

Joachim Schaefer
Lecarrow, Spencer Harbour, Drumkeeran,
County Leitrim. N41 NP70

Phone: [redacted] ai [redacted] jojoschf@gmail.com

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA
LDG- 026 817-20
ABP-
13 JUN 2020
Fee: € 220- Type: Cheque
Time: By: Post.

AN BORD PLEANÁLA
18 JUN 2020
LTR DATED _____ FROM _____
LDG- _____
ABP- _____

Date: 15/06/2020

Re.: Appeal

against Declaration regarding Development/Exempted Development
(Section 5 of Planning & Development Acts 2000 – 2019)
of Leitrim County Council

Leitrim County Council Reference Number: ED- 19-25

A Chara,

I am making this Appeal to An Bord Pleanála because I believe the Declaration of Leitrim County Council (Ref. No. : ED- 19-25) is not correct.

Leitrim County Council declares:

“The **repair and improvement of a private road** constitutes development and such development is exempted development”

I am accepting that the 1st column of CLASS 13 of Part 1 of Schedule 2 of the Planning and Development Regulations, 2001-2020 would support this notion subject to that the condition in the 2nd column is fulfilled.

The issues I have with the content of the Section 5-Declaration of Leitrim County Council are as follows:

In my opinion and contrary to the opinion of Leitrim County Council unauthorised and not exempted development took place in respect to the entire road(s) under construction and is not limited to “The **creation of a private road to access agricultural structures under construction**”.

Leitrim County Council in their letter to me dated 8th April 2020 (copy enclosed) declaring respectively defining the private road to access agricultural structures

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under construction as a “spur road off the reconstructed road towards proposed stables which are under construction”.

For Clarification: Leitrim CoCo is naming, defining the newly constructed road towards proposed stables a spur road.

This is the small part of the entire new road construction development which Leitrim CoCo determined as not exempted development.

As regards to the road construction leading from the public road towards Lough Allen. I am stating, contrary to what Leitrim CoCo is declaring, that this road construction development does not constitute **repair and improvement of a private road** nor constitutes this road construction development reconstruction of a road.

I know this due to my local knowledge, living in the neighbourhood since ca. 26 years, hunting on this land over which I own the sole and exclusive sporting which I bought together with my farm where I am living now for ca. 26 years. Furthermore I know the land where the new road construction took place because I was a good friend of the former occupier (late Shaune Fee) of this land and the house on it.

This massive road construction is not exempted development because it is not improvement of a private street, road or way, being works carried out on land within the boundary of a street, road or way, and the construction of any private footpath or paving.

The massive new road construction took place along the line which could most conveniently used (taking into account the pattern of the land and the gradient of the land) and indeed was used in the past to cross and access fields by tractor, farm machinery, and for shifting livestock and accessing pasture and meadows for making silage or saving hay.

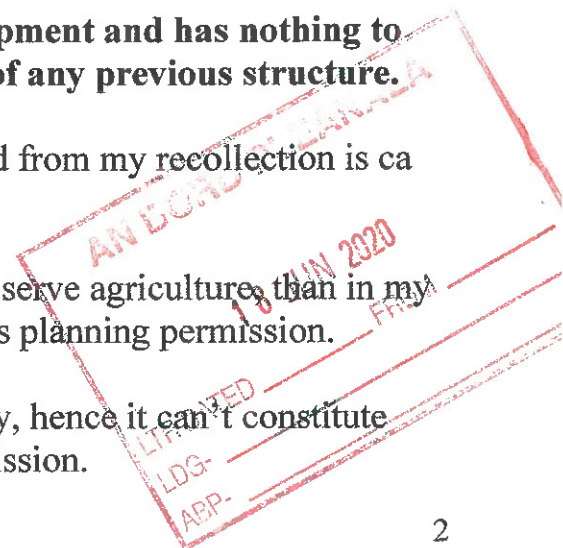
But at now time was there any form of stoned, metalled or paved path or road anywhere in these fields where the massive new road is constructed.

This road construction is an entirely new development and has nothing to do with repair, improvement or reconstruction of any previous structure.

