



**John T. Garrett & Associates**  
CONSULTING ENGINEERS | MEDIATORS | CONCILIATORS

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21<sup>st</sup> August 2019

The Secretary

An Bord Pleanála

64 Marlborough Street

Dublin 1 D01 V902

<b>AN BORD PLEANÁLA</b>	
LDG-	018631-19
ABP-	
22 AUG 2019 <i>Dot</i>	
Fee: €	220
Type:	CHQ
Time:	11:20
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**Re: Planning and Development Acts 2000 (as amended)**  
**Planning and Development Regulations, 2001 (as amended)**  
**Section 5 - Declaration on Development and Exempted Development**  
**Declaration No. EC22/19**  
**Name and address of applicant: Claudia Reidy, Ardyoul, Kilmallock, Co. Limerick**  
**Planning Authority who made Declaration on Development or Exemption: Limerick City & County Council**  
**Date on which application was received by Planning Authority: 2<sup>nd</sup> May 2019**  
**Date on which further information was requested by Planning Authority: 21<sup>st</sup> May 2019**  
**Date on which further information was received by Planning Authority: 3<sup>rd</sup> July 2019**  
**Date on which Declaration on Development and Exempted development was issued by Local Authority: 26<sup>th</sup> July 2019**  
**Location of proposed development: Grange, Kilmallock, Co. Limerick**  
**Description of proposed development: Boundary wall (1.2m)**  
**Local Authority's Decision as issued in its Declaration:**  
**That the said development as described above is development and is not exempted development.**

Dear Sirs,

With reference to the above, this office has been engaged by Claudia Reidy, the applicant to write to An Bord Pleanála and request a review of the above mentioned Declaration on development and exempted development.

We attach herewith cheque in the sum of €220 being the fee associated with this request for review.

We make the following submissions.

1. The Local Authority received further information in response to its request of 21<sup>st</sup> May 2019 on 3<sup>rd</sup> July 2019. You will note from Section 5 (2) (b) of the Act that 'a Planning Authority may require any person who made a request under subsection (1) to submit further information with regard to the request in order to enable the Authority to issue a Declaration on the question and, where further information is received under



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1. The first part of the document  
 discusses the importance of  
 maintaining accurate records  
 for all transactions. This  
 includes both incoming and  
 outgoing payments. It is  
 essential to ensure that all  
 entries are clearly documented  
 and dated.

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this paragraph, the Planning Authority shall issue the Declaration within three weeks of the date of the receipt of the further information.' Because the Declaration was not issued until 26<sup>th</sup> July 2019 i.e. in excess of the three week period we respectfully submit that the Declaration should be considered void.

2. Alternatively I have been instructed by the applicant to request that her application for the Declaration on Development and Exempted Development be withdrawn and I hereby do so.
3. If the Board decides that neither of the above two submissions can be accommodated we make the following submissions.

a) In its Declaration on development and exempted development the Local Authority concluded that 'the erection of a 1.2 metre high boundary wall at Grange, Kilmallock, Co. Limerick does not come within the scope of exempted development by virtue of Articles 9(1)(a)(iii)(x)(xi) of the Planning and Development Regulations 01(as amended). Also the said works would result in a material change of use of the said property'.

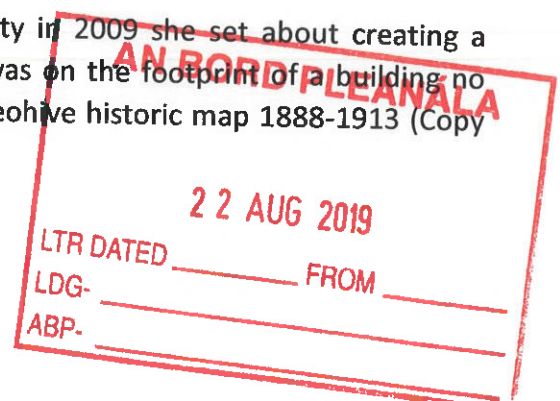
For ease of reference Articles 9(1)(a)(iii),(x),(xi) state as follows: '(1) Development to which Article 6 relates shall not be exempted development for the purposes of the Act (a) if the carrying out of such development would (iii) endanger public safety by reason of traffic hazard or obstruction of road users, (x) consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility, (xi) obstruct any public right of way'.

