



## **1.0 Introduction**

1.1. Following a meeting of the Board held on the 15<sup>th</sup> of January 2024 an Addendum Inspector's report was required to clarify the following two points.

1. The Board noted that the split decision of the Local Authority, reg ref 22/415 did not remove the pedestrian access by way of condition. The inspector is requested to clarify in such circumstances can Article 9(1)(i) be invoked as this Article makes specific reference to contravening a condition attached to a permission?
2. The Board notes that the Article 9(a)(ii) includes the proviso "that the surfaced carriageway of which exceeds 4 meters in width". Please confirm an accurate measurement of the surfaced carriageway was taken/obtained confirming that the surface carriageway exceeded four meters in width.

## **2.0 Assessment**

- 2.1. In relation to Reg. Ref. 22/415 the decision issued by the Planning Authority was split. Permission was refused for two shipping containers for use as bicycle storage and rental and pedestrian gate with level access to the 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 site works.

- 2.2. In relation to this decision of the Planning Authority the proposed pedestrian gate with level access to the greenway was refused permission. Regarding the grant of permission issued by the Planning Authority which refers to the development description detailed above it is subject to 4 no. conditions. As raised by the Board the conditions attached to the permission do not specifically refer to the pedestrian access and did not remove the pedestrian access by way of condition. While the subject decision to refuse permission under Reg. Ref. 22/415 did not permit the proposed pedestrian access, I would acknowledge that the conditions attached to the permission granted under Reg. Ref. 22/415 did not specifically require the omission/removal of the subject pedestrian access.
- 2.3. Accordingly, on that basis the restriction on exemption provided under Article 9(1)(i) do not apply in respect of the subject pedestrian access.
- 2.4. In relation to the matter of the Article 9(a)(ii) which states,  
*(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,*
- 2.5. The provision of the subject pedestrian access onto the Limerick Greenway would entail the formation of a means of access to a public road. In accordance with the requirement of the Board I inspected the site on the 11/6/2024 to obtain an accurate measurement of the surfaced carriageway. The measurement of the width surface carriageway of the Limerick Greenway at the location of the subject pedestrian access is 3.15 metres.
- 2.6. Accordingly, as the width of the greenway at this location is less than 4 metres the provisions of Article 9(a)(ii) do not apply.

### **3.0 Recommendation**

- 3.1. 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 Wicklow County Council and the Council issued a declaration on the 1<sup>st</sup> day of July, 2021 stating that the matter was development and was not exempted development:

**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) Article 6 and article 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, and
- (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, as amended, and would therefore, constitute exempted development, and,
- (c) None of the restrictions on exemption set out in article 9(1) of these Regulations apply in this instance.

**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 erection of a pedestrian gate in the rear boundary hedge of an existing houses at Meenoline South, Templeglantine, Co. Limerick is development and is 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.

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Siobhan Carroll  
Planning Inspector

16<sup>th</sup> August 2024