

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1,
D01 V902.

AN BORD PLEANÁLA	
LDG-031702-20	
ABP-	
20 OCT 2020	
Fee: € 220	Type: cheque
Time: /	By: Reg post 12 th October 2020

Dear Sir / Madam,

In application for a Referral Under Section 5(3)(a) of the Planning & Development Act 2000 (as amended) -

Please find enclosed

1. Letter of application for Referral.

Copies of documentation between myself and Galway City Council including -

- a. Planning Declaration from Galway City Council dated 24th September 2020.
- b. Letter to Galway City Council requesting a Declaration under Section 5(1) of the Planning and Development Act 2000 and clarifications sought therein.
- c. Site Location Map.
- d. Photographs of said gateway.
- e. Copy of Inspectors Report ABP-302804-18 (as cited in declaration request (b))
- f. Copy of Board Order ABP-302804-18 (as cited in declaration request (b))
- g. Copy of PL 61.094183 (as cited in declaration request (b))
- h. Copy of PL 73.096426 (as cited in declaration request (b))
- i. Copy of other communications -
 - i. From GCC - 23rd July 2020.
 - ii. Reply - 28th July 2020
 - iii. From GCC - 10th August 2020.
 - iv. Reply - 15th August 2020
- j. Cheque €220 in payment for Referral.

If you have any queries please do not hesitate to contact me.

Kind Regards


Tom Barry
0872356619
tljbarry@gmail.com

31 The Maples,
Dr. Mannix Road,
Salthill,
Galway.

An Bord Pleanála,
64 Marlborough Street,
Dublin 2

AN BORD PLEANÁLA	
20 OCT 2020	
LTR DATED _____	FROM _____
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ABP- _____	

Referral Under section 5(3)(a) of the Planning & Development Act 2000 (as amended)

Sir/madam,

I wish to refer a Declaration issued under section 5(2)(a) of the Planning and Development Act 2000 (as amended) for review. The Declaration was issued by Galway City Council and is dated 24th September 2020, copy of Declaration attached (Galway City Council Ref: P/DC/3/13/20).

I am also attaching a copy of all the documentation I submitted to Galway City Council in relation to the Declaration as originally sought. I request that An Bord Pleanála consider this documentation as part of this review. The question put to the planning authority and that is now before An Bord Pleanála is as follows:

'Whether the opening of a pedestrian gateway from the rear of the house into an area of public open space at No. 31 The Maples, Dr. Mannix Road, Salthill, Galway City, is or is not development or is or is not exempted development.'

I hold that the subject gateway is development and is exempted development. The grounds for this position are as laid out in the attached documentation originally submitted to Galway City Council.

In relation to the Declaration as issued by Galway City Council I wish to comment as follows:

- In the Declaration it appears to be argued that because the subject gateway was not specifically referred to in Condition No. 11 of PL 61.094183, it is de-exempted with reference to Article 9(1)(a)(i) of the Planning & Development Regulations. I contest this interpretation as it would nullify and render the function of exempted development regulations provided for under section 4(2) of the Planning & Development Act 2000 (as amended) meaningless. If it was the intention of the consent authority to prohibit the insertion of a gateway in this wall it would have to have been clearly stated in Condition No. 11 of PL 61.094183. The condition contains no such prohibition and therefore the gateway does not contravene the condition.
- With reference to the citing of section 4(1)(h) of the Act of 2000 in the Declaration, I would draw An Bord Pleanála's attention to the fact that this provision was not cited by the planning authority in its initial letter concerning

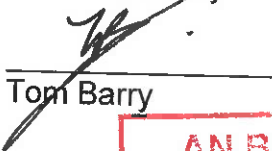
the gateway dated 10/08/2020 (copy enclosed). I suggest this displays inconsistency and uncertainty on the matter by the planning authority. I also note that in its deliberations on similar referrals relating to the insertion of gateways in boundary walls, An Bord Pleanála did not consider this provision applicable (ref. An Bord Pleanála reference cases ABP-302804-18, RL3380 and RL2711). Notwithstanding the planning authority's reference to section 4(1)(h), the provisions of section 4(2) and the regulations to which it gives rise, must be considered.

- With reference to the section titled 'Legal Interest' in the Declaration, I hold that this is of no relevance to the specifics of the question now before An Bord Pleanála.

Having regard to the above and the documentation attached as previously submitted to Galway City Council, I invite An Bord Pleanála to determine as follows:

'That the opening of a pedestrian gateway from the rear of the house into an area of public open space at No. 31 The Maples, Dr. Mannix Road, Salthill, Galway City, is development and is exempted development.'

Yours sincerely


Tom Barry

AN BORD PLEANÁLA	
20 OCT 2020	
LTR DATED _____	FROM _____
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ABP- _____	



Comhairle Cathrach na Gaillimhe
Galway City Council

Halla na Cathrach
Bóthar an Choláiste
Gaillimh
H91 X4K8

City Hall
College Road
Galway
H91 X4K8

Tom Barry,
31 The Maples,
Dr. Mannix Road,
Salthill,
Galway. H91 RX 7K

AN BORD PLEANÁLA

20 OCT 2020

LTR DATED _____ FROM _____

LDG- _____

APP. _____

Our Ref: P/DC/3/13/20

21st September, 2020

**Planning Declaration under Section 5 of the Planning
& Development Act, 2000 (as amended).**

Re: Construction of gateway in rear boundary wall to facilitate pedestrian access from the garden to the area of public open space at the rear of dwelling. The purpose of the gateway is to facilitate direct access for children to the area of public open space. The gateway is 1.30m high by 0.87m wide.

At: 31 The Maples, Dr. Mannix Road, Salthill, Galway H91 RX 7 K

A Chara,

I refer to your recent application for a declaration of exempted development in relation to the above and I wish to inform you that a declaration of exempted development is refused for the following reasons:-

With regards to the definition of "Development", this is defined under Section 2 of the Planning and Development Act, 2000, as amended, which states that " 'development' has the meaning assigned to it by section 3 " .

In this case Section 3 (1) of the Planning and Development Act, 2000, as amended, states " In this Act, "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".

In this instance, the insertion of a gateway in the rear boundary wall, which is a structure, and the works which have occurred, namely the insertion of a gate, are material changes in the rear boundary wall, therefore, these works are considered to be "development" as defined in the Act.

Having regards to the above, the Planning and Development Regulations, 2001, as amended, Article 9, 1 (a) (i) states:

- “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 contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act”.

In this instance Condition No. 11 of Pl.Ref.No. 57/97 (ABP Ref.61.094183) relates to this site and states:-

- (a) Screen walls in stone, brick or similar materials not less than two metres high and suitably capped and rendered shall be provided at the necessary location so as to screen rear gardens from public view. Details of the specific type, location and extent of walling shall be submitted to and agreed with the Planning Authority prior to the commencement of development.
- (b) Rear boundary walls between rear gardens shall be 1.8 metres high and of concrete block construction.
- (c) A screen wall 1.80 metres high and extending for a minimum of three metres from the rear wall of the house towards the rear of the site shall be erected between all semi-detached dwelling houses.

Having regards to the above, as it is established that the works are considered ‘development’, the condition does not mention the insertion of a gate as part of the permitted development and specifies the rear boundary wall to be 2.0 metres high and of concrete block construction. In this instance the insertion of the gateway would contravene the attached condition which directs the form of development to occur along the rear boundaries of the dwelling, and in this instance would not be an exempted development.