Furthermore the road exceeds 3 metres in width and from my recollection is ca 12 feet respectively 3.6 metres wide.

If the new massive road construction is intended to serve agriculture, than in my opinion it is not exempted development but requires planning permission.

This road is not accessing forests or serving forestry, hence it can't constitute exempted development but requires planning permission.



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At the time of my section 5 request to Leitrim County Council I was assuming that the road was not constructed to serve agriculture. At this time there were no stables under construction which are accessed by the newly constructed road. I learned about the stable developments under construction respectively agricultural structures under construction only through the Section 5 Declaration Letter of Leitrim CoCo.

Please note, that not only the spur road is needed to access the stables under construction via vehicles, but without the western part of the new road under construction or newly constructed road even the spur road can't be accessed by vehicles hence without this road enabling access to the spur road the stables cannot be accessed.

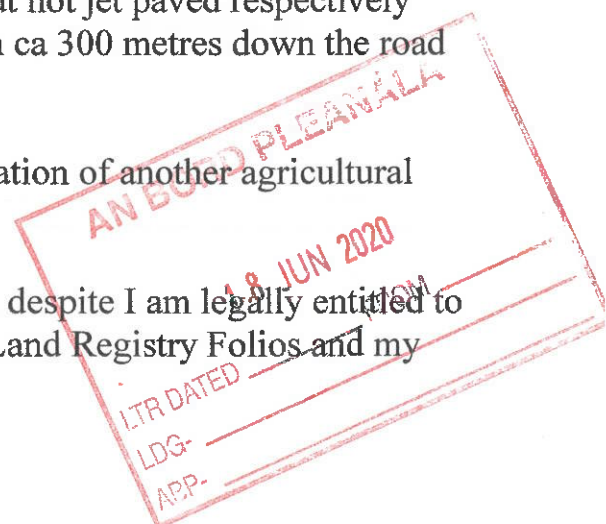
The criteria applied by Leitrim County Council itself in their letter dated 8th April 2020 when determining if the spur road is a private road or not, is if the spur road is intended as a private footpath or paving or an agricultural road upon which motorised vehicles will pass to access a stable development. Leitrim CoCo writes, as regards to the spur road: "However, the Planning Authority does not believe that it is intended as a private footpath or paving but rather as an agricultural road upon which motorised vehicles will pass to access a stable development."

If they come to this conclusion that the spur road is not a private how can they come to a different conclusion in respect to the road other than the spur road. At least parts of the road if not even the entire newly constructed road being not the spur road is not intended to be used as a private footpath or paving but rather as an agricultural road upon which motorised vehicle will pass to access stable development.

Furthermore at the time of my Section 5 Declaration Request to Leitrim CoCo there were another big square area excavated (but not jet paved respectively metalled) just beside the road under construction ca 300 metres down the road towards Lough Allen.

It might have been the preparation for the foundation of another agricultural structure. I haven't yet found out.

I and others have difficulties to access their land despite I am legally entitled to access their land which is documented on their Land Registry Folios and my LM2S Land Registry Folio.



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But they are tnis aggressive to me since I complained with the owners of the land where the road|(s) are under construction about their blocking of the public road traversing their property.

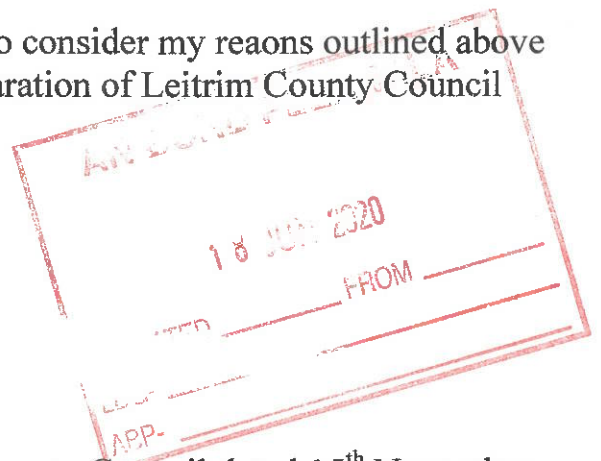
Anyhow for all the above reasons I am of the opinion that the entire new road(s) [for which I looked for a Section 5 Declaration of Leitrim County Council] constitutes development and that this development is not exempted development.

