



An  
Bord  
Pleanála

## Inspector's Report 93.RL.3538

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<b>Question</b>	Whether the creation of 2 no. entrances, is or is not development or is or is not exempted development.
<b>Location</b>	Coolbunia, Cheekpoint, Co. Waterford.
<b>Declaration</b>	
Planning Authority	Waterford County Council.
Planning Authority Reg. Ref.	D5.2016.32.
Applicant for Declaration	Helen Keane.
Planning Authority Decision	Exempt.
<b>Referral</b>	
<b>Referred by</b>	Helen Keane.
<b>Owner/ Occupier</b>	Malachy Doherty & Marie Ryan-Carew.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	22 <sup>nd</sup> April 2017.
<b>Inspector</b>	Susan McHugh

## 1.0 Site Location and Description

- 1.1. The site is located in the rural area of Coolbunia, approximately 800m from the L4082 Cheekpoint Road and joins the same on the southern approach to Cheekpoint village located approximately 1km to the north. The site is located towards the end of the cul de sac which serves approximately 10 houses. The site is located in a scenic area above and along the River Suir and Estuary. The route is also used as a walking route to Passage East to the south.
- 1.2. The entrances subject to the referral consist of two agricultural gates. The first entrance referred to as entrance A is located at the entrance to a narrow lane serving derelict buildings and agricultural fields.
- 1.3. The second entrance referred to as entrance B is located further south, again serving agricultural fields and beyond the last house on the road, see map attached.

## 2.0 The Question

- 2.1. Whether the creation of two new vehicular entrances, one from an abandoned lane onto a private road and a second directly from a field onto a private way (pedestrian right of way) is development and is or is not exempted development.

## 3.0 Planning Authority Declaration

### 3.1. Declaration

**D/5/201632** The Planning Authority issued a Section 5 Declaration on 20<sup>th</sup> December 2016 which had regard to the details submitted and the relevant sections of the Planning and Development Act, Roads Act, and Planning and Development Regulations. The Declaration states that “the said repairs and improvement works constituted development which is exempted development”. This appears to be a drafting error. It is the same as the Declaration issued on the same date in respect of works on adjacent lands, see Section 4.0 below.

## 3.2. Planning Authority Reports

### 3.2.1. The Planner's Report

The Planner considered that in the context of Sections 2, 3 and 4 of the Planning and Development Act, Section 2 of the Roads Act 1993, and the definitions as set out therein, the proposal falls within the definitions of 'works' and as such constitutes 'development'. With regard to Articles 6 and 9 and Schedule 2, Part 1 Class 9 of the Planning and Development Regulations 2001, as amended, it was noted that;

- The entrances open onto a road which is less than 4m in width.
- The roadway onto which the entrances are erected is not maintained or taken in charge by the Council and, as such, would not be considered to be a public road.
- As the road is used for both vehicular and pedestrian access it would not be classed solely as a 'pedestrian' right of way.

Regard was also had to the condition and carrying capacity of the road, the apparent low volume and speed of traffic on the road and the low volume of pedestrian movement thereon. As such the provision of the entrances was not considered to constitute a traffic hazard. It was concluded that, as the road is less than 4m in width, the development complies with the conditions and limitations associated with Class 9 and Article 9 and, therefore, consists of development which is exempted development for the purpose of the Act.

## 4.0 Planning History

There is no recent relevant planning history relevant to the site.

### **PAD5/201630**

It is noted that the referrer sought a second Section 5 declaration to the planning authority on adjacent lands.

The question as referred is 'whether the carrying out of repairs and improvements to a section of private road involving the surfacing with blacktop (screenings) and

associated drainage at Coolbunna, Cheekpoint, Co. Waterford is development which is exempted development within the meaning of the Act.'

The Declaration, issued on 20<sup>th</sup> December states that the said repairs and improvement works constitute development which is exempted development.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant development plan is the **Waterford County Development Plan 2011-2017**. The following plan provisions are of relevance:

As shown on the Scenic Landscape Evaluation map, Appendix A9, the site is located in an area which is identified as Visually Vulnerable. This is defined as having 'Very distinctive features with a very low capacity to absorb new development without significant alterations of existing character over an extended area.'

### 5.2. Natural Heritage Designations

The nearest European sites are the River Barrow and River Nore SAC, at a distance of 0.16km to the east, and the Lower River Suir SAC, at a distance of 1.52km to the west.

## 6.0 The Referral

### 6.1. Referrer's Case

The referral to Waterford County Council by Helen Keane, Hurt Hill House, Coolbunna, Cheekpoint is summarised as follow;

- The precise question posed was not answered,
- The declaration issued incorrectly refers to repairs and improvement works, which was not relevant to the question posed and appears to have been a clerical error.

