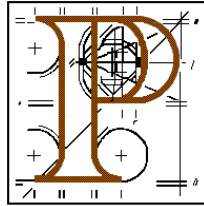


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# An Bord Pleanála



## Inspector's Report

**Ref.:** RL08. RL3450

**Development:** Whether the development of a pedestrian access from the back garden of a semi-detached house in a residential estate to a narrow public road to the rear is or is not exempted development.

**Referred By:** Pat O'Leary, Paul Sweeney & Patrick Collins

**Other Parties:** Celia O'Shea

**Planning Authority:** Kerry County Council

**Location:** No. 7 Burr Ridge (Dennehy's Bohereen), Killarney, Co. Kerry.

**INSPECTOR:** Robert Speer

**Date of Site Inspection:** 29<sup>th</sup> April, 2016

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## **1.0 SITE LOCATION AND DESCRIPTION**

1.1 The site in question is located within a recently constructed housing development known as Burr Ridge in Killarney town, Co. Kerry, approximately 590m northeast of the junction of High Street / New Street in the town centre. The surrounding area is generally characterised by a variety of two and three-storey housing whilst the site itself is situated within a cul-de-sac of conventional two-storey semi-detached housing. The site is generally triangular in shape and is presently occupied by a semi-detached two-storey dwelling house with front and rear garden areas and on-site parking. The rear garden area is bounded by blockwork walls with the exception of the rear (western) site boundary which is defined by a sod and stone ditch with mature hedging / trees atop same. This ditch / hedgerow serves to separate the site from an adjacent narrow public roadway known locally as 'Dennehy's Bohereen' which extends northwards from the R876 Regional Road (Park Road) to provide access to other residential development in the immediate vicinity of the referral site.

## **2.0 THE QUESTION BEFORE THE BOARD**

2.1 On 25<sup>th</sup> November, 2015 Mr. Pat O'Leary, Mr. Liam McGuire, Mr. Patrick Collins & Mr. Paul Sweeney submitted a request to Kerry County Council for a declaration in accordance with Section 5 of the Planning and Development Act, 2000, as amended, to determine whether or not the opening of a pedestrian entrance from No. 7 Burr Ridge, Killarney, onto Dennehy's Bohereen, Killarney, Co. Kerry, would constitute development which was exempted development (PA Ref. No. EX449). Subsequently, on 21<sup>st</sup> December, 2015 the Planning Authority issued a declaration which determined that *'the development of a pedestrian access from the back garden of a semi-detached dwelling house in a residential estate (No. 7 Burr Ridge) onto a narrow public road to the rear (Dennehy's Bohereen, Killarney)'* was considered to constitute exempted development. Accordingly, pursuant to Section 5(3)(a) of the Planning and Development Act, 2000, as amended, Mr. Pat O'Leary, Mr. Paul Sweeney & Mr. Patrick Collins have now sought to refer this declaration to the Board for a determination.

2.2 Having conducted a site inspection, and following a review of the submitted information, in my opinion, the question before the Board can be reformulated as follows:

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*'Whether the opening of a pedestrian access from the rear garden area of No. 7 Burr Ridge, Killarney, onto Dennehy's Bohereen, Killarney, Co. Kerry, is or is not development and is or is not exempted development'.*

N.B. The Board is advised that prior to the original lodgement of the subject referral with the Planning Authority, Kerry County Council had already issued a separate declaration pursuant to Section 5 of the Planning and Development Act, 2000, as amended, to the site owner / occupier (i.e. Ms. Celia O'Shea) under PA Ref. No. EX429 which held that the development of a pedestrian access from the back garden of the semi-detached dwelling house in question onto Dennehy's Bohereen, Killarney, Co. Kerry, constituted exempted development. In this respect it should be noted that whilst the subject referral has been lodged by a third party, it effectively seeks a new determination with regard to those matters previously considered under PA Ref. No. EX429.

### **3.0 RELEVANT PLANNING HISTORY**

#### **3.1 On Site:**

PA Ref. No. 00203541. Application by Dan O'Donoghue for permission for the construction of 36 No. dwelling houses at Park Road, Killarney, Co. Kerry. This application was withdrawn.