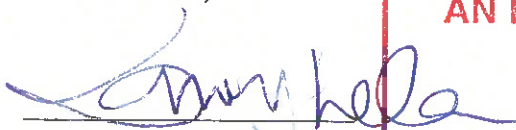
In addition to the above, it is noted under S.4 (1) (h) of the Planning and Development Act 2001, as amended, states “Development consisting of the carrying out of works for the maintenance, improvement or other alteration of any structure, being works which affect only the interior of the structure or which do not materially affect the external appearance of the structure so as to render the appearance inconsistent with the character of the neighbouring structures.” The insertion of the gateway in the rear boundary wall, which as outlined above is development, has materially affected the external appearance of the structure (rear boundary wall) and has rendered the appearance inconsistent with the character of the neighbouring structures (adjacent boundary walls) and in this instance would not be an exempted development.

Legal Interest:-

As highlighted above the constructed gateway accesses onto an area of communal open space, the removal of a boundary wall and construction of a gateway allowing access onto an area of communal space would require consent from any co-owners of the boundary wall and the adjacent landowners of the communal open space. It should also be noted that under Section 34 (13) of the Planning and Development Act 2000 (amended), provides that "a person shall not be entitled solely by reason of a permission under this section to carry out any development." In this regard, it is pointed out that matters pertaining to title of property, including legal rights of way are not for the Planning Authority and An Bord Pleanála to determine. The parties involved can have recourse to the Courts to settle any such questions.

However, it must be emphasised that this opinion is given without prejudice to the provisions of Section 5(3) of the Planning & Development Act 2000. "Where a declaration is issued under this section, any person issued with a declaration may, on payment to the Board of such a fee as may be prescribed, refer a declaration for review by the Board within 4 weeks of the date of the issuing of the declaration".

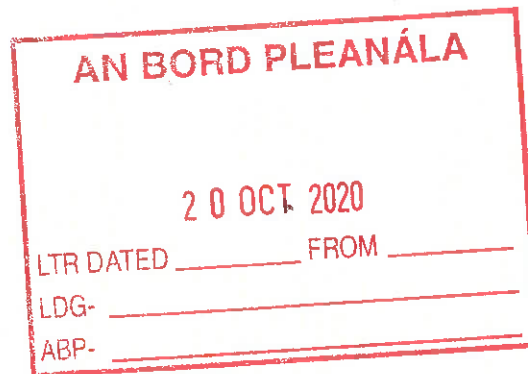
Mise le Meas,



**A/Director of Services,
Planning Department.**

AN BORD PLEANÁLA	
20 OCT 2020	
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LDG- _____	
ABP- _____	

The Planning Department,
Galway City Council,
City Hall,
College Road,
Galway



31 The Maples,
Dr. Mannix Road,
Salthill,
Galway.

**Request to Galway City Council for a Declaration under section 5(1) of the
Planning and Development Act 2000 (as amended)**

Dear sir/madam,

You are requested to treat this letter and attached documentation as a formal request for a Declaration under section 5(1) of the *Planning and Development Act 2000 (as amended)* concerning a question that has arisen regarding a development and whether it is or is not exempted development.

I believe that the development in question is exempted development and am seeking a Declaration on that effect from Galway City Council.

The Question

The question I wish to put to Galway City Council is as follows:

'Whether the opening of a pedestrian gateway from the rear of the house into an area of public open space at No. 31 The Maples, Dr. Mannix Road, Salthill, Galway City, is or is not development or is or is not exempted development.'

Development description

I constructed a gateway in the rear boundary wall of my back garden to facilitate pedestrian access from the garden to the area of public open space at the rear of my dwelling. The purpose of the gateway is to facilitate direct access for my children to the area of public open space. The gateway is 1.30 m high by 0.87 m wide. The opening was finished in plaster to match the existing finish of the boundary wall. The height of the rear wall remains unaltered. The gate is constructed of vertical timber boarding and is opaque. I attach a site location map and a number of photographs of the gateway.

Legislation relied upon

I accept that the works carried out constitute development having regard to Section 2(1) and Section 3(1) of the *Planning and Development Act 2000 (as amended)* in relation to the definition of 'works' and 'development'.

However, I hold that, with reference to Section 4(1) and Section 4(2) of the *Planning and Development Act 2000 (as amended)* and Article 6(1) and Schedule 2, Part 1, Class 5 of the *Planning and Development Regulations 2001-2019*, the development is exempted development.

In particular, I hold that Class 5 of Part 1 of Schedule 2 to the above mentioned Regulations provides that the development subject of this question is exempted. The 'Conditions and Limitations' of Class 5 in Column 2 of the Schedule are fully met in this instance.

Planning Precedent

To assist Galway City Council in its deliberations on the question I refer you to an An Bord Pleanála Section 5 Referral Case Ref. No. 302804. The question raised in that case is very similar to that I now pose to Galway City Council. I attach the Inspector's Report and An Bord Pleanála Order in relation to that case for ease of reference (available on www.pleanala.ie).

The question posed in that instance was:

'Whether the opening of a pedestrian gate from the rear of the house into an area of public open space at 8 Millbridge Avenue, Mill Lane, Naas, County Kildare is or is not development or is or is not exempted development.'

The above question was first put to Kildare County Council. The Planning Authority in that instance held that the gate was exempted development. That Declaration was the subject of a third party referral to An Bord Pleanála. Having considered the matter An Bord Pleanála concurred with Kildare County Council and held that the gateway was exempted development.

The nature of that development, including its context, is very similar to the one that is now before Galway City Council for determination. Furthermore, the Millbridge housing development subject of the above referral is contemporaneous with The Maples housing development.

I believe that my gateway is exempted development with reference to the exact same legislative provisions cited by An Bord Pleanála in its Order in relation to case Ref. No. 302804.

Noting, *inter alia*, the obligations placed on planning authorities arising from section 5(6) and (7) of the 2000 Act, and also noting the provisions of section 9.10 of the 'Development Management – Guidelines for Planning Authorities' (Dept. of Env.

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Heritage & Local Gov. 2007) where it states, inter alia, the following “..The Board is also required to forward to each planning authority a copy of the record of its referral decisions from time to time...The planning authority must have regard to the decisions on this record in making decisions on future declarations...” (emphasis added), I would request that Galway City Council fully consider the above mentioned referral case as part of its deliberations on the question now before it.

Condition No. 11 of PL 61.094183

Shortly after carrying out the subject development I was contacted by the Planning Enforcement Section of Galway City Council. It appears the development was the subject of a third party complaint to the Authority.

Following some (limited) communication on the matter Galway City Council issued a letter dated 10/08/2020 (copy attached for ease of reference). In that letter it was stated that the gateway was not exempted development. The Authority specifically cited Condition No. 11 of the parent permission PL 61.094183 as granted by An Bord Pleanála and, with reference to Article 9(1)(a) of the *Planning and Development Regulations 2001-2019*, held that the development was de-exempt as it contravened Condition No. 11(a) concerning the provision of a screen wall between the rear garden and the public open space.

I appreciate that the Authority did not have the full facts and pertinent information before it when it issued the letter dated 10/08/2020, I also note that the letter does not constitute a Declaration in response to a request under section 5(1) of the 2000 Act, hence, I am now seeking a formal Declaration on the question.