I am asking An Bord Pleanala to correct the Section 5 Declaration accordingly.

Thank you very much for taking your time to consider my reaons outlined above for asking you to correct the Section 5 Declaration of Leitrim County Council dated 27th day of March 2020.

Yours sincerely,


Joachim Schaefer



Please find enclosed with this Appeal,

a copy of my Section 5 request to Leitrim County Council dated 15th November 2019 ; Declaration regarding Development/Exempted Development (Section 5 of Planning & Development Acts 2000 – 2019) ;

a copy of Leitrim County Council Declaration regarding Development/Exempted Development (Section 5 of Planning & Development Acts 2000 – 2019 dated 27th day of March,2020 ; Leitrim County Council Reference Number: ED- 19-25

a copy of Leitrim County Council letter to me dated 8th April 2020.
The heading of the letter is: WARNING LETTER PLANNING & DEVELOPMENT ACT 2000-2019, SECTION 152 ; Leitrim County Council Reference Number: E/19/033

Please find enclosed also a cheque of €220.00 to pay the relevant fee for this appeal.



Comhairle Contae Liatroma Leitrim County Council

Áras an Chontae
Cora Droma Rúisc
Contae Liatroma
N41 PF67

Áras an Chontae
Carrick on Shannon
Co. Leitrim
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This matter is being dealt with by: **Bernard Greene 071 9620005 Ext. 504**

27th March 2020

Our Ref: ED19 numbers 25,28,29 &30

Joachim Schaefer.
Lecarrow,
Drumkeerin,
Co. Leitrim.


Re: Request for Declarations Regarding Development/Exempted Development

- 1) ED-19-025 – Application received on 15th November 2019
- 2) ED-19-028 – Application received on 10th December, 2019
- 3) ED-19-029 – Application received on 10th December, 2019
- 4) ED-19-030 – Application received on 10th December, 2019

A Chairde,

I refer to your applications received as above and enclose herewith a Declaration in each regarding Development/Exempted Development in accordance with Section 5 of the Planning and Development Acts 2000 – 2019.

Is Mise, le Meas,


Administrative Officer
Planning Department
FK/BG



Leitrim County Council



**Declaration regarding Development/Exempted Development
(Section 5 of Planning & Development Acts 2000 – 2019)**

Leitrim County Council Reference Number: ED- 19-25

WHEREAS a question has arisen as to whether:

- **the repair and improvement of a private road and the creation of a private road to access agricultural structures under construction** constitutes development and, if so, whether such development is or is not exempted development.

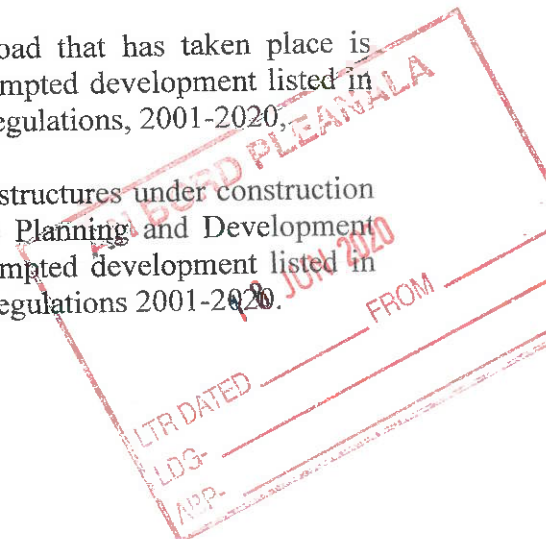
AND WHEREAS the said question was referred to Leitrim County Council by on the 15th November 2019, by Mr. Joachim Schaefer of Leecarrow, Drumkeeran, Co. Leitrim with respect to a property at Drummans Lower, Drumkeeran, Co. Leitrim;

AND WHEREAS Leitrim County Council, in considering this referral, had regard particularly to -

- a) Sections 2, 3 and 4 of the Planning and Development Acts, 2000-2019;
- b) Article 6 (1) and Article 9(1) of the Planning and Development Regulations, 2001-2020;
- c) Part 1 of Schedule 2 Exempted Development – General contained in the Planning and Development Regulations, 2001-2020.