PA Ref. No. 00203592. Was granted on 21<sup>st</sup> February, 2001 permitting Dan O'Donoghue permission for the construction of 41 No. houses and 6 No. dormer houses with ground floor maisonettes under same at Park Road, Killarney, Co. Kerry.

PA Ref. No. 02203856. Was granted on 14<sup>th</sup> August, 2002 permitting Dan O'Donoghue permission for an open plan housing layout to houses Nos. 32 - 47; permission for open plan front garden layout to house Nos. 1 - 18 together with retention of open plan housing layout for houses Nos. 19 - 31; rear garden fences to all houses numbered above shall be treated timber trestle type fence, all at Park Road, Killarney, Co. Kerry.

PA Ref. No. EX429. Was determined on 12<sup>th</sup> October, 2015 wherein the Planning Authority held that the development of a pedestrian access from the back garden of a semi-detached dwelling house in a residential estate onto a narrow road to the rear at Dennehy's Bohereen, Killarney, Co. Kerry, constituted exempted development.

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## **4.0 GROUNDS OF REFERENCE**

4.1 The grounds of reference have been examined and may be summarised as follows:

- The pedestrian access has been constructed in breach of planning law and amounts to unauthorised development which is not exempted development.
- The alleged unauthorised development was first commenced and completed on or about 18<sup>th</sup> August, 2015 with planning permission having been neither sought nor obtained from Kerry County Council.
- The application for a Section 5 declaration received by the Planning Authority from Ms. Celia O'Shea (PA Ref. No. EX429) was lodged retrospectively on 16<sup>th</sup> September, 2015 after the development had commenced.
- Despite the Planning Authority having been informed by the referrers of their concerns as regards the alleged unauthorised development and the submission that the works in question should be required to cease with the roadside ditch to be restored in full, the Planning Authority allowed the developer to seek a Section 5 declaration on foot of which it was determined that the works constituted exempted development. It is considered that this amounted to an inequitable action on the part of the Planning Authority which, despite its knowledge of the objections of local residents, unilaterally gave licence to the developer to proceed without recourse to the appropriate planning process through which the referrers would have been afforded the opportunity to express their concerns.
- The works in question constitute unauthorised development as they involve the construction of a pedestrian access / egress (through the creation of an opening in the roadside ditch with the subsequent construction of a wall, gate pillars, pathway and a doorway etc.) from a private dwelling house onto a public roadway at Dennehy's Bohereen which has the effect of extending the curtilage of the Burr Ridge housing estate to include a private roadway thereby necessitating the lodgement of a further planning application to retain the entirety of the housing estate within its revised site boundaries.
- The pedestrian access, which is located between two road hazard signs along Dennehy's Bohereen at a point where the carriageway is approximately 10ft. in width, will endanger public safety by reason of traffic hazard. It is further considered that the entrance represents an inherent danger to the residents of No. 7 Burr Ridge when used to access / egress

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the rear of that property. However, more particularly, the access represents a danger to the residents of Dennehy's Bohereen (in addition to service providers such as An Post, refuse collection services, maintenance personnel etc.) who use the roadway on a daily basis in getting to and from their homes.

- The development in question will be especially dangerous to traffic and the personal safety of those using the Bohereen after dark.
- The development establishes a precedent whereby other dwelling houses within the Burr Ridge housing scheme and adjoining estates will attempt to gain access onto Dennehy's Bohereen and will ultimately be allowed to do so by the Planning Authority.
- The ditch along Dennehy's Bohereen has been severely compromised by the unprecedented development whilst the character and natural beauty of the area has also been damaged. In this respect it is considered to be ironic that in its determination of PA Ref. No. 08/204854 for an adjacent property the Planning Authority required the developer to protect the integrity of the ditch and to ensure that the vegetation / trees were not disturbed during works.
- The pedestrian access infringes upon the referrers' constitutional right to privacy and threatens to devalue properties along Dennehy's Bohereen.
- Section 3(1) of the Planning and Development Act, 2000, as amended, states the following:

*'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 use of any structures or other land'.*

Accordingly, on the basis of the foregoing, the Board is invited to conclude that Section 3(1) of the Act, as cited in Paragraph (b) of the Planning Authority's determination of the subject referral, is of no relevance as regards exempted development and instead refers to development which specifically requires planning permission. In this respect it is further submitted that the decision of the Planning Authority, in its entirety, is acutely defective and should therefore be overturned.