It is my understanding that the Condition No. 11 of PL 61.094183 is a standard condition that is applied to all multi-unit housing schemes granted permission. This condition, or a version of it, is attached to virtually all grants of permission for residential housing schemes across the State, irrespective of the Planning Authority concerned. There is nothing unique or site-specific as to the application of this condition on the parent permission giving rise to The Maples development. This standard condition, or a version of it, requires developers to provide screen walls/fences between private rear gardens and between such gardens and areas of public open space. If Galway City Council hold that this condition, in this instance, can be grounds to de-exempt development, then such de-exemption must be applied to all multi-unit housing schemes that are subject to such conditions. I hold that this was not the intent or purpose of Condition 11.

The Planning Authority will of course be aware of incidents where exempted development is de-exempted by way of condition. But in such instances, it must be clearly stated in the condition what Class of exempted development is being de-exempted and why. The use of such conditions are not common and where used, must be development-specific and precise in their intent. The reasoning for such a condition must be clearly stated. I refer Galway City Council to section 7.1 of the

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AN BORD PLEANÁLA

‘Development Management – Guidelines for Planning Authorities’ (Dept. of Env. Heritage & Local Gov 2007) where it states, inter alia, the following: “Conditions proposed to be attached to permissions, and the reasons for them, should be carefully drafted so that their purpose and meaning are clear. Conditions must always be precise and unambiguous, particularly since the effectiveness of subsequent enforcement action may depend on the wording. Moreover, adequate reasons should be given by planning authorities to justify conditions...” (emphasis added)

There is no reference whatsoever in Condition 11 of PL 61.094183 to de-exemptions. If it was the intention of the consenting authority to de-exempt development by way of this condition then they would have clearly stated so in the condition. It is respectfully held here that it is not open to Galway City Council to re-interpret or re-purpose this Condition No. 11. I have a right to avail of the exemptions as laid down in legislation or, in the alternative, I have a right to know, via the conditions applied to the grant of planning permission, what Class exactly is being de-exempted, and why.

I refer again here to Referral Case Ref. No. 302804 mentioned above under ‘Planning Precedent’. I draw your attention to paragraph 7.2.2 of the Inspector’s Report on that Referral case. In that section the Inspector clearly considers the provisions and implications of Article 9(1)(a) of the *Planning and Development Regulations 2001-2019*. This is the same provision cited in Galway City Council’s letter of the 10/08/2020 in which they held that my gateway is de-exempted. Yet, having considered the matter, the Inspector did not consider that the same Article was grounds to de-exempt the gate in that case. Furthermore, in its Order on that Referral, An Bord Pleanála clearly stated that it had regard to, inter alia, Article 9(1) and “the planning history of the site” and still went on to determine that the gate was exempted development. The gate in that instance was located in a screen wall between a private rear garden and an area of public open space, as is my gate.

I refer Galway City Council to An Bord Pleanála Order Ref. No. PL 73.096426 (copy attached for ease of reference). This is the parent permission granting outline permission for the Millbridge housing development in Naas where the site subject of Referral Case Ref. No. 302804 is located. In particular, I draw the Planning Authority’s attention to Condition No. 5 of said Order which states:

Screen walls shall be provided at such locations as may be required by the planning authority to screen rear gardens from public view. Details of the height, materials and external finishes of the walls shall be submitted at approval stage.

Reason: In the interest of visual and residential amenity.

The above condition is very similar in its intent and purpose as Condition No. 11 of PL 61.094183. Yet neither Kildare County Council nor An Bord Pleanála in their deliberations on the gateway subject of Referral Case Ref. No. 302804 held that it de-exempted the gate.

The intent and purpose of Condition 11(a) of PL 61.094183 is clear, it is "to screen rear gardens from public view" as stated in the condition. My rear garden remains screened from public view with the gateway in place. As stated previously, the gate is constructed of vertical timber boarding and is opaque. It is not in my interests to undermine the privacy of my own home.

Conclusion

Having regard to the foregoing, I am requesting that Galway City Council declare as follows:

'That the opening of a pedestrian gateway from the rear of the house into an area of public open space at No. 31 The Maples, Dr. Mannix Road, Salthill, Galway City, is development and is exempted development.'

Yours sincerely



Tom Barry



Site location Map with Property 31 The Maples highlighted



AN TORD PLEANÁLA
20 OCT 2020
FROM [signature]
DATE
EP. 308493-20

31 The Maples

The Maples

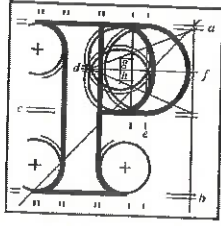
Doctor Mannix Road

Doctor Mannix Drive

D'Alton Drive

Glenard Crescent

Galway



An
Bord
Pleanála

Inspector's Report
ABP-302804-18

Question

AN BORD PLEANÁLA

Location 20 OCT 2020
LTR DATED _____ FROM _____
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ABP- _____

Whether the opening of a pedestrian gate from the rear of house into a green area of Millbridge Avenue is or is not development and is or is not exempted development.

8 Millbridge Court, Mill Lane, Naas, Co. Kildare.

Declaration

Planning Authority

Kildare County Council

Planning Authority Reg. Ref.

UD7133.

Applicant for Declaration

Des Murray & Caroline Flynn.

Planning Authority Decision

Is development and is exempted development.

Referral

Referred by

Des Murray & Caroline Flynn.

Owner/ Occupier

Mark & Dearbhla McDaid

Observer(s)

None.

Date of Site Inspection

6th December, 2018

Inspector

A. Considine

1.0 Site Location and Description

- 1.1. The subject site is located within an existing and well established residential estate within the town of Naas. The site is occupied by a two storey detached dwelling house and the rear of the property backs onto an area of public open space associated with the wider estate. The site is bound on east by a stream and to the south by the public open space.
- 1.2. The owners of the property installed a pedestrian gate in the rear boundary wall which provides access to the public open space area. The boundary wall is approximately 1.8m in height and is set back from the public road by approximately 45m.

AN BORD PLEANALA

20 OCT 2020

2.0 The Question

- 2.1. The question arising is whether the opening of a pedestrian gate from the rear of the house into an area of public open space is or is not development or is or is not exempted development, at 8 Millbridge Avenue, Naas, Co. Kildare.

3.0 Planning Authority Declaration

3.1. Declaration

The Planning Authority considered the opening of the gate following an objection to same by a third party. An Unauthorised Development File was opened, file ref UD7133, and on the 25th of September, 2018, the PA decided that the creation of the opening in the existing wall and construction of a pedestrian entrance gate constitutes exempted development pursuant to Class 5 under Part 1, Schedule 2 of the Planning and Development Regulations, 2001 as amended. The Planning Authority advised all parties that the UD file was closed and no further enforcement action was to be taken.

Mr. Des Murray & Ms. Caroline Flynn referred the question to An Bord Pleanala on the 17th October, 2018.

3.2. Planning Authority Reports

3.2.1. Planning Reports

There are no planning reports on file specifically relating to the referral issue. The submission from the Planning Authority however, provides details of the planning permission for an extension to the subject property, PA reference 15/978.

3.2.2. Other Technical Reports

None noted.