AND WHEREAS Leitrim County Council has concluded that -


- a) the repair and improvement of a private road of approximately 414 metres in length and 3 metres in width and the construction of a private road involves the carrying out of works, as defined under section 3(1) of the Planning and Development Acts, 2000-2019, and is, therefore, development,
- b) the repair and improvement of any existing private road that has taken place is considered to come within the scope of Class 13 of exempted development listed in Part 1 of Schedule 2 of the Planning and Development Regulations, 2001-2020,
- c) the construction of a private road to access agricultural structures under construction does not come within the scope of section 4(1) of the Planning and Development Acts, 2000-2019 or Class 13 or any other class of exempted development listed in Part 1 of Schedule 2 of the Planning and Development Regulations 2001-2020.



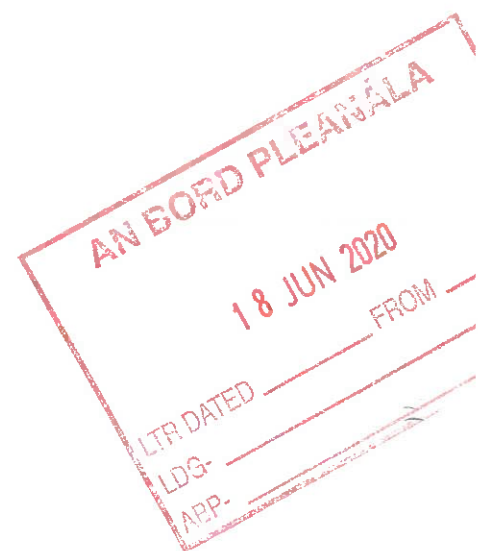
2.

NOW THEREFORE Leitrim County Council, in exercise of the powers conferred on it by Section 5(2)(a) of the Planning and Development Acts, 2000-2019, as amended, hereby declares that:

- The **repair and improvement of a private road** constitutes development and such development is exempted development, and;
- The **creation of a private road to access agricultural structures under construction** constitutes development and such development is not exempted development.


Administrative Officer
Planning Department

Dated this 27th day of March, 2020





Comhairle Contae Liatroma Leitrim County Council

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Cora Droma Rúisc
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THIS MATTER IS BEING DEALT WITH BY: **Bernard Greene** ☎ 071 9620005 Ext. 504

Our ref: E/19/033

**Joachim Schaefer,
Lecarrow,
Drumkeeran,
Co. Leitrim.**

8th April 2020

WARNING LETTER PLANNING & DEVELOPMENT ACT 2000 - 2019, SECTION 152

**Re: Unauthorised Development at Drummans Lower, Drumkeeran, Co. Leitrim
E/19/033 – Alleged construction of roadways and hardstand for other than
agricultural/forestry purposes at Drummans Lower, Drumkeeran, Co Leitrim**

Dear Sir,

I refer to the above matter and your complaint in this regard.

The Planning Authority issued a Warning Letter to Mr. Matt Fisher and Ms. Maria Carey on 22nd November 2019 with respect to the allegation of unauthorised development having occurred on lands in their ownership at Drummans Lower, Drumkeeran, Co. Leitrim.

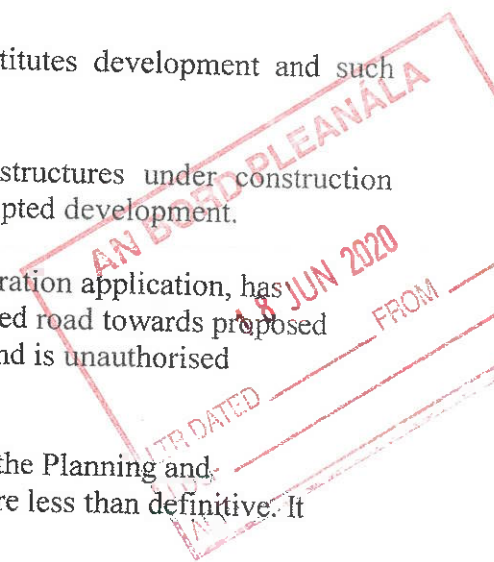
As you are also aware, a Section 5 Declaration application was submitted by you on the 15th November 2019 in which you referred the question to the Planning Authority whether **the repair and improvement of a private road and the creation of a private road to access agricultural structures under construction** at the property of Mr. Matt Fisher and Ms. Maria Carey was development and whether such development is or is not exempted development. Leitrim County Council have determined that