- The planners report confirms that what it meant to declare was that the provision of the entrances did not constitute a traffic hazard and was therefore exempted. Notwithstanding, the findings of the referral are flawed.
- Agrees with the planner that the 'proposals' are considered within the definition of works and development and are therefore "development".

6.1.1. In support of the argument that the works are not exempt, the referrer states the following:

6.1.2. *Creation of vehicular entrances onto a private roadway and pedestrian right of way*

- The referrer disagrees with the planners report which refers to the roadway as not being a public roadway, and that the road is used for both vehicular and pedestrian access, and as such would not be classed solely as a "pedestrian" right of way.
- The referrer submits that one of the two entrances relates to opening an old farm access lane, (which has been out of use for many years) onto a section of private roadway. The private roadway at this point and beyond, is used only by vehicles accessing her property, and by the adjoining landowner entering a field gate just beyond her property on the river side. Beyond that field gate the private road stops and the route becomes a pedestrian way which is a public right of way known as Hurthill. This is a popular pedestrian walkway used by walkers and horse trekkers and leads to Passage.
- The referrer contends that until recently there was a large boulder at the end of the private road which prevented unauthorised vehicular access onto the pedestrian way, but this was removed to allow access at the other end of the field in question. A photograph of the sign on the road which confirms that the road is a cul de sac was attached.
- The referrer notes the low vehicle usage, but that pedestrian volumes can be high, and is a popular walkers trail as highlighted in a number of tourist websites.

#### 6.1.3. *The entrances represent a traffic hazard*

- The referrer argues that there will be poor sightlines for vehicles exiting the recently reopened access onto the private road, and the new access gate onto the pedestrian way. Similarly, pedestrians and horse trekkers will not be able to see vehicles emerging from the entrances. The entrances have no visibility and therefore represent a traffic hazard.
- The referrer considers that the planners' assessment in relation to whether the development poses a traffic hazard, on the basis of the low volume of pedestrian and vehicle traffic, is irrelevant.
- The referrer also considers the planners' assessment in relation to the road width being more or less than 4m wide to be also irrelevant, as these criteria only applies to vehicle accessing onto a public road.

#### 6.1.4. *Erection of the gates and gateway structures for vehicles*

- The referrer disagrees with the planners report which suggests that Class 9 permits vehicular entrances to be created. The referrers interpretation of this Class is that it permits only gate and gateway 'structures' and not new entrances. Reference to another Referral case considered by An Bord Pleanala (Ref. 26.RL.2545 at Corsillagh in County Wicklow) appears to clarify that Class 9 refers only to gate structures to serve existing entrances, and does not exempt the creation of entrances themselves.
- The referrer questions if the owner in the current case had not erected the gates after creating the entrances, would he still have been able to claim exemption for the entrance under Class 9.

#### 6.1.5. *Removal of hedgerows*

- The referrer notes that the original reason given to her by the Council, as to why the landowner does not require permission for the openings, was that the removal of hedges was exempt under Article 8D of the Planning and Development Regulations, being works consisting of the removal for the purposes of agriculture of field boundaries including stone walls, clay banks or

wire or post fences. The referrer submits that this primarily relates to the amalgamation of smaller fields and not to the creation of new field entrances for vehicles. No reference to this Article is made in the planners' report, and there is an inconsistency in the application of the Regulations within the Council.

- Refers to An Bord Pleanála (Ref. 93.RL.3334) where the removal of hedgerows and the formation of a cemetery road from what had been a cemetery path, at Knockboy, Waterford were declared not exempted development.

*6.1.6. Need for the private road to be extended to the second entrance*

- The referrer asserts that the planners report fails to address the obvious need for the private road to be extended to the second entrance, which is currently onto the pedestrian way only. If it is accepted that the landowner can move onto a public pedestrian right of way and widen it to accommodate vehicular traffic, the existing pedestrian route all the way to Passage could be turned into a roadway without planning permission. This cannot be correct and is supported by the case at Knockboy.

*6.1.7. De exemptions under Article 9(a)(vi)*

- The referrer contends that the planners report fails to address Article 9(a)(vi) which de exempts development which would interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan.
- The referrer notes that the accesses and the adjoining field boundary hedges and stone features are all located in an elevated and exposed coastal location adjoining the Waterford Estuary and within a scenic rural area designated as visually vulnerable in the Waterford Estuary and within a scenic rural area

designated as visually vulnerable in the Waterford County Development Plan. “Visually vulnerable” is the most sensitive of all of the sensitivity categories listed in the County Development Plan and defined as areas which have “very distinct features with a very low capacity to absorb new development without significant alterations of the existing character of the extended area” (Appendix 9, fig. 1 of the County Development Plan).