In response I consider it important to confirm that I am in agreement with the Local Authority in coming to its conclusion insofar as the wall as proposed would endanger public safety. I say this having regard to the proximity of the proposed wall to the roadside kerb which I am instructed was installed by the Local Authority.

Had this been the only reason for the Local Authority to conclude that the development is not exempted, this would not have posed a difficulty for the applicant and she could have gone back to the Planning Authority with an alternative proposal.

However on behalf of the applicant I contest the Local Authority's rationale.

- b) In relation to Article 9(1)(a)(x) in that the proposed works do not consist of the fencing or enclosure of any land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility.
- c) When the applicant purchased this property in 2009 she set about creating a garden which was mature by 2012. This was on the footprint of a building no longer in existence which appears on the geohive historic map 1888-1913 (Copy attached).





- d) **Attached** herewith are 3 no. photographs provided to me by the applicant. I am instructed that Photographs A1 and B1 were taken on 19<sup>th</sup> July 2012 and Photograph C1 was taken on 30<sup>th</sup> August 2012.

From these the maturity of the garden area can be seen along with a kerb line beside the road.

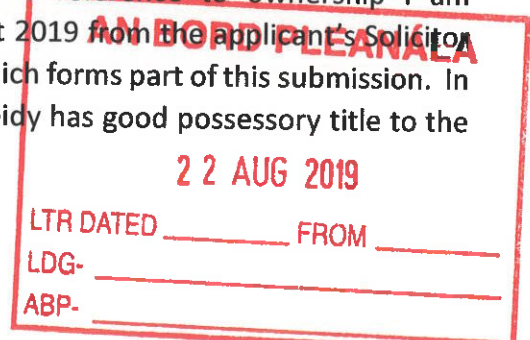
- e) Prior to issuing its Declaration, a report was prepared by the Development Inspector of Limerick City and County Council. This relied on Google Street View photographs dated April and May 2009. These show two lorries and a car parked in the area. I am instructed that the lorries belonged to a Mr. John Hanly and the parking of those vehicles were with the consent of the applicant. I am instructed that the car which bears a registration number 95 D 53036 is still in the ownership of Mr. Hanly and his confirmation of the permission granted to him to park his lorries and car here is **attached**.

- f) The Development Inspector's report states that the site has recently been stoned and a dropped kerb line has been laid around the perimeter of the site. The circumstances behind this which lead to a chain of events where the applicant felt it was necessary to apply for the Declaration of Development and Exempted Development are important. I am instructed that on Saturday 10<sup>th</sup> November 2018 the applicant received a telephone call that she needed to get to Grange as her property was being 'destroyed'. On her arrival in Grange she found that not only the yard but also her garden had been flattened and covered with fresh '2 inch down' quarry stone. She explained that 'all the garden furniture, ornaments, Liscannor flag stones, stepping stones, cut stone pillars, slate, rare plants and shrubs, flowers, bulbs, heathers, ornamental trees had disappeared'.

To secure her site she purchased fence units and temporary fencing couplers on 23<sup>rd</sup> November 2018 and 6/7<sup>th</sup> December 2018 respectively. I am instructed that when the fence was put up initially, this was taken down by others and again when re-erected with the couplers was again taken down by others. See **attached** copy of cheque stub for the fencing and dockets related to collected cash sales for the couplers.

The Development Inspector refers to 'previous enforcement queries in or around November 2018 when a 2 metre high Harris fence was erected around the subject site'. This is the fencing to which I have referred above. He also states that once the fence was removed shortly after the enquiries, no further action was required. I am instructed that the destruction of the garden and stoning of the area was carried out by others and that the dropped kerb line was installed around the perimeter of the site by the City and County Council. I am instructed that initially a raised kerb was installed and this was subsequently replaced in part by a flat kerb.