4.0 Planning History

PA ref 15/978: Permission granted for the demolition of an existing conservatory and the construction of a one and two storey extension at 8 Millbridge Court, Mill Lane, Naas, Co. Kildare.

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5.0 Policy Context

5.1. Development Plan

The Kildare County Development Plan, 2018 advises that Local Area Plans will be prepared for a number of towns in Co. Kildare, including Naas. The LAP for Naas is currently at pre-draft stage.

The expired Naas Town Development Plan, 2011-2017 identified the subject site as being located on lands zoned for residential infill with an R2 zoning objective 'to protect and improve existing residential amenity, to provide for appropriate infill residential development and to provide for new and improved ancillary services.'

5.2. Natural Heritage Designations

The site is not located within any designated site and is located within developed lands in the urban environment.

AN BORD PLEANÁLA

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6.0 The Referral

6.1. Referrer's Case

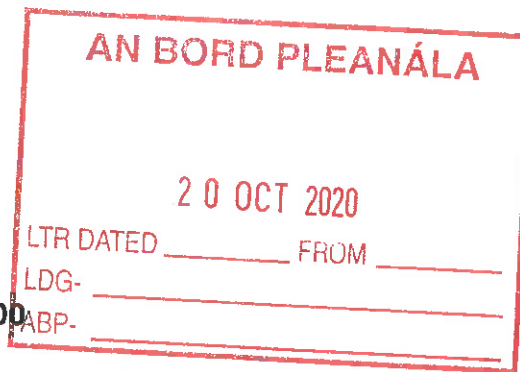
Mr. Des Murray & Ms. Caroline Flynn submitted an objection to the opening of the pedestrian gate by Mr. & Mrs. McDaid from their property onto the public open space associated with the wider Millbridge Avenue residential estate. The referrer notes that permission was granted for the extension to the house but that there was no indication of the intention to open an access onto the common area. The objections to the gate are summarised as follows:

- Access to the gate is approximately 45m from a public footpath.
- There is potential that the developers would consider constructing a footpath across the common area.
- The gate could result in cars or vehicles going across the common area to allow easier access for movement of goods through the new entrance.
- The entrance is adjacent to the referrers property.
- The developers still have an access to the rear of their property.
- While it is convenient for the developers in terms of access to Naas town centre, it is to the detriment of a green common area within the estate.
- Similar construction was rejected by the Council to no. 30. Millbridge Avenue, which sets a precedent for the reinstatement of the wall.

It is requested that the Board issue an Enforcement Order against an unauthorised development and order that the boundary wall be immediately reinstated to its full original purpose and appearance.

6.2. Planning Authority Response

The Planning Authority responded to this referral and submitted documents relating to the recent grant of planning permission for the extension to the house.



7.0 Statutory Provisions

7.1. Planning and Development Act, 2000

7.1.1. Section 2 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, except where the context otherwise requires – ‘development’ has the meaning assigned to it by Section 3 ...”

In Section 2 (1) of the Act “works” are interpreted as including “any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure”.

7.1.2. Section 3 (1) of the 2000 Planning and Development Act states as follows:-

“In this Act, ‘development’ means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land.”

7.1.3. Section 4(1) of the Planning and Development Act identifies what may be considered as exempted development for the purposes of the Act, and Section 4(2) of the Act provides that the Minister, by regulations, provide for any class of development to be exempted development. The principal regulations made under this provision are the Planning and Development Regulations, 2001.

7.2. Planning and Development Regulations, 2001

7.2.1. Article 6(1) of the Planning & Development Regulations, 2001 as amended states as follows:-

“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.”

AN BORD PLEANÁLA

20 OCT 2020

FROM

REG. DATED

ABP-

6.3. Owner/ occupier's response

Mr. & Mrs. McDaid responded to the referral. The submission presents a background to the issue raised by the referrer and is summarised as follows:

- Following a request by the referrers to Kildare County Council to issue enforcement action to return the wall to its original condition, the Council advised that the works were considered exempted development.
- It is accepted that the works carried out constitute development within the meaning of Section 3 of the Planning & Development Act, 2000 as amended.
- It is considered that the development constitutes exempted development as it comes within the scope of Class 5, Part 1, Schedule 2 of the Planning & Development Regulations, 2001 as amended.

In response to the issues raised by the referrers, the following is submitted:

- There is no intention of constructing a footpath or to move goods, requiring cars or vehicles, through the gate.
- The area is open space adjacent to their home to which they have full entitlement to access and use. The gate gives their young children safer access to the common green and provides a more convenient access to Naas town centre.
- It is unclear how the referrers will be impacted by a pedestrian gate accessing a grassed area.
- Kildare County Council have determined that there is no unauthorised development at the property.
- While they are not familiar with the precedent cited, it is understood that the opening was for a car and suspect that it was determined not to be exempt by virtue of contravening Articles 9(1)(a) (ii) & (iii).

6.4. Further Responses

None.

7.2.2. Article 9(1) of the Planning & Development Regulations 2001 as amended, provides a number of scenarios whereby development to which article 6 relates shall not be exempted development for the purposes of the Act. In particular, I consider the following to be relevant:

9. (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—

- (i) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act,
- (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,
- (xi) obstruct any public right of way

7.2.3. Schedule 2, Part 1 of the Planning & Development Regulations deal with Exempted Development – General and in terms of the subject referral, Class 5 and Class 9 are relevant, and state as follows:

Column 1 Description of Development	Column 2 Conditions and Limitations
<p>CLASS 5</p> <p>The construction, erection or alteration, within or bounding the curtilage of a house, of a gate, gateway, railing or wooden fence or a wall of brick, stone, blocks with decorative finish, other concrete blocks or mass concrete.</p>	<p>1. The height of any such structure shall not exceed 2 metres or, in the case of a wall or fence within or bounding any garden or other space in front of a house, 1.2 metres.</p> <p>2. Every wall other than a dry or natural stone wall bounding any garden or other space shall be capped and the face of</p>

	<p>any wall of concrete or concrete block (other than blocks with decorative finish) which will be visible from any road, path or public area, including public open space, shall be rendered or plastered.</p> <p>3. No such structure shall be a metal palisade or other security fence.</p>
<p>CLASS 9</p> <p>The construction, erection, renewal or replacement, other than within or bounding the curtilage of a house, or any gate or gateway.</p>	<p>The height of any such structure shall not exceed 2 metres.</p>

AN BORD PLEANALA

20 OCT 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

7.3. Roads Act, 1993

Public Road means a road over which a public right of way exists and the responsibility for the maintenance of which lies with the authority;

'road' includes -

- Any street, lane, footpath, square, court, alley or passage,
- Any bridge, viaduct, underpass, subway, tunnel, overpass, overbridge, flyover, carriageway (either single or multiple), pavement or footway,
- Any weighbridge or other facility for the weighing or inspection of vehicles, toll plaza or other facilities 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.

AN BORD PLEANÁLA

20 OCT 2020

LTR DATED _____ FROM _____

LDG- _____

7.4. Other

In terms of referrals relating to similar questions, the Board is advised of referral RL3380 which relates to the opening of an opening in the rear wall of a garden to provide pedestrian entrance from the public road / pavement and to provide 1.95m high pedestrian timber gate opening into the rear garden of a dwelling. The subject referral was one of 11 no. concurrent referrals made to the Board in respect of a road of terraced houses in a housing estate in Dublin. All houses had rear boundaries adjoining a residential cul-de-sac. The subject question related to the provision of a pedestrian entrance at the rear boundary of the dwelling.

