

KILDARE COUNTY COUNCIL



PLANNING DEPARTMENT

**Section 5 declaration & referral on development & exempted development
Planning & Development Act 2000 (as amended)**

Reference No. ED/00692 ABP-303326-18

Name Of Applicant(s):	Ulric (Ollie) Barry
Address Of Development:	Mylerstown, Naas, Co. Kildare
Development Description:	Creation of vehicular access and erection of gateway

I refer to the correspondence on file which was forwarded to the Planning Authority from An Bord Pleanála with a covering letter dated 5th February 2019.

The Board has invited the Planning Authority to make submissions or observations in relation to the circulated documentation on or before the 25th February 2019.

There are a number of matters at issue in this case including:

- a) Whether or not the proposed development, notwithstanding other factors such as compliance with conditions of planning permission, would constitute development which might be exempted development under the provisions of the relevant legislation
- b) Whether the proposed development would contravene conditions attached a grant of planning permission
- c) Whether the development is or is not a pre-1964 development
- d) Whether any pre-existing entrance had or had not been abandoned

I propose to address each of these matters in turn below.

a) Whether or not the proposed development, notwithstanding other factors such as compliance with conditions of planning permission, would constitute development which might be exempted development under the provisions of the relevant legislation

In my view it would not be appropriate for the Planning Authority to comment in the abstract as to whether or not a particular development would or would not constitute exempted development, in circumstances where the referral clearly relates to a particular development where other matters are directly relevant to the question of exemption.

Neither party disputes the fact that, in accordance with the provisions of article 9(1)(a)(ii) of the Planning and Development Regulations 2001-2018, development to which article 6 relates shall not be exempted development for the purposes of the Act if the carrying out of 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". As this point is not in any dispute, there is no significant benefit in the planning authority restating or confirmed this general provision without having regard to the specifics of this particular case.

b) Whether the proposed development would contravene conditions attached a grant of planning permission

This matter was previously considered by the planning authority in its assessment of a complaint regarding alleged unauthorised development at this location (Our Ref: UD7028). An Enforcement Notice issued on the 30th May 2018 and the owner of the subject property has been engaging with the Planning Authority since then to address the matter s raised in that Enforcement Notice.

The Planning Authority has been engaged in correspondence with the referrer in the current instance in relation to progress on the Enforcement Notice. Given that there is still an outstanding Enforcement Notice in relation to this entrance, I suggest that it would be inappropriate for the Planning Authority to engage in any parallel assessment of the legitimacy of the subject entrance which might prejudice the successful resolution of that ongoing enforcement case.

c) Whether the development is or is not a pre-1964 development


This would appear to be a matter which requires a "finding of fact" in circumstances where competing assertions have been put forward by both parties.

Parties on both sides have submitted contrary claims as to whether or not there was a pre-existing entrance at this location and I suggest that the Board must now weigh these competing assertions and make a finding of fact in relation to this question.

d) Whether any pre-existing entrance had or had not been abandoned

I am of the opinion that this question can only be fully addressed in light of a determination on the previous question. Furthermore, any consideration of potential abandonment must take into consideration the intention of the owners/occupiers and this matter has not been comprehensively addressed by either party in their submissions.

Given that this is a matter which is subject of an active investigation by the Planning Authority's Enforcement Section, I am of the opinion that the Authority should not prejudice that ongoing investigation and enforcement action by putting any opinions as to fact on the public record in circumstances where there are clearly divergent positions being articulated by both sides (including a number of sworn affidavits).



Liam McGree
Senior Planner
18th February 2019