- g) With regard to the Development Inspector's reference to ownership I am **attaching** herewith a letter dated 19<sup>th</sup> August 2019 from the applicant's Solicitor John Cooke addressed to An Bord Pleanála which forms part of this submission. In this letter Mr. Cooke certifies that the Ms. Reidy has good possessory title to the property.





- h) It is pointed out at this stage that any person has a right to apply for a Declaration on Development and Exempted Development and need not necessarily be the owner of the property.
- i) Furthermore I am instructed that on 21<sup>st</sup> January 2019 having regard to the fact that the garden was destroyed by others and in light of the enforcement queries the applicant requested a pre-planning meeting. See attached application. There is an exchange of emails concluding with a final email of 26<sup>th</sup> February 2019 where the Clerical Officer undertook to forward the applicant's email of 25<sup>th</sup> February 2019 to the Area Planner. You will see from this exchange of emails that the applicant was desperately trying to have the matter resolved in a way that she could protect her property within the Planning and Development Regulations. I am instructed that she was contacted by the Area Planner who told her that she did not require a meeting so long as the wall would be no higher than 1.2 metres. She was concerned that if she went ahead and built the wall that somebody would find a reason to have it knocked and therefore proceeded to make the application. Furthermore I am instructed that she was made aware of the Section 5 procedure by a Limerick City and County Council Planner who advised that if she wanted confirmation in writing this was the way to go.
- j) With regard to Article 9(1)(a)(xi) it is our submission that this is the applicant's property and does not obstruct any public right of way. In addition to Mr. Cooke's letter dated 19<sup>th</sup> August 2019 as at 2012 one will see where there is a raised kerb fronting the buildings and I am instructed that any parking permitted on the site was for the benefit of Mr. Hanly only. See attached photographs circa 1970 and circa 1880-1900.
- k) Site visit  
I visited the site on Thursday 15<sup>th</sup> August 2019 and attach herewith a signed photograph which I took at that time.

### Summary

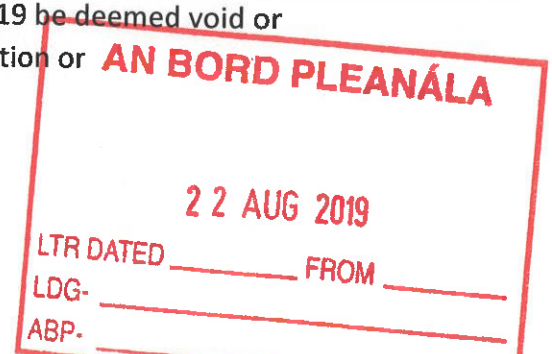
In summary we would not have a difficulty with a Declaration that defines the construction of a 1.2 metre high wall as proposed as 'not exempt development' by virtue of Article 9(1)(a)(iii). However we do not accept that Articles 9(1)(a)(x) and 9(1)(a)(xi) should be included as reasons for the Local Authority's conclusion.

The proposal does not result in a material change of use of the said property.

The garden area was constructed on the footprint of an old building and was for the use and enjoyment of the property.

We request one or other of the following of An Bord Pleanála:

- 1) That the Local Authority's Declaration of 26<sup>th</sup> July 2019 be deemed void or
- 2) That our client be permitted to withdraw the application or





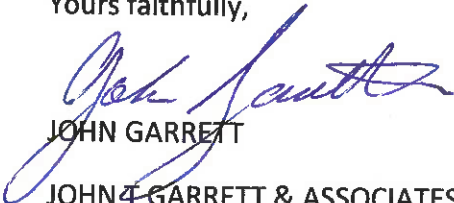


- 3) That a Declaration be provided by An Bord Pleanála concluding that the development is not exempt development by virtue of the wall in its current position endangering public safety but without reference to Articles 9(1)(a)(x) and 9(1)(a)(xi) of the Planning and Development Regulations 2001 (as amended).

I submit that the applicant was left with no choice but to make this referral to An Bord Pleanála and could not leave the Local Authority's conclusions based on Articles 9(1)(a)(x) and 9(1)(a)(xi) on file as a matter of public record go uncontested.

We should be obliged if you would give this submission your consideration and let us have your response in early course.