- The referrer submits that in order to provide safe access onto the private road as existing or extended, it would be necessary to remove almost all of the front ditch to provide visibility to allow emerging vehicles to see roads users and pedestrians and vice versa. It would also be necessary to remove the large stone wall to the north of the reopened lane entrance and a section of hedge, both of which are in separate ownership. These works would be a significant alteration to the existing character of the area and be highly visible to the many walkers who trek along Hurt Hill and over the wider area.
- The referrer also makes reference to planning applications by the landowner on different sites, and recent request by the Council to remove a temporary structure located in the field in question.

#### 6.1.8. *Conclusion*

The referrer concludes that no regard was given to the creation of new entrances and the traffic hazard they both represent, or to the works that would be necessary to achieve visibility which would involve the removal of structures and extensive hedgerows, which would have a severely damaging impact on the visual amenity and character of the area.

#### 6.2. **Planning Authority Response**

No further comment.

#### 6.3. **Owner/ occupier’s response**

The submission by Malachy Doherty is summarised as follows:



### 6.3.1. *Ownership*

- The plot comprising of 10 acres of agricultural land was purchased by him from the previous owner Marie Carew in 2016, which previously belonged to her family for many generations.
- He and his father have been caretakers of the land for Marie Carew's family since 1978, (as they live outside of Co. Waterford), and have used the land for simple agricultural purposes.
- The entrances subject of the referral, were not created by him but were re-opened. Both entrances have existed since pre-1900, and were in regular use prior to his father becoming elderly. Letters from residents confirming this are enclosed. The entrances have been used within the last seven years by him and the Carew family as vehicular and pedestrian entrances, neither of which have been widened to hang gates.

### 6.3.2. *Entrance 'B' (Entrance A in referral submission)*

- Clarifies that one of the entrances marked as "B" is owned by Marie Carew, as it provides the only access to buildings in her ownership.
- The owner Marie Carew had previously contacted the planning authority seeking clarification about rehangng a gate at the entrance to her property, where she was advised that no permission was needed. He was subsequently asked by the Carew's to rehang the gate.
- Subsequently a complaint was made by the referrer to the planning authority, upon which he wrote to the Council 5/11/2016 setting out that he was not the owner of the entrance. As the entrance is not in his ownership he submits that the observation by the referrer does not apply to him.

### 6.3.3. *Entrance 'C' (Entrance B in referral submission)*

- The entrance marked "C" is an existing entrance to a field in his ownership and falls within Class 9 which permits gates and gateway structures to be created on an existing entrance. He showed this entrance to a Council

environmental inspector 01/11/2016 before work commenced and he observed the old post and stonework surrounding the entrance. The Council environmental inspector was satisfied that the entrance was pre-existing, and that he could cut back the briars and hang a gate onto the existing post. He notes that the previous gate was in poor repair so a new gate was hung. He alerted the Council that he had carried out the work by letter 5/11/2016.

- He asserts that the entrance was not widened, and nor does it need to be, as it is 14 feet wide which is adequate for the safe entry and exit for his tractor.
- The complainant Ms Keane was notified by the Council 10/11/2016 that the matter was closed.

#### *6.3.4. Status of the Laneway*

- The Coolbunna laneway leading to entrance “C” (Entrance B in referral submission) is not just ‘pedestrian only’ as claimed by the referrer, and Mr. Doherty states that he regularly drives over the laneway in his tractor to the junction where it meets the main road to Passage East, in order to keep the pathway clear as it can become quickly overgrown.

#### *6.3.5. Planning history and other referrals*

- The assertion by the referrer that he as the owner was required to remove a temporary structure from the field behind the entrance is untrue.
- The reference by the referrer to two planning applications on a separate plot in his ownership, located half a kilometre away is not relevant to this case.
- The reference by the referrer to referral ref 26.RL.2545 at Corsillagh in Co. Wicklow is not relevant, as it related to a large electric gate with piers over two meters high.
- The reference by the referrer to referral ref 93.RL.3334 at Knockboy Cemetery in Co. Waterford is not relevant, as it related to the removal of a large section of the boundary ditch and hedgerow and the installation of a new fence.

### 6.3.6. *Conclusion*

In conclusion the works are considered to comply with the conditions and limitations associated with Class 9 and Article 9, and therefore consists of development which is exempted development for the purposes of the Planning and Development Act, 2000 as amended.

