant land to facilitate the creation of the access onto the Limerick Greenway.
- 8.3.5. The report of the Planning Officer in respect of the Section 5 referral stated that the subject pedestrian gate was specified in the planning application Register Reference 22/415 they consider that the Section 5 referral is at variance with the refusal of permission issued. In respect of this matter, I would concur with the determination of the Planning Authority that the proposed entrance gate with access to the greenway would be inconsistent with the permission which the Council granted under Reg. Ref. 22/415. The application made under Reg. Ref. 22/415 in the description of development proposed included the construction of a pedestrian entrance gate with level access to the greenway. The Planning Authority issued a split decision in

respect of the application and granted permission for all the development set out under the description of development apart from two aspects of the proposal. They were the provision of two shipping containers for use as bicycle storage and rental and pedestrian entrance gate with level access to the greenway at Meenoline South, Templeglantine, Co. Limerick. Accordingly, I would consider that the subject pedestrian gate would be inconsistent with the development specified under Reg. Ref. 22/415 whereby, Limerick City and County Council issued a split decision and refused permission for the pedestrian entrance gate with level access to the greenway at Meenoline South, Templeglantine, Co. Limerick.

- 8.3.6. Furthermore, I would note the provisions of Article 9(1)(a)(ii) of the Planning and Development Regulations 2001, as amended, which sets out that development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out such development would 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.
- 8.3.7. The subject pedestrian entrance gate is proposed to comprise the formation of a means of access onto the Limerick greenway at Meenoline South, Templeglantine.
- 8.3.8. Section 68(1) of the Roads Act 1993, as amended, states that a ‘cycleway’ means “a public road or proposed public road reserved for the exclusive use of pedal cyclists or pedal cyclists and pedestrians”. Accordingly, the greenway is a public road within the meaning of the Roads Act 1993, and its surface carriageway exceeds four metres in width. The development of a pedestrian gate constitutes a means of access to this public road, and therefore is not exempted development.

9.0 **Appropriate Assessment**

- 9.1. Having regard to the nature and scale of the development which is the subject of this referral and its location relative to Natura 2000 sites, no appropriate assessment issues arise and it is not considered that the development would be likely to have a significant effect either individually or in combination with other plans or projects on a European site.

10.0 Recommendation

10.1. 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 erection of a pedestrian gate in the rear boundary hedge of an existing house is or is not development or is or is not exempted development:

AND WHEREAS Rachel O’Keeffe requested a declaration on this question from Council and the Council issued a declaration on the 1st day of July, 2021 stating that the matter was development and was not exempted development:

AND WHEREAS referred this declaration for review to An Bord Pleanála on the 20th day of July, 2021:

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

- (a) Section 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) Articles 6 and 9 of the Planning and Development Regulations, 2001, as amended,
- (c) Class 5 of Part 1 of the Second Schedule to the Planning and Development Regulations, 2001, as amended,
- (d) The planning history of the site, and
- (e) The Roads Act 1993, as amended.

AND WHEREAS An Bord Pleanála has concluded that:

- (a) The construction of the pedestrian gate involves the carrying out of works, which comes within the meaning of development in Section 3

(1) of the Planning and Development Act 2000, as amended, and is therefore development.

- (b) This development would come within the scope of Class 5 of Part 1 of the Second Schedule to the Planning and Development regulations 2001, but
- (c) The development comes within the scope of Article 9 (1)(a)(i) of the Planning and Development Regulations 2001, as amended, because the subject pedestrian gate would be inconsistent with the development specified under Reg. Ref. 22/415 whereby, Limerick City and County Council issued a split decision and refused permission for the pedestrian entrance gate with level access to the greenway at Meenoline South, Templeglantine, Co. Limerick.
- (d) The development comes within the scope of Article 9 (1)(a)(ii) of the Planning and Development Regulations 2001, as amended, because the Limerick Greenway is a public road within the meaning of the Roads Act 1993, as amended, and its surface carriageway exceeds four metres in width, and the development constitutes a means of access to this public road, and therefore is not exempted development.

NOW THEREFORE An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) Planning and Development of the 2000 Act, hereby decides that the erection of a pedestrian gate in the rear boundary hedge of an existing house is development and is not exempted development.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Siobhan Carroll
Planning Inspector

13th December 2023