The Planning Authority declared that the works were exempted development. The Board decided that the works were development and not exempted development as follows:

- The works were development per Section 3(1) of PDA, 2000 and came within the exempted development provisions of Part 1 Schedule 2 Class 5 of PDR, 2001
- The works were de-exempted under Article 9(1)((a)(ii) (adjoining road was public road the surfaced carriageway of which exceeded 4 m width).

I note that a number of the gates opened onto the grass verge of the public road.

8.0 Assessment

The question posed is as follows:

'Whether the opening of a pedestrian gate from the rear of a house into a mature landscaped green area of Millbridge Avenue at 8 Millbridge Court, Mill Lane, Naas, Co. Kildare, is or is not development or is or is not exempted development.

8.1. Is or is not development

- 8.1.1. Section 2(1) of the Act defines 'works' as including "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in

relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure". I am satisfied that, in accordance with the above definition, the subject referral relates to 'works'.

8.1.2. In terms of Section 3(1) of the Act, "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". I am satisfied that the said 'works' comprise 'development'. This determined, consideration is required as to whether the 'works' would constitute 'exempted development'.

8.2. Is or is not exempted development

8.2.1. Having established that the 'works' undertaken amount to 'development', the issue to be considered is whether the development is exempted development or not. Section 4(1) of the Act defines certain types of development as being 'exempted development'. It is possible that the works might be considered under Section 4(1)(j) being

development consisting of the use of any structure or other land within the curtilage of a house for any purpose incidental to the enjoyment of the house as such;

Therefore, the works might be considered to be exempted development under the provisions of Section 4(1) of the Planning & Development Act, 2000-2013.

8.3. Restrictions on exempted development

8.3.1. In terms of the Planning & Development Regulations, Article 6 relates to Classes 5 and 9 of Part 1, Schedule 2. The detail of both classes is provided above and I consider that the works come within the scope of Class 5, Schedule 2, Part 1 of the Regulations. In terms of Article 9(1)(a), and the assessment of previous similar referrals, I consider it appropriate to determine if the gate comprises the creation of an access onto a public road which exceeds 4m in width.

8.3.2. While Millbridge Avenue is a public road which is +4m in width, given that the gate is located at approximately 45m from the road, across an area of public open space which could not be considered as a road margin for the purposes of defining a road, I would not consider that it falls within this restriction. In relation to Article 9(1)(a)(iii), I am satisfied that the gate does not endanger public safety by reason of traffic hazard or obstruction of road users. As such, I do not consider that the restrictions associated with Article 9(1)(a)(iii) apply in this instance. Finally, I am satisfied that the provision of the gate does not interfere with or obstruct any public right of way and therefore, the restrictions associated with Article 9(1)(a)(xi) do not apply.

8.3.3. In light of the above, I am satisfied that the provision of the pedestrian gate is development and exempted development.

AN BORD PLEANÁLA
20 OCT 2020
FROM
LTR DATED
LDG-

9.0 Recommendation

9.1. I recommend that the Board should decide this referral in accordance with the following draft order.

WHEREAS a question has arisen as to whether the opening of a pedestrian gate from the rear of the house at 8 Millbridge Avenue, Mill Lane, Naas, Co. Kildare into an area of public open space is or is not development or is or is not exempted development:

AND WHEREAS Mr. Des Murray & Ms. Caroline Flynn requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 11th day of October, 2018 stating that the matter was development and was exempted development:

AND WHEREAS Mr. Des Murray & Ms. Caroline Flynn referred this declaration for review to An Bord Pleanála on the 17th day of October, 2018:

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

(a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,

(b) Article 6(1) and article 9(1) of the Planning and Development

Regulations, 2001, as amended,

(c) Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,

(d) the planning history of the site,

(e) the Roads Act, 1993

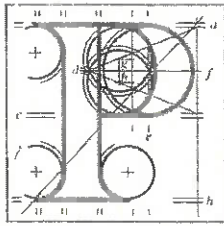
AND WHEREAS An Bord Pleanála has concluded that the opening of a pedestrian gate from the rear of the house into an area of public open space:

- (a) Would constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000
- (b) Would come within the scope of Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and
- (c) Would be exempted development by reason of Article 9(1)(a)(ii) of the Planning and Development Regulations, 2001, because the gate does not affect a public road within the meaning of the Roads Act, 1993;

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 said the opening of a pedestrian gate from the rear of the house at 8 Millbridge Avenue, Mill Lane, Naas, Co. Kildare into an area of public open space is development or is exempted development.

A. Considine
Planning Inspector

23rd January, 2019



An
Bord
Pleanála

AN BORD PLEANÁLA

20 OCT 2020

LTR DATED _____ FROM _____

LDG- _____

ABP **Board Order**

ABP-302804-18

Planning and Development Acts 2000 to 2018

Planning Authority: Kildare County Council

Planning Register Reference Number: 15978

WHEREAS a question has arisen as to whether the opening of a pedestrian gate from the rear of the house into an area of public open space at 8 Millbridge Avenue, Mill Lane, Naas, County Kildare is or is not development or is or is not exempted development:

AND WHEREAS Des Murray and Caroline Flynn of 29 Millbridge Avenue, Naas, County Kildare requested a declaration on this question from Kildare County Council and the Council issued a declaration on the 25th day of September, 2018 stating that the matter is development and is exempted development:

AND WHEREAS Des Murray and Caroline Flynn referred the declaration for review to An Bord Pleanála on the 17th day of October, 2018:

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

AN BORD PLEANÁLA

- (a) Sections 2, 3 and 4 of the Planning and Development Act, 2000, as amended,
- (b) article 6(1) and article 9(1) of the Planning and Development Regulations, 2001, as amended,
- (c) Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, as amended,
- (d) the planning history of the site, and
- (e) the Roads Act, 1993:

AND WHEREAS An Bord Pleanála has concluded that the opening of a pedestrian gate from the rear of the house into an area of public open space –

- (a) would constitute the carrying out of works which comes within the meaning of development in Section 3(1) of the Planning and Development Act, 2000,
- (b) would come within the scope of Class 5, Part 1 of Schedule 2 to the Planning and Development Regulations, 2001, and
- (c) would be exempted development by reason of article 9(1)(a)(ii) of the Planning and Development Regulations, 2001, as the gate does not affect a public road within the meaning of the Roads Act, 1993:

AN BORD PLEANÁLA

20 OCT 2020

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 opening of a pedestrian gate from the rear of the house into an area of public open space at 8 Millbridge Avenue, Mill Lane, Naas, County Kildare is development and is exempted development.

Matters Considered

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Michelle Fagan

Member of An Bord Pleanála

**duly authorised to authenticate
the seal of the Board.**

Dated this day of 2019.

