

Joachim Schaefer, Lecarrow, Spencer Harbour, Drumkeeran,

Co. Leitrim, Eircode: N41 NP70

To The Secretary  
An Bord Pleanala  
64 Marlborough Street  
Dublin 1  
Eircode: D01 V902

AN BORD PLEANALA  
LDG- 029798-00  
ABP-  
27 AUG 2020  
Fee: € 50  
Time: - Type: cheque  
By: Roy. Post exp. part

Date 24.08.2020

Reference: ABP Case Number: ABP-307371-20

Planning Authority Reference Number: ED-19-25

Submission or Observation which I am requested by An Bord Pleanala (with letter dated 06.08.2020) to make in relation to the submission dated 21<sup>st</sup> July, 2020 from Leitrim County Council

Ref: Whether or not the repair and improvement of a private road and the creation of a private road to access agricultural structures under construction is or is not development and is or is not exempted development.

Drummanns Lower, Drumkeeran, Co. Leitrim

Dear Madam,

Dear Sir;

Thanks for giving me the opportunity to make this Observation in relation to the submission dated 21<sup>st</sup> July, 2020 from Leitrim County Council.

The entire road development which is subject to my Section 5 referral is a type of development which falls not under the category improvement of a private street or private road.

At this location there was never a private street or private road and not even a permanent track or path or way.



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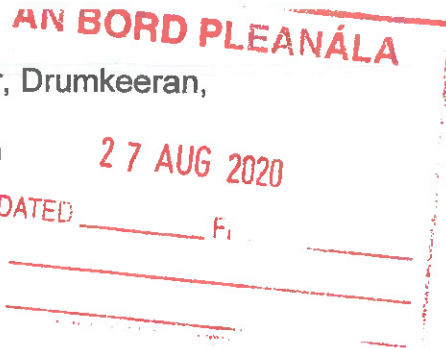
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This is correct as far as the spur road to the stables is concerned and is as well correct as far the road is concerned which leads down towards Lough Allen. Even a way in the form of a track or path would firstly only be laid down for walking and treading or secondly it would be a line of marks left or beaten by use rather than construction.

In the case which is for consideration by ABP it is clear that what can or could be seen on one satellite or aerial photo is only a temporarily line appearing as a result of an activity in the ordinary course of agriculture when driving in and out and from one plot to another one at the time and for the purpose of fodder making and saving and bringing out of the field round bales of hay and silage. No line or marks could be seen where the upper part of the road is constructed now. The former google satellite photo was taken at a time of fodder making. But the new google satellite photos show the width of the road and the excavated material along the road creating a kind of embankment for large parts of the newly constructed road where the road surface is constructed above the level of the land it crosses. These embankments are clearly being part of the road and adding further to the width of the road whose surface area alone is already exceeding 3 metres. In the past before the new road construction development there was not only not a constructed (laid down) street, road, path or track or way but even no lines or marks left by use, certainly not even temporarily marks during the last several years. At the time and for years before the road construction took place there was not even a trace of a permanent line of marks left by use. The present owners have some all terrain vehicles which they use to drive on their land and with which they explore their land and with which they drove respective drive to their horse pasture. Driving over grassland, pasture or meadows leaves some temporarily marks on the grass especially if the grass is long and wet. But these markings are only of temporarily nature.

Therefore the road development does not fall under repair or improvement but constitutes road construction. Certainly this road construction development does not constitute repair or improvement of a private street, road or way, because nothing like this was ever in existence and hence nothing like this could be repaired or



improved, because physical corporal respectively tangible things can only be improved when in existence.

But even if there would have been something in place which could be regarded as a way, the repair or improvement went far beyond what would constitute the repair of a way having in mind the massive scale, width and depth of the constructed road.

Now it is clear that this road construction development falls not under the category repair and improvement.

Would it instead fall under the exempted development category of construction of a private footpath or paving? This as well can be clearly denied due to the massive scale of the road construction development and the depth of the body and the width of the newly constructed road exceeding 3 metres and the embankments forming part of the road and adding significantly to the width of the newly constructed road. It is a road designed for heavy traffic. The entire newly constructed road is designed and constructed to serve all types of vehicles including heavy agricultural vehicles and machinery from where the newly constructed road starts (from the road traversing the property in south north direction) up to the beginning of the spur road and further to the newly constructed buildings, referred to by Leitrim County Council as stables. The same is true for the other part of the road leading down to Lough Allen and to lay bays or areas excavated probably in preparation for construction of more additional agricultural buildings or stables. Up to where the spur road to the constructed stables starts it is anyhow without doubt no private road because it is needed, used and designed and intended to be used for accessing the spur road to the stables. Even the older satellite photo of Google map does not show any line or marks where the upper part of the road leading eastwards towards Lough Allen is constructed.

This road in its entire length does not constitute the construction of a private footpath or paving. Even the most generous interpretation cannot arrive at this result.

Furthermore in assessing this or coming to an adjudication regarding this road construction development, the intention of the legislator of this text of CLASS 13 of Part 1 of Schedule 2 of Planning and Development Regulations 2001 - 2020 has to be found out, researched, examined and taken into account. It can clearly be



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concluded that it was not the legislator's intention to allow the type of road construction development which is subject matter of this referral to avail of the benefit of being exempted development.

Regarding the statement of Leitrim County Council that my actual question in my referral was not clearly stated on the application form and for this reason a degree of interpretation was required by the Planning Authority as to what the substantive question was asked by me, I would like to respond as follows.

I have described the in my opinion unauthorized and not exempted road construction development sufficiently without prejudice. At this time I didn't know anything about the intended use and purpose of the road construction development.

When I submitted my Section 5 request the stables were not even under construction.

The Leitrim County Council Planning Authority actually created and answered questions which I had not asked.

Their formulation of the questions shows a significant amount of prejudice and bias of the Planning Authority.

They take it for granted in the question they formulated and answered that my Section 5 request is about the repair and improvement of a private road, where indeed it has nothing to do with repair and improvement of anything physical in existence on the land as I have explained above. I hadn't asked this.

Furthermore the creation of a private road is not exempted development under Class 13 irrespectively if it accesses agricultural structures or not.

In Accordance to CLASS 13 only the construction of a private footpath or paving is exempted development and even then only when the width is not exceeding 3 metres.

I have local knowledge because I am the full owner of the sole and exclusive sporting rights registered as a burden on the Folio of this land which is referring to my sporting rights of Land Registry Folio LM2S of which I am the full owner. During my regular exercising of the sporting rights over this land where the road is now







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constructed neither myself nor friends who exercised (authorized by me) my sporting rights did ever come across anything physical like a street, road, way, path, track, paving where the road is constructed now.

Finally I would like to quote Emmett Johnston (ecologist with NPWS) who writes in his email to Bernard Greene (Senior Planner) that the fact that species are on Annex II of the Directive means that they are endangered, rare or vulnerable across the EU and therefore any loss of Annex II species or their habitats is undesirable and to be avoided wherever possible.

Now my conclusion out of this is, that this out of proportion road construction development does not take into account the conservation needs of the Marsh Fritillary (*Euphydryas aurina*) irrespective of the fact that in my opinion it constitutes development which is not exempted from planning permission and therefore is unauthorized development.

I am respectfully asking An Bord Pleanála to consider my above delivered arguments in their decision making.

Yours sincerely

  
Joachim Schaefer

P.S.: please find enclosed cheque of €50 to pay for this observation.