## 6.4. **Further Responses**

6.4.1. The registered owner of the property Marie Ryan-Carew, confirmed by e-mail to An Bord Pleanála dated 27<sup>th</sup> January 2017, that she had recently sold the surrounding land to the Malachy Doherty, and clarified that one of the entrances in question (Entrance A) remains in her ownership.

6.4.2. The submission by T. Kiersey & Co. Solicitors on behalf of Marie Ryan-Carew submitted 1<sup>st</sup> March 2017, is summarised as follows:

- Clarifies in detail those lands sold to Malachy Doherty in 2016.
- That one of the entrances (Entrance A), marked with the letter “Y” on the attached map is in the ownership of their client, and was the entrance to the house and farmyard on the lands since 1852.
- Their clients father continued to farm the land into the 1960’s and used all three entrances marked “Y” “X” and “Z” on the attached map. He died in 2008.
- The entrance marked “Y” (Entrance A), was blocked with branches and bushes to prevent dumping.
- After the sale of the land to Malachy Doherty, and with his assistance, their client arranged to clear the entrance marked “Y” (Entrance A), and hang a gate on the existing posts. They claim this was merely re-opening of a pre-existing entrance which had been in situ since the 1850’s and is the only access to the retained lands.

## 7.0 Statutory Provisions

### 7.1. Planning and Development Act, 2000 (as amended)

#### **Structure**

*“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,”*

#### **Road**

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

#### **Section 2(1)**

*““works” includes any act or operation of construction, excavation, demolition, extension, alterations, repair or renewal and ....”*

#### **Section 3(1)**

*““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(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, as amended

### 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:

Column 1 Description of Development	Column 2 Conditions and Limitations
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,

(vi) interfere with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed or, pending the variation of a development plan or the making of a new development plan, in the draft variation of the development plan or the draft development plan,

(vii B) comprise development in relation to which a planning authority or An Bord Pleanála 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. 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.
- 8.2. The main parties to this referral are as follows;
- Helen Keane (Referrer)
  - Waterford County Council
  - Malachy Doherty (Landowner and owner Entrance B)
  - Marie Ryan-Carew (Owner of Entrance A)
- 8.3. Helen Keane has sought declaration from An Bord Pleanala in respect of whether the creation of the two entrances is or is not development, or is or is not exempted development. Many of the matters raised in correspondence to this referral such as inter alia land ownership, unauthorised development, and planning applications on different sites etc, do not in my view concern the specific question that is before the Board.
- 8.4. It is noted by the referrer and accepted that the declaration issued by Waterford City and County Council incorrectly refers to 'repairs and improvement works'. This matter was the subject of another but concurrent referral. This would appear to have been a clerical error.
- 8.5. From my site inspection, and as indicated on the submissions on file and attached photographs, it is clear that work has taken place at both entrances. I am also satisfied that the works involved related to existing entrances and do not result in the creation of new entrances. A gateway can be defined as 'an opening that can be

closed by a gate' and while it is not clear if there had been a gate previously at entrance A, it can still be considered a gateway.

8.6. From my assessment and for clarification, I consider that

- (a) A new gate and gate post has been erected at entrance A. which is located at the entrance to a narrow lane serving derelict buildings and agricultural fields,
- (b) And that the second gate at entrance B is a replacement gate serving agricultural fields.

8.7. I therefore consider that the question asked by the referrer in relation to the creation of new entrances to be ambiguous and should be rephrased. I propose to redefine the question as 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'.

**8.8. Is or is not development?**

8.8.1. The first question before the Board relates to whether or not the works comprise development. Having regard to sections 2 and 3 of the Planning and Development Act 2000, as amended I consider the works to both vehicular entrances constitutes 'development' within the meaning of the Act, being the carrying out of an act of construction (i.e. 'works') on land. I note that this is not disputed by the parties.

**8.9. Is or is not exempted development?**

8.9.1. 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).

8.9.2. Section 4(1) of the Act sets out provisions in relation to exempted development. There is no exemption under Section 4.



8.9.3. 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’.

8.9.4. I consider that both entrance gates, Entrance A involving the erection of a new gate and gate post, and Entrance B relating to a replacement gate to existing gate post, are less than 2 metres in height, and fall within the terms of Class 9.

**8.10. If Exempted Development, are there any restrictions to this exemption?**

8.10.1. A further question arises as to whether or not if any of the provisions as set out in Article 9(1) of the Planning and Development Regulations 2001 (as amended) apply in this instance. Article 9 de-exempts various development that would otherwise be exempted under Article 6. Sections relevant to this referral are discussed below.

8.10.2. **Article 9(1)(a)(ii)** de-exempts development where it would result in the creation / widening of access to public road of more than 4 metres in width.