AN BORD PLEANÁLALOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1993Galway County Borough

Planning Register Reference Number: 57/94

APPEAL by Michael Gallen of "Baywood", 30 Dalton Drive, Salthill, Galway and others against the decision made on the 20th day of July, 1994 by the Mayor, Aldermen and Burgesses of Galway to grant subject to conditions a permission to O Grady Construction (Gort) Limited of Rakerin, Gort, County Galway for development comprising the erection of a housing development of 60 houses at Doctor Mannix Road, Galway in accordance with plans and particulars lodged with the said Corporation:

DECISION: Pursuant to the Local Government (Planning and Development) Acts, 1963 to 1993, it is hereby decided, for the reason set out in the First Schedule hereto, to grant permission for the said development in accordance with the said plans and particulars, subject to the conditions specified in the Second Schedule hereto, the reasons for the imposition of the said conditions being as set out in the said Second Schedule and the said permission is hereby granted subject to the said conditions.

FIRST SCHEDULE

The proposed residential scheme is located within an area where the predominant land use is residential and it is considered that the proposed layout retains the open character and aspect of the property. Accordingly, it would be in compliance with the objectives for the area as set out in the current development plan for Galway City (which objectives are considered to be reasonable) and would not be injurious to existing amenities by reasons of overlooking, overshadowing or traffic generation. Provided the conditions attached to the Second Schedule are fully complied with, the proposed development would not be contrary to the proper planning and development of the area.

SECOND SCHEDULE

1. The proposed development shall be carried out and completed in accordance with the application received by the planning authority on the 14th day of February, 1994 as revised and amended by details lodged on the 13th day of May, 1994, the 24th day of June, 1994 and the 30th day of June, 1994. In this regard the layout shall be as per layout to scale 1:500, lodged on the 24th day of June, 1994 except as may otherwise be required by the conditions that follow.

Reason: In the interest of the proper planning and development of the area.

Dam

AN BORD PLEANÁLA

20 OCT 2020

SECOND SCHEDULE (CONTD.)

LTR DATED _____ FROM _____
LDC- _____
ABP- _____

2. The roof colour shall be blue/black, slate grey or turf brown.

Reason: In the interest of visual amenity.

3. All service cables associated with the proposed development (such as electrical, communal television, telephone and street lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

4. The developer shall pay a sum of money to Galway Corporation as a contribution towards the expenditure that was incurred and/or that is proposed to be incurred by the Corporation in respect of works (comprising the provision of public services) facilitating the proposed development. The amount of the contribution and the arrangements for payment shall be as agreed between the developer and the Corporation or, in default of agreement, shall be determined by An Bord Pleanála.

In the case of expenditure that is proposed to be incurred the requirement to pay this contribution is subject to the provisions of section 26(2)(h) of the Local Government (Planning and Development) Act, 1963 generally, and in particular, the specified period for the purposes of paragraph (h) shall be the period of seven years from the date of this order.

Reason: It is considered reasonable that the developer should contribute towards the expenditure that was incurred and/or that is proposed to be incurred by the Corporation in respect of works facilitating the proposed development.

5. Before development is commenced, the developer shall lodge with Galway Corporation a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the Corporation of roads, footpaths, sewers, watermains, drains, public open space, public lighting and other services required in connection with the development, coupled with an agreement empowering the Corporation to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the Corporation and the developer or, in default of agreement, shall be determined by An Bord Pleanála.

Reason: To ensure the satisfactory completion of the development.

AN BORD PLEANÁLA

SECOND SCHEDULE (CONTD.)

20 OCT 2020

LETTER DATED FROM
TABP

6. The areas shown and conditioned as open space shall be fenced off before construction works commence to the satisfaction of the planning authority and shall not be used for the purpose of site compounds or for the storage of plant, materials or spoil.

Reason: To protect the amenities of the area.

7. (a) Prior to commencement of development, precise details of the retention of good quality trees not directly affected by the development including protective fencing, in accordance with the tree survey report received by the planning authority on the 13th day of May, 1994 shall be submitted for the written agreement of the planning authority. In addition, a landscape plan with full work specification including regrading, topsoiling, seeding, tree and shrub planting shall be submitted to and agreed with the planning authority prior to commencement of development.

(b) A scheme of street tree planting shall be submitted to and agreed with the planning authority prior to commencement of development.

Reason: In the interest of the proper planning and development of the area.

8. Public lighting shall be in accordance with the planning authority's requirements for such a service.

Reason: To ensure that street lighting of adequate standard can be provided.

9. Roads, footpaths, sewers, drains and water supply shall comply with An Foras Forbartha publication 'Recommendations For Site Development Works For Housing Areas'.

Reason: In the interest of orderly development.

10. The proposed first floor side elevation windows shall be glazed in obscure glass and opening sections shall be restricted to top hung pivot.

Reason: In the interest of privacy and amenity of occupiers of adjacent houses.

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AN BORD PLEANÁLA

-4-

PL 61.094183

20 OCT 2020

LTR DATED SECOND SCHEDULE (CONTD.)

11. (a) ~~Screen walls in stone,~~ brick or similar durable materials not less than two metres high and suitably capped and rendered shall be provided at the necessary locations so as to screen rear gardens from public view. Details of the specific type, location and extent of walling shall be submitted to and agreed with the planning authority prior to commencement of development.
- (b) Rear boundary walls between rear gardens shall be 1.8 metres high and of concrete block construction.
- (c) A screen wall 1.8 metres high and extending for a minimum of three metres from the rear wall of the house towards the rear of the site shall be erected between all semi-detached dwellinghouses.

Reason: In the interest of visual amenity.

12. Front gardens of houses numbers 1 to 6 inclusive shall be fenced off with walls, 0.9 metres high, which shall be rendered and capped with piers at the vehicular entrance. Details shall be submitted to and agreed in writing with the planning authority prior to the commencement of development.

Reason: To avoid piecemeal provision of front boundary walls in the interests of visual and residential amenity.

13. With the exception of houses numbers 1 to 6 inclusive, no boundary walls or fences shall be erected in advance of the front building line of the houses.

Reason: The proposed development provides for an open plan front garden layout and the piecemeal provision of boundary walls or fences would result in a serious loss of residential amenity.

14. (a) The existing stone wall along the eastern site boundary and bounding the existing public open space shall be reconstructed in natural stone. Details of finished height shall be agreed with the planning authority prior to commencement of development.
- (b) Detailed proposals for the remainder of the stone walling along the eastern boundary including maintenance, repair and finished height relative to the new access road shall be submitted to and agreed with the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

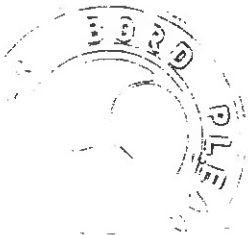
Down

AN BORD PLEANÁLA

SECOND SCHEDULE (CONTD.)

15. (a) The housing layout ~~for~~ ^{TO BE DATED} the north-western corner of the site, ~~including finished floor levels,~~ ^{LDG} shall be as per drawing, ~~dated the 31st day of August, 1994,~~ ^{ASP} lodged with An Bord Pleanála on the 14th day of September, 1994.
- (b) Houses numbers 45 and 46 and 47 to 50 shall have a hipped roof treatment.
- (c) The existing stone wall along the western boundary of sites 46 and 47 shall be refurbished to the satisfaction of the planning authority. In addition, a 1.8 metre high interlapping wooden fence shall be erected alongside the wall except in the vicinity of the hammerhead where a 1.8 metre concrete block wall faced in natural local stone shall be erected.
- (d) A planting proposal for the western boundary of sites numbers 46 and 47 shall be submitted to and agreed with the planning authority prior to the commencement of development.
- (e) Detailed drawings of the houses and boundary treatment shall be submitted to and agreed with the planning authority prior to commencement of development.