## **5.0 RESPONSES TO REFERRAL**

### **5.1 Response of the Owner / Occupier (Ms. Celia O'Shea):**

- Prior to the commencement of any development works to the rear site boundary (including the removal of a section of the sod bank and the

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installation of the gateway), the owner of the property in question (Ms. O'Shea) sought clarity from Kerry County Council and was advised that the proposed works would be considered to constitute exempted development. Accordingly, she proceeded to engage the services of a building contractor to undertake the works which commenced on 21<sup>st</sup> August, 2015 insofar as a section of the sod bank was removed on that date in order to provide an exit onto the bohereen, however, the contractor subsequently closed this gap and re-built the ditch with stone. Ms. O'Shea then lodged an application for a Section 5 declaration with the Planning Authority on 23<sup>rd</sup> September, 2015 and a determination on same (PA Ref. No. EX429) was issued on 12<sup>th</sup> October, 2015 which held that *'the development of a pedestrian access from the back garden of a semi-detached dwelling house in a residential estate into a narrow road to the rear of Dennehy's Bohereen, Killarney, Co. Kerry'* constituted exempted development. Accordingly, another builder was engaged to start works on 23<sup>rd</sup> November, 2015 and the development was then completed on 24<sup>th</sup> November, 2015.

- The owner of the property has at all times complied with the requirements of the Planning Acts and has not carried out any unauthorised development. Ms. O'Shea was advised that the works in question constituted exempted development and when concerns arose in this regard she applied for a declaration pursuant to Section 5 of the Planning and Development Act, 2000, as amended, which served to confirm that the works were indeed exempted development.
- In the accompanying report prepared by Mr. Ger O'Keeffe, Consulting Engineer, it is noted that the Planning Authority stated the following in its determination of the Section 5 declaration:

*'Class 5, Schedule 2, Part 1, exempt development general, exempts the construction of this gateway to the rear of this property on the boundary of the fence as being exempted, as it is not over two metres in height, it is not a metal palisade or other security fence.'*

Mr. O'Keeffe does not accept the submission by the referrers that it would be necessary to submit a further planning application to retain the entirety of the existing housing estate within revised site boundaries as the pedestrian gate in question is exempted development pursuant to the provisions of the Planning and Development Acts.

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- With regard to the 2 No. road hazard signs along the bohereen, the report prepared by Mr. Ger O’Keeffe, Consulting Engineer, states that these are defined under the Road Traffic Act. In this respect it is submitted that the first sign concerns a dangerous corner ahead that is quite a substantial distance away from the entrance gateway and relates to the almost right-handed bend into the bridge which requires traffic to be driving extremely slowly. It is further submitted that the other sign refers to a series of dangerous bends ahead and that whilst there are a number of bends along the roadway in question, the sight distances available in both directions in the vicinity of the gateway are considered to be quite substantial, particularly when cognisance is taken of the sightlines available from some of the existing entrances serving other properties along the roadway. Mr. O’Keeffe is also of the opinion that there are no safety issues arising as regards persons exiting from the pedestrian gate or for traffic using the roadway.
  - It is not accepted that the development in question will give rise to a precedent whereby the residents of other dwelling houses within Burr Ridge and adjoining estates may seek to gain access onto Dennehy’s Bohereen. Such a proposition is entirely speculative and unjustified.
  - The suggestion that the ditch along the bohereen has been severely compromised by the development and that the character and natural beauty of the area has been damaged is rejected.
  - The assertion that there has been a breach of planning law or an infringement of the referrers’ constitutional right to privacy is disputed. There are many entrances and access points along the bohereen with reference having been made to in excess of 70 No. residents living in the area. The roadway itself is not confined to vehicular traffic and is commonly used as an access route by pedestrians whilst the carriageway is wide enough to allow a vehicle to pass a pedestrian.
  - The owner of the property in question did not apply for planning permission as she was advised at all times and in advance of the commencement of any works that the development constituted exempted development.
  - The creation of a single pedestrian access does not affect the safety of the roadway for other users.

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## **6.0 RESPONSE TO CIRCULATION OF SUBMISSION RECEIVED FROM SITE OWNER / OCCUPIER:**

### 6.1 Response of the Planning Authority:

None received.