The works in question as decided above relate only to the replacement of gates, therefore there is no creation or widening of access involved.

The development does not, therefore, come within the scope of Article 9(1)(a)(ii).

8.10.3. **Article 9(1)(a)(iii)** de-exempts development where it would endanger public safety by reason of a traffic hazard or obstruction of road users.

The referrer considers that there will be poor sightlines for vehicles exiting the entrances giving rise to traffic hazard for pedestrians and horse trekkers.

It is noted by the owner that some briars were removed to improve sightlines to entrance B. I do not consider it necessary, as claimed by the referrer, to remove further hedgerows to improve sightlines at this entrance, as it is set back from the road. Having inspected the site, I would agree with the planning authority that, by

virtue of the low volume and speed of traffic on the road and the low volume of pedestrian movement the entrances do not constitute a traffic hazard. The development does not, therefore, come within the scope of Article 9 (1)(a)(iii).

8.10.4. **Article 9(1)(a)(vi)** de-exempts development where it would interfere with the character of a landscape, or a view or prospect of special interest, the preservation of which is an objective of a development plan for the area or draft variation/plan as appropriate.

8.10.5. The referrer considers that the entrances are located in an area identified as 'visually vulnerable' in the Waterford County Development Plan. I consider that both gates represent very minor features and, in themselves, do not detract from the visual amenity of the area or result in significant alterations to the existing character of the area. It would, therefore, be reasonable to conclude that the provisions of Article 9(1)(a)(vi) would not apply in this instance.

8.10.6. **Article 9(1)(a)(viiB)** de-exempts development where the development would require an appropriate assessment. Having regard to the nature and small scale of the development, and to the nature of the receiving environment, 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. It would, therefore, be reasonable to conclude that the provision of Article 9(1)(a)(viiB) would not apply in this instance.

#### 8.11. **Precedent cases**

8.11.1. The Referrer has referred to two specific cases 26.RL.2545 and 93.RL.3334.

##### 8.11.2. **26.RL.2545 (December 2008)**

The question here referred to whether the construction of a gateway with large electric gates serving Corsillagh Farm, Co. Wicklow constituted exempted development. The Board concluded that as the height of the gate and gate posts exceeded the 2m of the conditions and limitations of Class 9 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, it was not exempted

development. As indicated, in the subject case the 2m height limitation is not exceeded.

#### 8.11.3. **93.RL.3334 (July 2016)**

The question here referred to whether the removal of a boundary ditch and hedgerow, erection of post and rail boundary fencing, provision of vehicular entrances, and widening and resurfacing of a roadway, all at Saint Mary's Church, was exempt development.

The Board decided that the works were development and not exempted development. Given the wide scope of the works in question this case is not considered to be of particular relevance to the subject referral.

8.11.4. The following precedent referral is also of some relevance:

- **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.

## 9.0 **Recommendation**

9.1. Arising from my assessment above I consider that the erection of a new gate and gate post, and the replacement of an existing gate to existing vehicular entrances in question constitutes development that is exempted development.

9.2. I recommend that the Board should decide this referral in accordance with the following draft order (noting the re-formulated question as advised in section 8.7 above).

**WHEREAS** a question has arisen as 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 or is or is not exempted development:

**AND WHEREAS** Helen Keane requested a declaration on this question from Waterford City and County Council and the Council issued a declaration on the 20<sup>th</sup> day of December, 2016 stating that the matter was development and was exempted development:

**AND WHEREAS** Helen Keane referred this declaration for review to An Bord Pleanála on the 18th day of January, 2017:

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

- (a) Section 2(1), 3(1), 4(2)(a)(i) of the Planning and Development Act, 2000, as amended,
- (b) Article 6(1) and article 9(1) and Class 9, Part 1, Schedule 2 of the Planning and Development Regulations, 2001, as amended,
- (c) Section 2(1) of the Roads Act, 1993
- (d) the pattern of development and the character of the landscape in the area,
- (e) the Report of the Planning Inspector.

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

- (a) The development comes within the scope of Sections 2(1) and 3(1), of the Planning and Development Act 2000, as amended, and constitutes development,
- (b) The development comes within the scope of Article 6(1), Class 9, Part 1, Schedule 2, of the Planning and Development Regulations 2001, as amended,
- (c) The development does not come within the scope of Article

9(1)(a)(ii), (iii), (vi), and (viiB) 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 erection of a new gate and gate post and the replacement of an existing gate to existing vehicular entrances is development and is exempted development.

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Susan McHugh  
Planning Inspectorate

8<sup>th</sup> of June 2017