



An  
Bord  
Pleanála

## Inspector's Report ABP-315438-22

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### Question

Whether alteration to an existing access is development and whether it is exempted development.

### Location

5 New Road, The Demesne,  
Westport, Co. Mayo.

### Declaration

Planning Authority

Mayo County Council

Planning Authority Reg. Ref.

P22/949

Applicant for Declaration

Jim & Joan Noud

Planning Authority Decision

Development not exempted  
development

### Referral

Referred by

Jim & Joan Noud

Owner/ Occupier

Jim & Joan Noud

Observer(s)

None

Date of Site Inspection

7<sup>th</sup> March 2023

Inspector

Hugh D. Morrison

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## 1.0 Site Location and Description

- 1.1. The site is located to the north-west of the town centre of Westport. It lies on the southern side of New Road, which forms a cul-de-sac off Newport Road (N59). This site encompasses a residential property, which is one of a row of six such properties.
- 1.2. The site itself is rectangular in shape and it accommodates a two-storey semi-detached dwelling house with an attached garage on its exposed side. This dwelling house is served by front, side, and rear gardens. Originally, a drive-in served the garage. The vehicular entrance to this drive-in was enclosed by a pair of gates.
- 1.3. Recently, the garage was converted, and a new drive-in was formed to its side. The vehicular entrance to this drive-in is enclosed by a pair of gates. The original entrance has been narrowed to form a pedestrian entrance, which is enclosed by a single gate.

## 2.0 The Question

- 2.1. The referrers ask the following question: Whether alteration to an existing access is development and whether it is exempted development.
- 2.2. I consider that the question should, in the interests of clarity, be redrafted as follows: Whether the partial closure and extension eastwards of the existing vehicular access and the formation of a new pedestrian access in part of the former opening of the original vehicular access is development and whether it is exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

The Planning Authority declared that the alteration to an existing access is development, and it is not exempted development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The case planner states that the carriageway to New Road beside the site is greater than 4m in width, and, as the subject access has been materially widened, it is not exempted development under Article 9(1)(a)(ii) of the Planning and Development Regulations, 2001, as amended.

### 3.2.2. Other Technical Reports

None

## 4.0 Planning History

The access has been the subject of correspondence from planning enforcement dated 4<sup>th</sup> August and 21<sup>st</sup> September 2022.

## 5.0 Policy Context

### 5.1. Development Plan

The operative development plans are the Mayo County Development Plan 2022 – 2028 and the Westport Town and Environs Development Plan 2010 – 2016.

### 5.2. Natural Heritage Designations

Clew Bay Complex SAC (001482)

## 6.0 The Referral

### 6.1. Referrers' Case

- The referrers explain that the impetus for the alterations to the existing access arose from the need to both access the rear of the dwelling house for construction and maintenance and provide off-street EV charging facilities. The existing vehicular access was widened to the east and part of the original access was reconfigured as a pedestrian access. In the wake of damage to the front boundary wall, the new pedestrian access was formed as the more aesthetically appropriate option.

- The referrers review the provisions of Article 9(1)(a). They conclude that these provisions are not relevant. They observe that the Planning Authority appears to have based its decision on Items (ii) and (iii). In relation to the former Item, they state that the altered access is in substantially the same position as the original one and so no material changes in its impacts upon traffic movements or neighbouring properties have arisen. In relation to the latter Item, they state that public and health and safety are promoted as re-charging can take place wholly on the site.
- The referrers note that New Road is not an Architectural Conservation Area, and the altered access does not materially affect the appearance of the streetscape.
- Gated vehicular and pedestrian accesses to domestic properties are a common place in Ireland.
- To require planning permission for the altered access would establish a precedent, which would both stifle the necessary shift to electric vehicles and be unnecessarily bureaucratic.

## 6.2. Planning Authority Response

None

## 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

*“works” includes any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the*

*application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure;*

*“land” includes any structure and any land covered with water (whether inland or coastal);*

*“structure” means any building, structure, excavation, or other thing constructed or made on, in or under any 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,*

## **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.*

#### **Class 5 of Part 1 of Schedule 2 to Article 6**

<i>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.</i>	<ol style="list-style-type: none"><li><i>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.</i></li><li><i>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</i></li></ol>
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	<p><i>finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</i></p> <p><i>3. No such structure shall be a metal palisade or other security fence.</i></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,*

*(iii) endanger public safety by reason of traffic hazard or obstruction of road users,*

**7.3. Other**

None

**8.0 Assessment**

**8.1. Is or is not development**

8.1.1. The alteration to the original vehicular access entailed extending it extensively to the east to form a new vehicular access and reforming within part of the “vacated space” a new pedestrian access. Such alteration involved demolition and construction activities, which come within the definition of “works” under Section 2(1) of the Planning and Development Act, 2000, as amended. The carrying out of such works come within the definition of “development” under Section 3(1) of the Act.