### 6.2 Response of the Referrers (Mr. Pat O’Leary, Mr. Paul Sweeney & Mr. Patrick Collins):

- Notwithstanding the engineer’s report submitted on behalf of the site owner, it is considered that planning permission is required to open a new pedestrian and cycle access / gateway onto a narrow public road where the safety of road users, including pedestrians, is of paramount importance.
- The photographs which have accompanied the engineer’s report submitted on behalf of the site owner do not provide for an accurate representation of the extent of damage arising from the unauthorised development which has been inflicted upon the natural beauty and habitats of Dennehy’s Bohereen. Furthermore, it is considered that the submitted photographs do not in any way allow for consideration of the impact of the development on public safety.
- The unauthorised development contravenes Article 9(1)(a)(i) of Part 2 of the Planning and Development Regulations, 2001 (S.I. No. 600/2011) as follows:

Restrictions on exemptions:

9. (1) *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.*

It is considered that any exemption in the subject case is nullified as the unauthorised development endangers public safety by reason of traffic hazard and as it also clearly contravenes the terms of the original grant of planning permission.



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- It will be necessary to obtain planning permission in order to retain the unauthorised entrance and the entirety of the housing estate within its revised site boundaries.
  - When the entrance in question was first opened, it is submitted that the site owner wilfully undertook unauthorised development and showed a disregard for public safety.

## **7.0 RELEVANT LEGISLATION**

The Board received this reference on 15<sup>th</sup> January, 2016 and therefore the Planning and Development Act, 2000, as amended, and the Regulations made thereto apply.

### **7.1 Planning and Development Act, 2000, as amended:**

Section 2(1) of the Act defines the following:

*“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.*

*“public road” has the same meaning as in the Roads Act, 1993.*

*“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, and*
- b) *in relation to a protected structure or proposed protected structure, includes-*
  - (i) *the interior of the structure,*
  - (ii) *the land lying within the curtilage of the structure,*
  - (iii) *any other structures lying within that curtilage and their interiors, and*

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*(iv) all fixtures and features which form part of the interior or exterior of any structure or structures referred to in subparagraph (i) or (iii);*

Section 3(1) of the Planning and Development Act, 2000, as amended, states the following:

*“Development” in this Act 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 use of any structures or other land.*

Section 4(2) of the Act states that the ‘Minister’ may by Regulation provide for any class of development to be exempted development for the purposes of the Act.

### **7.2 Planning and Development Regulations, 2001, as amended:**

Article 6(1) of the Regulations states the following:

*‘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’.*

Article 9(1) of the Regulations states as follows:

*‘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,*
- (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 . . .*

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Part 1 of Schedule 2: Exempted Development – General:

Class 5:

Column 1 Description of Development	Column 2 Conditions and Limitations
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.	<ol style="list-style-type: none"><li>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.</li><li>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.</li><li>3. No such structure shall be a metal palisade or other security fence.</li></ol>

**7.3 Roads Act, 1993:**

Section 2(1) of the Act defines the following:

*“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

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*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 or for the protection of the environment, or*

*(ii) prescribed by the Minister;*

### **8.0 RELEVANT CASE HISTORY:**

ABP Ref. No. RL07.RL3236. Was determined on 3<sup>rd</sup> December, 2014 wherein it was held that the erection of front entrance pillars and gates at An Pointe, Kerraunbeg, Carraroe, Co. Galway, was development and was not exempted development.

ABP Ref. No. RL29S.RL3391. Was determined on 21<sup>st</sup> December, 2015 wherein it was held that the opening of an ope in the rear wall of a garden to provide a pedestrian entrance from the public road/pavement and to provide a 1.95m high pedestrian timber gate opening into the rear garden at No. 78 The Cloisters, Terenure, Dublin, was development and was not exempted development.

ABP Ref. No. RL07.RL.3400. Was determined on 19<sup>th</sup> January, 2016 wherein it was held that the creation of a pedestrian entrance between the public road and a supermarket car park at Tullyvoheen (Galway Road), Clifden, North Connemara, Co. Galway, was development and was not exempted development.

### **9.0 ISSUES AND ASSESSMENT**

9.1 Having conducted a site inspection, and following a review of the available information, in my opinion, it is clear that there are a number of issues which must be taken into consideration in assessing the subject referral and in determining whether or not the entrance in question constitutes development which is exempted development.