Yours faithfully,



JOHN GARRETT  
JOHN GARRETT & ASSOCIATES

ENCLS:

- A. Application for Declaration on Development and Exempted Development as received by the Local Authority shown stamped on 2<sup>nd</sup> May 2019 and file copies of drawings unstamped for clarity.
- B. Letter dated 21<sup>st</sup> May 2019 from Limerick City and County Council to the Applicant requesting further information regarding ownership.
- C. Response dated 2<sup>nd</sup> July 2019 from John Cooke Solicitor received by the Local Authority on 3<sup>rd</sup> July 2019.
- D. Local Authority's Declaration No. EC22/19 dated 26<sup>th</sup> July 2019.
- E. Approved Officer's Order dated 26<sup>th</sup> July 2019.
- F. Letter dated 25<sup>th</sup> July 2019 from the Development Inspector to A/Senior Executive Planner enclosing his report.
- G. Development Inspector's Report with photographs attached.
- H. Photographs A1 and B1 dated 19<sup>th</sup> July 2012 and C1 dated 30<sup>th</sup> August 2012 provided by the Applicant.
- I. Letter from Mr. John Hanly received by this office on 21<sup>st</sup> August 2019.
- J. Cheque stub and collected cash sales dockets relating to purchase of Harris fencing and fittings.
- K. Pre-planning meeting request documentation dated 21<sup>st</sup> January 2019 and exchange of subsequent emails.
- L. Old photograph understood to be circa 1880-1900 showing verge between old houses and road.
- M. Letter dated 19<sup>th</sup> August 2019 from John Cooke Solicitor to An Bord Pleanála.
- N. Historic 25 inch map (1888-1913) downloaded from geohive.ie showing where there had been a building on the footprint of the garden created by the Applicant.
- O. Photograph taken by John Garrett of this office during the course of his visit to the site on 15<sup>th</sup> August 2019.
- P. Photograph understood to be circa 1970.



(A)

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LIMERICK CITY & COUNTY COUNCIL  
PLANNING AND ENVIRONMENTAL SERVICES  
SECTION 5 APPLICATION

**DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT**

Applicant's Name: CLAUDIA REIDY

Applicant's Address: ARDYOUL  
KILTALLOCK  
CO. LIMERICK.

Telephone No. 086-2285009

Name of Agent (if any): \_\_\_\_\_

Address: \_\_\_\_\_

**AN BORD PLEANÁLA**  
**22 AUG 2019**  
LTR-DATED \_\_\_\_\_ FROM \_\_\_\_\_  
LDG- \_\_\_\_\_  
ABP- \_\_\_\_\_

Telephone No. \_\_\_\_\_

Address for Correspondence:

AS ABOVE

**Limerick City & County Council**  
**02 MAY 2019**  
**Planning and Environmental Services**

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John & Associates

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AN BORD PLEANÁLA  
LTR DATED 5 AUG 2019  
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John T. Garrett  
& Associates  
- 9 AUG 2019  
**Received**

AN BORD PLEANÁLA  
LTR DATED 22 AUG 2019  
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Location of Proposed development:

GRANGE

KILTALLOCK

CO. DUBLIN

Description of Proposed development:

BOUNDARY WALL. (1.2m.)

Is this a Protected Structure or within the curtilage of a Protected Structure.  
~~YES~~/NO

Applicant's interest in site: OWNER.

List of plans, drawings, etc. submitted with this application:

(a) SEE PRE-PLANNING REF. 10668.

(b) SITE LOCATION MAP.

(c) SITE LAYOUT MAP.

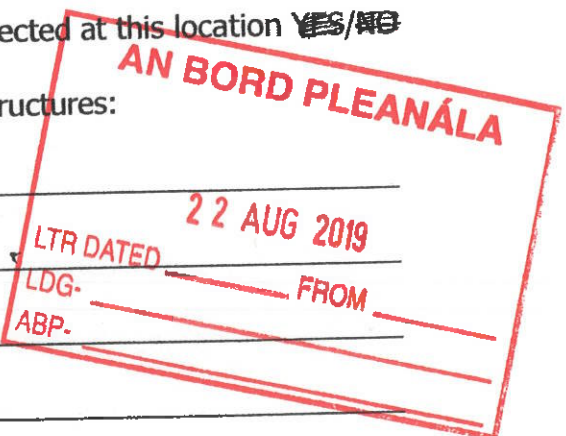
(d) FOR DIMENSIONS AND ELEVATIONS SEE LAYOUT MAP.