Reason: In the interest of the proper planning and development of the area and in the interest of residential amenity.



Douglas A. Murphy

Member of An Bord Pleanála duly
authorised to authenticate the
seal of the Board.

Dated this 14th day of December 1994.

AN BORD PLEANALA

LOCAL GOVERNMENT (PLANNING AND DEVELOPMENT) ACTS, 1963 TO 1993

Urban District of Naas

Planning Register Reference Number: 3078

AN BORD PLEANALA

20 OCT 2020

LTR DATED _____ FROM _____

APPEAL by Thomas McDermott care of McDonnell and Dixon of 20 Ely Place, Dublin against the decision made on the 16th day of June, 1995 by the Council of the Urban District of Naas to refuse an outline permission for development comprising the erection of 38 houses with ancillary roads and services at site off road to Tandy's Bridge, Naas West Townland, County Kildare in accordance with plans and particulars lodged with the said Council:

DECISION: Pursuant to the Local Government (Planning and Development) Acts, 1963 to 1993, it is hereby decided, for the reason set out in the First Schedule hereto, to grant outline permission for the said development in accordance with the said plans and particulars, subject to the conditions specified in the Second Schedule hereto, the reasons for the imposition of the said conditions being as set out in the said Second Schedule and the said outline permission is hereby granted subject to the said conditions.

FIRST SCHEDULE

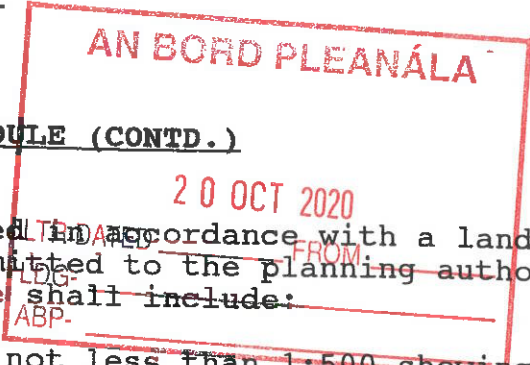
Having regard to the residential zoning objective of the site in the current Naas Development Plan (which is considered reasonable), and to the proximity of the site to the town centre, it is considered that, subject to compliance with the conditions set out in the Second Schedule, the proposed development would be acceptable in terms of traffic safety and convenience and would be in accordance with the proper planning and development of the area.

SECOND SCHEDULE

1. Prior to the commencement of development, an agreement shall be entered into with Naas Urban District Council under section 38 of the Local Government (Planning and Development) Act, 1963 to preserve the area outlined in blue on drawing number 94647/05, entitled "Proposal for land north east of proposed housing development", free of any further residential development.

Reason: The lands referred to bound the Grand Canal, an area of high amenity, it is necessary to restrict housing development in this area in the interest of visual amenity.

JAM



SECOND SCHEDULE (CONTD.)

2. The site shall be landscaped in accordance with a landscaping scheme which shall be submitted to the planning authority at approval stage. This scheme shall include:

- (a) A plan to a scale of not less than 1:500 showing:
 - (i) the trees to be removed and those to be retained, indicating species, heights, crown spread and condition,
 - (ii) the species and siting of all new planting. Particular attention shall be paid to the landscaping of the northern boundary of the site with Mill Lane and the western boundary, and
 - (iii) proposals for levelling, moulding and surface treatment of communal areas including hard surfaced areas and areas of public open space;
- (b) a landscape management plan to include details of the measures to protect existing trees and shrubs during the construction phase; and
- (c) a timetable for the implementation of this scheme indicating details of phasing.

Reason: In the interest of visual amenity.

3. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the detailed requirements of the planning authority for such works and services.

Reason: In the interest of public health and to ensure a proper standard of development.

4. All service cables associated with the proposed development (such as electrical, communal television, telephone and street lighting cables) shall be run underground within the site.

Reason: In the interest of orderly development and the visual amenities of the area.

5. Screen walls shall be provided at such locations as may be required by the planning authority to screen rear gardens from public view. Details of the height, materials and external finishes of the walls shall be submitted at approval stage.

Reason: In the interest of visual and residential amenity.

SECOND SCHEDULE (CONTD.)

AN BORD PLEANÁLA

28 OCT 2020
LTD DATED

FROM

LDG-

6. Public lighting shall be provided according as each street is occupied in accordance with a scheme, details of which shall be submitted at approval stage.

Reason: In the interest of amenity and public safety.

7. Details of the proposed entrance to the site, the road layout within the site, and land to be reserved for future road improvement works shall be determined at approval stage.

Reason: In the interest of traffic safety.

8. The developer shall pay a sum of money to Naas Urban District Council as a contribution towards the expenditure that was incurred and/or that is proposed to be incurred by the Council in respect of the provision of public water supplies and sewerage facilities facilitating the proposed development. The amount of the contribution and the arrangements for payment shall be as agreed between the developer and the Council at approval stage.

Reason: It is considered reasonable that the developer should contribute towards the expenditure that was incurred and/or that is proposed to be incurred by the Council in respect of the provision of public water supplies and sewerage facilities facilitating the proposed development.

9. The developer shall pay a sum of money to Naas Urban District Council as a contribution towards the expenditure that is proposed to be incurred by the Council in respect of road improvement works and traffic management measures facilitating the proposed development. The amount of the contribution and the arrangements for payment shall be as agreed between the developer and the Council at approval stage.

Reason: It is considered reasonable that the developer should contribute towards the expenditure that is proposed to be incurred by the Council in respect of works facilitating the proposed development.

Qam.

AN BORD PLEANÁLA

SECOND SCHEDULE (CONTD.) ³⁰OCT 2020

LTR DATED _____ FROM _____

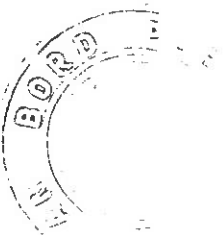
10. Before development is commenced, ~~the developer shall lodge with Naas Urban District Council a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion and maintenance until taken in charge by the Council of roads, footpaths, watermains, drains, public open space and other services required in connection with the development, coupled with an agreement empowering the Council to apply such security or part thereof to the satisfactory completion or maintenance of any part of the development. The form and amount of the security shall be as agreed between the Council and the developer at approval stage.~~

Reason: To ensure the satisfactory completion of the development.

Donough A. Murphy

Member of An Bord Pleanála duly
authorised to authenticate the
seal of the Board.

Dated this 13th day of November 1995.





Comhairle Cathrach na Gaillimhe
Galway City Council

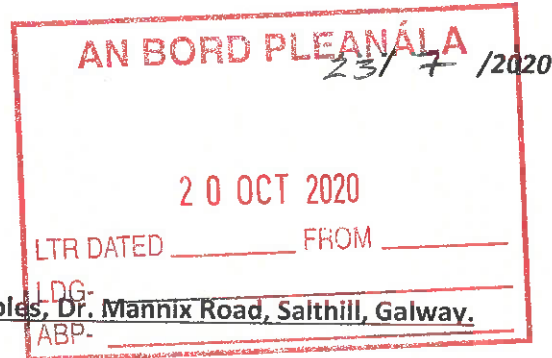
Halla na Cathrach
Bóthar an Chólaíste
Gaillimh
H91 X4K8

City Hall
College Road
Galway
H91 X4K8

Our Ref: C146/20

NK/JM/PK

The Owner/Occupier,
31 The Maples,
Dr. Mannix Road,
Salthill,
Galway.