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9.2 Whether the opening of a pedestrian access from the rear garden area of No. 7 Burr Ridge, Killarney, onto Dennehy's Bohereen, Killarney, Co. Kerry, is or is not development and is or is not exempted development:

9.2.1 At the outset I would refer the Board to Section 3 of the Planning and Development Act, 2000, as amended, which defines "development" as 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. Having regard to Section 2 of the Act wherein "works" are defined as including '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', in my opinion, it is clear that the provision of the pedestrian access in question has clearly involved the carrying out of 'works' through an act of 'excavation' and 'construction', and therefore constitutes development. Accordingly, having established that the subject works constitute development within the meaning of the Act it is necessary to ascertain whether or not they can be considered to be exempted development.

9.2.2 Article 6(1) of the Planning and Development Regulations, 2001, as amended, states that 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.

9.2.3 Column 1 of Class 5 of Part 1 of Schedule 2: 'Exempted Development – General' of the Regulations 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' and, therefore, it is necessary to determine whether or not the subject access accords with the conditions and limitations set out in Column 2 of Class 5 as follows:

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.*

The structure comprising the pedestrian access / gateway bounds the rear garden area of an existing dwelling house and measures less than 2

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metres in height. Accordingly, I am satisfied that the pedestrian access / gateway accords with the aforementioned requirement.

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.*

Following a site inspection, it is apparent that the development of the existing pedestrian access has necessitated the removal of a section of the rear site boundary ditch / hedgerow in order to allow for the construction of two sections of concrete blockwork wall which essentially define the width of the access and also serve to provide supporting structures onto which the actual door / gate (including the hinges and locking mechanism of same) has been affixed whilst an overhead lintel has been placed atop the two sections of walling to create an enclosed door surround. In my opinion, the aforementioned two sections of blockwork wall comprise an integral part of the existing gateway / doorway as constructed which serves to facilitate the pedestrian access in question and thus they should be considered to form part of the subject referral. Accordingly, on the basis that the foregoing walling bounds the rear garden area of the existing dwelling house, and as the facing of the concrete blockwork used in the construction of said walling is clearly visible from the adjacent roadway and has not been rendered or plastered, it is my opinion that the pedestrian access does not satisfy in full the conditions and limitations set out in Column 2 and thus cannot avail of the exemption set out in Class 5 of Part 1 of Schedule 2 of the Regulations.

3. *No such structure shall be a metal palisade or other security fence.*

The pedestrian access in question does not include any metal palisade or other security fencing and thus accords with this requirement.

9.2.4 On the basis of the foregoing, it is my opinion that the pedestrian access as constructed does not satisfy in full the conditions and limitations set out in Column 2 of Class 5 of Part 1 of Schedule 2 of the Regulations and thus cannot avail of the exemption offered by that class. However, in the interests of completeness, and in the event that the Board does not concur with my assessment of the subject referral as regards non-compliance with the

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requirements of Class 5, I propose to review the implications, if any, of Article 9(1) of the Regulations for the development in question.

9.2.5 Article 9(1)(a)(i) of the Regulations states that development to which Article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of the development would contravene a condition attached to a permission issued under the Act or if it would be inconsistent with any use specified in a permission under the Act. In this respect it is of relevance to note that the Planning Authority's assessments of both the subject referral (PA Ref. No. EX449) and an earlier declaration issued on site under PA Ref. No. EX429 concluded that the provision of the access in question would not contravene any of the conditions attached to the grants of planning permission issued for PA Ref. Nos. 00/203592 & 02/203856. Similarly, having reviewed the documentation forwarded to the Board for consideration, it can be confirmed that there are no conditions attached to PA Ref. No. 00/203592 which would prohibit the development in question.

9.2.6 With regard to Article 9(1)(a)(ii) of the Regulations which states that development to which article 6 relates shall not be exempted development if it consists of or comprises 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, having conducted a site inspection it can be confirmed that the section of Dennehy's Bohereen onto which the pedestrian access will open comprises a public road within the meaning of the Roads Act, 1993 and that the surfaced carriageway of same is less than four metres in width.