- The **repair and improvement of a private road** constitutes development and such development is exempted development, and;
- The creation of a private road to access agricultural structures under construction constitutes development and such development is not exempted development.

The Planning Authority, through the accompanying Section 5 Declaration application, has determined that the development of the spur road off the reconstructed road towards proposed stables which are under construction requires planning permission and is unauthorised development.

The Planning Authority considers that the provisions of Class 13 of the Planning and Development Regulations 2001-2020 (Part 1 of Schedule 2 refers) are less than definitive. It

Beidh Failte roimh freagra tre Ghaeilge




allows for the 'construction of any private footpath or paving', subject to the limitation that the width of any such private footpath or paving shall not exceed 3 metres. In this instance, the width of the structure approximates 3 metres. However, the Planning Authority does not believe that it is intended as a private footpath or paving but rather as an agricultural road upon which motorised vehicles will pass to access a stable development.

The Planning Authority does consider that the indiscretion warrants the issuing of an Enforcement Notice under Section 154 of the Planning and Development Acts, 2000 – 2019, at this time, which would require the removal of the spur road and the reinstatement of the lands to its previous agricultural condition. The Planning Authority has suggested that the owners should be afforded an opportunity to make a planning application seeking to retain and complete the subject roadway.

Where the current Covid -19 restrictions allow, the Planning Authority will revisit this matter on **June 30th 2020**. The owners have been advised to submit the required planning application for retention before this date.

Yours faithfully,


ADMINISTRATIVE OFFICER
PLANNING SECTION.
BG/FK.



COMHAIRLE CHONTAE LIATROMA
LEITRIM COUNTY COUNCIL



Declaration Regarding Development / Exempted Development
(Section 5 of Planning & Development Acts 2000 - 2018)

APPLICATION FORM Please note: a fee of €80.00 must accompany this form

- Name of person seeking declaration [Applicant] JOACHIM SCHAEFER
DATE : 15 / 11 / 2019
- Postal Address of Property / Site or Building to which the declaration sought relates
DRUMMANS LOWER
DRUMKEERAN, COUNTY LEITRIM
- Applicant's legal interest in the land or structure. [Give details] I OWN SUBSIDIARY PROPERTY RIGHTS OVER THIS PROPERTY, AS I AM THE REGISTERED OWNER OF FOLIO LM2S, WHICH ARE REGISTERED ON FOLIO LM006.
- State whether or not the applicant is the owner of the property in question [Yes] or [No] and if {No} please provide the information under item 11 at the end of this form
- State if owner / occupiers are aware of the current application for Declaration under S 5 of the Act / [N]
- Type of declaration sought : IS THIS CONSTRUCTION AS DESCRIBED IN THE ATTACHMENT
a. ~~That the proposal is or is not development within the act [Yes] or [No] and if {yes}~~
b. ~~That the development is or is not Exempt development [Yes] or [No]~~
DEVELOPMENT AND IF SO, IS IT EXEMPTED DEVELOPMENT?
- Provide full description of the question / matter / subject which arises wherein a declaration on the question is sought?

PLEASE READ THE TEXT IN THE ATTACHMENT TO THIS FORM, WHICH IS ATTACHED TO THIS FORM.

€80.00 cash received
15 NOV 2019

AN BORD PLEANALA
18 JUN 2020
FROM
LTDG-
APP-

Attachment to the Form -
Declaration Regarding Development / Exempted Development

To: Leitrim County Council, Carrick on Shannon

Date: 15/11/2019

By Joachim Schaefer, Lecarrow, Drumkeeran, County Leitrim.