RE: Development at No. 31 The Maples, Dr. Mannix Road, Salthill, Galway.

Dear Sir/Madam,

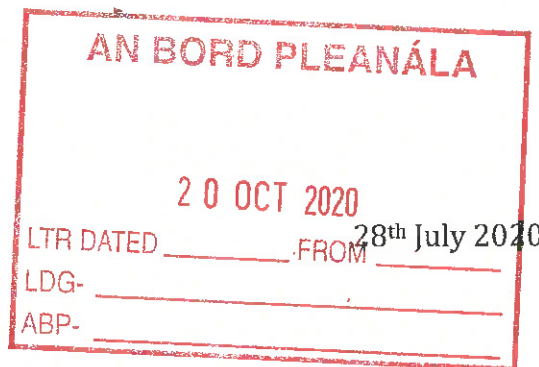
I refer to the above site and wish to advise that it has come to the attention of the Planning Authority that works have recently been carried out to the rear boundary wall of the above property.

You are requested to contact Jarlath Moloney, Planning Enforcement Officer on 091-536477 or Jarlath.moloney@galwaycity.ie to arrange an inspection of the property within the next 10 days.

Yours faithfully,

Norann Keane,
Senior Staff Officer,
Planning Department.

Mr. Jarlath Moloney,
Planning Enforcement Officer,
Galway City Council,
City Hall,
College Road,
Galway,
H91 X4K8



Dear Mr. Moloney,

Thank you for your letter dated 23rd July 2020 which we received today (28th July 2020) regarding works carried out on an already existing rear boundary wall. These works entailed the opening of a gateway in an existing boundary wall and we are satisfied that these works are exempt from a planning perspective as they comply with Class 5, Part 1, Schedule 2 (Planning and Development Regulations, 2001) and also Article 9 of said Regulations.

We welcome your wish to visit our property and you can contact me so that we can arrange a date and time that suits us both.

In the unlikely event that the Galway City council planning authority disagrees and feels that the work is de-exempted we would want the reasons or grounds for such a decision, to be given in writing.

Again thank you for your correspondence and I look forward to meeting you in person.

Yours Sincerely



Tom Barry

tjbarry@gmail.com



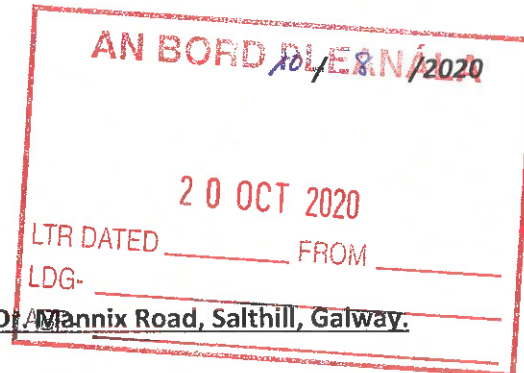
Comhairle Cathrach na Gaillimhe
Galway City Council

Halla na Cathrach
Bóthar an Choláiste
Gaillimh
H91 X4K8

City Hall
College Road
Galway
H91 X4K8

Our Ref: C146/20 NK/JM/PK

Tom Barry,
31 The Maples,
Dr. Mannix Road,
Salthill,
Galway.



RE: Development at No. 31 The Maples, Dr. Mannix Road, Salthill, Galway.

Dear Sir,

I refer to the above and wish to acknowledge receipt of your email correspondence of the 28th July 2020. With reference to the contents of said email, I refer you to Condition No. 11 of Pl. Reg. Ref. No. 57/94 (An Bord Pleanála Ref. Pl. 61.094183) which states,

"(a) Screen walls in stone, brick or similar durable materials not less than two metres high and suitably capped and rendered shall be provided at the necessary location so as to screen rear gardens from public view. Details of the specific type, location and extent of walling shall be submitted to and agreed with the planning authority prior to commencement of development.

(b) Rear boundary walls between rear gardens shall be 1.8 metres high and of concrete block construction.

(c) A screen wall 1.8 metres high and extending for a minimum of three metres from the rear wall of the house towards the rear of the site shall be erected between all semi-detached dwellinghouses".

Article 9 of the Planning & Development Regulations 2001-2018 – Restriction of exemptions states,

"(1) Developments to which article 6 relates shall not be exempted development for the purpose of the Act-

(a) if the carrying out of such development would –

(1) contravene a condition attached to a permission under the Act or be inconsistent with any use specified in a permission under the Act".

Accordingly, the creation of an opening (timber gate) in the boundary wall which abuts the public open space is not exempted development and any such openings would require planning permission.

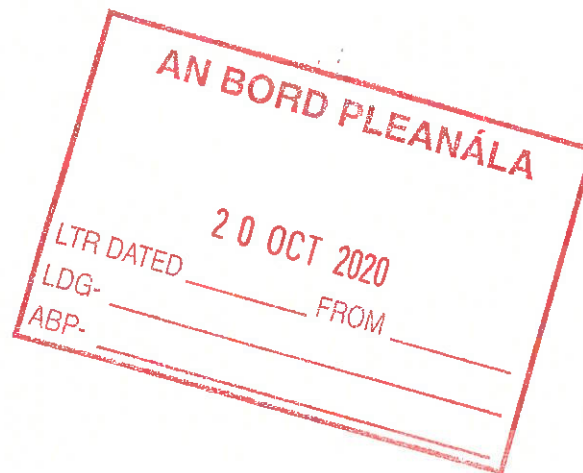
Aside from planning requirements, any opening in boundary walls opening onto public open space would be subject to referral to the Parks, Recreation & Amenity Department for their observations in regard to the structural integrity of the boundary wall and health & safety concerns associated with maintenance of public open spaces.

I wish to advise that planning enforcement will commence within 10 days if a written commitment is not received to reinstate the boundary wall to its original condition.

Yours faithfully,

pp Emma Silke.

Norann Keane,
Senior Staff Officer,
Planning Department.



Ms. Norann Keane,
Senior Staff Officer,
Planning Department,
Galway City council.

AN BORD PLEANÁLA
15th August 2020

20 OCT 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

**Re: Gateway in Rear Boundary Wall at 31 The Maples, Dr.
Mannix Road, Salthill, Galway**


Dear Ms. Keane,

Thank you for your letter dated 10th August 2020 sent in response to my letter of 28th July regarding above. I also note that there was no visit arranged to the work by your office as requested in your letter of 23rd July 2020, we had begun to change our work commitments to facilitate this meeting.

To be honest we were quite disappointed with your decision especially as we feel this work is exempt under **Class 5, Part 1, Schedule 2 (Planning and Development Regulations, 2001)** and also within the **Article 9 provisions of said Regulations.**

Because of this we are going to apply for a **Section 5 referral declaration** on this matter. We do however commit to close the gate, if this is the resulting decision, once all avenues in this process have been exhausted.

Yours Sincerely,


AN BORD PLEANÁLA
Tom Barry

20 OCT 2020

LTR DATED _____ FROM _____

LDG- _____

ABP- _____