9.2.7 In relation to Article 9(1)(a)(iii) of the Regulations which serves to 'de-exempt' any development to which article 6 relates where it would endanger public safety by reason of traffic hazard or obstruction of road users, given that the doorway / gateway of the pedestrian access under consideration is recessed from the edge of the carriageway thereby avoiding users having to step directly onto or off the public road, the fact that the doorway itself opens inwards away from the public road, the overall condition, width and alignment of the roadway at this location, and in light of the limited low traffic volumes and speeds likely to be experienced along this section of Dennehy's Bohereen, it is my opinion that the pedestrian access would not endanger public safety by reason of traffic hazard or result in the obstruction of road users.

9.2.8 No other aspects of Article 9 of the Regulations are of relevance to the determination of the subject referral.

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9.2.9. In conclusion, it is my opinion that the opening of the pedestrian access in question from the rear garden area of No. 7 Burr Ridge, Killarney, onto Dennehy's Bohereen is development which is not exempted development on the basis that it does not satisfy the conditions and limitations set out in Column 2 of Class 5 of Part 1 of Schedule 2 of the Regulations.

9.3 Appropriate Assessment:

9.3.1 Having regard to the nature and scale of the development under consideration, the nature of the receiving environment, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

**10.0 RECOMMENDATION**

It can be concluded, given the foregoing, that the opening of a pedestrian access from the rear garden area of No. 7 Burr Ridge, Killarney, onto Dennehy's Bohereen, Killarney, Co. Kerry, is development which is not exempted development. A draft order is set out as follows.

**ORDER**

**WHEREAS** a question has arisen as to whether a pedestrian access from the back garden of a semi-detached dwelling house in a residential estate (No. 7 Burr Ridge) onto a narrow public road to the rear (Dennehy's Bohereen, Killarney), is or is not development and is or is not exempted development:

**AND WHEREAS** Mr. Pat O'Leary, Mr. Liam McGuire, Mr. Patrick Collins & Mr. Paul Sweeney of Dennehy's Bohereen, Killarney, Co. Kerry, requested a declaration on the said question from Kerry County Council and the said Council issued a declaration on the 21<sup>st</sup> day of December, 2015 stating that the development of a pedestrian access from the back garden of a semi-detached dwelling house in a residential estate (No. 7 Burr Ridge) onto a narrow public road to the rear (Dennehy's Bohereen, Killarney) is exempted development:

**AND WHEREAS** the said Mr. Pat O'Leary, Mr. Patrick Collins & Mr. Paul Sweeney referred the declaration to An Bord Pleanála for review on the 15<sup>th</sup> day of January, 2016:



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**AND WHEREAS** An Bord Pleanála, having regard to the nature and content of the referral, has reformulated the question, as follows:

*‘Whether the opening of a pedestrian access from the rear garden area of No. 7 Burr Ridge, Killarney, onto Dennehy’s Bohereen, Killarney, Co. Kerry, is or is not development and is or is not exempted development’.*

**AND WHEREAS** An Bord Pleanála in considering this reference, had regard particularly to -

- a) Sections 2, 3 & 4 of the Planning and Development Act, 2000, as amended,
- b) Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001,
- c) Article 9(1) of the Planning and Development Regulations, 2001,
- d) the planning history of the site, and
- e) the Roads Act, 1993:

**AND WHEREAS** An Bord Pleanála has concluded that the opening of a pedestrian access from the rear garden area of No. 7 Burr Ridge, Killarney, onto Dennehy’s Bohereen, Killarney, Co. Kerry –

- a) would constitute 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,
- b) the structural elements forming the pedestrian access, which include two sections of concrete blockwork wall, are interdependent and constitute one overall entity for the purposes of Class 5 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and
- c) given that the faces of the concrete block walls are visible from an adjacent road and have not been rendered or plastered as specified in the Conditions and Limitations attaching to Class 5 of Part 1 of Schedule 2 to the Regulations, the pedestrian access does not, therefore, come within the scope of the exempted development provisions of the said Class 5.

**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 opening of a pedestrian access from the rear garden area of No. 7 Burr Ridge, Killarney, onto

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Dennehy's Bohereen, Killarney, Co. Kerry, is development and is not exempted development.

Signed: \_\_\_\_\_  
Robert Speer  
Inspectorate

Date: \_\_\_\_\_