(e) FEE 80 EURO. ENCLOSED.

Have any previous extensions/structures been erected at this location ~~YES~~/NO

If Yes please provide floor areas of all existing structures:

N/A



Signature of Applicant (or Agent)

*C. Kelly*

**John T. Garrett  
& Associates**  
- 9 AUG 2019  
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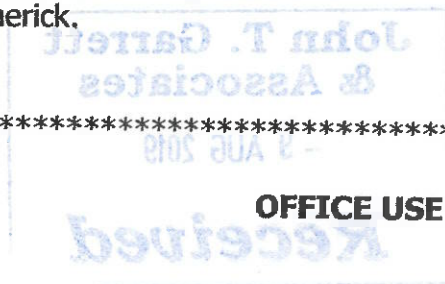
**NOTES:** Application must be accompanied by:

- (a) Fee of €80
- (b) Site location map
- (c) Site layout plan
- (d) Dimensioned plans and elevations of the structure and any existing structures.
- (e) Where the declaration is in respect of a farm building, a layout identifying the use of each existing building together with floor area of each building.

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Application to be forwarded to:

Limerick City & County Council,  
Planning and Environmental Services,  
City & County Council Offices,  
Dooradoyle Road,  
Limerick.



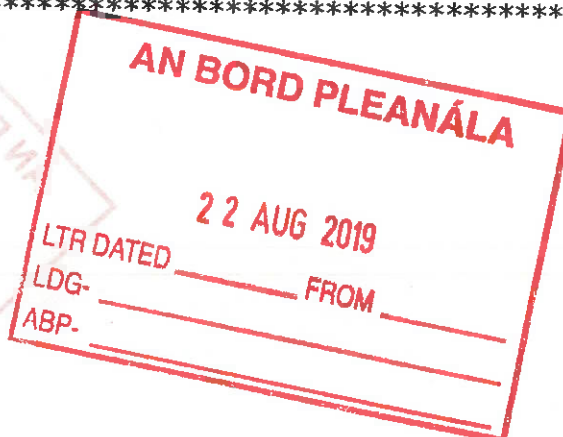
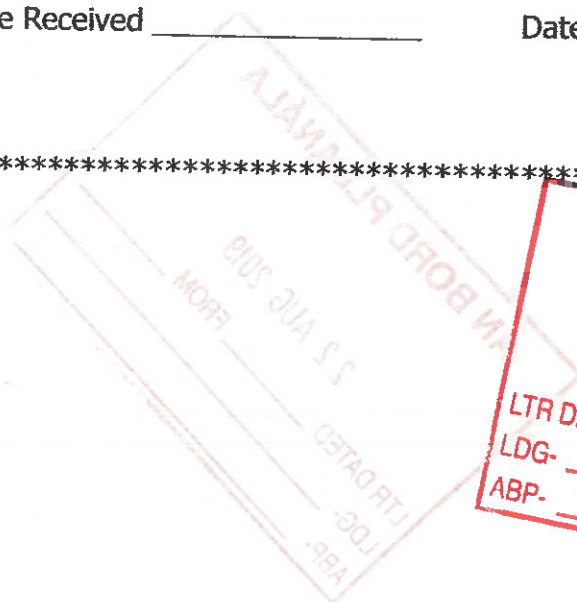
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**OFFICE USE ONLY**

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LIMERICK CITY & COUNTY COUNCIL  
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CLAUDIA REIDY  
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**AN BORD PLEANÁLA**  
  
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 & Associates  
 John T. Garrett

EXEMPTION CERTIFICATES	80.00
GOODS	80.00
VAT Exempt/Non-vatable	

Total/lomlán : 80.00 EUR

Tendered/Tairgthe :  
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AN BORD PLEANÁLA  
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**John T. Garrett  
& Associates**  
- 9 AUG 2019  
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