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

- 8.2.1. As described above, the subject development has resulted in the replacement of the original vehicular gateway with a replacement vehicular gateway and a new pedestrian gateway. These gateways are in the front boundary of the curtilage to the referrers' residential property.
- 8.2.2. Under Class 5 of Part 1 of Schedule 2 to Article 6 of the Planning and Development Regulations, the construction or alteration of a gateway and the erection of gates is exempted development provided certain conditions and limitations do not apply. Thus, the gates and any gateposts must not exceed 1.2m in height, any accompanying wall shall be capped, and its public face rendered or plastered, and metal palisade or other security fencing is disallowed. The subject development would come within these conditions and limitations and so it would be exempted development.

## **8.3. Restrictions on exempted development**

- 8.3.1. The subject development is accessed off New Road, the surfaced carriageway to which is c. 6.5m in width. Under Article 9(1)(a)(ii) of the Regulations, development, which would otherwise be exempted development, if it entails "the formation, laying out or material widening of access to a public road the surfaced carriageway of which exceeds 4m in width" is de-exempted. The Planning Authority considers that the subject development is thereby de-exempted.
- 8.3.2. The referrers have responded by explaining why the original access was altered and by highlighting that such alteration far from adversely affecting public health and safety would improve the same, as the recharging of their vehicle(s) would take place wholly off the public road. They contend that the alterations at issue are not substantial or material.
- 8.3.3. During my site visit, I observed that the position of the replacement vehicular access overlaps in part with the original one. The pattern of vehicular movements attendant upon it is similar to the original one. Arguably, in addition to the referrers' observation about re-charging, the separation out of vehicular and pedestrian gateways, enhances, at the margin, public safety. I, therefore, consider that Article 9(1)(a)(iii) of



the Regulations, which refers to development that endangers public safety, is not applicable.

- 8.3.4. During my site visit, I also observed that the replacement vehicular access is accompanied by a dished public footpath. However, the lining on the adjoining carriageway continues to reflect the position of the original vehicular access, i.e., a yellow box with a "X" in it, and on-street parking spaces. The revised vehicular access has resulted in changes in the separation distances between the original vehicular access and the nearest vehicular accesses to its east and west, i.e., in the former case from 9.7m to 6.8m, and in the latter case from 13m to 16m. The pattern of on-street parking has thus changed from 2 to 1 and 2 to 3 spaces. While no net reduction in spaces has ensued, arguably pairs of spaces are preferable to one and three spaces.
- 8.3.5. Returning to the question of whether the alteration is substantial or material, I note that the original vehicular access was 3.6m wide and that its replacement is 3.4m wide. The overlap in the footprints of these two accesses is minimal at 0.45m, and so the greater portion, i.e., 2.95m, of the replacement access comprises a new opening. Within the vacated space of the original opening, a new pedestrian access, 1m in width, has been formed. Accordingly, the development has resulted in the effective shunting of the original vehicular access eastwards and the formation of a new pedestrian access in its place. I consider that these revisions to the access arrangements to the site are material. In this respect, it is of relevance that, under ABP-304360-19, the Board decided that an increase in width of 0.6m in a domestic vehicular access was "material", albeit this increase involved the extension of an existing vehicular access from 3.6m to 4.2m in width.
- 8.3.6. I, therefore, conclude that the development, which would otherwise be exempted development, is de-exempted under Article 9(1)(a)(iii) of the Regulations.

## 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 partial closure and extension eastwards of the existing vehicular access and the formation of a new pedestrian access in part of the former opening of the original vehicular access is or is not development or is or is not exempted development:

**AND WHEREAS** Jim and Joan Noud requested a declaration on this question from Mayo County Council and the Council issued a declaration on the 1<sup>st</sup> day of December, 2022 stating that the matter was development and was not exempted development:

**AND WHEREAS** referred this declaration for review to An Bord Pleanála on the 29<sup>th</sup> day of December, 2022:

**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) Article 6(1) and Article 9(1) of the Planning and Development Regulations, 2001, as amended, and
- (d) Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended:

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

- (a) The partial closure and extension eastwards of the existing vehicular access and the formation of a new pedestrian access in part of the former opening of the original vehicular access is development.

(b) That this development is exempted development under Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended.

(c) That this development is de-exempted under Article 9(1)(a)(ii) of the Planning and Development Regulations, 2001, as amended.

**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 partial closure and extension eastwards of the existing vehicular access and the formation of a new pedestrian access in part of the former opening of the original vehicular access 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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Hugh D. Morrison  
Planning Inspector

18<sup>th</sup> April 2023