Answer to Question 7 – Provide full description of the question / matter / subject which arises
wherein a declaration on the question is sought:

On Thursday 14/11/2019 we noticed again the continuation of the construction of the road construction on private land going on. We were surprised by the extension of the constructed roads at address: Drummans Lower, Drumkeeran, Co. Leitrim.

Owners of the property are: Matt Fisher and Maria Carey.

This road is not in the immediate vicinity of the house. This road is not for agriculture and/or forestry purposes. The road starts as a turn to the right from the road which traverses through Folios LM8006 and LM3994F into Folio 19090 and is located opposite the unauthorized located caravan (which is already there for more as 2 years and has electricity connection).

This road which is the matter of this Declaration and Question goes direction to Lough Allen and I do not know how close to the shore of Lough Allen this road will be built. Lough Allen has Water Framework Directive Status: Moderate. At least half to $\frac{3}{4}$ length of the being constructed road slopes more down to the lake and surface run off water from the road drains immediately into Lough Allen.

The road preparation to take the stone aggregate includes substantial depth of excavation of soil. The entire channel is ca. 12 feet wide and is lined with plastic geo fabric before the hard-core is put on top. In my opinion there is no need for geo fabric due to the fact of the very solid/impermeable blue daub clay in the land. The excavated material is heaped next to the constructed road.

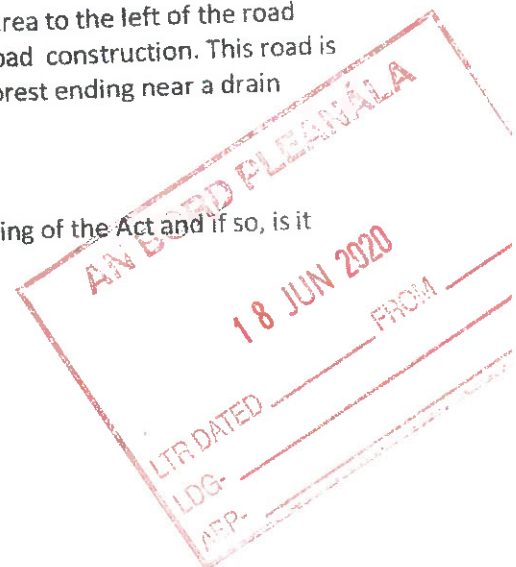
As well - an unauthorised road ending with a bigger road/parking? area to the left of the road under construction has been constructed as part of this overall latest road construction. This road is located towards the Northern boundary along Folio LM19090 Coillte Forest ending near a drain which drains into Lough Allen.

Type of declaration sought:
Is this construction described above Development within the meaning of the Act and if so, is it Exempted Development?

Kind regards,



Joachim Schaefer,
Lecarrow, Drumkeeran, Co. Leitrim.



{The applicant is advised to set out the matter on which the declaration is sought, as comprehensively as possible and should use additional material / pages if necessary, to give as full account as possible of this matter A site map to a scale of not less than 1:2500 based on the Ordnance Survey map for the area, shall be provided to identify the lands in question.}

Additional accompanying documentation provided[Yes] / [No]

The applicant is advised that notwithstanding the completion of the above application form, that the planning authority may require the applicant to submit further information with regard to the request in order to enable the authority to issue the declaration on the question.

The applicant is also advised that the Authority may also request other persons, other than the applicant to submit information on the question which has arisen and on which the declaration is sought:

FOR OFFICE USE ONLY

Date Received..... Fee of €80.00 Paid. [Yes] / [No]

Date acknowledged..... Reference No.: -ED- _____

Decision:.....

Date declaration made.....

M.O. No.....

APPLICATION FORM : ADDITIONAL CONTACT INFORMATION :
See next page, which must be completed.

AN BORD PLEANÁLA
18 JUN 2020
LITIGATED _____
LDG- _____
MFP- _____
FROM _____

↑ NORTH

Lough
Allen



DRUMMANS
LOWER,
DRUMKEERAN,
Co. LEITRIM

ANDRU PLANALA

18 JUN 2020

DATE DATED _____ FROM _____

LEG. _____

REP. _____

CS

15-11-2019
Bucklin Shoh

CS 11/11/2019
CONSTRUCTION
OF DRAWS

